

## Sample

TSET reserves the right to amend and edit the final terms and conditions of a contract issued for review and signature by a grantee.

### TERMS AND CONDITIONS

#### **Access to and Retention of Records Requirements**

The Grantee agrees to hold, manage, and maintain Program records, accounts and supporting documentation, for validation of costs billed to TSET, for three (3) years from the ending date of the Agreement. The Grantee also agrees to allow the State Auditor's Office, TSET, or their authorized representatives, access to the records, books, documents, accounting procedures, practices, or any items of the service provider relevant to this Agreement for purpose of audit and examination. The Grantee further agrees to provide appropriate access to the aforementioned parties regarding any subcontractor's associated records. In the event any audit, litigation or other action involving these pertinent records is started before the end of the three (3) year period, the Grantee agrees to retain these records until all issues arising out of the action are resolved or until the end of the three-year period, whichever is later.

#### **Acknowledgment of TSET Support**

The Grantee shall prior to release make available to and closely coordinate with TSET on all publications related to the results of the work conducted under this Agreement. All presentations and publications resulting from work under this Agreement shall include an appropriate acknowledgement of the support of TSET.

#### **Advance Payments Prohibited**

No payments in advance of or in anticipation of goods or services to be provided under this Agreement shall be made by TSET to the Grantee or by the Grantee to a subcontractor. TSET may routinely request supporting documentation to validate Grantee payments.

#### **Agreement Extensions**

TSET may exercise the option to extend this Agreement past its original end date if both TSET and the Grantee deem an extension necessary and mutually beneficial. Any extensions to this Agreement shall be in writing, dated, and executed by both the Grantee and TSET.

#### **Amendments**

Any modifications or amendments to this Agreement, including, but not limited to, budget changes and scope of work changes, shall be in writing, dated and executed by both the Grantee and TSET.

#### **Applicable Law**

This Agreement shall be governed in all respects by the laws of the State of Oklahoma. The terms "TSET", "the agency", "Trust", "Oklahoma Tobacco Settlement Endowment Trust" or any other reference to an agency of the State of Oklahoma means the State of Oklahoma acting by and through that agency. Any action, claim, dispute, or litigation relating in any way to the execution, interpretation, performance, or enforcement of this Agreement shall be filed in a court of competent jurisdiction in Oklahoma County, Oklahoma, to which jurisdiction and venue TSET and Grantee expressly agree.

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### **Assignment and Delegation**

This Agreement may not be assigned. If the Grantee cannot perform a specific service as identified in this Agreement, the Grantee will be responsible for subcontracting the services or making alternative arrangements for the provisions of the services. Prior to the execution of a subcontract, the Grantee must provide in writing to TSET a "Notice of Intent to Subcontract". The Grantee will be liable for any and all additional costs and expenses arising from such subcontract or substitution to cover performance. In no event will any subcontract by Grantee incur obligation on the part of TSET. To the extent provided by law, the Grantee shall be totally responsible for the management of all subcontracts/subcontractors proposed or engaged and shall to the extent provided by law be liable for all performance requirements regardless of which entity is providing the contracted supplies, materials, equipment, or services.

The Grantee shall give TSET immediate notice in writing by certified mail of any action or suit filed against Grantee and/or subcontractor and prompt notice of any claim made against the Grantee by any subcontractor or contractor that may reasonably be anticipated to result in litigation related in any way to the Agreement or the State of Oklahoma.

### **Availability of Funding**

Notwithstanding any contrary provision in this Agreement, any obligation of TSET to make any payment(s) hereunder is subject to the availability and continuation of sufficient funds for that purpose. This Agreement may be canceled, and/or not renewed beyond the current fiscal year and/or the end of any subsequent fiscal year without obligation or penalty, should the TSET Board of Investors fail to certify sufficient earnings from the Oklahoma Tobacco Settlement Endowment Trust, or if a reduction in or elimination of any source of funding for the payment(s) required under this Agreement occurs. TSET may terminate or reduce the amount funded under this Agreement by providing notice in writing to Grantee. TSET shall be the final authority as to the availability of funds. The effective date of such termination or reduction shall be specified in the notice. In the event of a reduction, the Grantee may cancel this Agreement as of the effective date of the proposed reduction by providing by certified mail advanced written notice to TSET. In the event this Agreement is canceled under this section, the Grantee agrees to take all reasonable steps to minimize termination costs. Upon presentation of proper invoice(s) for allowable claims(s), TSET agrees to reimburse the Grantee for expenditures and non-cancelable commitments incurred in anticipation of performance for all work performed under this Agreement prior to the termination date contained in the notice of termination. This clause provides an exception to the amendment clause and the cancellation clause requiring thirty (30) days' notices.

### **Budget Revisions**

Reimbursement of expenditures will be made in accordance with the approved budget. For each year of this Agreement, without prior TSET approval, the Grantee may make budget revisions between categories not to exceed 10% of the total cash portion of the TSET-supported budget, provided the revisions do not result in any applicable budget category maximums being exceeded. All budget revision requests in excess of 10% of the total TSET funding must be approved in writing by TSET prior to incurring any costs. No budget revisions that would have

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the effect of changing the scope of work are reimbursable. TSET will determine, in its sole discretion, whether any budget revision changes the scope of work such that the revision is not reimbursable. If multiple funding sources are involved, Grantee agrees to within ten (10) days of Grantee's generation of budget revision(s) provide TSET with a copy of budget revisions supplied to other funders.

### **Cancellation Clause**

This Agreement shall be in force until the expiration date, or until 30 days after notice has been given by either party of its desire to cancel, whichever is earlier. Notification of cancellation shall be by Certified Mail to the business address of record.

### **Certification of Non-Acceptance of Tobacco Funds**

The Grantee, by signing this Agreement, certifies that it will not accept funding from nor have an affiliation or contractual relationship with a company engaged in the manufacture of tobacco or tobacco products during the term of the Agreement with TSET.

### **Certification Regarding Debarment, Suspension, Proposed for Debarment, or Declared Ineligible for Award of Contracts by any Federal or State Agency**

By signing this Agreement, the Grantee attests and assures that no employee or it or of any of its principals performing hereunder:

- 1) Are presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
- 2) Have within a three year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
- 3) Have, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal, State, or local governmental entity; or
- 4) Are presently indicted for, or otherwise criminally indicted, or charged by a governmental entity with any of the offenses enumerated above in this section.

### **Compliance with the Oklahoma Smoking in Public Places and Indoor Workplaces Act**

*Title 63 of the Oklahoma Statutes, Sections 1-1521 through 1-1527*

The Grantee and its subcontractors must at all times during the Agreement term be in full compliance with the Oklahoma Smoking in Public Places and Indoor Workplaces Act.

### **Contact Persons**

All programmatic questions should be directed to the assigned TSET program officer. All contractual, compliance, payment, and grants management questions should be directed to the

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assigned grants manager.

Any changes to contact persons shall be communicated in writing to all parties to the Agreement within five business days of the change.

### Disputes

Any dispute concerning performance of the Agreement shall be decided by TSET and a copy of the decision shall be provided in writing to the Grantee. Pending final determination of any dispute hereunder, the Grantee shall proceed diligently with the performance of the Agreement and in accordance with TSET's direction.

### Electronic Communication Minimum Standards

The Grantee must assure that, at a minimum, all program staff have internet access, a dedicated email address—an organizational email account is strongly preferred—a recent version of Microsoft Office, and the latest version of Adobe Acrobat Standard or Professional. Broadband access is not required, but it is preferred as many of the electronic forms or web-based reporting items may be difficult to access or download through dial-up access. Also preferred is the capability of scanning information to reduce the burden of having to recreate vital records or documents.

### Entire Agreement

This Agreement, including referenced attachments and any modifications approved by TSET, represents all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto. No changes in the project being funded are permitted without prior TSET written approval.

### Equipment and Other Purchases

Any items of equipment (defined as items with a cost greater than \$500), property or other capital purchases made pursuant to the terms of this Agreement shall be made only with written approval from TSET, only for the benefit of the public, and shall be used by the public during the useful life of the equipment for the benefit of the public and in fulfillment of the intended purposes of the Agreement even after the Agreement term has expired. All inventory, maintenance, and repair of such items of equipment purchased by the Grantee shall be the responsibility of the Grantee, whether during or after the Agreement term. Should such equipment no longer be used for the benefit of the public and in fulfillment of the intended purposes of the Agreement, whether before or after the Agreement term, and if such equipment still has useful life, it shall expeditiously be disposed of through the same competitive bidding or public sale procedure as is used for the disposition of State surplus equipment.

### Event of Default

In the event the Grantee fails to timely meet the terms and conditions of this Agreement or fails to provide services in accordance with the provisions of the Agreement, TSET at its sole

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discretion may withhold payments claimed by the Grantee or may by written notice of default to the Grantee cancel this Agreement. Cancellation due to default shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. If TSET materially breaches the Agreement, Grantee may by written notice to TSET detailing the nature of the material breach terminate the Agreement immediately as an exception to the standard cancellation clause of thirty (30) days' notice requirement.

### **Failure to Comply Statement**

The Grantee shall be subject to all applicable state and federal laws, rules and regulations, and all amendments thereto. The Grantee agrees that should it be in noncompliance, TSET may suspend or cancel the Agreement in part or in whole. Compliance with the Grantee's Agreement requirements shall be the responsibility of the Grantee, without reliance on or direction by TSET.

### **Force Majeure**

The Grantee shall not be liable for any damages resulting from any delay in delivery or failure to give notice of delay that directly or indirectly results from the elements, acts of God, delays in transportation, or delays in delivery by any cause beyond the reasonable control of the Grantee.

### **Grantee Eligibility**

Any Grantee who, in TSET's judgment, has failed to correct a material breach of a contract previously awarded under any of TSET's programs will not be eligible to be awarded a new TSET contract.

### **Grantee Organization**

The Grantee shall be the applicant organization(s), which shall be the employer(s) of the Principal Investigator, Co-Investigator, Program Coordinator, Project Manager, or other designated program liaison and/or shall be providing services and/or facilities for the funded project and executing the Agreement. If there is more than one party to this Agreement, one of the parties shall be designated as the Fiscal Agent (Agent) to receive and account for all funds.

The Grantee or the Agent, as appropriate, will ensure that the necessary personnel, facilities, supplies, equipment, and/or related resources and skills to accomplish the project are provided in accordance with the terms and conditions of this agreement. All the work and services required shall be performed by, or under supervision of, the Grantee or Agent, and all personnel engaged therein must be fully qualified and authorized under state and local law to perform such work and services.

### **Grantee's Relation to TSET**

The Grantee is in all respects an independent contractor and is neither an agent nor an employee of TSET. Neither the Grantee nor any of its officers, employees, agents, members, or subcontractors shall have authority to bind TSET nor are they entitled to any of the benefits or worker's compensation provided by TSET to its employees.

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### **Hold Harmless Clause**

Grantee and its subcontractors, within limitations placed on such entities by State law, shall hold harmless the State of Oklahoma, its agents, officers, and employees from all claims and actions, and all expenses defending same, that are brought as a result of any injury or damage sustained by any person or property in consequence of any negligent or intentionally wrong act or omissions by Grantee or any of its subcontractors or by an such act or omission by any agents, officers or employees of Grantee of its subcontractors.

The State of Oklahoma and TSET, and its insurers, if applicable, shall only be responsible for the actions of TSET and its employees while acting within the scope of their employment. The State of Oklahoma, TSET, and its insurers, if applicable, shall not be responsible or liable for the actions of the Grantee, its agents or employees or subcontractors. Each party to this agreement shall be responsible for the actions and liability of their own employees.

### **Inspection of Work Performed**

The State of Oklahoma, State Auditor and Inspector, Tobacco Settlement Endowment Trust, or their authorized representatives shall, at all reasonable times, have the right to enter into Grantee's premises, or such other places where duties under the Agreement are being performed, to inspect, monitor, or otherwise evaluate the quality, appropriateness, and timeliness of work being performed. The Grantee and all subcontractors must provide access at all reasonable times to all facilities and provide assistance, if deemed necessary by the requesting agency/personnel. All inspections and evaluations shall be performed in such manner as will not unduly delay work.

### **Insurance**

The Grantee shall obtain and retain insurance, including, as applicable, workers' compensation, automobile insurance, medical malpractice, and general liability or as required by state or federal law, prior to receiving TSET funds and prior to any work in connection with the Agreement. The Grantee shall timely renew the policies to be carried pursuant to this section throughout the term of the Agreement and shall provide TSET with evidence of such insurance and renewals.

### **Intellectual Property**

The Grantee represents that to the best of its knowledge the purchase, use or sale of goods or services covered by this Agreement do not and will not infringe on any patent, trademark, copyright, trade secret or other intellectual property right.

The Grantee acknowledges that inventions, improvements, discoveries, copyrightable works, or other proprietary information may arise from initiated research, sponsored in whole or in part by governmental agencies. Grantee further represents that any such developments shall be governed by the provisions of applicable law and as applicable, subject to the reservation of the rights of the Government of the United States of America, as set forth in 37 CFR 401 and the Patent and Trademark Law Amendments Act of 1980 (Bayh-Dole Act).

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When using the image or likeness of an individual in educational materials, the Grantee will verify that the individual has consented to such use. Agencies shall obtain an additional consent form from the parent or legal guardian of individuals under 18 years of age.

The provisions in this section by which the third-party Vendor agrees to hold the State harmless and to indemnify the State, shall be exceptions from whatever other limits of liability there might be.

The Grantee agrees that in its contract(s) with third party Vendors by which contract(s) the Grantee will use software or other intellectual property owned by others to perform services for TSET, that the Grantee will include and enforce in its contract(s) with said third-party Vendors certain terms, as follows:

- 1) The Vendor represents and acknowledges the State of Oklahoma's reliance hereon, of the provisions contained in the contract between the Grantee and the third-party Vendor, that the Vendor has good and lawful title or license to all goods and services supplied by the Vendor for use by the State of Oklahoma, to the extent applicable, and that the Vendor conveys same free of encumbrance, including infringement of any known intellectual property rights, or if covered by intellectual property rights of the Grantee and in consideration of the State of Oklahoma buying goods and services from the Grantee, the Vendor agrees not to sue the State of Oklahoma for infringement of said intellectual property rights of the Vendor.
- 2) Each such third-party vendor shall comply with minimum requirements and applicable provisions of the Contract. At the request of the State, Grantee shall promptly provide adequate evidence that such persons are its employees, agents or approved subcontractors and have been informed of their obligations under the Contract.
- 3) The third-party Vendor will hold harmless and indemnify the individual State of Oklahoma officers, agents, and their successors, and assigns, to the extent they were acting in the scope of their employment, against and from any and all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses and liabilities, including but not limited to, reasonable attorney's fees, related to infringement of intellectual property rights (including invention rights pending applications, patents, trademarks, copyrights, trade names, trade dress, trade secrets, right of privacy, and right of publicity) caused by either the Grantee or the third-party Vendor or by TSET, their agents, or their employees.

The Grantee represents and acknowledges the State of Oklahoma's reliance hereon, that the Grantee has good and lawful title or license to all goods and services supplied by the Grantee to the State of Oklahoma, to the extent applicable, and that the Grantee conveys same free of encumbrance, including infringement of any known intellectual property rights, or if covered by intellectual property rights of the Grantee and in consideration of the State of Oklahoma buying goods and services from the Grantee, to the extent permitted by applicable law, the Grantee agrees not to sue the State of Oklahoma for infringement of said intellectual property rights of the Grantee, subject to the exceptions made in writing by the Grantee to the State of Oklahoma

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within 30 days hereof and specifically listing each excepted right.

### **Invoicing and Supporting Documentation**

The Grantee, as appropriate, shall use funds made available pursuant to this Agreement only for expenses incurred during the funding period for the purposes and activities approved and agreed to by TSET. No Agreement funds may be used for expenses incurred either before or after the Agreement funding period. Payment under the procedure outlined below will be made by TSET only in the form of reimbursement for costs incurred during the funding period and paid by Grantee.

A properly completed claim for reimbursement must be submitted monthly and within 30 days of the end of the month in which services were delivered—except for the final invoice, which must be received within 90 days of the end of the fiscal year—be in accordance with the terms and conditions of this Agreement, and include the following items:

- Name and address of the Grantee
- invoice date
- period covered by invoice
- any other data, reports, information, or documentation required by other conditions of this Agreement
- detail of the services provided and be in accordance with the terms and conditions of this Agreement

The claim for reimbursement shall be submitted electronically via Smartsheet, or by another method as required by TSET Grants Management.

The State of Oklahoma has 45 days from presentation of a proper claim for reimbursement to issue payment to the Grantee.

TSET may request supporting documentation for any claim for reimbursement and may withhold or delay payment to any Grantee who fails to provide required programmatic documentation and/or requested financial documentation.

If, subsequent to reimbursement, the Grantee is unable to support any part of their claim to TSET and TSET determines that such inability is attributed to misrepresentation of fact or fraud on the part of the Grantee, the Grantee shall be liable to TSET for an amount equal to such unsupported part of the claim in addition to all of TSET's costs, including attorney fees, attributable to the reviewing and discovery of said part of claim, all of which shall be paid by Grantee to TSET within thirty (30) days of written demand by TSET. Liability under this section shall be determined by TSET within five (5) years of the Grantee's commission of such misrepresentation of fact or fraud.

### **Limited English Proficiency**

Where a significant number or proportion of the population eligible to be served under this



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Agreement needs service or information to be provided in a language other than English in order to effectively be informed of or participate in the program, the Grantee shall take reasonable steps, considering the scope of the program and the size and concentration of such population, to provide the information in languages appropriate to such persons.

### **Non-Collusion**

The Non-Collusion Affidavit must be signed and completed by the Grantee.

### **Other Certifications**

The Grantee, by signing this Agreement, attests and assures compliance, to the extent applicable to Grantee, with the provisions of Titles VI and VII of the 1964 Civil Rights Act and Section 504 of the Rehabilitation Act of 1973, the Age discrimination Act of 1975, the Hatch Act, the Pro Children Act of 1994, Drug free Workplace Act of 1988, the American with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, 31 U.S.C. Section 1352, Public Law 105-78, the Vietnam Era Assistance Act of 1974, 38 U.S.C. Section 4212. and the Single Audit Act of 1984.

As applicable to the Grantee, the provisions of Executive Order 11246, as amended by EO 11375 and EO 11141 and as supplemented in Department of Labor regulations (41 CFR Part 60 et. seq.) are incorporated into this Agreement and if applicable to Grantee must be included in any subcontracts awarded involving this Agreement. The Grantee represents: that all services are provided without discrimination on the basis of race, color, religion, national origin, disability, political beliefs, sex, or veteran's status; it does not maintain nor provide for their employees any segregated facilities, nor will the Grantee permit its employees to perform their services at any location where segregated facilities are maintained.

### **Political Activity**

No portion of the Agreement funds may be used for any political activity or to further the election or defeat of any candidate for public office. No portion of the Agreement funds may be used for lobbying activities.

### **Privacy Clause**

All information obtained by Grantee during the performance of this Agreement shall be treated by Grantee as confidential to the extent that it is confidential under State or Federal law, and Grantee shall not use any confidential information without the prior written approval of TSET except as necessary for the proper discharge of Grantee's obligations and the securing of Grantee's rights hereunder.

### **Procurement Integrity**

The Grantee certifies it has not entered into this Agreement with this or any other state agency that would result in a substantial duplication of the services or duplication of the end product rendered by the Grantee or its employees.

### **Prohibited Conflicts of Interest**

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The Grantee and any entity or person directly or indirectly controlled by, under common control with, or controlling the Grantee will not acquire any interest, direct or indirect, which would conflict in any manner or disagree with the performance of its services hereunder. The Grantee further covenants that in the performance of the Agreement no person having any such known interest shall be employed. No official or employee of the State and no other public official of the State of Oklahoma or the federal government who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall prior to the completion of the project, voluntarily acquire any personal interest direct or indirect, in this Agreement or proposed Agreement.

### **Public Disclosure**

Upon signing of the Agreement by all parties, the terms of the Agreement shall become available to the public, pursuant to the Tobacco Settlement Endowment Trust Act.

### **Receipt of Funds**

The Grantee will receive funds by electronic funds transfer (EFT). Disbursements from the State Treasury must be processed electronically and the EFT method is used to make state expenditures.

### **Risk Assessment Analysis**

During the term of the Agreement, if TSET becomes aware of facts indicative to TSET of possible Grantee financial instability and/or misuse of TSET funds, Grantee shall upon request by TSET promptly complete and submit to TSET the TSET Agency Risk Assessment form. If TSET determines that funds have been misused, or if the Grantee's financial condition is such that it constitutes a violation of the terms or purposes of the Agreement, TSET may in its discretion terminate the Agreement.

### **Severability**

If any provision of the Agreement (including items incorporated by reference) is declared or found to be illegal, unenforceable, or void, then both TSET and the Grantee shall be relieved of all obligations arising under such provision; if the remainder of the Agreement is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

### **Statement of Responsibility and Liability**

The parties intend that each party shall be responsible for that party's own intentional and negligent acts or omissions to act. TSET shall be responsible for the negligent acts and omissions to act of its officers, and employees while acting within the scope of their employment according to the Oklahoma Governmental Tort Claims Act, Title 51, O.S. §§151, et seq.

The Grantee shall be responsible for any damages or personal injury caused by the negligent acts or omissions to act by its officers, employees, or agents acting within the scope of their authority or employment. If Grantee is a political subdivision as defined in Title 51, O.S. §§151,

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et seq, Grantee's liability is according to the terms of the Oklahoma Governmental Tort Claims Act, Title 51, O.S. §§151, et seq.

It is the express intention of the parties hereto that this Agreement shall not be construed as, or given the effect of, creating a joint venture, partnership or affiliation or association that would otherwise render the parties liable as partners, agents, employer-employee or otherwise create any joint and several liability.

### **Termination**

Either party may terminate the Agreement upon thirty (30) days' written notice to the other party. Either party may terminate this Agreement immediately upon written notice in the event of a material breach of this agreement. In the event of termination, payments will be made for all work performed up to date of termination and will include any non-cancelable obligations incurred by Grantee in connection with this Agreement.

### **Time and Effort**

The Grantee shall maintain time and effort reports on all personnel reimbursed under this Agreement. Subcontractors claiming reimbursement for time worked must also maintain time and effort reports. Time and effort reports must reflect after-the-fact distribution of the actual activity of each employee or subcontractor. For employees, time and effort reports must account for the total activity for which each employee is compensated and include all hours worked by the employee (s) with the hours delineated by each program area. Both the employee and their supervisor attesting to the performance of the services and the accuracy of the report must sign the reports.

### **Travel and Related Expenses**

If travel costs and related expenses are a part of the Agreement, they shall not exceed those authorized by the State Travel Reimbursement Act, Title 74 O.S. §500.1, et seq. All out-of-state travel for which reimbursement is requested must be pre-approved in writing by TSET prior to travel.

### **Waiver of Breach**

No failure by TSET to enforce any provisions hereof after any event of default by the Grantee shall be deemed a waiver of TSET's rights with regard to that event, or any subsequent event. TSET's failure to enforce an Agreement provision shall not be construed to be a modification of the terms of the Agreement.

### **Workers' Compensation Insurance Coverage**

Proof of Workers' Compensation Insurance is required by TSET for all entities that receive TSET funding and enter into a contract with TSET. The certificate of insurance showing compliance with the Oklahoma Administrative Workers' Compensation Act must be provided to TSET prior to receipt of the funds and commencement of work. If Grantee claims that it is exempt from the Oklahoma Administrative Workers' Compensation Act, prior to receipt of funds and

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commencement of work, the Grantee must submit to TSET a statement sworn under penalty of perjury, dated, and signed by the Grantee, establishing the factual basis for an exemption under any of the exemptions provided for in the Workers' Compensation Act under Title 85A O.S. Section 2(18) (b) (1-11).

FOR APPLICANT REVIEW