

AGREEMENT

THIS CALENDAR YEAR AGREEMENT is entered into as of this 31 day of December, 2011, by and between [GRANTEE], a non-profit corporation organized and existing under the laws of [STATE] with principal offices at [ADDRESS] (hereinafter referred to as "████████"), and

(hereinafter referred to as the Delegate Provider, or "d.p."). a non-profit corporation organized and existing under the laws of the [STATE] with principal offices at [ADDRESS]

WHEREAS, [GRANTEE] provides comprehensive family planning services and has been awarded a grant for Calendar Year 2012 by the U.S. Department of Health and Human Services, Office of Public Health Service, pursuant to the provisions of the Public Health Service Act (42 U.S.C. §201, *et seq.*) and the regulations promulgated thereunder (42 C.F.R. Part 59) (hereinafter referred to collectively as "Title X") to assist in the establishment and operation of a comprehensive family planning services delivery system (CFDA # 93.217; Grant No. FPHPA016027-01-00) ; and

WHEREAS, [GRANTEE] wishes to provide comprehensive family planning services on an area-wide basis in neighborhood oriented health settings that are providing primary care; and

WHEREAS, the d.p. has been and is operating a family planning program which provides family planning services in neighborhood oriented primary care settings; and

WHEREAS, [GRANTEE] and the d.p. agree that the d.p. shall be designated an [GRANTEE] family planning services delegate provider and offer certain family planning services (listed below) in accordance with the requirements of Title X, regulations and guidelines promulgated thereunder, and other applicable law; and

WHEREAS, [GRANTEE] and the d.p. agree that [GRANTEE] shall pay the d.p. compensation from its family planning grant award for the performance of such family planning services by the d.p.,

NOW, THEREFORE, in consideration of the mutual covenants contained herein, [GRANTEE] and the d.p. hereby agree as follows:

1. SCOPE OF D.P. SERVICES. The d.p. shall offer to the general public at its community health center or hospital outpatient department family planning sites, as part of [GRANTEE]'s Family Planning program, physician and mid-level practitioner's family planning consultation, examination, assessment, prescription, continuing supervision and follow-up; family planning laboratory testing, family planning and HIV prevention counseling and client education and appropriate referrals. All family planning services shall be in compliance with 42 U.S.C. 201 and 42 C.F.R. Part 59 (Title X Act and regulations), the then current Program Guidelines for Project Grants for Family Planning Services, and attachments thereto, promulgated pursuant to Title X, and Mass. Regulation 105 CMR §300.300, and the [GRANTEE] Family Planning Policies, Procedures, Protocols and Recommended Guidelines Manual or the d.p. patient care standards that have been accepted by the [GRANTEE] Medical Director ("accepted I d.p. Medical Protocol"), all of the foregoing referred to collectively hereinafter as "applicable guidelines." Performance of these services shall be subject to the following terms and conditions:

a. FAMILY PLANNING CLIENTS. For the purposes of this agreement, family planning clients shall be defined as any client of the d.p. who has received family planning counseling, family planning medical services, adopts or continues the use of a contraceptive, relies on a partner's contraceptive method, or is seeking pregnancy. Any visits of a family planning client subsequent to his or her initial visit to the d.p. that include any reproductive health or family planning component shall constitute family planning visits.

b. STAFFING. Medical family planning services will be performed by the d.p. under the direction and responsibility of a physician duly licensed in the Commonwealth of Massachusetts with special training or experience in family planning. The d.p. must assure that all staff members are professionally and medically qualified for the positions to which they are appointed. The [GRANTEE] Medical Director for Family Planning may, in his or her discretion, review and approve the qualifications of all professional d.p. staff members or designate the d.p.'s medical director to carry out this review. The d.p. will insure the continuation of a family planning clinical coordinator position, staffed by a licensed nursing provider and supported by d.p. leadership, who will directly communicate with and require program accountability from medical and nursing staff. All family planning counseling staff of the d.p. must be certified through completion of Basic Family Planning training, including attendance at all sessions, and passing of exam at completion of training. Family planning counselor session observation and ongoing supervision and training needs assessment will be provided by the d.p. Continuing education for family planning counselors shall include attendance at four trainings per year, up to three of which are on mandatory topics determined by [GRANTEE]. D.P. cost reimbursement budgets for staff providing family planning services must reflect the actual percentage of time spent in the provision of family planning services and must be updated as changes occur.

c. MEDICAL RECORDS. The d.p. shall maintain medical records for every client in accordance with accepted professional standards and applicable statutes and guidelines, including but not limited to, the DPH/[GRANTEE] Service Contract, the client's consent for treatment and consent for any prescriptive contraceptive method prescribed, including all relevant medical, treatment and counseling information with respect to a given client as set forth in the applicable statutes and guidelines and must be signed by the responsible staff member. A complete health history, including medical, surgical, immunization, reproductive, sexual, social, and relevant family history, shall be obtained and documented at the initial medical visit interview and updated at subsequent visits. Medical records shall be readily accessible and systematically organized to facilitate retrieving and compiling information. The provisions of applicable privacy statutes and implementing regulations shall govern access to all individual data records at all times. Medical records must be retained at least 4 years following the date of service.

d. PHYSICAL EXAMINATIONS AND LABORATORY TESTS. Physical examinations and laboratory tests shall be performed by the d.p. in accordance with the then current [GRANTEE] Family Planning Policies, Procedures, Protocols and Recommended Guidelines Manual or the accepted d.p. Medical Protocol. Internal exams shall meet the standards of the American College of Obstetrics and Gynecology. The d.p. shall use the services of laboratories I that are certified by the Massachusetts Department of Public Health ("DPH"), when such laboratories are not on the premises of the d.p., and which comply with applicable federal law including but not limited to the Clinical Laboratory Improvement Amendment and regulations promulgated thereunder, 42 CFR Part 493. D.P. must ensure the availability at all times of an appropriately licensed advanced practice nursing or medical professional, to examine clients as needed.

e. CLIENT CONSULTATIONS.

(i) All family planning clients shall receive counseling by trained family planning staff of the d.p. who shall discuss with the client all of the choices of contraceptive methods and the risks, benefits effectiveness and use of each method. Fertility awareness and its use in conception and contraception shall be discussed. After consideration of findings of the client's medical history, applicable physical examination and laboratory tests, the client's choice of method shall be honored, subject to any medical contraindications which shall be fully explained to the client. Should the client adopt any family planning method, prior to the distribution of a method, the d.p. shall review the attendant risks, benefits,

potential side effects, complications, discontinuation issues, danger signs, and the use of any method chosen and any procedure for its insertion or removal, and what actions the client should take if any symptoms do occur. The d.p. shall then obtain and witness the client's signature on a consent form signifying that they were given, understood and accepted the information and the family planning method provided.

(ii) All family planning clients shall receive thorough and accurate I information on STDs and HIV, and shall be involved in a discussion of personal risk and provided with appropriate risk reduction and prevention education. Additional information, counseling and provision of or referral for testing shall be provided as appropriate or as requested.

(iii) The d.p. and its staff shall encourage family participation in the decision of minors seeking family planning services.

f. **REVISITS.** All clients, regardless of the contraceptive method initially chosen, shall receive the medical services set forth in sub-paragraph c and d above on at least an annual basis unless sound medical judgment indicates to the contrary. The d.p. must have a system of contacting family planning clients to remind them of their annual visits. Revisit schedules shall be individualized based on client need for education, counseling, and clinical care beyond that provided at the initial and annual visits. For clients who adopt prescriptive contraceptive methods, revisits shall be scheduled and services provided in accordance with the then current [GRANTEE] Protocol.

g. **BACK-UP AND EMERGENCY SERVICES.** Family Planning services must be offered by the d.p. with appropriate medical back-up. The d.p. shall have, by prior arrangement, a group of agencies to whom clients can be referred because of problems arising as a result of the contraceptive method, or because the client requested an additional examination and evaluation. The d.p. shall have arrangements for 24 hour emergency care and family planning clients shall be furnished the emergency phone number at initiation of services. Either directly or by referral, the d.p. must arrange or provide for hospitalization of clients with complications arising from contraceptive methods.

h. **STERILIZATION SERVICES.** The family planning services offered by the d.p. shall include voluntary male and female sterilization counseling and referral and shall ensure that clients who might desire sterilizations are provided the necessary information to arrive at an informed decision. Guidelines for sterilization counseling and informed consent requirements shall be followed in accordance with the then current [GRANTEE] Protocol. Sterilization may only be performed on individuals who are at least 21 years old at the time the consent is obtained and who are not mentally incompetent.

i. **INFERTILITY SERVICES.** The d.p. shall provide basic infertility services, including an initial infertility interview, education, physical examination, counseling, and appropriate referrals for further diagnostic and treatment services.

j. **ABORTIONS AND OPTIONS COUNSELING.** The d.p. agrees that it will offer all pregnant women the opportunity to be provided information and counseling regarding each of the following options: prenatal care and delivery; infant care, foster care, or adoption; and pregnancy termination. If requested to provide such information and counseling, the d.p. shall provide neutral, factual information and nondirective counseling on each of the options, and referral upon request, except with respect to any option(s) about which the pregnant woman indicates she does not wish to receive such information and counseling. The d.p. shall not offer abortions as a method of family planning within the [GRANTEE] Family Planning Program.

k. REFERRAL SERVICES. [GRANTEE] Family Planning clients shall have available to them through the d.p. the coordination and use of referral and follow-up arrangements with other providers of health care, with local health and welfare departments, hospitals, and voluntary agencies, and health services projects supported by other Federal, State and Local programs. The d.p. shall have written policies and procedures for follow-up on referrals made as a result of abnormal physical exam or laboratory testing findings, which are sensitive to the clients concerns for confidentiality and privacy. All referrals must include follow-up by the d.p. to ensure that the referral process is completed successfully. If the referral was for abnormal laboratory test results or a reproductive health problem, follow-up must include arrangements for the d.p. to receive written results of tests or a report of initiated treatment.

1. ELIGIBILITY. The d.p. shall make family planning services available to all persons without the imposition of place of residence, or duration-of-residency or referral requirements and without regard to religion, race, color, national origin, creed, handicap, gender, number of pregnancies, marital status, age, or contraceptive preference, and shall comply with all applicable federal and state statutes prohibiting discrimination in the provision of governmental financial assistance. Services must be provided in a manner that protects the dignity of the individual client. The d.p. shall give priority to providing family planning services to adolescents and to persons from low income families, i.e., families whose incomes fall below 100% of the poverty level as defined at the time the service is provided by applicable federal guidelines.

m. CHARGES.

(i) All charges shall be based on a cost analysis of all services provided by the d.p. and all bills shall be given directly to the client, or to another payment source, such as Title XIX, DPH, or private insurance.

(ii) The d.p. shall not bill any person from a low income family as defined in (1) above for any services or /supplies offered, although such charges must be billed to third parties, including government agencies, which are authorized or under legal obligation to pay such charges.

(iii) Reasonable efforts shall be made to obtain third-party reimbursement for all d.p. clients and all billings to such third-parties must be for total charges and without applying any discounts. Where reimbursement is available from DPH and Title XIX of the Social Security Act, a written agreement between the d.p. and the reimbursement funding source is required.

(iv) Charges shall be made to persons between 100% and 250% of poverty, and such charges shall be in accordance with a schedule of discounts submitted by the d.p. to [GRANTEE] and approved through [GRANTEE] by the United States Department of Health and Human Service (DHHS).

(v) Full cost-based charges shall be made to persons living in households with incomes above 250% of poverty.

(vi) Charges should be made in a manner that will not constitute a barrier to the provision of services. No client shall be denied services because of inability to pay. Bills for minors obtaining confidential services must be based on the resources of the minor.

(vii) All fees collected for family planning services offered, along with the expenditures paid from these fees, shall be reported by the d.p. to the [GRANTEE] Family Planning Program Director on an annual basis. Such fees collected by the d.p. need not be refunded to [GRANTEE]. However, they must be used to support the family planning program.

n. **VOLUNTARINESS.** Acceptance by any individual of project services shall be solely on a voluntary basis. Individuals shall not be subjected to any coercion to receive services or to employ any particular method of family planning. Acceptance of family planning services shall not be a prerequisite to eligibility for, or receipt of, any other service, or assistance from, or participation in, any other programs of the d.p., nor shall the d.p. lead any person to believe that such receipt of services will adversely affect his or her entitlement to any other benefits or services. All d.p. personnel shall be informed that they may be subject to prosecution under Federal law if they coerce or endeavor to coerce any person to undergo an abortion or sterilization procedure.

o. **CONFIDENTIALITY.** The d.p. must assure client confidentiality and provide safeguards for individuals against the invasion of personal privacy, as required by the Privacy Act and the Health Insurance Portability and Accountability Act (HIPAA). The physical design of the agency's facilities must ensure privacy, confidentiality and regard for the dignity of family planning clients during personal interviews, consultations, medical exams and treatment. The d.p. shall provide a written notice of its privacy policy to new and existing family planning clients. No information obtained by the project staff about individuals receiving services may be disclosed without the individual's consent, except as required or authorized by Federal and State law. Information may otherwise be disclosed only in summary, statistical, or other form that does not identify the individual. The d.p. shall also hold all personal data relating to personnel and persons receiving services under this Agreement in accordance with the Massachusetts Data Security Regulations, found at 201 CMR 17.00, as well any other relevant federal laws, regulations, or guidelines.

- **ADOLESCENTS.** Adolescents must be assured that all family planning clinical and counseling services are confidential, except as regards child abuse and neglect reporting obligation, and, if follow-up is necessary, every attempt will be made to assure the privacy of the individual. A delivery site may not require written consent of parents or guardians for the provision of services to minors, nor can a delivery site notify parents or guardians before or after a minor has requested and received Title X family planning services. Once a minor client has consented to confidential fertility planning services, the medical record of that visit may only be released with the consent of the client.
- D.p. Family Planning staff must provide counseling for adolescents around encouragement of family participation in the decision of minors to seek family planning services, and provide counseling to minors on resisting attempts to coerce minors into engaging in sexual activities.
- Notwithstanding any other provision of law or this Agreement, no provider of services under Title X shall be exempt from any state law requiring notification, or reporting of child abuse, child molestation, sexual abuse, rape, or incest.

p. **USER REPORTING SYSTEM.** The d.p. shall prepare a Family Planning Encounter Record ("FPER") for each encounter with a family planning client. All FPER data elements shall be completed in accordance with the instructions provided in the [GRANTEE] FPER Instruction Manual. The FPER shall thoroughly and completely document all family planning services provided. The FPER shall be submitted by the 10th of the month after the family planning visit has occurred for processing by the Regional Title X Data System via the designated secure website, or as export from the d.p. practice management system.

2. **SCOPE OF [GRANTEE] RESPONSIBILITIES.** [GRANTEE] responsibilities under this Agreement shall include the following:

a. **CLINICAL TRAINING SERVICES.** [GRANTEE] shall provide training for counselors and clinical staff of the d.p., including: all new Family Planning Counselor staff will be trained and certified through Basic Family Planning; all clinical staff of the d.p. will be offered participation in the Family Planning for Advanced Practice course and clinical updates; all counselors and supervisory staff will participate in the [GRANTEE] Protocol training and mandatory continuing education based on needs assessment and funder initiatives.

b. **FAMILY PLANNING CLIENT EDUCATION MATERIALS.**

[GRANTEE] shall write, publish and/or distribute appropriate educational materials focused on the informational needs of the client population of the d.p., Only materials reviewed and approved by the Informational Education Materials Review Committee and approved by the [GRANTEE] Board of Directors may be used in the family planning program.

c. **ADMINISTRATIVE SERVICES.** [GRANTEE] shall provide, as it deems appropriate, technical assistance regarding the Family Planning program, to the d.p. in the development of fiscal, data, contracting, client flow and budget systems, if required.

3. **COMPENSATION.**

a. **DELEGATION OF FUNDS.** Subject to receipt of funds from DHHS (see Subsection (d) below), [GRANTEE] agrees to reimburse the d.p. for expenditures which are incurred in the performance of activities authorized under this Agreement, as provided in the budget approved by [GRANTEE] and attached hereto as Attachment A, and which are not in excess of \$ _____ ("Total Agreement Funds"). In no event will the d.p. receive reimbursement for personnel costs exceeding the amount indicated in the d.p. budget approved by [GRANTEE].

b. **SCHEDULE OF PAYMENT.** The aggregate payments made by [GRANTEE] to the d.p. at any time and from time to time during the term of this Agreement shall not exceed that amount of Total Agreement Funds which is proportionate to the portion of the Agreement term that has then elapsed. All requests for reimbursement of expenditures must be made within twenty (20) days of the end of the month in which the expenditure was made and no later than thirty-one (31) days after the termination of this Agreement.

Notwithstanding any of the above, [GRANTEE] shall have the right to withhold any payment hereunder pending receipt from the d.p., in satisfactory form, of all reports and other information as described herein then due under the provisions of this Agreement. [GRANTEE] shall also have the right to withhold five percent (5%) of the Total Agreement Funds until the d.p. has submitted in satisfactory form the final financial report required by [GRANTEE] pursuant to this Agreement. [GRANTEE] shall also have the right to suspend or terminate payments and this Agreement in whole or in part consistent with Paragraph 10 of this Agreement and to deny payment for any requests for reimbursement made after the timeline described in the preceding paragraph.

c. **CONTINGENCY.** The delegation and payment of funds to the d.p. under the terms of this Agreement shall be contingent on the receipt of such funds by [GRANTEE] from DHHS and shall be subject to the d.p.'s continued eligibility to receive funds under the applicable provisions of state and federal laws. If the amount of funds [GRANTEE] receives from DHHS is reduced, [GRANTEE] reserves the right to reduce the amount of funds delegated under, or terminate, this Agreement.

d. **LIMITATIONS ON EXPENDITURES AGAINST FUNDS.** Expenses to be charged by the d.p. against any Title X compensation established under this Agreement may not be incurred prior to the effective date of this Agreement or subsequent to the termination date of this Agreement and may be incurred only as necessary to carry out the family planning services covered by this Agreement. Such expenditures may not exceed the maximum compensation amount set forth in paragraph 3(a) of this Agreement. All expenses incurred by the d.p. as part of the family planning services offered pursuant to this Agreement must be documented by approved contracts or other evidence of liability consistent with [GRANTEE] and established d.p. procedures. Expenses to be charged must also be incurred in accordance with DHHS directives.

4. **TIME OF PERFORMANCE.** This Agreement shall be effective, subject to any earlier termination provided for herein, during the period December 31, 2011 through December 30, 2014.

5. **CHANGES.** This Agreement may be amended only by written agreement of the parties. Changes requiring written amendments include but are not limited to changes in the scope of services, program direction or scope of emphasis. Written amendments are not required for filling of a previously authorized position.

6. **ADMINISTRATION OF GRANT FUNDS.** The d.p. shall administer grant funds and maintain fiscal accounting records in accordance with Title X (42 U.S.C. 201) and all applicable regulations and OMB Circulars, including 42 C.F.R. Part 59, (Title X regulations), 45 CFR Part 74 (HHS administrative grant requirements), 2 C.F.R. Part 230 (cost principles), OMB Circular A-133 (audit requirements), and the HHS Grants Policy Statement. These fiscal accounting records shall itemize all supporting expenditures in sufficient detail to show their exact nature. The d.p. shall adopt such additional accounting procedures as may from time to time be prescribed by [GRANTEE] if required by Title X. The d.p. shall retain for a period of not less than eight (8) years after termination of this Agreement, such financial and other accounting records as shall fully disclose the amount of reimbursement for family planning services supplied from other sources. The d.p. shall prepare and retain, for a period of not less than eight (8) years, attendance or effort reports for all employees offering the family planning services and make them available for inspection by [GRANTEE] and Title X representatives or designees, including auditors, and DHHS representatives.

7. **FINANCIAL REPORTS AND OTHER RECORDS.** In addition to client medical records and FPER forms, the d.p. shall submit to [GRANTEE] such reports as may be required by DHHS directives or by [GRANTEE], including but not limited to:

- (a) An annual report due February 1st which includes program income and expenditures through the end of the calendar year.
- (b) A monthly report which shall set forth the actual expenditures for the month then ended, and the cumulative expenses through the month then ended, all in such detail as the [GRANTEE] Family Planning Director may request due within twenty (20) days of the end of each month.
- (c) A final financial report listing all amounts spent and owing under this agreement (said report to be a final version of the report required in Subsection (a) hereof) due within sixty (60) days after the end of the term of this agreement.

The d.p. shall prepare and retain, and permit [GRANTEE] or its designees to inspect as they deem necessary for grant audit and reimbursement purposes, property, personnel, medical and financial records of the d.p. as well as other records that may be required by relevant DHHS directives and guidelines which governs the retention of records. Provision of medical records shall be consistent with confidentiality requirements imposed by statute and regulation.

8. **QUALITY ASSURANCE AND REVIEW.**

The d.p. shall establish and maintain a quality assurance system which is responsible for ongoing evaluation of services and personnel. This system shall include: licensing and credentialing procedures and performance evaluations for professional staff; tracking systems to identify clients in need of follow-up and/or clinical care; a process to elicit consumer feedback, and ongoing clinical care reviews including medical record reviews which contain family planning criteria. In addition, the d.p. shall maintain mid-level practitioner protocols on file, which shall be available for review by [GRANTEE]. (B) The d.p. shall permit [GRANTEE] to monitor and evaluate the family planning services offered by the d.p. through direct on-site administrative, billing, and clinical reviews including family planning client medical record reviews of clinical and counseling visits conducted on a periodic basis determined by [GRANTEE], and through ongoing reviews conducted by authorized [GRANTEE] Family Planning staff to provide quality assessment and ensure compliance with this Agreement. This shall include, but not be limited to, permitting authorized [GRANTEE] Family Planning staff to evaluate, through direct observation of family planning counselors, the client counseling provided by the d.p. The d.p. shall also permit reasonable visits by DHHS for the purpose of monitoring the provision of services and program evaluation.

9. EDUCATIONAL ADVISORY COMMITTEE. The d.p. shall appoint a representative to serve on the [GRANTEE] Information and Education Materials Review Committee

10. **TERMINATION/SUSPENSION**

a. **BY [GRANTEE].** [GRANTEE] may, by giving written notice specifying the effective date, terminate or suspend this Agreement in whole or in part for cause, which shall include, but not be limited to: 1) failure for any reason of the d.p. to fulfill timely and properly any of its obligations under this Agreement, including compliance with the approved program and attached conditions and such statutes, regulations, Executive Orders, and Title X directives and guidelines as are or may become generally applicable at any time; 2) submission by the d.p. to [GRANTEE] or DHHS of reports that are incorrect or incomplete in any material respect; 3) ineffective or improper use by the d.p. of compensation received under this Agreement; 4) suspension or termination in whole or in part of grants or reimbursements to [GRANTEE] under Title X; and (5) the necessity for termination and/or amendment of the Agreement so as to make any terms of the Agreement consistent with applicable law; (6) fraudulent activities on the part of the d.p.; and (7) the filing of bankruptcy by the d.p. [GRANTEE] may also terminate this Agreement in whole or in part without cause by giving 30 days written notice to the d.p.

b. **BY DELEGATE PROVIDER.** If the d.p. is unable or unwilling to comply with any additional conditions or requirements which are newly and lawfully applied after the commencement of this Agreement by Title X in their grant to [GRANTEE] and thereby become applicable to the d.p. during the term of this Agreement, the d.p. shall terminate the Agreement by giving written notice to [GRANTEE]. The effective date of such notice of termination shall be no earlier than thirty (30) days from the date of the notice.

c. Upon such notice of termination, [GRANTEE] may require the d.p. to ensure that adequate arrangements have been made for the transfer of performance of the family planning services required

under this Agreement to another d.p. or to [GRANTEE], including the reasonable payments of any costs involved out of compensation otherwise due the d.p. under this Agreement. The d.p. may assign and transfer this Agreement only with the prior written approval of [GRANTEE].

d. **DISPOSITION OF PROPERTY.** In the event of any termination, all property and finished or unfinished documents, data, studies, and reports purchased or prepared by the d.p. under this Agreement shall be disposed of according to Title X directives, and the d.p. shall be entitled to compensation for any unreimbursed expenses reasonably and necessarily incurred in satisfactory performance of the Agreement to the date of termination.

11. **LIABILITY FOR DEFAULT.** Whether or not this Agreement is terminated, the d.p. shall be liable to [GRANTEE] for damages sustained by [GRANTEE] by virtue of any breach of the agreement by the d.p. and [GRANTEE] shall be liable to the d.p. for damages sustained by the d.p. by virtue of any breach of the agreement by [GRANTEE]. This shall include, but not be limited to, liability of the d.p. for the disallowance by Title X of the grant requests submitted by [GRANTEE] for services provided by the d.p. Under this agreement where the disallowance is in any way attributable to the d.p., including the provision or maintenance by the d.p. of inadequate or erroneous medical records or documentation of services provided. If any such grant request is disallowed as a result of an audit by Title X of the d.p. or [GRANTEE], the amount disallowed must be paid by the d.p. to [GRANTEE] from funds other than those provided by [GRANTEE] under the agreement.

12. **SUBCONTRACTS AND ASSIGNMENTS.** The d.p. may enter into subcontract(s) to carry out certain components of the Approved Work Program, provided that [GRANTEE] gives prior written approval. The d.p. shall provide [GRANTEE] with a copy of every proposed subcontract complete with such collateral material as may be necessary for [GRANTEE] fully to understand and approve the said subcontract at least thirty (30) days prior to its execution. No subcontracts will be entered into by the d.p. until [GRANTEE] notifies the d.p. in writing that it approves of the subcontract. [GRANTEE] will give its written approval or disapproval within fifteen (15) days after receipt of any such proposed subcontract. All subcontracts must include, as a minimum, the standard DHHS requirements with respect to audit and to the degree of supervision, control and evaluation which must be maintained.

Except as provided in this Section, the d.p. may not otherwise assign, subcontract or transfer any of its rights, duties and obligations under this Agreement. [GRANTEE] may assign and transfer this Agreement when, without limitation, such assignment and transfer is required by DHHS directive.

13. **GENERAL PROVISIONS.**

a. **NON-DISCRIMINATION IN EMPLOYMENT.** The d.p. shall not discriminate against any qualified employee or job applicant because of race, color, creed, national origin, ancestry, age, gender, sexual orientation, religion, genetic information, physical or mental disability, political affiliation, military service, or status as a veteran. The d.p. shall comply with all applicable provisions of federal and state statutes prohibiting discrimination in employment.

b. **AFFIRMATIVE ACTION.** The d.p. shall assure that a copy of its most recent Affirmative Action plan is on file at [GRANTEE] one month from the signing of this Agreement, and shall operate in compliance with that plan.

c. **FISCAL REQUIREMENT.**

(i) If the d.p. expends \$500,000 or more in federal awards, including awards as a subgrantee, in a fiscal year, the D.P. must comply with the federal audit requirements of the U.S. Office of Management and Budget's Circular A-133, "Standards for Audit of Governmental Organizations, Programs, Activities and Functions," including the preparation of an audit by a Certified Public Accountant in conformance with the Single Audit Act Amendments of 1996, 31 U.S.C. 7501-7507 and, with Generally Accepted Accounting Principles. However, if the awards are under only one program, the d.p. has the option of having an audit of the awards based on that program's requirements. If the d.p. expends less than \$500,000 in federal awards in a fiscal year, it is exempt from federal audit requirements, but records must be available for review by appropriate officials of the federal grantor agency or sub-granting agency, including [GRANTEE].

(ii) [GRANTEE] has the responsibility to determine whether the d.p. has spent funds in accordance with applicable laws, regulations, including the federal audit requirements, and agreements. [GRANTEE] will monitor the activities of the d.p. to ensure that it has met those requirements and will require that corrective action be taken if deficiencies are found.

(iii) The D.P. shall provide [GRANTEE] with one copy of the d.p.'s reporting package required by Circular A-133, including financial statements and schedule of expenditures of federal awards; summary schedule of prior audit findings; auditor's report; and corrective action plan, as well as any management letters from the auditor.

d. **BONDING.** The d.p. shall secure fidelity bond coverage in the minimum amount of one hundred thousand dollars (\$100,000) for each person authorized to handle, sign or countersign checks or to transport, maintain custody of, or disburse sizable amounts of cash (such as payrolls). No bond need be secured for persons who handle only petty cash of \$200.00 or less or persons authorized to sign payment vouchers but not to sign or countersign checks or to disburse cash. The d.p. agrees to submit to [GRANTEE] written assurance that the bonding requirements set forth in this Section have been met on or before the execution of this Agreement. The written assurance shall take the form of a letter from a bonding company or agent stating the type of bond, amount and period of coverage, positions covered, and the annual cost of the bond that has been obtained. The d.p. shall notify [GRANTEE] within twenty (20) days of any changes in bonding coverage

e. **COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS AND RELEVANT PROVISIONS OF NOTICE OF GRANT AWARD.** The d.p. shall comply with all applicable laws, ordinances, and codes of the federal, state and local governments, including but not limited to the Public Health Service Act (42 U.S.C. 300) and regulations implementing the Act (42 C.F.R. 59), DHHS regulations governing administration of grants, including 42 C.F.R. 74, 80, 84, and 91, 2 C.F.R. 180 and 376, and the Interim Final Rule concerning New Restrictions in Lobbying (45 C.F.R. Part 93 and 55 Fed. Reg. 6736). The d.p. shall also comply with relevant provisions of DHHS Notice of Grant Award, including the Office of Population Affairs Title X Program Priorities, which are attached hereto as Attachment B. In the event of any conflict between any terms of this Agreement or Attachment B and such federal, state and local laws, the requirements of such laws shall control pursuant to this Agreement.

f. **COVENANT AGAINST CONTINGENT FEES.** The d.p. warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warrant, [GRANTEE] shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the AGREEMENT or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as legally may be available.

g. **INDEMNITY.** The d.p. agrees to hold [GRANTEE] and its officers, directors, employees, and agents, harmless, and to defend and indemnify them against all claims, actions, liability, damage, loss and expenses by reason of malpractice, injury, illness, death or otherwise to any person or persons or for property damage arising or alleged to have arisen from the acts or omissions of the d.p. or its employees, its servants, and affiliates and their agents and employees, including reasonable attorney's fees and costs. [GRANTEE] agrees to hold the d.p. and its employees harmless and to defend and indemnify them against all claims, actions, liability, damage, loss and expenses by reason of injury, illness, death, or otherwise to any person or persons or for property damages rising or alleged to have arisen from the acts or omissions of [GRANTEE], its employees, servants, affiliates and/or agents, including reasonable attorney's fees and costs. In particular, [GRANTEE] agrees to indemnify and hold the d.p. harmless for any liability arising from birth control devices where such liability arises from [GRANTEE]'s conduct.

h. **INSURANCE.** The d.p. shall ensure that all individuals performing services under this Agreement shall be covered by policies for malpractice and/or liability insurance with limits of at least \$1 million/\$3 million. [GRANTEE] will carry liability insurance including product liability insurance with respect to its provision of birth control devices and its exercise of training and evaluative functions pursuant to this Agreement.

i. **PUBLICATIONS AND COPYRIGHT.** If the d.p. prepares, publishes or distributes any brochure, periodical or other publication, the costs of which are funded at least in part by the Agreement, then any such publication shall clearly state the percentage and dollar amount of the total costs of the program or project which will be financed with Federal money (i.e. under this Agreement) and the percentage and dollar amount of the total costs of the project or program that will be financed by nongovernmental sources. Such publications need not be submitted to [GRANTEE] for prior approval but must not contain information contrary to DHHS or [GRANTEE] program requirements or accepted medical practice. The d.p. may arrange for copyright of such materials without [GRANTEE] approval but such copyrighted materials shall be subject to a royalty-free, non-exclusive and irrevocable license or right to [GRANTEE] and the Government to reproduce, translate, publish, use, disseminate and dispose of such materials and to authorize others to do so.

j. **INVENTIONS OR DISCOVERIES.** All d.p. inventions or discoveries are subject to the regulations of DHHS as set forth in 45 CFR Parts 6 and 8, as amended. These regulations shall apply to any activity of the project for which grant funds are used, whether the activity is part of an approved project or is an unexpected byproduct of that project. No contracts, assignments or other arrangements inconsistent with the grant obligations shall be continued or entered into and all personnel involved in the grant activity shall be made aware of and comply with such obligations.

k. **WAIVER OF BREACH.** The waiver by either party of any breach of any provision of this Agreement shall not be deemed a waiver of any subsequent breach of the same or of different provisions.

l. **AMENDMENT.** In the event that any condition or circumstance subsequent to the execution of this Agreement necessitates significant modification to the provisions of or alters the type or amount of resources required to deliver services, such modification must be agreed to by both parties and requires a formal written amendment to the Service Contract.

m. **PERSONNEL POLICIES.** The d.p. must establish and maintain written personnel policies that comply with federal and state requirements, including the American Disabilities Act and Title VI of the Civil Rights Act. These policies shall include but need not be limited to staff recruitment, selection, performance evaluation, promotion, termination, compensation, benefits and grievance procedures. The d.p. shall also ensure:

- (i) That personnel records be kept confidential;
- (ii) That an organizational chart and personnel policies be available to all personnel;
- (iii) That job descriptions be available for all positions, and that these be reviewed annually and updated when necessary to reflect changes in duties; and
- (iv) That an evaluation and review of the job performance of all project personnel be conducted annually.
- (v) Other records, including payroll and time and attendance records documenting program assignment and hours and days worked, required by and maintained in accordance with generally accepted accounting principles recommended by the AICPA, and sufficient to meet the requirements of M.G.L. c.151 and the Fair Labor Standards Act of 1938, as amended.

n. **PRO-CHILDREN ACT OF 1994.** In accordance with 20 U.S.C. 6081 et seq., the d.p. certifies that the d.p., its employees, agents, contractors, and subcontractors will not permit smoking in any portion of indoor facility owned or leased or contracted for by the d.p. and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18 if the services are funded by federal programs either directly or through state or local government by federal grant, loan, or loan guarantee.

o. **SEVERABILITY.** The provisions of this Agreement are severable. If any provision is found to be invalid, the remainder of the provisions shall remain in full force and effect.

p. **WRITTEN TERMS CONTROL.** This Agreement supersedes all oral agreements, negotiations and representations pertaining to the particular services in the Agreement for the period of performance specified in said AGREEMENT.

q. **D.P. CERTIFICATION.** By signing this Agreement, the d.p. is providing the "Certification Regarding Debarment, Suspension And Other Responsibility Matters-Lower Tier Covered Transactions" attached hereto as Attachment C.

IN WITNESS WHEREOF, [GRANTEE] and the Delegate Provider hereby execute this Agreement.

[GRANTEE]

DELEGATE PROVIDER

By: _____

President, C.E.O.

Name of Delegate Provider

Date: _____

By: _____
Signature

Printed Name

Printed Title

Date: _____