

ATTACHMENT "A"

UTAH DEPARTMENT OF HEALTH

General Grant Provisions

I. GRANT DEFINITIONS 1

II. AUTHORITY 1

III. MISCELLANEOUS PROVISIONS 2

IV. UTAH INDOOR CLEAN AIR ACT 3

V. RELATED PARTIES & CONFLICTS OF INTEREST 4

VI. OTHER AGREEMENTS 4

VII. SUBGRANTS & ASSIGNMENTS 4

VIII. FURTHER WARRANTY 4

IX. INFORMATION OWNERSHIP 4

X. SOFTWARE OWNERSHIP 4

XI. INFORMATION PRACTICES 5

XII. INDEMNIFICATION 5

XIII. SUBMISSION OF REPORTS 6

XIV. PAYMENT 6

XV. RECORD KEEPING, AUDITS, & INSPECTIONS 6

XVI. GRANT ADMINISTRATION REQUIREMENTS 7

XVII. DEFAULT, TERMINATION, & PAYMENT ADJUSTMENT 9

XVIII. FEDERAL REQUIREMENTS 10

ATTACHMENT "A"

UTAH DEPARTMENT OF HEALTH GENERAL GRANT PROVISIONS

I. GRANT DEFINITIONS

The following definitions apply in these general grant provisions:

- "**Assign**" or "**Assignment**" means the transfer of all rights and delegation of all duties in the grant to another person.
- "**Business**" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
- "**This Grant**" means this agreement between the Department and the Grantee, including both the General Grant Provisions and the Special Provisions.
- "**The Grantee**" means the person who delivers the services or goods described in this Grant, other than the state or the Department.
- "**The Department**" means the Utah Department of Health.
- "**Director**" means the Executive Director of the Department or authorized representative.
- "**Equipment**" means capital equipment which costs at least \$1,000 and has a useful life of one year or more unless a different definition or amount is set forth in the Special Provisions or specific Department Program policy as described in writing to Grantee.
- "**Federal law**" means the constitution, orders, case law, statutes, rules, and regulations of the federal government.
- "**Grant provisions**" means those provisions of this Grant which are set forth under the heading "General Grant Provisions."
- "**Governmental entity**" means a federal, state, local, or federally-recognized Indian tribal government, or any subdivision thereof.
- "**Individual**" means a living human being.
- "**Local health department**" means a local health department as defined in § 26A-1-102, Utah Code Annotated, 1953 as amended (UCA.).
- "**Non-governmental entity**" means privately held non-profit or for profit organization not classified as a "Governmental entity."
- "**Person**" means any governmental entity, business, individual, union, committee, club, other organization, or group of individuals.
- "**Recipient**" means an individual who is eligible for services provided by the Department or by an authorized Grantee of the Department under the terms of this Grant.
- "**Services**" means the furnishing of labor, time, or effort by a Grantee, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance.
- "**Special provisions**" means those provisions of this Grant which are in addition to the General Grant Provisions and which more fully describe the goods or services covered by this Grant.
- "**State**" means the State of Utah.
- "**State law**" means the constitution, orders, case law, statutes, and rules, of the state.
- "**Subgrant**" means any signed agreement between the Grantee and a third party to provide goods or services for which the Grantee is obligated, except purchase orders for standard commercial equipment, products, or services.
- "**Subgrantee**" means the person who performs the services or delivers the goods described in a subgrant.

II. AUTHORITY

1. The Department's authority to enter into this Grant is derived from Chapter 56, Title 63, UCA; Titles 26 and 26A, UCA; and from related statutes.
2. The Grantee represents that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the project or services described in this Grant.

ATTACHMENT "A"

III. MISCELLANEOUS PROVISIONS

1. For reference clarity, as used in these General Grant Provisions: "ARTICLE" refers to a major topic designated by capitalized roman numerals; "SECTION" refers to the next lower numbered heading designated by arabic numerals, and "SUBSECTIONS" refers to the next two lower headings designated by lower case letters and lower case roman numerals.
2. If the General Grant Provisions and the special provisions of this Grant conflict, the special provisions govern.
3. These provisions distinguish between two Grantee types: Governmental and Non-governmental. Unspecified text applies to both types. Type-specific statements appear in bold print (*e.g.*, **Non-governmental entities only**).
4. Once signed by the Director and the State Division of Finance, when applicable, and the State Division of Purchasing, when applicable, this Grant becomes effective on the date specified in this Grant. Changes made to the unsigned Grant document shall be initialed by both persons signing this Grant on page one. Changes made to this Grant after the signatures are made on page one may only be made by a separate written amendment signed by persons authorized to amend this Grant.
5. Neither party may enlarge, modify, or reduce the terms, scope of work, or dollar amount in this Grant, except by written amendment as provided in section 4.
6. This Grant and the grants that incorporate its provisions contain the entire agreement between the Department and the Grantee. Any statements, promises, or inducements made by either party or the agent of either party which are not contained in the written Grant or other grants are not valid or binding.
7. The Grantee shall comply with all applicable laws regarding federal and state taxes, unemployment insurance, disability insurance, and workers' compensation.
8. The Grantee is an independent contractor, having no authorization, express or implied, to bind the Department to any agreement, settlement, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the Department unless expressly set forth herein. Compensation stated herein shall be the total amount payable to the Grantee by the Department. The Grantee shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the Department for these grant services.
9. The Grantee shall maintain all licenses, permits, and authority required to accomplish its obligations under this Grant.
10. The Grantee shall obtain prior written Department approval before purchasing any equipment with grant funds.
11. Notice shall be in writing, directed to the contact person on page one of this Grant, and delivered by certified mail or by hand to the other party's most currently known address. The notice shall be effective when placed in the U.S. mail or hand-delivered.
12. The Department and the Grantee shall attempt to resolve grant disputes through available administrative remedies prior to initiating any court action.
13. This Grant shall be construed and governed by the laws of the State of Utah. The Grantee submits to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Grant or the breach thereof. The proper venue of any legal action arising under this grant shall be in Salt Lake City, Utah.
14. Any court ruling or other binding legal declaration which declares that any provision of this Grant is illegal or void, shall not affect the legality and enforceability of any other provision of this Grant, unless the provisions are mutually dependent.
15. The Grantee agrees to maintain the confidentiality of records that it holds as agent for the Department as required by the Government Records Access and Management Act, Title 63, Chapter 2, UCA and the confidentiality of records requirements of Title 26, UCA.
16. The Grantee agrees to abide by the State of Utah's executive order, dated March 17, 1993, which prohibits sexual harassment in the workplace.
17. The waiver by either party of any provision, term, covenant or condition of this Grant shall not be deemed to be a waiver of any other provision, covenant or condition of this Grant nor any subsequent breach of the same or any other provision, term, covenant or condition of this Grant.
18. The Grantee agrees to warrant and assume responsibility for each hardware, firmware, and/or software product (hereafter called the product) that it licenses, or sells, to the Department under this Grant. The Grantee acknowledges that the Uniform Commercial Code applies to this Grant. In general, the Grantee warrants that: (a) the

ATTACHMENT "A"

product will do what the salesperson said it would do, (b) the product will live up to all specific claims that the manufacturer makes in their advertisements, (c) the product will be suitable for the ordinary purposes for which such product is used, (d) the product will be suitable for any *special purposes* that the Department has relied on the Grantee's skill or judgement to consider when it advised the Department about the product, (e) the product has been properly designed and manufactured, and (f) the product is free of significant defects or unusual problems about which the Department has not been warned..

19. The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid for from State funds and used in the exercise of that entity's essential functions. If the items purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the grant.

20. The Grantee agrees that the Grant will be a public document, and may be available for distribution. Grantee gives the Department express permission to make copies of the Grant and/or of the response to the solicitation in accordance with State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.

21. This Grant may be amended, modified, or supplemented only by written amendment to the Grant, executed by the parties hereto, and attached to the original, signed copy of the Grant.

22. Unless otherwise specified in this Grant, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Grantee. Responsibility and liability for loss or damage will remain with Grantee until final inspection and acceptance, when responsibility will pass to the Department, except as to latent defects, fraud and Grantee's warranty obligations.

23. All orders will be shipped promptly in accordance with the delivery schedule. The Grantee will promptly submit invoices (within 30 days of shipment or delivery of services) to the Department. The State grant number and/or the agency purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the Grant order. The prices paid by the Department will be those prices listed in the Grant. The Department has the right to adjust or return any invoice reflecting incorrect pricing.

24. The Grantee will release, indemnify, and hold the State, its officers, agents, and employees harmless from liability of any kind or nature, including the Grantee's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article, or appliance furnished or used in the performance of this Grant.

25. Neither party to this Grant will be held responsible for delay or default caused by fire, riot, acts of God, and/or war which is beyond that party's reasonable control. The Department may terminate this Grant after determining that such delay or default will reasonably prevent successful performance of the Grant.

26. The Grantee understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63-56-1002, Utah Code Annotated, 1953 as amended).

27. Grantee Terms and Conditions that apply must be in writing and attached to the Grant. No other Terms and Conditions will apply to this Grant, including terms listed or referenced on a Grantee's website, terms listed in a Grantee quotation/sales order, etc. In the event of any conflict in the grant terms and conditions, the order of precedence shall be: 1. Department General Grant Provisions; 2. Department Special Provisions; 3. Grantee Terms and Conditions.

IV. UTAH INDOOR CLEAN AIR ACT

The Grantee, for all personnel operating within the State of Utah, shall comply with the Utah Indoor Clean Air Act, Title 26, Chapter 38, UCA, which prohibits smoking in public places.

ATTACHMENT "A"

V. RELATED PARTIES & CONFLICTS OF INTEREST

1. The Grantee may not pay related parties for goods, services, facilities, leases, salaries, wages, professional fees, or the like for grant expenses without the prior written consent of the Department. The Department may consider the payments to the related parties as disallowed expenditures and accordingly adjust the Department's payment to the Grantee for all related party payments made without the Department's consent. As used in this section, "related parties" means any person related to the Grantee by blood, marriage, partnership, common directors or officers, or 10% or greater direct or indirect ownership in a common entity.
2. The Grantee shall comply with the Public Officers' and Employees' Ethics Act, § 67-16-10, UCA, which prohibits actions that may create or that are actual or potential conflicts of interest. It also provides that "no person shall induce or seek to induce any public officer or public employee to violate any of the provisions of this act." The Grantee represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with § 67-16-8, UCA.

VI. OTHER GRANTS

1. The Department may perform additional work related to this Grant or award other grants for such work. The Grantee shall cooperate fully with other grantees, public officers, and public employees in scheduling and coordinating grant work. The Grantee shall give other grantees reasonable opportunity to execute their work and shall not interfere with the scheduled work of other grantees, public officers, and public employees.
2. The Department shall not unreasonably interfere with the Grantee's performance of its obligations under this Grant.

VII. SUBGRANTS & ASSIGNMENTS

The Grantee shall not assign, sell, transfer, subgrant, or sublet rights or delegate responsibilities under this Agreement, in whole or part, without the prior written consent of the Department. The Department agrees that the Grantee may partially subgrant services, provided that the Grantee retains ultimate responsibility for performance of all terms, conditions and provisions of this Agreement. When subgranting, the Grantee agrees to use written subgrants that conform with Federal and State laws. The Grantee shall request Department approval for any assignment at least 20 days prior to its effective date.

VIII. FURTHER WARRANTY

The Grantee warrants that (a) all services shall be performed in conformity with the requirements of this Grant by qualified personnel in accordance with generally recognized standards; and (b) all goods or products furnished pursuant to this Grant shall be free from defects and shall conform to grant requirements. For any item that the Department determines does not conform with the warranty, the Department may arrange to have the item repaired or replaced, either by the Grantee or by a third party at the Department's option, at the Grantee's expense.

IX. INFORMATION OWNERSHIP

Except for confidential medical records held by direct care providers, the Department shall own exclusive title to all information gathered, reports developed, and conclusions reached in performance of this Grant. The Grantee may not use, except in meeting its obligations under this Grant, information gathered, reports developed, or conclusions reached in performance of this Grant without the express written consent of the Department.

X. SOFTWARE OWNERSHIP

1. If the Grantee develops or pays to have developed computer software exclusively with funds or proceeds from this Grant to perform its obligations under this Grant, or to perform computerized tasks that it was not previously performing to meet its obligations under this Grant, the computer software shall be exclusively owned by or licensed to the Department. In the case of software owned by the Department, the Department grants to the Grantee a nontransferable, nonexclusive license to use the software in the performance of this Grant. In the case of software licensed to the Department, the Department grants to the Grantee permission to use the software in the performance of this Grant. This license or permission, as the case may be, terminates when the Grantee has completed its work

ATTACHMENT "A"

under this Grant.

2. If the Grantee develops or pays to have developed computer software which is an addition to existing software owned by or licensed exclusively with funds or proceeds from this Grant, or to modify software to perform computerized tasks in a manner different than previously performed, to meet its obligations under this Grant, the addition shall be exclusively owned by or licensed to the Department. In the case of software owned by the Department, the Department grants to the Grantee a nontransferable, nonexclusive license to use the software in the performance of this Grant. In the case of software licensed to the Department, the Department grants to the Grantee permission to use the software in the performance of this Grant. This license or permission, as the case may be, terminates when the Grantee has completed its work under this Grant.

3. If the Grantee uses computer software licensed to it which it does not modify or program to handle the specific tasks required by this grant, then to the extent allowed by the license agreement between the Grantee and the owner of the software, the Grantee grants to the Department a continuing nonexclusive license to use the software, either by the Department or by a different Grantee, to perform work substantially identical to the work performed by the Grantee under this Grant. If the Grantee cannot grant the license as required by this section, then the Grantee shall reveal the input screens, report formats, data structures, linkages, and relations used in performing its obligations under this Grant in such a manner to allow the Department or another Grantee to continue the work performed by the Grantee under this Grant.

4. The Grantee shall deliver to the Department a copy of the software or information required by this Article within 90 days after the commencement of this Grant and thereafter immediately upon making a modification to any of the software which is the subject of this Grant.

XI. INFORMATION PRACTICES

1. **(Governmental entities only)** The Grantee shall establish, maintain, and practice information procedures and controls that comply with Federal and State law. The Grantee assures that any information about an individual that it receives or requests from the Department pursuant to this Grant is necessary to the performance of its duties and functions and that the information will be used only for the purposes set forth in this Grant. The Department shall inform the Grantee of any non-public designation of any information it provides to the Grantee.

2. **(Non-governmental entities only)** The Grantee shall establish, maintain, and practice information procedures and controls that comply with Federal and State law. The Grantee may not release any information regarding any person from any information provided by the Department, unless the Department first consents in writing to the release.

XII. INDEMNIFICATION

1. **(Governmental entities only)** It is mutually agreed that each party assumes liability for the negligent or wrongful acts committed by its own agents, officials, or employees, regardless of the source of funding for this Grant. Neither party waives any rights or defenses otherwise available under the Governmental Immunity Act.

2. **(Non-governmental entities only)** To the extent authorized by law, the Grantee shall indemnify and hold harmless the Department and any of its agents, officers, and employees, from any claims, demands, suits, actions, proceedings, loss, injury, death, and damages of every kind and description, including any attorney's fees and litigation expenses, which may be brought, made against, or incurred by that party on account of loss or damage to any property, or for injuries to or death of any person, caused by, arising directly or indirectly out of, or contributed to in whole or in part, by reason of any alleged act, omission, professional error, fault, mistake, or negligence of the Grantee or its employees, agents, or representatives, or subgrantees or Grant employees, agents, or representatives, in connection with, incident to, or arising directly or indirectly out of this Grant, or arising out of workers' compensation claims, unemployment, or claims under similar such laws or obligations.

ATTACHMENT "A"

XIII. SUBMISSION OF REPORTS

If the Grantee is a Local Health Department, it shall submit monthly expenditure reports to the Department in a format approved by the Department. All other Grantees shall submit monthly summarized billing statements to the Department. Expenditure reports and billing statements must be submitted to the Department within 30 days following the last day of the month in which the expenditures were incurred or the services provided.

XIV. PAYMENT

1. If a recipient, a recipient's insurance, or any third-party is responsible to pay for services rendered pursuant to this Grant, the Grantee shall bill and collect for the goods or services provided to the recipient. The Department shall reimburse total actual expenditures, less amounts collected as required by this section.
2. Under no circumstances shall the Department authorize payment to the Grantee that exceeds the amount specified in this Grant without an amendment to the Grant.
3. The Department agrees to make every effort to pay for completed services, and payments are conditioned upon receipt of applicable, accurate, and completed reports prepared by the Grantee and delivered to the Department. The Department may delay or deny payment for final expenditure reports received more than 20 days after the Grantee has satisfied all Grant requirements.
4. In the case that funds are not appropriated or are reduced, the Department will reimburse Grantee for products delivered or services performed through the date of cancellation or reduction, and the Department will not be liable for any future commitments, penalties, or liquidated damages.

XV. RECORD KEEPING, AUDITS, & INSPECTIONS

1. The Grantee shall use an accrual or a modified accrual basis for reporting annual fiscal data, as required by Generally Accepted Accounting Principles (GAAP). Required monthly or quarterly reports may be reported using a cash basis.
2. The Grantee and any subgrantees shall maintain financial and operation records relating to grant services, requirements, collections, and expenditures in sufficient detail to document all grant fund transactions. The Grantee and any subgrantees shall maintain and make all records necessary and reasonable for a full and complete audit, inspection, and monitoring of services by state and federal auditors, and Department staff during normal business hours or by appointment, until all audits and reviews initiated by federal and state auditors are completed, or for a period of four years from the date of termination of this Grant, whichever is longer, or for any period required elsewhere in this Grant.
3. The Grantee shall retain all records which relate to disputes, litigations, claim settlements arising from grant performance, or cost/expense exceptions initiated by the Director, until all disputes, litigations, claims, or exceptions are resolved.
4. The Grantee shall comply with federal and state regulations concerning cost principles, audit requirements, and grant administration requirements, cited in Table 1. Unless specifically exempted in this Grant's special provisions, the Grantee must comply with applicable federal cost principles and grant administration requirements if state funds are received. The Grantee shall also provide the Department with a copy of all reports required by the State Legal Compliance Audit Guide (SLCAG) as defined in Chapter 2, Title 51, UCA. All federal and state principles and requirements cited in Table 1 are available for inspection at the Utah Department of Health during normal business hours. A Grantee who receives \$100,000 or more in a year from all federal or from all state sources may be subject to federal and state audit requirements. A Grantee who receives \$500,000 for fiscal years ending after December 31, 2003 or more per year from federal sources may be subject to the federal single audit requirement. Counties, cities, towns, school districts, and all non-profit corporations that receive 50 percent or more of its funds from federal, state or local governmental entities are subject to the State of Utah Legal Compliance Audit Guide. Copies of required audit reports shall be sent to the Utah Department of Health, Bureau of Financial Audit, Box 144002, Salt Lake City, Utah 84114-4002.

ATTACHMENT "A"

Federal and State Principles and Requirements				
<u>Grantee</u>	<u>Cost Principles</u>	<u>Federal Audit Requirements</u>	<u>State Audit Requirements</u>	<u>Grant Admin. Requirements</u>
State or Local Govt. & Indian Tribal Govts.	OMB Circular A-87	OMB Circular A-133	SLCAG	OMB Common Rule
Hospitals	45 CFR 74, App. E	OMB Circular A-133	SLCAG	OMB Common Rule or Circular A-110
College or University	OMB Circular A-21	OMB Circular A-133	SLCAG	OMB Circular A-110
Non-Profit Organization	OMB Circular A-122	OMB Circular A-133	SLCAG	OMB Circular A-110
For-Profit Organization	48 CFR 31	n/a	n/a	OMB Circular A-110
<u>Documents</u>	<u>Web Address</u>			
OMB Circulars	http://www.whitehouse.gov/omb/circulars/index.html			
OMB Common Rule	http://www.whitehouse.gov/omb/grants/attach.html			
CFRs	http://www.access.gpo.gov/nara/cfr/cfr-table-search.html			
SLCAG	http://www.sao.state.ut.us/resources/resources-lg.htm			

Table 1

XVI. GRANT ADMINISTRATION REQUIREMENTS

The Grantee agrees to administer this Grant in compliance with either OMB Common Rule or OMB Circular A-110 depending upon the legal status of the of the Grantee as shown in Table 1. Financial management, procurement, and affirmative step requirements specify that:

1. the Grantee must have fiscal control and accounting procedures sufficient to:
 - a. permit preparation of reports required by this Grant, and
 - b. permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.
2. the Grantee's financial management systems must meet the following standards:
 - a. *financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of this Grant.
 - b. *accounting records.* The Grantee must maintain records which adequately identify the source and application of funds provided for federally financially-assisted activities. These records must contain information pertaining to the Grantee's awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.
 - c. *internal control.* Effective control and accountability must be maintained for all Grant cash, real and personal property, and other assets. The Grantee must adequately safeguard all such property and must assure that it is used solely for authorized purposes.
 - d. *budget control.* Actual expenditures or outlays must be compared with budgeted amounts for the Grant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in this Grant. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.
3. Federal OMB cost principles, federal agency program regulations, and the terms of grant and subgrant, and grant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.
 - a. *source documentation.* Accounting records must be supported by such source documentation as canceled checks, paid bills, payrolls, time and attendance records, grant and subgrant award documents, etc.
 - b. *cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by the Department and the Grantee must be followed whenever advance payment procedures are used.

ATTACHMENT "A"

4. the Grantee shall use its own procurement procedures which reflect applicable State and local laws, rules, and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this Grant.
 - a. The Grantee will maintain a grant administration system which ensures that subgrantees perform in accordance with the terms, conditions, and specifications of its grants or purchase orders.
 - b. The Grantee will maintain a written code of standards of conduct governing the performance of its employees engaged in the award and administration of grants. No employee, officer or agent of the Department or the Grantee shall participate in selection, or in the award or administration of a grant supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
 - i. the employee, officer or agent,
 - ii. any member of his immediate family,
 - iii. his or her partner; or
 - iv. an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The Department's or the Grantee's officer, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from grantees, potential grantees, or parties to subagreements. The Department and the Grantee may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the Department's or the Grantee's officers, employees, or agents, or by subgrantees or their agents.
 - c. The Grantee's procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
 - d. To foster greater economy and efficiency, the Grantee, if a governmental entity, is encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.
 - e. If allowed by law, the Grantee is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
 - f. The Grantee may grant only with responsible grantees possessing the ability to perform successfully under the terms and conditions of a proposed procurement.
 - g. The Grantee shall maintain records sufficient to detail the significant history of a procurement. These records shall include, but are not necessarily limited to the following:
 - i. the rationale for the method of procurement,
 - ii. selection of grant type,
 - iii. grantee selection or rejection, and
 - iv. the basis for the grant price.
 - h. The Grantee may use time and material type grants only:
 - i. after a determination that no other grant is suitable, and
 - ii. if the Grant includes a ceiling price that the Grantee exceeds at its own risk.
 - i. The Grantee alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all grant and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the Grantee of any grant responsibilities under its grants.
 - j. The Grantee shall have protest procedures to handle and resolve disputes relating to its procurements and shall in all instances disclose information regarding the protest to the federal funding agency. A protestor must exhaust all administrative remedies with the Department and the Grantee before pursuing a protest with the federal funding agency.
5. the Grantee shall take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps shall include:
 - a. placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - b. assuring that small and minority businesses, and women's business enterprises are solicited whenever they

ATTACHMENT "A"

are potential sources;

- c. dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- d. establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- e. using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
- f. requiring the prime grantee, if subgrants are to be let, to take the affirmative steps listed in Article XVI, section 5, subsections a - e.

XVII. DEFAULT, TERMINATION, & PAYMENT ADJUSTMENT

1. Each party may terminate this Grant with cause. If the cause for termination is due to the default of a party, the non-defaulting party shall send a notice, which meets the notice requirements of this Grant, citing the default and giving notice to the defaulting party of its intent to terminate. The defaulting party may cure the default within fifteen days of the notice. If the default is not cured within the fifteen days, the party giving notice may terminate this Grant 45 days from the date of the initial notice of default or at a later date specified in the notice.
2. The Department may terminate this Grant without cause, in advance of the specified termination date, upon 30 days written notice.
3. The Department agrees to use its best efforts to obtain funding for multi-year grants. If continued funding for this Grant is not appropriated or budgeted at any time throughout the multi-year grant period, the Department may terminate this Grant upon 30 days notice.
4. If funding to the Department is reduced due to an order by the Legislature or the Governor, or is required by federal or state law, the Department may terminate this Grant or proportionately reduce the services and goods due and the amount due from the Department upon 30 days written notice. If the specific funding source for the subject matter of this Grant is reduced, the Department may terminate this Grant or proportionately reduce the services and goods due and the amount due from the Department upon 30 written notice being given to the Grantee.
5. If the Department terminates this Grant, the Department may procure replacement goods or services upon terms and conditions necessary to replace the Grantee's obligations. If the termination is due to the Grantee's failure to perform, and the Department procures replacement goods or services, the Grantee agrees to pay the excess costs associated with obtaining the replacement goods or services.
6. If the Grantee terminates this Grant without cause, the Department may treat the Grantee's action as a default under this Grant.
7. The Department may terminate this Grant if the Grantee becomes debarred, insolvent, files bankruptcy or reorganization proceedings, sells 30% or more of the company's assets or corporate stock, or gives notice of its inability to perform its obligations under this Grant.
8. If the Grantee defaults in any manner in the performance of any obligation under this Grant, or if audit exceptions are identified, the Department may, at its option, either adjust the amount of payment or withhold payment until satisfactory resolution of the default or exception. Default and audit exceptions for which payment may be adjusted or withheld include disallowed expenditures of federal or state funds as a result of the Grantee's failure to comply with federal regulations or state rules. In addition, the Department may withhold amounts due the Grantee under this Grant, any other current agreement between the Department and the Grantee, or any future payments due the Grantee to recover the funds. The Department shall notify the Grantee of the Department's action in adjusting the amount of payment or withholding payment. This Grant is executory until such repayment is made.
9. The rights and remedies of the Department enumerated in this article are in addition to any other rights or remedies provided in this Grant or available in law or equity.
10. Upon termination of the Grant, all accounts and payments for services rendered to the date of termination will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination. If the Department terminates this Grant, the Grantee shall stop all work as specified in the notice of termination. The Department shall not be liable for work or services performed beyond the termination date as specified in the notice of termination.
11. Any of the following events will constitute cause for the Department to declare Grantee in default of the Grant:
 - a. Nonperformance of grant requirements; b. A material breach of any term or condition of this Grant. The

ATTACHMENT "A"

Department will issue a written notice of default providing a ten (15) day period in which Grantee will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Grantee's liability for damages. If the default remains, after Grantee has been provided the opportunity to cure, the Department may do one or more of the following: c. Exercise any remedy provided by law; d. Terminate this Grant and any related Agreements or portions thereof; e. Impose liquidated damages, if liquidated damages are listed in the Grant; f. Suspend Grantee from receiving future solicitations.

XVIII. FEDERAL REQUIREMENTS

The Grantee shall comply with all applicable federal requirements. To the extent that the Department is able, the Department shall give further clarification of federal requirements upon the Grantee's request. If the Grantee is receiving federal funds under this Grant, certain federal requirements apply. The Grantee agrees to comply with the federal requirements to the extent that they are applicable to the subject matter of this Grant and are required by the amount of federal funds involved in this Grant.

1. Civil Rights Requirements:

- a. The Civil Rights Act of 1964, Title VI, provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. The Health and Human Services regulation implementing this requirement is 45 CFR Part 80.
- b. The Civil Rights Act of 1964, Title VII, (P.L. 88-352 & 42 U.S.C. § 2000e) prohibits employers from discriminating against employees on the basis of race, color, religion, national origin, and sex. Title VII applies to employers of fifteen or more employees, and prohibits all discriminatory employment practices.
- c. The Rehabilitation Act of 1973, as amended, section 504, provides that no otherwise qualified handicapped individual in the United States shall, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. The Health and Human Services regulation 45 CFR Part 84 implements this requirement.
- d. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), prohibits unreasonable discrimination on the basis of age in any program or activity receiving federal financial assistance. The Health and Human Services regulation implementing the provisions of the Age Discrimination Act is 45 CFR Part 91.
- e. The Education Amendments of 1972, Title IX, (20 U.S.C. §§ 1681-1683 and 1685-1686), section 901, provides that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. Health and Human Services regulation 45 CFR Part 86 implements this requirement.
- f. Executive Order No. 11246, as amended by Executive Order 11375 relates to "Equal Employment Opportunity," (all construction grants and subgrants in excess of \$10,000)
- g. Americans with Disabilities Act of 1990, (P.L.101-336), section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), prohibits discrimination on the basis of disability.
- h. The Public Health Service Act, as amended, Title VII, section 704 and TITLE VIII, section 855, forbids the extension of federal support for health manpower and nurse training programs authorized under those titles to any entity that discriminates on the basis of sex in the admission of individuals to its training programs. Health and Human Services regulation implementing this requirement is 45 CFR Part 83.
- i. The Public Health Service Act, as amended, section 526, provides that drug abusers who are suffering from medical conditions shall not be discriminated against in admission or treatment because of their drug abuse or drug dependence, by any private or public general hospital that receives support in any form from any federally funded program. This prohibition is extended to all outpatient facilities receiving or benefitting from federal financial assistance by 45 CFR Part 84.
- j. The Public Health Service Act, as amended, section 522, provides that alcohol abusers and alcoholics who are suffering from medical conditions shall not be discriminated against in admission or treatment, solely because of their alcohol abuse or alcoholism, by any private or public general hospital that receives support in any form from any federally funded program. This prohibition is extended to all outpatient facilities receiving or benefitting from federal financial assistance by 45 CFR Part 84.

ATTACHMENT "A"

2. **Confidentiality:** The Public Health Service Act, as amended, sections 301(d) and 543, require that certain records be kept confidential except under certain specified circumstances and for specified purposes. Confidential records include records of the identity, diagnosis, prognosis, or treatment of any patient that are maintained in connection with the performance of any activity or program relating to drug abuse prevention, i.e., drug abuse education, training, treatment, or research, or alcoholism or alcohol abuse education, training, treatment, rehabilitation, or research that is directly or indirectly assisted by the federal government. Public Health Service regulations 42 CFR Parts 2 and 2a implement these requirements.
3. **Lobbying Restrictions:** Lobbying restrictions as required by 31 U.S.C. § 1352, requires the Grantee to abide by this section and to place its language in all of its grants:
- No federal funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal grant, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.
 - If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the federal agreement, grant, loan, or cooperative agreement, the Grantee shall complete and submit Federal Standard Form LLL, "Disclosure Form to report Lobbying," in accordance with its instructions.
 - The Grantee shall require that the language of this article be included in the award documents for all subgrants and that subgrantees shall certify and disclose accordingly.
4. **Debarment, suspension or other ineligibility:** The Grantee certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or excluded from participation in this Grant by any governmental department or agency (<http://epls.gov>). The Grantee must notify the Department within 30 days in accordance with the notification requirements specified in Article III, section 11 of this Grant if the Grantee has been debarred/excluded by any governmental entity within the Grant period. Debarment regulations are stated in Health and Human Services regulation 45 CFR Part 76.
5. **Environmental Impact:** The National Environmental Policy Act of 1969 (NEPA) (Public Law 91-190) establishes national policy goals and procedures to protect and enhance the environment. NEPA applies to all federal agencies and requires them to consider the probable environmental consequences of any major federal activity, including activities of other organizations operating with the concurrence or support of a federal agency. This includes grant-supported activities under this Grant if federal funds are involved. Additional environmental requirements include:
- the institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order 11514;
 - the notification of violating facilities pursuant to Executive Order 11738 (all agreements, grants, and subgrants in excess of \$100,000);
 - the protection of wetlands pursuant to Executive Order 11990;
 - the evaluation of flood hazards in floodplains in accordance with Executive Order 11988;
 - the assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.);
 - the conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.);
 - the protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523),
 - the protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205) and;
 - the protection of the national wild and scenic rivers system under the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.).
6. **Human Subjects:** The Public Health Service Act, section 474(a), implemented by 45 CFR Part 46, requires basic protection for human subjects involved in Public Health Service grant supported research activities. Human

ATTACHMENT "A"

subject is defined in the regulation as "a living individual about whom an investigator (whether professional or student) conducting research obtains data through intervention or interaction with the individual or identifiable private information." The regulation extends to the use of human organs, tissues, and body fluids from individually identifiable human subjects as well as to graphic, written, or recorded information derived from individually identifiable human subjects. The regulation also specifies additional protection for certain classes of human research involving fetuses, pregnant women, human in vitro fertilization, and prisoners. However, the regulation exempts certain categories of research involving human subjects which normally involve little or no risk. The exemptions are listed in 45 CFR Part 46.101(b). The protection of human subjects involved in research, development, and related activities is found in P.L. 93-348.

7. Sterilization: Health and Human Services and Public Health Service have established certain limitations on the performance of nonemergency sterilizations by Public Health Service grant-supported programs or projects that are otherwise authorized to perform such sterilizations. Public Health Service has issued regulations that establish safeguards to ensure that such sterilizations are performed on the basis of informed consent and that the solicitation of consent is not based on the withholding of benefits. These regulations, published at 42 CFR Part 50, Subpart B, apply to the performance of nonemergency sterilizations on persons legally capable of consenting to the sterilization. Federal financial participation is not available for any sterilization procedure performed on an individual who is under the age of 21, legally incapable of consenting to the sterilization, declared mentally incompetent, or is institutionalized.

8. Abortions and Related Medical Services: Federal financial participation is generally not available for the performance of an abortion in a grant-supported health services project. For further information on this subject, consult the regulation at 42 CFR Part 50, Subpart C.

9. Recombinant DNA and Institutional Biosafety Committees: Each institution where research involving recombinant DNA technology is being or will be conducted must establish a standing Biosafety Committee. Requirements for the composition of such a committee are given in Section IV of *Guidelines for Research Involving Recombinant DNA Molecules*, (49 FR 46266 or latest revision), which also discusses the roles and responsibilities of principal investigators and grantee institutions. *Guidelines for Research Involving Recombinant DNA Molecules and Administrative Practices Supplement* should be consulted for complete requirements for the conduct of projects involving recombinant DNA technology.

10. Animal Welfare: The *Public Health Service Policy on Humane Care and Use of Laboratory Animals By Awardee Institutions* requires that applicant organizations establish and maintain appropriate policies and procedures to ensure the humane care and use of live vertebrate animals involved in research activities supported by Public Health Service. This policy implements and supplements the U.S. *Government Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research, and Training* and requires that institutions use the *Guide for the Care and Use of Laboratory Animals* as a basis for developing and implementing an institutional animal care and use program. This policy does not affect applicable State or local laws or regulations which impose more stringent standards for the care and use of laboratory animals. All institutions are required to comply, as applicable, with the Animal Welfare Act as amended (7 U.S.C. 2131 et seq.) and other federal statutes and regulations relating to animals. These documents are available from the Office for Protection from Research Risks (OPRR), National Institutes of Health, Bethesda, MD 20892, (301) 496-7005.

11. Grant Provisions: The Grantee must include the following provisions in its grants, as limited by the statements enclosed within the parentheses following each provision:

- a. administrative, grant, or legal remedies in instances where grantees violate or breach grant terms, and provides for such sanctions and penalties as may be appropriate. (Grants other than small purchases. Small purchase involve relatively simple and informal procurement methods that do not cost more than \$100,000 in aggregate.)
- b. termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All grants in excess of \$10,000)
- c. compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60). (All construction grants awarded in excess of \$10,000 by the Grantee and its grantee or subgrantees)
- d. compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of

ATTACHMENT "A"

Labor regulations (29 CFR Part 3). (All grants and subgrants for construction or repair)

e. compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction grants in excess of \$2,000 awarded when required by Federal grant program legislation)

f. compliance with the Contract Work Hours and Safety Standards Act, sections 103 and 107, (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction grants awarded in excess of \$2,000, and in excess of \$2,500 for other grants which involve the employment of mechanics or laborers)

g. notice of the federal awarding agency requirements and regulations pertaining to reporting.

h. notice of federal awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such grant.

i. federal awarding agency requirements and regulations pertaining to copyrights and rights in data.

j. access by the Department, the Grantee, the Federal funding agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the Grantee which are directly pertinent to that specific grant for the purpose of making audit, examination, excerpts, and transcriptions.

k. compliance with all applicable standards, orders, or requirements of the Clear Air Act, section 306, (42 U.S.C. 1857(h)), the Clean Water Act, section 508, (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15). (Grants, and subgrants of amounts in excess of \$100,000)

l. mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

12. **(Governmental entities only) Merit System Standards:** The Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763), requires adherence to prescribed standards for merit systems funded with federal funds.

13. **Misconduct in Science:** The United States Public Health Service requires certain levels of ethical standards for all PHS grant-supported projects and requires recipient institutions to inquire into, investigate and resolve all instances of alleged or apparent misconduct in science. Issues involving potential criminal violations must be promptly reported to the HHS Office of Inspector General. (See regulations in 42 CFR Part 50, Subpart A)

END OF GENERAL GRANT PROVISIONS