

SERVICE PROVIDER SUBCONTRACT

THIS AGREEMENT made as of the _____ day of _____, 20__ by and between

_____, a _____
(Contractor's name) (State)

_____, having its registered office at
(Corporation, limited liability company,
sole proprietorship, other)(Choose one)

(Address)
(hereinafter referred to as "Contractor"),

AND

_____, a _____
(Subcontractor's name) (State)

_____, having its registered office at
(Corporation, limited liability company,
sole proprietorship, other) (Choose one)

(Address)
(hereinafter referred to as "Subcontractor"),

WITNESSETH

WHEREAS, Subcontractor desires to render services to Contractor on the terms provided in this Agreement (this "Agreement");

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

1. **WORK TO WHICH THIS AGREEMENT APPLIES**

Subcontractor and Contractor acknowledge and agree that from time to time, pursuant to a contract between Contractor and Philadelphia Corporation for Aging ("PCA") ("PCA Contract"), Subcontractor may be asked to provide services or do work (collectively "Work") for PCA or PCA's consumers under Contractor pursuant to the PCA Contract. The parties agree that this Agreement and all of the terms and conditions set forth hereafter in this Agreement, shall be

applicable to all Work given to Subcontractor by Contractor under the PCA Contract. If Contractor intends to engage the services of Subcontractor on any Work, then Contractor shall provide to Subcontractor a written statement, which Subcontractor shall sign, setting forth the Work to be done, and that it is given pursuant to the PCA Contract, as well as any other specific terms and conditions which may be applicable to the engagement of Subcontractor by Contractor for such Work, such as the price and the time of the Work.

2. **CONFIDENTIALITY**

A. **Confidentiality of Consumer Information.** In the course of performing its services under the Agreement, Subcontractor may be required to use, create, receive, disclose or maintain personal information about PCA consumers, including information relating to the consumer's finances, family contacts and health care. All such individually identifiable information ("Confidential Consumer Information"), whether or not in written or documented form, including but not limited to the consumer's name, birth date, social security number and other identification numbers, bank account information, medical status, prognosis, provider of service, service date, diagnosis code and certain claims payment information, shall be used and disclosed by Contractor only as needed to provide the services under this Agreement and subject to the following terms and conditions:

(1) Subcontractor agrees to protect all Confidential Consumer Information that comes into its possession from unauthorized use or disclosure.

(2) Subcontractor shall take reasonable steps to ensure that such Confidential Consumer Information is used solely and exclusively to perform the services under this Agreement ("Identified Purposes") or as required by law.

(3) Subcontractor shall restrict access to Confidential Consumer Information to those employees whose access is reasonably necessary to fulfill the Identified Purposes. Employees shall only be provided the minimum necessary information required to perform the Identified Purposes.

(4) Subcontractor shall maintain the confidentiality of Confidential Consumer Information pursuant to the terms of this Agreement, any applicable Pennsylvania Department of Public Welfare ("DPW") or Department of Aging ("PDA") agreement, guidance or regulation and in accordance with any applicable state and federal laws and regulations.

(5) Except for Identified Purposes, as required by law or in response to a court order, Subcontractor will not release or disclose Confidential Consumer Information to any third party or person without Consumer's express written authorization.

(6) Subcontractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Provider of a use or disclosure of Confidential Consumer Information in violation of the terms of this Agreement.

(7) Subcontractor shall comply with all applicable laws and regulations relating to the privacy and security of consumer information and take reasonable measures to protect the integrity and security of all electronic Confidential Consumer Information.

(8) In the event there is an unpermitted or unauthorized disclosure of Confidential Consumer Information in the possession or control of Subcontractor, Subcontractor shall notify PCA of the incident in writing (by email or letter) immediately upon discovery. Subcontractor shall promptly provide sufficient details regarding the incident to allow PCA and Subcontractor to investigate and assess whether the incident constitutes a breach for which notice must be provided to any individual or others under any applicable law. Such detailed information shall be provided to PCA no later than fifteen (15) days following the discovery of any unauthorized disclosure of Confidential Consumer Information. To the extent that any legal notice of the breach or other remedies are required by law as a result of the unauthorized disclosure, Subcontractor shall be responsible for the cost of making the notification and providing any required remedy.

B. PCA Business Information. In connection with the services to be provided to Contractor by Subcontractor, PCA or Contractor may disclose to Subcontractor, and/or give Subcontractor access to, information that is of a confidential and proprietary nature (“Proprietary Information”). Proprietary information shall include, but not be limited to, marketing data and strategies, financial information and other information, whether or not in written or documented form, that is not generally known to the public, that relates to PCA’s anticipated or existing business, products, operations, or customers, and that has been expressly or implicitly protected from unrestricted use by persons not associated with PCA. Subcontractor and its employees and agents shall at all times, both during the term of this Agreement and after its termination, keep in trust and confidence and not disclose Proprietary Information and shall not use such information other than in the course of Subcontractor’s duties under this Agreement.

C. Notice. Subcontractor agrees to give PCA and any affected consumer reasonable notice before making any disclosure of Confidential Consumer Information and to give PCA reasonable notice before making any disclosure of Confidential Consumer Information or Proprietary Information (collectively “Confidential Information”) required by law or court order, and to give PCA or consumer an opportunity, at its discretion, to seek a protective order or similar relief.

D. Termination for Breach of Confidentiality Provisions.

(1) Notwithstanding any contrary termination provision in this Agreement, PCA shall notify Subcontractor of any material breach or violation of the terms of these confidentiality provisions and the period in which Subcontractor must either, at its own expense, cure the breach or end the violation.

(2) PCA may, in its sole discretion, determine that the breach or violation is such that immediate termination is justified and necessary to protect the confidentiality of Confidential Information. If Subcontractor does not cure the breach or end the violation within the specified

period, or if PCA determines that no period is appropriate, PCA shall direct Contractor to, and Contractor shall, terminate the Agreement as soon as feasible.

(3) The Parties will undertake reasonable efforts that may be necessary to keep this Agreement compliant with all applicable state and federal privacy laws, including all new laws or amendments to existing laws adopted hereafter.

E. Return or Destruction of Confidential Information. To the extent reasonably feasible and permitted by applicable laws and regulations, Subcontractor will destroy or return to PCA all documents containing Confidential Information upon termination of the Agreement. Notwithstanding anything herein to the contrary, the restrictions on Subcontractor's use and disclosure of Confidential Information set forth in this Agreement shall continue to apply for so long as Subcontractor retains copies of Confidential Information created, used by, disclosed to or maintained by Subcontractor for PCA under the terms of this Agreement.

F. Indemnification. Subcontractor agrees that the duty to indemnify, defend and hold harmless set forth in this Agreement shall apply to any loss, claim, liability, damage, demand, suit, action, investigation, audit or charge against Subcontractor or an Indemnitee (as defined in the Indemnification provision) arising out of the breach or violation of these confidentiality provisions, including any judgments, assessments, penalties, fines, costs and expenses (including reasonable attorneys' fees and costs) and other liabilities of any kind, nature or description arising out of or attributable to any actual or alleged breach or violation of these confidentiality provisions by Subcontractor, its directors, officers, employees, agents, or subcontractors.

3. INSURANCE

Subcontractor shall, at its sole cost and expense, procure and maintain in full force and effect, throughout the term of the Agreement, the following insurance (which, except as specifically provided herein, shall be written on an occurrence basis):

A. General liability insurance (including coverage for physical abuse and sexual molestation with sublimits of at least \$500,000 per occurrence and \$2,000,000 per annual aggregate) with no self-insured retention, and with no endorsements excluding or limiting coverage, including, but not limited to, contractual liability coverage, naming PCA and the Commonwealth of Pennsylvania and their directors, officers, employees and agents as additional insureds, with an endorsement stating that the coverage afforded the additional insureds shall be primary and non-contributory to any other coverage available. Such coverage shall have limits of coverage, on a stand-alone basis or in combination with excess or umbrella coverage, of not less than \$1,000,000 combined bodily injury and property damage per occurrence and \$3,000,000 per annual aggregate;

B. Automobile liability insurance written on the current Insurance Services Office's commercial auto form or its equivalent, with no self-insured retention, naming PCA and its agents as additional insureds, with an endorsement stating that the coverage afforded the additional insureds shall be primary and non-contributory to any other coverage available, and

with limits of coverage, on a stand-alone basis or in combination with excess or umbrella coverage, of not less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage, covering owned, non-owned and hired vehicles;

C. Workers compensation insurance (with statutory limits of coverage and no deductible) and employers liability insurance (with limits of coverage of not less than \$100,000 per accident, \$100,000 per employee by disease and \$500,000 policy limit by disease and no deductible) endorsed for all states in which work is to be performed under the Agreement (including, without limitation, Pennsylvania);

D. If such insurance is applicable to the nature of the Work, professional liability insurance naming PCA and its agents as additional insureds (except with respect to Health Care Providers under the Medical Care Availability and Reduction of Error (MCARE) Act), with an endorsement stating that the coverage afforded the additional insureds shall be primary and non-contributory to any other coverage available, and with no endorsements excluding or limiting coverage, as follows:

(1) "Participating Health Care Providers" under the MCARE Act must have statutory limits and must participate in the MCARE Fund;

(2) "Non-participating Health Care Providers" under the MCARE Act and other providers of professional services (including, but not limited to, social and legal services providers and those health care providers who are not "Health Care Providers" under the MCARE Act) must have limits of coverage of not less than \$1,000,000 per occurrence and \$2,000,000 per annual aggregate and no-self insured retention.

(3) Professional liability insurance may be written on a claims-made basis, provided, however, that the policy permits Contractor to purchase extended reporting period coverage ("Tail Coverage") upon termination of the policy.

(a) In the event that insurance is written on a claims-made basis, Subcontractor hereby agrees to maintain, following termination of such coverage or of the Agreement (whichever is earlier), professional liability insurance, covering claims arising out of occurrences during the term of the Agreement, whether by (i) purchasing additional policies of insurance with no exclusion for prior occurrences and the option of purchasing appropriate Tail Coverage, or (ii) purchasing the appropriate Tail Coverage. Tail Coverage for medical professional liability coverage shall be of unlimited duration. All other Tail Coverage shall be maintained for a period of not less than the greater of six years or as required by law, following termination of the Agreement or of such claims-made coverage (whichever is earlier). In no event shall any such Tail Coverage provide limits of coverage lower than the limits of coverage required herein for professional liability.

(b) In the event that Subcontractor elects to maintain insurance written on a claims-made basis, these undertakings (and the provision of certificates or policies of insurance evidencing compliance with same, as further specified below) shall survive termination of the Agreement.

If Subcontractor has contracted with Contractor for work being done by Contractor for PCA for any prior period(s) and has in force general liability or, if applicable, excess insurance, written on a claims-made basis, covering claims arising in connection with its performance under contract with PCA during such period(s), Subcontractor shall maintain said insurance during and for a period of not less than the greater of six years or as required by law, following the term of the last contract for work for PCA (whether by (i) purchasing additional policies of insurance with no exclusion for prior occurrences and the option of purchasing Tail Coverage, or (ii) purchasing the appropriate Tail Coverage); provided, however, that all other terms and conditions contained in Paragraph 3 are otherwise met. In the event that Subcontractor elects to maintain insurance written on a claims-made basis, as provided in this paragraph, this undertaking (and the provision of certificates or policies of insurance evidencing compliance with same, as further specified below) shall survive termination of this Agreement.

PCA shall have the right to require Subcontractor to submit to PCA certificates of insurance, or certified copies of policies of insurance, evidencing compliance with this Paragraph 3, upon reasonable notice.

4. **INDEMNIFICATION**

Subcontractor shall indemnify, defend and hold harmless Contractor, PCA and the Commonwealth of Pennsylvania, and their directors, officers, employees and agents (individually, "Indemnitee", and collectively, "Indemnitees"), from and against any and all losses, claims, liability, damages, demands, suits, actions, costs, expenses (including, without limitation, settlement costs, attorney's fees and court costs) and judgments recovered from or asserted against Subcontractor or Indemnitees, whether or not such claims are based upon PCA's alleged active or passive negligence, on account of injury (including, without limitation, death) to any person, (including an employee of Subcontractor), or damage to or loss (including, without limitation, theft) of any property (i) when any such injury, damage or loss may be incident to, arise out of, or be caused, wholly or in part, by any act, omission, negligence or misconduct on the part of Subcontractor or any of its agents, servants, employees, contractors, licensees or invitees, or (ii) when any such injury, damage or loss is the result, proximate or remote, of the violation by Subcontractor or any of its agents, servants, employees, contractors, licensees or invitees of any law, ordinance or governmental order of any kind or any term of the Agreement, or (iii) when any such injury, damage or loss may in any other way arise from, out of, or in connection with Subcontractor's performance or failure to perform under this Agreement.

When Subcontractor has the duty to indemnify, defend and hold harmless Indemnitees as set forth in the preceding paragraph, such duty shall include, but shall not be limited to: (a) environmental contamination; (b) Subcontractor's failure to pay its sub-subcontractors, vendors and employees; (c) any infringement or violation of any proprietary right (including without

limitation patent, trademark and copyright) or right of privacy, whether arising out of publication or use of data generated or furnished under this Agreement, or otherwise; (d) audit exceptions and misuse of funds by Subcontractor; (e) the full amount of any claims made by Subcontractor's employees (notwithstanding any (i) provisions set forth in the Pennsylvania Worker's Compensation Act prohibiting or limiting such claims or the amount of such claims such as Section 303(b) of such Act, (ii) statutory or constitutional immunity Subcontractor may enjoy from suit, or (iii) limitations of liability under the worker's compensation laws of any state that provides employers with immunity from suit, the benefits of which are specifically hereby waived by Subcontractor); and (f) damages to or loss of (i) PCA-funded property and (ii) PCA property entrusted to Subcontractor (except for PCA-owned vehicles, in which case indemnification shall be limited to the amount of PCA's deductible).

In the event of any obligation of Subcontractor to indemnify, defend and hold harmless any Indemnitee hereunder due to the institution of proceedings against any Indemnitee by a third party, as to which PCA shall have received written notice from the third party (a "Third Party Action"), PCA shall give Subcontractor written notice of such Third Party Action, specifying the nature thereof. Within ten (10) calendar days after receipt of such notice, Subcontractor shall give PCA written notice stating whether or not Subcontractor assumes responsibility for, and intends to defend or settle, such Third Party Action. If Subcontractor assumes responsibility, PCA shall, at Subcontractor's sole expense, cooperate with Subcontractor and provide reasonably necessary information and documents within the control of PCA, and any Indemnitee may participate in such defense at his, her or its own expense. Failure of PCA to give notice to Subcontractor of such Third Party Action shall excuse the obligation of Subcontractor hereunder if such failure shall materially affect the ability of Subcontractor to defend or settle such Third Party Action, but only to the extent of such effect. Failure of Subcontractor to give timely notice to PCA shall be deemed notice that Subcontractor does not assume responsibility for such Third Party Action, except that if Subcontractor thereafter notifies PCA of its intention to assume responsibility, upon payment of the expenses incurred by Indemnitees to date in connection with the matter, Subcontractor may assume the defense or settlement as if Subcontractor had originally elected to do so. If (i.) Subcontractor does not assume responsibility for such Third Party Action, (ii.) Subcontractor assumes responsibility for, but fails reasonably to defend or settle, such Third Party Action, or (iii.) PCA determines that any such Third Party Action may have a material adverse effect on the reputation or operations of PCA, Indemnitees may defend or settle such Third Party Action on terms determined in their sole discretion and Subcontractor shall be responsible for indemnification hereunder. In determining whether to invoke the rights provided in clause iii of the preceding sentence, PCA shall use reasonable business judgment, and PCA shall give reasonable notice of such determination to the Subcontractor prior to taking any action based on PCA's determination. In those cases in which Indemnitees have determined to defend or settle such Third Party Action, Subcontractor shall, at Subcontractor's sole expense, cooperate with PCA and provide reasonably necessary information and documents within the control of Subcontractor, and Subcontractor may participate in such defense at its own expense.

The duty to indemnify, defend and hold harmless Indemnitees set forth in this Agreement: (a) shall be effective without regard to limits of coverage for insurance required or procured hereunder; (b) shall survive termination of the Agreement; (c) shall in no way be construed to

limit or reduce (or be limited or reduced by) any other indemnification obligation of Subcontractor under this Agreement; and (d) shall apply regardless of whether Indemnitees are alleged or otherwise determined to be negligent or grossly negligent, except that indemnification shall not be available when Indemnitees are determined to be solely negligent; provided, however, that the duty to defend Indemnitees shall nevertheless apply.

5. **ADDITIONAL PROVISIONS**

A. In accordance with Executive Order 11246, Subcontractor agrees not to discriminate against any employee or applicant for employment because of sex, race, color, religion, disability, veteran status, citizenship or national origin. Subcontractor will take affirmative action to ensure that Equal Employment Opportunity is implemented in employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. All federal, state and local equal employment opportunity laws and regulations, the Drug-Free Workplace Act of 1988, and other applicable provisions of the rules, regulations and relevant orders of the Secretary of Labor are herein incorporated by reference including, but not limited to, Section 60-1.4 of Chapter 60 of Title 41 of the Code of Federal Regulations, Section 503 of the Rehabilitation Act of 1973 and Sections 4301-4333 of the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended. Subcontractor shall in turn notify all subcontractors, vendors or suppliers and unions of their responsibilities to comply with non-discrimination laws.

B. Subcontractor hereby agrees that it will comply with the following: Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), as amended, and the regulations at 45 C.F.R. Part 80; Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and the regulations at 45 C.F.R. Part 84; Title IX of the Educational Amendments of 1972 (Pub. L. 92-318), as amended, and the regulations at 45 C.F.R. Part 86; the Age Discrimination in Employment Act of 1975 (Pub. L. 94-135), as amended, and the regulations at 45 C.F.R. Part 91; and the American With Disabilities Act, 28 C.F.R. 35.101 et seq.; the Older Americans Act, as amended, 42 U.S.C.A. Section 3001 et seq.

C. In carrying out the Agreement, Subcontractor shall minimize pollution and shall strictly comply with all applicable Environmental Laws. The term "Environmental Laws" as used herein is defined to include any and all current or future federal, state and local environmental laws, statutes, rules, regulations or ordinances, including but not limited to the following statutes or codes, and the regulations promulgated thereunder (inclusive of any future revisions): Pennsylvania Clean Streams Law, 35 P.S. 691.1 et seq., as amended, the Pennsylvania Solid Waste Management Act, 35 P.S. 6018.101 et seq., as amended, the Water Obstructions Act, Act of June 25, 1913, P.L. 555, as amended, the Toxic Substances Control Act, 15 U.S.C. 6018.101 et seq., as amended, ("TSCA"), and the Philadelphia Air Management Code (Chapter 3-100 et seq., Philadelphia Code) as amended.

D. (i) Subcontractor certifies that it has not been debarred, suspended or excluded by the Commonwealth of Pennsylvania, the federal government, or any governmental entity,

instrumentality or authority, and that as of the date of execution of the Agreement it does not owe any taxes or other obligations to the Commonwealth, and agrees to notify PCA within five (5) days of receipt of notice by Subcontractor that it has been debarred, suspended or excluded or within five (5) days after it has become delinquent in the payment of taxes or other obligations to the Commonwealth. (ii) Subcontractor will not use any individual or company to provide services nor invoice PCA for services rendered under the Agreement by any individual or company that has been excluded from any federal health care program, including Medicare and Medicaid (42 C.F.R. §1001.1901; 55 Pa. Code §52.53(c)). Subcontractor will check the appropriate databases of persons excluded from participation in federal healthcare programs for employees and sub-subcontractors names upon contracting or hire and not less than monthly thereafter during the term of the Agreement. (iii) Subcontractor will not use any individual or company to provide services nor invoice PCA for services rendered under the Agreement by any individual or company that has been debarred or suspended by the Commonwealth, the federal government, or any governmental entity, instrumentality or authority. Subcontractor will check the appropriate databases for employees and sub-subcontractors names upon contracting or hire and on a regular basis thereafter during the term of the Agreement. (iv) Subcontractor shall retain documentation evidencing compliance with the requirements in (ii) and (iii) above and provide it to PCA upon request.

E. During the term of this Agreement, Subcontractor agrees as follows: In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Agreement, Subcontractor or any person acting on behalf of Subcontractor shall not by reason of gender, race, creed, color, disability, national origin, ancestry or age discriminate against any citizen of the Commonwealth of Pennsylvania who is qualified and available to perform the work to which the employment relates. Neither Subcontractor nor any person on its behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under the Agreement on account of gender, race, creed, color, disability, national origin, ancestry or age. Subcontractor shall establish and maintain a written non-discrimination/sexual harassment policy and shall inform its employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined. Subcontractor shall furnish information, necessary employment documents and records and permit access to its books, records and accounts by PCA for purposes of investigation to ascertain compliance with this non-discrimination/sexual harassment clause consisting of this paragraph E. If Subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish the information on reporting forms supplied by PCA. Neither Subcontractor nor any subcontractor shall apply a policy of mandatory retirement to positions funded under the Agreement.

F. The Subcontractor certifies, to the best of its knowledge and belief, that: (a) No federal appropriated funds have been paid or will be paid, by or on behalf of PCA and/or the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal,

amendment or modification of any federal contract, grant, loan, or cooperative agreement; (b) 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 agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions; (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrantees, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly; This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. Subcontractor shall provide immediate written notice to PCA if Subcontractor learns that its certification was erroneous or has become erroneous because of changed circumstances.

G. Subcontractor agrees to maintain books, program and financial records, documents, policies and procedures and other evidence and supporting information (hereinafter collectively referred to as the "Records") pertaining to the transactions, costs and expenses, performance, representations, and reporting related to the Agreement and Subcontractor's compliance with the Agreement's provisions. Subcontractor agrees to make available through such electronic means as are required from time to time by PCA, and at Subcontractor's office at all reasonable times during the term of the Agreement and the applicable period set forth below, any of the Records for inspection, audit and/or reproduction by any authorized representative of PCA, the Department of Aging, the Auditor General, federal auditors, or PCA's designees. Except for documentary evidence delivered to PCA, Subcontractor shall preserve and make available its Records for the period of time that is the greater of (i) three (3) years from the date of final payment under the Agreement, (ii) the expiration date of the Agreement, (iii) the date when all questioned costs or activities have been resolved to the satisfaction of the Commonwealth and PCA, (iv) for such period, if any, as is required by applicable federal, state and local statutes, rules, regulations, ordinances, and other requirements (e.g., HIPAA's six year retention requirement), including but not limited to Aging Program Directives and other policies of the Pennsylvania Department of Aging, (v) by any other paragraph of the Agreement, or (vi) by paragraphs a. and b. as follows, whichever is longer: a. If the Agreement is completely or partially terminated, the Records relating to the work terminated shall be preserved and made available for a period of three (3) years from the date of the later of any resulting final statement or final settlement; b. Records which relate to litigation or the settlement of claims arising out of the performance of this Agreement, or costs under this Agreement as to which exception has been taken by the auditors, shall be retained by Subcontractor until such litigation, claims or exceptions have been litigated or settled to final disposition.

H. As applicable, Subcontractor shall comply with the following: The Davis Bacon Act, as amended (40 U.S.C. 276(a)); the Contract Work Act (40 U.S.C. 328) and the regulations at 29 C.F.R. Section 5; and the Copeland Anti-Kickback Act (40 U.S.C. 276c) and the

regulations.

I. If Subcontractor provides goods or services to the City of Philadelphia through PCA, the following shall apply: Subcontractor certifies and represents that, and agrees that, it (and any parent, subsidiary, exclusive distributor, or company affiliated with Subcontractor, collectively hereinafter in this section called "Subcontractor") does not and will not, and Subcontractor will not utilize any subsubcontractors, suppliers or consultants who (or whose parent, subsidiary, exclusive distributor, company affiliated with such subsubcontractor, supplier or consultant, or their subsubcontractors, suppliers or consultants) (i) have any investments, licenses, franchises, management agreements, or operations in Northern Ireland and/or (ii) provide products which originate in Northern Ireland, unless, in either or both cases, Subcontractor has, or its subsubcontractors, suppliers or consultants or their parent, subsidiary, exclusive distributor, company affiliated with them, subsubcontractors, suppliers or consultants have, implemented the fair employment principles embodied in the MacBride Principles. Subcontractor shall cooperate with PCA, Contractor and the City of Philadelphia in accordance with Section 17-104 of the Philadelphia Code. Subcontractor expressly understands and agrees that any false certification or representation in connection with this section, or failure to comply with any of the requirements of this section, shall be such a substantial or material breach as to entitle PCA to all rights and remedies provided in this Agreement or otherwise available at law or in equity.

J. Subcontractor shall comply with all federal, state and local statutes, regulations, rules, ordinances, and other requirements, including but not limited to Aging Program Directives and other policies of the Pennsylvania Department of Aging, and shall require its subcontractors (if any) to comply with same, to the extent these are applicable to Subcontractor or subcontractor or to the provision of services or supplies under the Agreement.

6. RIGHTS IN DATA: COPYRIGHTS AND DISCLOSURE

A. Definition: The term "Data", as used herein, includes, without limitation, written reports, letters, articles, photography, drawings, studies, brochures, ads, announcements, flyers, kits, trademarks, servicemarks, slogans, logos, designs, theme lines, topic outlines, CD-ROM, source code, software and any copyrightable or patentable work, or any other intellectual property, which is required to be delivered under this Agreement.

B. Rights in Data: Data under this Agreement shall be the exclusive property of PCA and PCA shall have full right to use such Data for any purpose in whatever manner PCA chooses. Such use shall be without any additional payment to, or approval by, Subcontractor.

C. Copyrights, Trademarks, Patents and Ownership of Intellectual Property: Subcontractor acknowledges that a condition of Contractor engaging Subcontractor's services is that the services be performed on a work made for hire basis on behalf of PCA. The parties hereto agree that all Data under the Agreement is a work made for hire and all copyrights, patents, trademarks and all intellectual property rights in and to the Data shall be owned exclusively by PCA. In the event any of the foregoing is considered at any time, for any reason,

not to be a work made for hire, then (i) Subcontractor relinquishes to PCA any and all rights and privileges in and to Data developed under the Agreement, including, but not limited to, copyrights, patents and trademarks; (ii) Subcontractor hereby agrees to, and does, assign, transfer, convey, set-over and deliver to PCA, its successors and assigns, forever, all right, title and interest in and to Data developed under the Agreement; and (iii) Subcontractor further agrees to execute promptly all documents necessary to transfer to PCA all rights in and to such Data. PCA shall have the sole and exclusive right to apply for and register such copyrights, patents and trademarks and any other intellectual property rights in its name in the United States of America and any other country throughout the world.

D. Subcontractor agrees not to plagiarize, copy, or infringe the work of any person, and shall not include in the Data any work of any third party that is copyrighted or otherwise protected, unless the holder of such copyright or other protected right has given express written consent to such use by PCA.

E. Subcontractor shall indemnify, defend and hold harmless PCA and its directors, officers, employees and agents against any claims, suits, or proceedings, arising from and against, more particularly, but without limitation, any claims of alleged infringement relating to the Data hereunder or by reason of any unlawful matter contained or alleged to be contained in such Data. If principles of governmental or public law are involved, the Commonwealth may participate in the defense of any such action. Subcontractor shall pay all damages and costs awarded therein against PCA. If information and assistance are furnished by PCA at Subcontractor's written request, it shall be at Subcontractor's expense, but the responsibility for such expense shall be only that within Subcontractor's written request. If any Data provided by Subcontractor is held to constitute infringement and the use or publication thereof is enjoined in such suit or proceeding, Subcontractor shall, at its own expense and at its option, either procure the right for PCA to publish or continue use of such infringing materials or so modify them so that they are no longer infringing. The duty to indemnify, defend and hold harmless contained in this Paragraph shall be in addition to and shall in no way limit any other duty to indemnify, defend and hold harmless contained elsewhere in this Agreement.

F. The obligations of Subcontractor under this Paragraph continue without time limit.

7. **THIRD-PARTY BENEFICIARY**

PCA, while not a signatory to this Agreement, is intended to be a third-party beneficiary of this Agreement. Without limiting the meaning of the preceding sentence, PCA shall have the right, but not the obligation, to enforce for its benefit, any provisions of this Agreement in its favor.

8. **CRIMINAL HISTORY RECORD INFORMATION**

Without in any way limiting Subcontractor's duties under any other term or condition of this Agreement, Subcontractor shall comply with any federal, state or local law pertaining to

mandatory use of criminal history record information, including but not limited to the Older Adults Protective Services Act, 35 P.S. Section 10225.101 et seq., and the regulations promulgated pursuant thereto, 6 Pa. Code Chapter 15 (commonly referred to as “Act 13”). In the event that Subcontractor is not otherwise required by applicable law to review criminal history record information, Subcontractor shall obtain criminal history record information for all employees having contact with PCA consumers and shall exercise reasonable discretion in making employment decisions based thereon.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the day and year first above written.

CONTRACTOR

Seal

By: _____

Name and Title

SUBCONTRACTOR

Seal

By: _____
Signature

Name and Title