

Texas Equal Access to Justice Foundation

IOLTA GENERAL GRANT PROVISIONS

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ARTICLE I
GENERAL

1.01 INTRODUCTION

On May 9, 1984, the Supreme Court of Texas adopted and promulgated Article IX of the State Bar Rules referred to as the Texas Equal Access to Justice Program. In so doing, the Court made the following findings:

- A. On certain client funds held by attorneys, interest income cannot reasonably be earned to benefit individual clients for whom the funds are held;
- B. Income can be earned on those client funds pursuant to the program provided for in this Article and that income should be used to provide additional legal services to the indigent in civil matters;
- C. This Court is the proper and appropriate body, through the adoption of rules as set forth in this Article, to create and administer, or cause to be created and administered, a program to carry out the purposes of this Article; and
- D. This Article is adopted in furtherance of the inherent powers of this Court to regulate the practice of law in the State of Texas.

To accomplish the above purposes, the Supreme Court of Texas ordered the formation of the Texas Equal Access to Justice Foundation as a non-profit corporation whose purpose is to grant funds received by it to organizations that will use the funds exclusively to provide legal services to the indigent in civil matters. On December 10, 1984, the Court adopted rules to implement Article IX (Rules Governing the Operation of the Texas Equal Access to Justice Program). On May 22, 1991, the Court approved, adopted and promulgated amendments to those Rules. In order to clarify the requirements of the program for Grantees, the Foundation has developed these General Grant Provisions. Unless otherwise indicated, all Grantees will be required to comply with these provisions.

1.02 DEFINITIONS

The capitalized terms used in these General Grant Provisions are defined as follows:

"Annual Financial Statements" or "Financial Statements" - means Grantee's audited annual financial statements prepared in conformity with FASB Statement No. 117 which accounts for and reports the IOLTA grant as temporarily restricted fund.

"Approved Budget" - means the Proposed Budget and Budget Narrative submitted by a Grantee for the expenditure of the Grant after it has been approved by the Foundation.

"Budget Narrative" - means the budget explanation submitted to the Foundation by a Grantee along with the Proposed Budget.

"Carryover" - means the use of Grant funds in a Grant Period subsequent to the Grant Period for which they were awarded.

"Court" – means the Supreme Court of Texas.

"Default" - see Section 9.01.

"Executive Director" - means the Executive Director of the Texas Equal Access to Justice Foundation.

"Foundation" - means the Texas Equal Access to Justice Foundation, the non-profit corporation, incorporated to be the recipient of and disbursing agent for IOLTA funds.

"General Grant Provisions" or "Provisions" - means these General Grant Provisions as amended by the Foundation from time to time.

"Grant" - means the amount of funds awarded to a Grantee for a Grant Period pursuant to the Grant Agreement.

"Grantee" - means a qualified legal services project named in the Grant Agreement as the recipient of the Grant.

"Grant Agreement" - means the contract between a particular Grantee and the Foundation pursuant to which a grant award is made and to which these provisions are attached.

"Grant Closeout" - means the process by which the Foundation determines that all applicable administrative actions and all required work of the Grant have been completed by the Grantee and the Foundation.

"Grant Period" - means the period of time specified in the Grant Agreement during which expenses for items set forth in the Approved Budget may be applied against the Grant.

"IOLTA" - means Interest on Lawyers Trust Accounts, the mechanism by which the Supreme Court of Texas established the funding source to be administered by the Foundation.

"IOLTA Program" - means the program created by Court to provide civil legal services to indigent Texans.

"Installments" - means portions of the Grant as disbursed by the Foundation from time to time.

"Project" - means identified activity or program approved by the Foundation.

"Proposed Budget" - means the itemized budget submitted by the Grantee.

"Rules" - means the Rules Governing the Operation of the Texas Equal Access to Justice Program as approved, adopted and promulgated by the Supreme Court of Texas.

"Termination" - means cessation of payment of Grant Installments and withdrawal of the Grantee's right to receive and authority to obligate previously awarded Grant funds before that right and authority would otherwise expire. It also means the voluntary relinquishment of that right and authority by the Grantee. "Termination" does not include the refusal of the Foundation to consent to a Carryover or the determination by the Foundation that a Grantee is not eligible to receive funds for a subsequent Grant Period.

ARTICLE II

GRANT PAYMENT PROVISIONS

2.01 TIMING OF PAYMENTS

Upon a Grantee's satisfaction of each of the conditions contained in Section 2.04 hereof, the Foundation shall release one-third, one-sixth or one-twelfth of the Grant (depending upon the amount of the Grant) to the Grantee. Following receipt and approval of the quarterly reports submitted pursuant to Grant Provision 5.01 and subject to Section 2.02, the remainder of the Grant will be released in periodic Installments on the first business day of the month following the due date of the quarterly report or monthly installments on the first business day of each month following the release of the first Installment. Notwithstanding the foregoing, the Foundation reserves the right in its sole discretion to alter the disbursement schedule of the Grant for any or all Grantees from time to time. Grantees should submit requests for different disbursement schedules at the time of submission of the Proposed Budget and include a detailed explanation in the Budget Narrative or as a request for budget alteration if the reason for a change occurs after the beginning of the Grant Period. In the event of a Default, the Foundation may impose reasonable conditions which must be satisfied before all or any portion of the Grant is released.

2.02 FUNDING ADJUSTMENTS

The Foundation reserves the right to make adjustments in the amounts, permitted uses or other conditions of the Grant to any or all Grantees as it may deem appropriate from time to time. Adjustments may be made by the Foundation to the Grant in total or to any one or more Installments. The Foundation will condition disbursement of any funds which it may award in addition to the Grant on its review and approval of a supplement to the Approved Budget in such form as the Foundation may direct, specifying the use of such additional funds by the Grantee. Grantees will expend such additional funds only in accordance with the approved supplement to the Approved Budget.

2.03 UNEXPENDED FUNDS

At the conclusion of a Grant Period, the Grantee will account to the Foundation for the disposition of the Grant as a part of the Financial Statements required by the Rules. Any unused portion of the Grant will be returned to the Foundation at the time for such accounting unless the Grantee received specific authorization from the Foundation to retain all or a portion thereof. Any funds so retained by the Grantee at the direction of the Foundation will be used by the Grantee in the next Grant Period in accordance with the Approved Budget for such Grant Period. Unused funds which are returned to the Foundation shall become a part of unallocated funds administered by the Foundation. Grantees who anticipate expending Grant funds beyond the end of the Grant Period for which they were awarded should so indicate in the Budget Narrative.

2.04 CONDITIONS PRECEDENT TO RELEASE OF FUNDS

Prior to the release of any Installment of the Grant, Grantees will have satisfied each of the following conditions:

- A. The Grantee has submitted a Proposed Budget and Budget Narrative within two weeks of notification of Grant award , or other period of time specified by the Foundation, in accordance with the Rules and such Proposed Budget and Budget Narrative have been approved by the Foundation.
- B. The Grantee has executed the Grant Agreement.
- C. The Grantee shall have made the assurances set forth in Article XV, and the factual statements made therein shall remain unchanged.
- D. All of the statements and representations contained in the application for funding shall be accurate and remain unchanged materially.

No further Installments shall be released to the Grantee if the Grantee has not continued to satisfy the conditions set forth in paragraphs C and D above.

ARTICLE III
APPROVED BUDGET AND USE OF FUNDS

3.01 APPROVED BUDGET

Upon receipt of notification of a proposed Grant, a Grantee shall submit within two weeks, or other period of time specified by the Foundation, a Proposed Budget and Budget Narrative for the proposed expenditure of the Grant. The Foundation will provide instructions and guidelines for the submission of the Proposed Budget and Budget Narrative. All Proposed Budgets and Budget Narratives will be reviewed by the Foundation for compliance with the Rules. Upon approval of the Proposed Budget and the Budget Narrative by the Foundation said Proposed Budget and Budget Narrative shall be deemed an "Approved Budget," and the Grant will be disbursed to the Grantee in accordance with Article II of these Provisions, subject to the Rules, these General Grant Provisions and the Approved Budget.

3.02 USE OF FUNDS

The Grant shall be expended by the Grantee to provide civil legal services without charge to indigent persons as defined in the Rules and for the specified purposes and in the amounts as set forth in the Approved Budget as amended from time to time in accordance with the procedure provided herein.

3.03 COMPLIANCE WITH LAWS

Grantees must at all times comply with the assurances contained in Article XV. In addition, Grantees will comply with all relevant statutes, rules, regulations or decisions of the State of Texas or any applicable subdivision thereof.

ARTICLE IV
STANDARDS FOR GRANTEE
FINANCIAL MANAGEMENT SYSTEMS AND AUDITS

4.01 FINANCIAL MANAGEMENT STANDARDS

Grantees will comply with financial management standards and requirements which may be imposed by the Foundation from time to time to reasonably enable the Foundation to monitor and evaluate the Grantee's Project and use of the Grant funds. To assist in such evaluation, the Approved Budget and financial reports will allocate Project expenses paid with Grant funds between program costs and administrative costs. Such allocation will be based on reasonable estimates and formulas which will be explained in the Budget Narrative.

A. Program Costs

"Program Costs" are those that are identified specifically with the direct delivery of civil legal services. Typical Program Costs include the following:

1. Compensation and related taxes and benefits of attorneys, paralegals, law clerks, law students and direct support staff for time and effort devoted specifically to the provision of legal services.
2. Cost of materials acquired, consumed or expended specifically for the purposes of the grant.
3. Equipment and other approved capital acquisitions necessary to accomplish the purposes of the Grant.
4. All other items of expense incurred specifically to carry out the purposes of the Grant.

B. Administrative Costs

"Administrative Costs" are those incurred for a common or joint purpose benefiting more than one cost objective, and not readily assignable to the cost objectives specifically benefited without effort disproportionate to the results achieved. Charges for Administrative

Costs normally will include items such as the cost of maintaining buildings, utilities or administrative salaries incurred for the benefit of the Project as a whole, as well as other activities of the Grantee.

4.02 ALLOCATION

The Approved Budget will allocate expenses of the Grant between Program and Administrative Costs. Each item of cost must be treated consistently in like circumstances as either a Program Cost or an Administrative Cost. The Budget Narrative will detail Administrative Costs as a proportion of the total Grant. All such allocations will be based on the reasonable and documented estimate of the Grantee.

4.03 SOURCE DOCUMENTATION

Accounting records shall be supported by source documentation such as canceled checks, paid bills, timecards, payrolls, etc. The Foundation may disallow unsupported expenses and may require that funds expended for unsupported expenses be returned.

4.04 AUDIT RESOLUTION

The Foundation may require Grantees to follow a systematic method to assure timely and appropriate resolution of annual audit findings and recommendations and to report progress in such manner and at such times as the Foundation shall deem appropriate.

4.05 FINANCIAL STATEMENT

Grantees shall submit a Financial Statement for the fiscal year ended most recently within one-hundred twenty (120) days of the close of their fiscal year. The Financial Statement shall be prepared in conformity with U.S. generally accepted accounting principles or other comprehensive basis of accounting approved by the Foundation. The Financial Statement shall be audited or reviewed by an independent certified public accountant. Any recipient whose gross expenses, from all sources, exceeded \$750,000 during the fiscal year shall be required to submit an audited Financial Statement.

The Foundation may grant an exception to the requirement for a reviewed or audited Financial Statement upon receipt of a justified request from the Grantee.

ARTICLE V

REPORTING AND MONITORING OF PROGRAM PERFORMANCE

5.01 REPORTING BY GRANTEES

Grantees shall submit a financial and program activity report to the Foundation quarterly during the Grant Period at such times as shall be directed by the Foundation. These reports will be in the form and contain the information specified by the Foundation. The financial report will detail the expenses of the Grant to date, compare those expenses against the Approved Budget, and disclose any facts or events which would make the Grantee ineligible for funding if applying for funding as of the date of the report.

5.02 SIGNIFICANT DEVELOPMENTS BETWEEN SCHEDULED REPORTING DATES

Between the scheduled reporting dates, events may occur which have significant impact upon the Grant. The Grantee shall inform the Foundation as soon as the following types of conditions become known:

- A. Problems, delays or adverse conditions which will materially impair the Grantee's ability to comply with the Approved Budget. A statement of action taken or contemplated shall accompany this disclosure, and any assistance needed to resolve the situation.
- B. Any facts or events which would make the Grantee ineligible for funding if it were making application for funding at that time.

5.03 PROGRAM VISITS

Visits to one or more of a Grantee's places of business may be made as necessary by Foundation representatives to inspect and review a Project's physical facilities, financial records, operational policies and procedures, including but not limited to observation of Grantee's delivery of civil legal

services, and such other aspects of a Grantee's Project as reasonably necessary to ensure compliance with the Rules, the Grant Agreement and these Provisions.

ARTICLE VI
BUDGET REVISIONS AND PROGRAM CHANGES

6.01 BUDGET REVISIONS

Grantees shall not materially deviate from the Approved Budget without first obtaining the prior written consent of the Executive Director. A material deviation will be deemed to have occurred in the event of the following: (1) anticipated or actual expenses of Grant funds which are materially greater or less than as set forth in the Approved Budget, whether in total or by individual line item; (2) anticipated or actual expenses of Grant funds which materially alter the ratio of Program to Administrative Costs; (3) anticipated or actual expenses of Grant funds which involve a disposition of property acquired with Grant funds; or (4) anticipated or actual expenses of Grant funds for which no budget line item has been approved by the Foundation. Budget amount increases or decreases will be deemed material when they meet either of the following tests:

- A. The individual deviation is in excess of \$1,000 and exceeds the lesser of \$10,000 or 10% of the Grant for that Grant period; or
- B. The accumulated total of all budget deviations since the beginning of the Grant Period exceeds the lesser of \$10,000 or 10% of the Grant for that Grant Period.

In the event of a material budget deviation, the Grantee shall request a revision of its Approved Budget. Such request shall be in a writing submitted to the Executive Director fully delineating the request, the reasons for it, why it is necessary and its effect on the Grantee. The Executive Director may request such additional information as he or she may deem necessary. If the Executive

Director determines that use of funds is consistent with the goals of the IOLTA Program, he or she will approve the request and the Approved Budget will be deemed amended accordingly.

6.02 PROGRAM CHANGES

In the event of any of the following program changes, the affected Grantee will notify the Foundation in writing within seven (7) business days:

- A. The occurrence of any event which makes or with the passage of time will make the Grantee ineligible to receive a Grant if it applied at that time;
- B. Any material change in the Grantee's program or other funding, if any, which would make the Budget Narrative inaccurate; or
- C. Any change in the name, address or telephone number of the Grantee or any change of the individual who is responsible for the Grantee's expenditure of the Grant.

ARTICLE VII

RETENTION AND ACCESS REQUIREMENTS FOR RECORDS

7.01 LENGTH OF RETENTION PERIOD

- A. Except as provided in paragraphs (B) and (C) of this section, records shall be retained for five years from the starting date of the submission of the final expenses report or ending date of Grant Period, whichever is later.
- B. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the five-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five-year period, whichever is later.
- C. In order to avoid duplicate record keeping, the Foundation may make special arrangements with Grantees to retain any records which are continuously needed for joint use. The Foundation will request transfer of records to its custody when it determines that the records possess long-term value. When the records are transferred to or maintained by the Foundation, the five-year retention requirement is not applicable to the Grantee.

7.02 SUBSTITUTION OF MICROFILM

Copies made by microfilming, photocopying or similar methods may be substituted for the original records.

7.03 ACCESS TO RECORDS

- A. Records of Grantees. The Foundation, or any of its authorized representatives, shall have the right of access to any books, documents, papers or other of the Grantee's records which are pertinent to the Grant, in order to make audits, examinations, excerpts and transcripts.
- B. Expiration of Right of Access. The rights of access in this section shall not be limited to the required retention period but shall last as long as the records are retained.

ARTICLE VIII

MANAGEMENT OF PROPERTY

REVERSIONARY RIGHTS OF THE FOUNDATION

8.01 SCOPE

Policies applying to Tangible Personal Property apply to property that has:

- A. A purchase price exceeding \$1,000 and a useful life of more than one year; or
- B. A lease with annual payments exceeding \$1,000 with a lease term of more than one year that meets the requirements to be classified as a capital lease.

Tangible personal property satisfying either condition in paragraph A or B above is referred to as "Tangible Personal Property" in these policies. These policies do not apply to tangible personal property that does not meet either of the criteria set forth in paragraph A or B above.

The terms “acquire” or “acquisition” referred in these policies to purchases or leases with a term in excess of one year. The term “acquisition cost” refers in these policies to the total purchase price or the annual lease payments, including the cost to put the property in place.

8.02 ACQUISITION PROCEDURES

Grantees must adhere to the following procedures when purchasing or leasing Tangible Personal Property:

- A. Acquisition of Tangible Personal Property with a per item acquisition cost of less than \$2,000 may be made by Grantee by any reasonable procedure.
- B. Grantees should obtain telephone or written quotations before acquiring Tangible Personal Property with an acquisition cost between and including \$2,000 and \$5,000. A record of the quotations received should be filed with Grantee’s financial records and should be available for audit purposes.
- C. Grantees should prepare written solicitations for bids when acquiring Tangible Personal Property with an acquisition cost in excess of \$5,000. If feasible, Grantees should obtain at least three written quotations for the cost of the Tangible Personal Property to be acquired. If Grantees determine that special circumstances, such as compatibility with existing equipment or lack of dependable alternative vendors, require Grantees to acquire the Tangible Personal Property from a single source, Grantees need not solicit bids. Grantees should prepare and submit to the Executive Director of the Foundation an estimate of the useful life of the Tangible Personal Property, including the information used in making the estimate. All solicitation material and responses must be filed with Grantees’ financial records and made available for audit purposes. If written solicitations are not prepared, Grantee should record and make available in a similar manner the reasons for not using the written solicitation process.
- D. As soon as Grantee plans to acquire Tangible Personal Property with an acquisition cost in excess of \$5,000 without bidding, Grantee should inform the Executive Director of the planned acquisition and the reasons for not using the solicitation process.
- E. Grantee should maintain accurate documentation, such as purchase orders or vendor’s invoices, of all acquisitions of Tangible Personal Property.
- F. Prior to purchasing any item of Tangible Personal Property, Grantee shall prepare and submit to the Foundation those documents requested as part of the budget approval process to secure the Foundation’s interest in the Tangible Personal Property. The Foundation will take reasonable measures to accommodate Grantees and other funding or financing sources when Grantee commingles Grant funds with other financing sources to purchase items of Tangible Personal Property.

8.03 GENERAL GUIDELINES

Grantees must observe these general guidelines when acquiring Tangible Personal Property:

- A. The acquisition should be an efficient use of the Grant. The Foundation recognizes that price is only one of the several factors that must be weighed when deciding from whom to acquire Tangible Personal Property. The requirements to obtain telephone or written bids do not mandate that Grantees patronize only the cheapest sources of Tangible Personal Property;
- B. In acquisitions of Tangible Personal Property, no Grantee shall discriminate against any vendor because of the race, creed, religion, color, national origin, or sex of such vendor. As used in these policies, “vendor” includes any person, firm, association, organization, partnership, business trust, corporation or company. Grantees are encouraged to seek out and use minority, women and small business vendors.

8.04 INVENTORY CONTROL

Grantees must observe the following inventory control procedures:

- A. An inventory control tag should be attached to each item of Tangible Personal Property purchased with Grant funds. These tags should be consecutively numbered and each number accounted for, unless Grantee has a reasonable alternative numbering system.
- B. A record of each item of Tangible Personal Property must be filed with Grantee’s financial records. This record should describe the Tangible Personal Property, a serial number or other identification number, its acquisition cost and date, estimate of useful life, the percent of IOLTA funds used to acquire the property, the location, use and condition of the property, the vendor from whom it was acquired, who holds title, and when disposed of, its date and method of disposition.
- C. A physical inventory of the property must be taken annually and the results reconciled with the property records.
- D. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property.
- E. Adequate maintenance procedures must be developed to keep the property in good condition.

8.05 RETENTION OF REVERSIONARY RIGHTS OF FOUNDATION

The Foundation hereby reserves a reversionary right in all Grant funds expended by a Grantee to acquire property or an interest therein. The Foundation may require the Grantee to take such reasonable steps as may be necessary to secure the Foundation's reversionary interest.

8.06 EXERCISE OF RIGHTS

- A. Upon the termination of a Grant or if the Foundation does not fund a Grantee immediately following the expiration of a Grant Period, the Foundation may within six (6) months give written notice of its election to exercise its right of reversion to all property of Grantee acquired with Grant funds. If notice is not given within the six (6) month period, the Foundation will be deemed to have waived its reversionary right in the property or Grant funds. However, such waiver does not release the Grantee from its obligation to use the Grant funds or property for the purposes stated in the Approved Budget. Title to the property will be deemed to have reverted to the Foundation upon giving of the notice described herein. Upon receipt of such notice, the Grantee will immediately deliver the property to the Foundation, or otherwise dispose of it as directed by the Foundation.
- B. When a Grantee no longer uses the Tangible Personal Property and wishes to dispose of it, the Grantee must inform the Executive Director. Grantees must dispose of surplus or unusable Tangible Personal Property as directed by the Foundation, which may include using the property as a trade-in or selling the property and using the proceeds to offset the cost of the replacement property.

8.07 DISPOSITION OF PROPERTY THAT HAS REVERTED

In the notice of exercise of its reversionary rights, the Foundation shall direct the Grantee to:

- A. Physically deliver the property to the Foundation at a location designated by the Foundation;
- B. Direct the Grantee to sell the property for a price and on terms acceptable to the Foundation and remit the sale proceeds to the Foundation;
- C. Deliver the property to any other Grantee to be used by such Grantee for a use approved by the Foundation; or
- D. Take such other action concerning the property as the Foundation may direct.

8.08 RELEASE OF SECURED INTEREST

The Foundation will cooperate with Grantee to release any Foundation secured interest against Tangible Personal Property. The Foundation reserves the right to place reasonable restrictions on Grantees in connection with the Foundation's agreement to release any Foundation interest.

ARTICLE IX

DEFAULT AND REMEDIES

9.01 DEFAULT DEFINED

For purposes of these General Grant Provisions, a Grantee shall be deemed in default upon the occurrence of any of the following:

- A. Any material violation by the Grantee of the Rules, the Grant Agreement, these General Grant Provisions, any other applicable statute, ordinance or law or any other rules, regulations or provisions applicable to the Foundation which may hereafter be adopted;
- B. Any use of Grant Funds not in substantial accordance with the Approved Budget and Budget Narrative including approved revisions for that Grant Period;
- C. The occurrence of any event which would make the Grantee ineligible to receive a Grant if applying for one at that time;
- D. The submission of any materially false or intentionally misleading information to the Foundation or the Executive Director as a part of the Grant Application, Approved Budget, Budget Narrative, financial report, Financial Statements or otherwise; or
- E. Any failure to return unused Grant funds at the end of a Grant Period unless a Carryover has been approved by the Foundation.

9.02 REMEDIES UPON DEFAULT

In the event of a default by a Grantee, the Foundation shall have the right to do the following:

- A. Adopt a monthly Grant disbursement schedule (including demanding a return of Grant funds already disbursed in excess of the pro rata current month's Installment) and condition payment of subsequent Installments on the Grantee's cure of the Default;

- B. Terminate the Grant;
- C. Demand repayment of Grant funds improperly expended by a Grantee and institute legal action to recover them; or
- D. Seek such other remedies as the Foundation may deem appropriate.

Following are the procedures to be followed by the Foundation in deciding to exercise remedies upon default.

- A. Before exercising remedies, the Foundation shall provide reasonable notice to the Grantee if a condition of default is determined to exist.
- B. Before exercising remedies, the Foundation will allow the Grantee an opportunity to correct any deficiency (if reasonably possible to do so).
- C. The Executive Committee of the Foundation may, at its sole discretion, provide for a hearing before it or the Board of Directors of the Foundation.

ARTICLE X

GRANT CLOSEOUT

10.01 CLOSEOUT

- A. Except as otherwise provided herein, each Grant shall be closed out as promptly as is feasible after expiration or termination.
- B. In closing out Grants, the following shall be observed:
 - 1. The Grantee shall return all unused Grant funds immediately unless a Carryover thereof has been approved by the Foundation.
 - 2. Within thirty (30) days of any termination, the Grantee shall submit a final accounting of all Grant funds for the current Grant Period.
 - 3. The Grantee shall submit within one-hundred twenty (120) days of the date of expiration or termination, all financial, performance and other reports required by the terms of the Grant and the Rules, including without limit the audited Financial Statements required by the Rules. The Foundation may extend the due date for any report upon receiving a justified request from the Grantee, and may waive the requirement for any report which is not needed.

10.02 RIGHTS NOT AFFECTED

- A. The closeout of a Grant does not effect the retention period for, or Foundation rights of access to, records as provided herein.
- B. If a Grant is closed out without audit, the Foundation retains the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.
- C. The closeout of a Grant does not affect the Grantee's responsibilities with respect to property under Article VIII hereof, or unexpended Grant funds as provided herein.
- D. The closeout of a grant does not affect the legal or ethical responsibilities of a lawyer to a client under the State Bar Act, the Texas Disciplinary Rules of Professional Conduct or any other statutes, rules, regulation or provisions applicable to lawyers.

10.03 AMOUNTS PAYABLE TO FOUNDATION

For each Grant, the following sums shall constitute a debt or debts owed by the Grantee to the Foundation, and shall, if not paid upon demand, be recovered from the Grantee or its successor or assignees by setoff or other action as provided by law:

- A. Any Grant funds paid to the Grantee by the Foundation in excess of the amount to which the Grantee is finally determined to be entitled;
- B. Any amounts due the Foundation under these Provisions; and
- C. Any other amounts finally determined to be due the Foundation.

10.04 TERMINATION BY CONSENT

In addition to termination upon a Default, Grants may be terminated in whole or in part as follows:

- A. By the Foundation with the consent of the Grantee, in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion of the Grant to be terminated; or
- B. By the Grantee, upon written notification to the Foundation, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the Foundation determines that the remaining portion of the Grant will not accomplish the purposes for which the Grant was made, the Foundation may elect to terminate the Grant in its entirety.

ARTICLE XI
CARRYOVER

11.01 ORDINARY CARRYOVER

An amount up to 10% of a Grantee's current Grant may be carried over to the subsequent grant year upon approval by the Foundation. A Grantee requesting a Carryover must submit a budget and Budget Narrative showing how such funds will be used by the Grantee in the first six months of the next Grant Period.

11.02 EXTRAORDINARY CARRYOVER

In unusual circumstances, the Foundation may approve a carryover of a maximum of 25% of a Grantee's current Grant. A Grantee requesting such a Carryover must submit a timely written request setting forth the unusual and extraordinary circumstances that have resulted in a projected under-expenditure of the Grant accompanied by a Proposed Budget and Budget Narrative showing how such funds will be used by the Grantee in the first six months of the next Grant Period.

11.03 DISCLAIMER

Neither the issuance of this policy nor the acceptance of a carryover plan shall be construed as a commitment by the Foundation to award funds in the next Grant Period to any current Grantee. Where a Grantee is not awarded a Grant for the next Grant Period, previously approved carryover funds may be used in accordance with a plan and budget approved by the Foundation to promptly close out matters previously undertaken with Grant funds. Unused Grant funds shall be returned to the Foundation promptly.

ARTICLE XII
SUBGRANTS

12.01 SUBGRANT DEFINED

A “subgrant” is a grant of funds from a Grantee to a separate nonprofit organization to accomplish the purposes of the original IOLTA Grant. A subgrant is distinct from a contract for services in the following ways:

- ◆ A subgrant may be made only to an eligible 501(c)(3) nonprofit corporation.
- ◆ A contract for services may be with a for-profit entity or individual, as well as with a nonprofit organization.
- ◆ In the case of a contract for services, the Grantee agrees to pay a specific rate of compensation for a specific service that advances the mission of the Grantee.
- ◆ In the case of a subgrant, the Grantee grants funds to the subgrantee for use at its discretion with regard to any restrictions imposed to advance the subgrantee’s mission.
- ◆ A contract for services is typically for a specific service on behalf of the Grantee.
- ◆ A subgrant is typically for general purposes in furtherance of the original Grant purposes.
- ◆ A subgrant may involve costs in addition to a specified rate of compensation.

12.02 RESTRICTIONS ON SUBGRANTS

No Grantee shall subgrant any IOLTA Grant funds to any other organization unless it is approved by the Foundation. The organization receiving a subgrant must read, understand, comply with, and agree in writing to be subject to and bound by the Rules, these IOLTA General Grant Provisions, and other policies of the Foundation. The Grantee organization providing the subgrant shall be responsible for

monitoring the recipient organization to determine compliance. The organization receiving a subgrant also may be monitored by the Foundation.

Any subgrant must be part of a Grantee's approved budget. Proposed subgrants must be identified in the Grantee's Proposed Budget and Budget Narrative submitted with its Grant Application.

While a Grantee may contract with another entity to provide services to or on behalf of the Grantee, it may not give IOLTA funds unconditionally to another organization for the other organization's purposes.

ARTICLE XIII

APPEALS

IOLTA grants are not entitlements. IOLTA grants are discretionary decisions made collectively by majority vote of the Board members, each of which applies his or her best judgment to each decision. There may be as many different reasons for each grant decision as there are Board members comprising each voting majority. By the nature of this process each grant decision is a final decision from which there is no right of appeal or reconsideration. Applicants are free to seek information about the Board's determinations either from the Chair of the Board or the Executive Director and will find that the Board has an open information policy, although no such information can be relied upon as absolutely predictive of a discretionary, collective decision-making process.

ARTICLE XIV
EMERGENCY GRANTS

The Foundation may approve funding requests outside of its annual grant cycle in emergency situations. However, the Foundation will only consider such emergency requests when the following criteria are satisfied:

- A. The request must come from a current recipient of funding;
- B. An emergency grant must meet the Foundation's regular grant criteria; and
- C. The applicant must show the following:
 - 1. The need to be filled by the grant is highly meritorious;
 - 2. The organization submitting the proposal had no reasonable expectation the emergency would occur that would have allowed it to address the need in the application for the last previous grant cycle;
 - 3. The nature of the emergency requires a decision on funding before the Foundation's next grant cycle;
 - 4. Other funding is not obtainable that will meet the emergency need; and
 - 5. If the emergency is caused by loss of anticipated funding, the lost funding was committed to the organization and it was not foreseeable that it would be lost.

ARTICLE XV
ASSURANCES FOR GRANTEES

The Grantee assures compliance with the following:

- A. Funds allocated by the Foundation will be used only for the purposes set forth in the Rules Governing the Operations of the Texas Equal Access to Justice Foundation and any additional amendments.

- B. The Grantee will:
 - 1. at all times honor the attorney-client privilege and will uphold the integrity of the adversary process;
 - 2. not impose restrictions unrelated to statutes and rules of professional conduct on attorneys who provide representations to indigent clients with funds provided in whole or in part by the Foundation;
 - 3. not discriminate on the basis of race, color, national origin, religion, sex, disability or age.

- C. All funds allocated by the Foundation will be expended exclusively to support the provision of legal services without charge to low-income persons.

- D. Attorney fees received by the Grantee that are generated through court awards in cases funded by the Foundation will be used to provide legal services without charge to low-income persons.

- E. All funds allocated by the Foundation will be expended exclusively to support services in the county or counties for which the monies were allocated.

- F. The Grantee will comply with quality control review procedures adopted by the Foundation.

- G. The Grantee will comply with fiscal management and control procedures (Standards for Financial Management Systems and Audits) adopted by the Foundation.

- H. The Grantee will permit site visits and present additional information when deemed reasonably necessary to determine compliance with the Rules governing the Texas Equal Access to Justice Foundation.