

INTERLOCAL COOPERATION CONTRACT  
HEALTH AND HUMAN SERVICES  
COMMISSION CONTRACT NO.  
HHS000868300001

The Health and Human Services Commission (“HHSC” or “System Agency”) and Harris Health County Hospital District dba Harris Health System (“Harris Health” or “Local Government”), each a “Party” and collectively the “Parties”, enter into the following contract for implementation and operation of Maternal Opioid Misuse (MOM) Model services (“the Contract”) pursuant to the provisions of the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code.

I. PARTIES

System Agency

Health and Human Services Commission  
Address: 4900 N Lamar Blvd  
City and Zip: Austin, TX 78751 Contact  
Person: Meghan Young Telephone: 512-462-  
6238  
Meghan.Young@hhsc.state.tx.us

HHSC Contract Administration and Provider  
Monitoring (CAPM)  
Address: 701 W. 51<sup>st</sup> St  
Mail Code W-359  
City and Zip: Austin, TX 78751  
Contact Person: Kevin Tooley  
Telephone: 512-438-3713  
[Kevin.Tooley@hhsc.state.tx.us](mailto:Kevin.Tooley@hhsc.state.tx.us)

Agency Number: 529

Local Government

Harris County Hospital District dba Harris Health  
System  
Address: 2525 Holly Hall  
City and Zip: Houston, TX 77054 Contact Person:  
Esmaeil Porsa, MD  
(President/CEO) and Kathryn Crary (Director, Grant &  
Resource Development)  
Telephone: 713-566-3940  
[esmaeil.porsa@harrishealth.org](mailto:esmaeil.porsa@harrishealth.org)  
[kathryn.crary@harrishealth.org](mailto:kathryn.crary@harrishealth.org)

## II. STATEMENT OF SERVICES TO BE PROVIDED

The Parties agree to cooperate to provide necessary and authorized services and resources in accordance with the terms of this Contract. Specific services provided are described in Attachment A Statement of Work.

## III. CONTRACT PERIOD AND RENEWAL

The Contract is effective on the signature date of the latter of the Parties to sign this agreement and terminates on December 31, 2024, unless renewed, extended, or terminated pursuant to the terms and conditions of the Contract. The Parties may extend this Contract subject to mutually agreeable terms and conditions.

## IV. AMENDMENT

The Parties to this Contract may modify this contract only through the execution of a written amendment signed by both parties.

## V. CONTRACT AMOUNT AND PAYMENT FOR SERVICES

The total amount of this Contract shall not exceed Total Contract Amount of \$612,633.00, as provided for in Attachment B-MOM Model Budget Projections for Subrecipient Harris Health

## VI. LEGAL NOTICES

Legal Notices under this Contract shall be deemed delivered when deposited either in the United States mail, postage paid, certified, return receipt requested; or with a common carrier, overnight, signature required, to the appropriate address below:

System Agency  
Health and Human Services Commission  
701 W. 51<sup>st</sup> St. Mail Code W-359  
Austin, TX 78751  
Attention: Contract Administration and Provider Monitoring (CAPM)

Health and Human Services Commission  
4405 N Lamar Blvd Mail Code 1100  
Austin, Texas 78756  
Attention: Office of the Chief Counsel  
Local Government  
The Office of Vince Ryan

System Agency Contract No.  
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Harris County Attorney  
Hospital District Practice Group  
2525 Holly Hall  
Houston, TX 77054  
Suite 190  
Attention: Cecilia Tolboom, Assistant County Attorney

Notice given in any other manner shall be deemed effective only if and when received by the Party to be notified. Either Party may change its address for receiving legal notice by notifying the other Party in writing.

## VII. CONFIDENTIALITY NOTICES

Any HHS Confidential Information received by either Party under this Interlocal Contract (ILC) may be disclosed only in accordance with applicable law. By signing this ILC, each Party certifies that it is, and intends to remain for the term of this ILC, in compliance with all applicable state and federal laws and regulations with respect to privacy, security, and breach notification, including without limitation the following:

1. The relevant portions of the Health Insurance Portability and Accountability Act of 1996 (HIPPA), 42 U.S.C. Chapter 7, Subchapter XI, Part C;
2. 42 CFR Part 2 and 45 CFR Parts 160 and 164;
3. The relevant portions of The Social Security Act, 42 U.S.C. Chapter 7;
4. The Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a;
5. Internal Revenue code, Title 26 of the United States Code including IRS Publication 1075;
6. OMB Memorandum 07-16;
7. Texas Business and Commerce Code Chapter 521;
8. Texas Health and Safety Code, Section 81.006 and Chapters 181 and 611;
9. Texas Human Resources Code § 12.003;
10. Texas Government Code, Chapter 552, as applicable;
11. Title 3 of the Texas Occupations Code, as applicable;
12. Constitutional and Common Law Privacy; and
13. Any other applicable law controlling the release of information created or obtained in the course of providing the services described in this ILC.

## VIII. CERTIFICATIONS

The undersigned contracting parties certify that:

1. the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the affected agencies of state government;
2. each Party executing this Contract on its behalf has full power and authority to enter into this Contract.

3. the proposed arrangements serve the interest of efficient and economical administration of state government; and
4. the services contracted for are not required by Section 21, Article XVI of the Constitution of Texas to be supplied under a contract awarded to the lowest responsible bidder.

The System Agency further certifies that it has statutory authority to contract for the services described in this contract under Texas Government Code § 531.039; Texas Human Resources Code § 22.002.

The Local Government further certifies that it has statutory authority to contract for the services described in this contract under Texas Government Code Chapter 791.

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE FOR SYSTEM AGENCY CONTRACT NO. HHS000868300001

SYSTEM AGENCY LOCAL GOVERNMENT

DocuSigned by:  
Stephanie Stephens  
D11862CEFCAE4E6

Signature  
Stephanie Stephens  
Stephanie Stephens

Printed Name

State Medicaid Director  
08/05/2020

Date

Cecilia M. Tolboom

Signature  
Cecilia Tolboom  
Cecilia Tolboom

Printed Name

Assistant County Attorney  
08/05/2020

Date

APPROVED AS TO FORM:  
VINCE RYAN  
COUNTY ATTORNEY

BY: Cecilia M. Tolboom  
CECILIA MONTALVO TOLBOOM  
ASSISTANT COUNTY ATTORNEY  
C.A. FILE NO. 20HSP0189

HARRIS COUNTY HOSPITAL DISTRICT  
D/B/A HARRIS HEALTH SYSTEM

By: E. J. Porsa  
Esmacil Porsa, MD  
President/CEO  
Date: 8/18/20

THE FOLLOWING ATTACHMENTS TO ENTERPRISE AGENCY CONTRACT NO.  
\*\*\* ARE HEREBY INCORPORATED BY REFERENCE:

- ATTACHMENT A-STATEMENT OF WORK
- ATTACHMENT B-MOM MODEL BUDGET PROJECTIONS FOR SUBRECIPIENT HARRIS HEALTH
- ATTACHMENT C-UNIFORM TERMS AND CONDITIONS
- ATTACHMENT D-DATA USE AGREEMENT
- ATTACHMENT E-CONTRACT AFFIRMATIONS
- ATTACHMENT F-GRANT AWARD-MOM MODEL SPECIAL TERMS AND CONDITIONS

**UNDER SYSTEM AGENCY CONTRACT NO. HHS000868300001**

**ATTACHMENT A – STATEMENT OF WORK**

## Attachment A: Statement of Work

### I. PURPOSE

This Interlocal Cooperation Contract (ILC) establishes the Maternal Opioid Misuse (MOM) Model, a formal structure for collaboration between Health and Human Services Commission (HHSC) and Harris Health System (Harris Health), to provide evidence-based coordinated care to pregnant and postpartum women with opioid use disorder (OUD) and their infants (beneficiaries) to improve the quality and availability of care for this population of Medicaid. The MOM Model is a five-year cooperative agreement (Grant Number: 2A2CMS331766-01-00) between HHSC and the Centers for Medicare and Medicaid Services (CMS), subject to continued approval from CMS. The MOM model will have a five-year period of performance beginning January 1, 2020 through December 31, 2024 which is divided into three performance periods: Pre-Implementation (Year 1), Transition (Year 2), and Full Implementation (Years 3-5). Different types of funding (implementation, transition, and milestone) are available during different performance periods of the model based on performance and availability of funding (see chart). CMS may make an optional no-cost extension available for the mode until December 31, 2025, but this is not guaranteed.

	Year 1	Year 2	Year 3-5	Optional No-cost Extension*
Period of performance	Pre-Implementation	Transition	Full Implementation	
Dates	January 1, 2020-June 30, 2021	July 1, 2021-June 30, 2022	July 1, 2022-December 31, 2024	January 1, 2025-December 31, 2025
MOM Model Funding Type	Implementation	Implementation, Transition	Implementation, Milestone	

\*Not guaranteed

In Year 1, Harris Health will complete implementation activities to prepare the multidisciplinary outpatient clinic at Ben Taub Hospital, located in Houston, Texas, to serve MOM Model beneficiaries in Years 2-5 of the model. This clinic will provide beneficiaries with obstetric and behavioral health services, referrals, and case management. Harris Health will work with partner subrecipients, contractors, and other community organizations, such as federally qualified health centers (FQHCs), to streamline systems of identification, screening, and referral for pregnant women with OUD who may qualify for the model.

HHSC and Harris Health will work in partnership to implement and administer the MOM Model in a cost-effective manner to increase the availability of integrated care for pregnant and postpartum women with OUD.

### II. HARRIS HEALTH RESPONSIBILITIES

Harris Health must perform or provide the following services for the MOM Model:

## Attachment A: Statement of Work

1. Integrate a Screening, Brief Intervention, and Referral to Treatment (**SBIRT**) tool into Harris Health's existing Electronic Medical Record (**EMR**) platform.
2. Identify and refer potential MOM Model beneficiaries to the MOM Model clinic for Year 2 of the project, and determine eligibility based on Medicaid status or pending Medicaid status.
3. Develop physician-led, training on SBIRT and motivational interviewing skills to present to clinicians in all Harris Health hospitals, prenatal clinics, and FQHCs in Harris County.
4. Educate other hospitals, prenatal clinics, and FQHCs about the MOM Model to generate referrals.
5. Standardize processes for pre-delivery anesthesia consults, pain management planning, and documentation for MOM Model beneficiaries.
6. Execute agreements with second-tier subrecipients Baylor College of Medicine and Santa Maria Hostel, and contractor Patient Care Intervention Center (**PCIC**).
7. Provide oversight and monitor contractual relationships with Baylor College of Medicine, Santa Maria Hostel, and PCIC.
8. Create custom data sharing system with PCIC to track MOM Model beneficiaries who have become disengaged in care by compiling data from various organizations.
9. Provide HHSC with reporting of Harris Health expenses for the MOM Model through invoices submitted on a quarterly basis via email, due within 15 (fifteen) calendar days of the end of each MOM Model quarter (see chart) beginning in Quarter 2. Year 1 funding will be split into three (3) payments of 33%, 33% and 34%. Year 2-5 funding will be split into quarterly increments with 25% of funds allocated to each quarter.

	<b>Quarter 1</b>	<b>Quarter 2</b>	<b>Quarter 3</b>	<b>Quarter 4</b>
Quarter budget period	January-March	April-June	July-September	October-December
Harris Health Invoice deadline	March 15	June 15	September 15	December 15

10. Provide HHSC with all necessary information at least 10 business days prior to due date to meet operational milestones listed in Program Terms and Conditions, Section 34, Table 4 provided by CMS.
11. Provide HHSC with all necessary information at least 10 business days prior to due date to complete reporting requirements for quarterly progress reports and appendices detailed in Program Terms and Conditions, Section 19 provided by CMS.
12. Comply with all federal and state financial audit requirements and furnishing HHSC with audit reports upon request.
13. Require Baylor College of Medicine, Santa Maria Hostel, and PCIC to comply with Terms and Conditions for the MOM Model cooperative agreement, including Special Terms and Conditions, Standard Terms and Conditions, and Program Terms and Conditions provided by CMS.
14. Safeguard the information Harris Health receives, accesses, transmits, maintains, and stores in performing all duties related to this program and ensure that Baylor College of Medicine, Santa Maria Hostel, and PCIC also safeguard the information in compliance with the HHS Data



## **Attachment A: Statement of Work**

Use Agreement attached hereto as Attachment D and incorporated herein by reference and ensuring that all subrecipients and subcontractors with whom Harris Health contracts to perform the services set forth in this SOW also comply with the HHS Data Use Agreement.

15. For all publication of data and any report related to MOM Model findings, Harris Health will obtain review from Baylor College of Medicine Principal Investigator Dr. Catherine Eppes or designee, in addition to submitting all materials listed in STC #17(i)-(iv) to HHSC at least 60 calendar days before release and submitting all materials listed in STC #17(v)-(vi) to HHSC at least 15 calendar days before release.
16. Assist with any requests for additional information from CMS related to the cooperative agreement.

### **III. HHSC RESPONSIBILITIES**

HHSC is responsible for performing or providing the following:

1. Transfer CMS funds from HHSC to Harris Health in the amount of \$612,633.00 for Year 1 funding of implementation activities detailed above in Harris Health Responsibilities section
2. Hire or assign two staff positions responsible for:
  - a. Project coordination; and
  - b. Data evaluation and tracking for the MOM Model.
3. Submit final reports and deliverables in accordance with Terms and Conditions provided by CMS.
4. Monitor beneficiary data reports for compliance with the project's beneficiary monitoring requirements.
5. Review invoices for compliance with the contract and Attachment B, Budget.
6. Build a process to validate routine compliance with Medicaid Program Integrity requirements in 42 C.F.R. Part 455
7. Review all proposed publications submitted for review by Harris Health under STC #17(i)-(vi) within thirty (30) calendar days and submit HHSC-approved materials to CMS for its review. HHSC will not unreasonably withhold approval of Harris Health's proposed publications.
8. Obtain review from Baylor College of Medicine Principal Investigator Dr. Catherine Eppes or designee for all publication of data and any report related to MOM Model findings at least 60 calendar days before release.
9. HHSC's Center for Analytics and Decision Support (**CADS**) will transmit data files to Harris Health via Globalscape, a secure file transfer protocol (**SFTP**), which encrypts the data and decrypts the data at the designated endpoint. The specific format in which the data files are to be provided will be agreed to by the transmitting and receiving Parties.

### **IV. SHARED RESPONSIBILITIES**

The activities in this section represent shared responsibilities for HHSC and Harris Health:

## **Attachment A: Statement of Work**

1. Comply with all Terms and Conditions for the MOM Model cooperative agreement, including Special Terms and Conditions, Standard Terms and Conditions, and Program Terms and Conditions provided by CMS
2. Safeguard protected health information (**PHI**) in accordance with state and federal laws.
3. Comply with state and federal laws regarding reporting substance use in pregnancy.
4. Exchange information in a reasonably timely manner to complete reporting requirements and operational milestones detailed in the Terms and Conditions for the MOM Model provided by CMS.
5. Develop necessary reports for either HHSC or Harris Health to account for the use of funds associated with this project.
6. Comply with data requests from CMS or CMS contractors in accordance with CMS deadlines.
7. Identify the contact person(s) within the respective system agency or local governmental entity for communication on the project and provide notification of any changes within five (5) business days.

### **V. DATA OWNERSHIP**

HHSC owns all data shared by Harris Health, Baylor College of Medicine, Santa Maria Hostel, and PCIC that is produced using MOM Model funds for the purposes of MOM Model activities, as well as all data that relies on new or previously generated data from HHSC or data created using MOM Model funds. Examples of this shared data are found under STC #16 and 17 and includes, but is not limited to, data for the purposes of MOM Model reporting, monitoring, and evaluation by CMS and Medicaid data shared for tracking beneficiary engagement within the MOM Model. Any data generated by Harris Health or its contractors that does not rely on new or previously generated data from HHSC or data created using MOM Model funds is exclusively owned by Harris Health.

**UNDER SYSTEM AGENCY CONTRACT NO. HHS000868300001**

**ATTACHMENT B – MOM MODDEL BUDGET PROJECTIONS FOR**

**SUBRECIPIENT HARRIS HEALTH**

Attachment B:

MOM Model Budget Projections for Subrecipient Harris Health

**Attachment B  
Budget/Payment for Services**

**I. Basis for Calculating Reimbursable Costs**

HHSC will pay Harris Health System ("Contractor") the not-to-exceed amount of \$612,633.00 for MOM Model Year 1 for services provided under the contract. Year 1 funding will be split into three (3) payments starting at Quarter 2 of 33%, Quarter 3 at 33%, and Quarter 4 at 34%, as stated in **Attachment A, Statement of Work** of this contract. Year 2-5 funding will be split into quarterly increments with 25% of funds allocated to each quarter, as the funds are awarded and become available per Budget Period, as defined in **Attachment F, MOM Model Program Terms and Conditions**.

Funds will be disbursed to Contractor at the end of each quarter after HHSC receives a valid invoice in accordance with the Section II of this Attachment B.

Payment by HHSC under this contract will be made in accordance with the Texas Prompt Payment Act, Texas Government Code, Chapter 2251.

**II. Payment for Services**

Contractor will invoice HHSC quarterly in arrears for services provided.

Invoices must be submitted to:

- A. **Electronic Invoice.** Contractor shall submit invoices in a secure, non-alterable electronic format (.pdf is acceptable) emailed directly to: [Accounts payable@dads.state.tx.us](mailto:Accounts payable@dads.state.tx.us) with Contractor's name and invoice name in the subject line. Contractor must send a courtesy copy of each invoice to Kevin Tooley at [kevin.tooley@hhsc.state.tx.us](mailto:kevin.tooley@hhsc.state.tx.us)
- B. **Invoice Requirements.** Each invoice must include, as applicable:
  - (1) HHSC contract number clearly stated;
  - (2) Contractor legal name and "remit to" address, telephone number, and fax number;
  - (3) A uniquely assigned invoice number;

Attachment B:

MOM Model Budget Projections for Subrecipient Harris Health

- (4) An invoice date;
- (5) A description of the services provided;
- (6) The correct invoice amount (invoices that contain an incorrect amount or a disputed amount will need to be revised and resubmitted);
- (7) The name of the HHSC contract manager;
- (8) The identification of XXXX as the HHSC "customer;" and
- (9) Any supporting documentation that may be reasonably requested by HHSC to verify the accuracy of the invoiced amounts.

HHSC will have the right to verify the details set forth in Contractor's invoices and supporting documentation, either before or after payment, by inspecting the books of the Contractor at mutually convenient times; and other reasonable action.

## Attachment B:

## MOM Model Budget Projections for Subrecipient Harris Health

## MOM Model Year 1 Budget

<b>MOM Model Subrecipient: Harris Health</b>		
<b>Budget Category</b>	<b>Cost</b>	<b>Narrative Justification</b>
Personnel	\$162,400	Staff costs to support MOM Model clinic and data systems collection and design (Case manager, IT Data Manager, Lactation Consultant, Nurse Manager, Project Manager)
Fringe Benefit	\$45,472	Refer to Attachment F-Grant Award-MOM Model Special Terms and Conditions
Travel	\$0	Travel to conduct trainings and monitor compliance
Equipment	\$0	
Supplies	\$1000	Consumable supplies for educational materials: paper, pens, printer toner
Contractual	\$312,922	Contractual costs between Harris Health and MOM Model second tier subrecipients Santa Maria Hostel, Baylor College of Medicine, and Patient Care Intervention Center (PCIC)
Other	\$0	
Indirect	\$90,839	
<b>Total</b>	<b>\$612,633</b>	

## Attachment B:

## MOM Model Budget Projections for Subrecipient Harris Health

## MOM Model Year 2 Projected Budget

<b>MOM Model Subrecipient: Harris Health</b>		
<b>Budget Category</b>	<b>Cost</b>	<b>Narrative Justification</b>
Personnel	\$198,162	Staff costs to support MOM Model clinic and data systems collection and design (Case manager, IT Data Manager, Lactation Consultant, Nurse Manager, Project Manager)
Fringe Benefit	\$55,485	Refer to Attachment F-Grant Award-MOM Model Special Terms and Conditions
Travel	\$0	Travel to conduct trainings and monitor compliance
Equipment	\$0	
Supplies	\$3,700	Consumable supplies for educational materials: paper, pens, printer toner
Contractual	\$275,321	Contractual costs between Harris Health and MOM Model second tier subrecipients Santa Maria Hostel, Baylor College of Medicine, and Patient Care Intervention Center (PCIC)
Other	\$0	
Indirect	\$81,967	
<b>Total</b>	<b>\$614,635</b>	

## Attachment B:

## MOM Model Budget Projections for Subrecipient Harris Health

## MOM Model Year 3 Projected Budget

<b>MOM Model Subrecipient: Harris Health</b>		
<b>Budget Category</b>	<b>Cost</b>	<b>Narrative Justification</b>
Personnel	\$267,651	Staff costs to support MOM Model clinic and data systems collection and design (Case manager, IT Data Manager, Lactation Consultant, Nurse Manager, Project Manager)
Fringe Benefit	\$74,942	Refer to Attachment F-Grant Award-MOM Model Special Terms and Conditions
Travel	\$25,000	Travel to conduct trainings and monitor compliance
Equipment	\$0	
Supplies	\$4,276	Consumable supplies for educational materials: paper, pens, printer toner
Contractual	\$343,370	Contractual costs between Harris Health and MOM Model second tier subrecipients Santa Maria Hostel, Baylor College of Medicine, and Patient Care Intervention Center (PCIC)
Other	\$0	
Indirect	\$118,454	
<b>Total</b>	<b>\$833,693</b>	



## Attachment B:

## MOM Model Budget Projections for Subrecipient Harris Health

## MOM Model Year 4 Projected Budget

<b>MOM Model Subrecipient: Harris Health</b>		
<b>Budget Category</b>	<b>Cost</b>	<b>Narrative Justification</b>
Personnel	\$252,613	Staff costs to support MOM Model clinic and data systems collection and design (Case manager, IT Data Manager, Lactation Consultant, Nurse Manager, Project Manager)
Fringe Benefit	\$70,731	Refer to Attachment F-Grant Award-MOM Model Special Terms and Conditions
Travel	\$42,000	Travel to conduct trainings and monitor compliance
Equipment	\$0	
Supplies	\$2,355	Consumable supplies for educational materials: paper, pens, printer toner
Contractual	\$277,957	Contractual costs between Harris Health and MOM Model second tier subrecipients Santa Maria Hostel, Baylor College of Medicine, and Patient Care Intervention Center (PCIC)
Other	\$0	
Indirect	\$117,255	
<b>Total</b>	<b>\$762,911</b>	

## Attachment B:

## MOM Model Budget Projections for Subrecipient Harris Health

## MOM Model Year 5 Projected Budget

<b>MOM Model Subrecipient: Harris Health</b>		
<b>Budget Category</b>	<b>Cost</b>	<b>Narrative Justification</b>
Personnel	\$255,194	Staff costs to support MOM Model clinic and data systems collection and design (Case manager, IT Data Manager, Lactation Consultant, Nurse Manager, Project Manager)
Fringe Benefit	\$71,454	Refer to Attachment F-Grant Award-MOM Model Special Terms and Conditions
Travel	\$34,800	Travel to conduct trainings and monitor compliance
Equipment	\$0	
Supplies	\$1,975	Consumable supplies for educational materials: paper, pens, printer toner
Contractual	\$283,053	Contractual costs between Harris Health and MOM Model second tier subrecipients Santa Maria Hostel, Baylor College of Medicine, and Patient Care Intervention Center (PCIC)
Other	\$0	
Indirect	\$116,023	
<b>Total</b>	<b>\$762,499</b>	

**UNDER SYSTEM AGENCY CONTRACT NO. HHS000868300001**

**ATTACHMENT C – UNIFORM TERMS AND CONDITIONS**



# TEXAS

## Health and Human Services

**Health and Human Services (HHS)**

**Uniform Terms and Conditions -  
Governmental Entity**

**Version 3.1**

Published and Effective - April 2020

Responsible Office: Chief Counsel

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## ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS

### 1.1 DEFINITIONS

As used in this Contract, unless the context clearly indicates otherwise, the following terms and conditions have the meanings assigned below:

“Amendment” means a written agreement, signed by the Parties, which documents changes to the Contract.

“Contract” means the Signature Document, these Uniform Terms and Conditions, along with any attachments, and any Amendments, purchase orders, and Work Orders that may be issued by the System Agency.

“Deliverables” means the goods, services, Work, and Work Product to be provided to System Agency under the Contract.

“DSHS” means the Department of State Health Services.

“Effective Date” means the date on which the Contract takes effect.

“Federal Fiscal Year” means the period beginning October 1 and ending September 30 each year, which is the annual accounting period for the United States government.

“GAAP” means Generally Accepted Accounting Principles.

“GASB” means the Governmental Accounting Standards Board.

“HHSC” means the Health and Human Services Commission.

“Health and Human Services” or “HHS” includes HHSC and DSHS.

“HUB” means Historically Underutilized Business, as defined by Chapter 2161 of the Texas Government Code.

“Intellectual Property Rights” means the worldwide proprietary rights or interests, including patent, copyright, trade secret, and trademark rights, as such rights may be evidenced by or embodied in:

- i. any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement;
- ii. any work of authorship, including any compilation, computer code, website or web page design, literary work, pictorial work, or graphic work;
- iii. any trademark, service mark, trade dress, trade name, branding, or other indicia of source or origin;
- iv. domain name registrations; and
- v. any other proprietary or similar rights. The Intellectual Property Rights of a Party include all worldwide proprietary rights or interests that the Party may have acquired by assignment, by exclusive license, or by license with the right to grant sublicenses.

“Local Government” means a Texas governmental unit defined under and authorized to enter this contract by Texas Government Code, Chapter 791.



“Parties” means the System Agency and Performing Agency, collectively.

“Party” means either the System Agency or Performing Agency, individually.

“Performing Agency” means the State Agency or Local Government providing the goods or services defined in this Contract.

“Receiving Agency” means HHSC or DSHS, as applicable, Agency receiving the benefit of the goods or services provided under this Contract.

“Signature Document” means the document executed by both Parties that sets forth all the documents that constitute the Contract.

“Solicitation” means the document, if any, issued by the System Agency (including any published addenda, exhibits, and attachments) under which the goods or services provided under the Contract were initially requested, which is incorporated by reference for all purposes in its entirety.

“Solicitation Response” means Performing Agency’s full and complete response (including any attachments and addenda) to the Solicitation, which is incorporated by reference for all purposes in its entirety.

“State Agency” means a Texas “Agency” as defined under Texas Government Code, Chapter 771.

“State Fiscal Year” means the period beginning September 1 and ending August 31 each year, which is the annual accounting period for the State of Texas.

“State of Texas Textravel” means the Texas Comptroller of Public Accounts’ state travel laws, rules, and policies.

“System Agency” means HHSC or DSHS, as applicable.

“Third Party IP” means the Intellectual Property Rights of any third party that is not a party to this Contract, and that is not a subcontractor.

“Work” means all services to be performed, goods to be delivered, and any appurtenant actions performed, and items produced, conceived, or developed, including Deliverables.

“Work Order” means an individually negotiated document that is executed by both Parties and which authorizes a Project, if any, in an indefinite quantity Contract.

“Work Product” means any and all works, including work papers, notes, materials, approaches, designs, specifications, systems, innovations, improvements, inventions, software, programs, source code, documentation, training materials, audio or audiovisual recordings, methodologies, concepts, studies, reports, whether finished or unfinished, and whether or not included in the Deliverables, that are developed, produced, generated, or provided by Performing Agency in connection with Performing Agency’s performance of its duties under the Contract or through use of any funding provided under this Contract.

## 1.2 INTERPRETIVE PROVISIONS

- A. The meanings of defined terms include the singular and plural forms.
- B. The words “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a

- whole and not to any particular provision, section, attachment, or schedule of this Contract unless otherwise specified.
- C. The term “including” is not limiting and means “including without limitation” and, unless otherwise expressly provided in this Contract, (i) references to contracts (including this Contract) and other contractual instruments shall be deemed to include all subsequent Amendments and other modifications, but only to the extent that such Amendments and other modifications are not prohibited by the terms of this Contract, and (ii) references to any statute, rule, or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, or supplementing the statute or regulation.
  - D. The captions and headings of this Contract are for convenience of reference only and do not affect the interpretation of this Contract.
  - E. All attachments, including those incorporated by reference, and any Amendments are considered part of the terms of this Contract.
  - F. This Contract may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative.
  - G. Unless otherwise expressly provided, reference to any action of the System Agency or by the System Agency by way of consent, approval, or waiver will be deemed modified by the phrase “in its sole discretion.”
  - H. Time is of the essence in this Contract.

## **ARTICLE II. PAYMENT PROVISIONS**

### **2.1 PAYMENT**

Payment shall be made in accordance with Government Code, Chapter 771, Government Code, Chapter 791, or Government Code, Chapter 2251.051, as applicable.

### **2.2 ANCILLARY AND TRAVEL EXPENSES**

- A. Except as otherwise provided in the Contract, no ancillary expenses incurred by the Performing Agency in connection with its provision of the services or Deliverables will be reimbursed by the System Agency. Ancillary expenses include, but are not limited to costs associated with transportation, delivery, and insurance for each Deliverable.
- B. When the reimbursement of travel expenses is authorized by the Contract, all such expenses will be reimbursed in accordance with the rates set by the Texas Comptroller of Public Accounts’ *Textravel* accessible at the Texas Comptroller of Public Accounts website.

### **2.3 NO QUANTITY GUARANTEES**

The System Agency makes no guarantee of volume or usage of Work under this Contract. All Work requested may be on an irregular and as needed basis throughout the Contract term.

### **2.4 TAXES**

Purchases made for State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. Performing Agency represents and warrants that it shall pay all taxes or similar amounts resulting from the Contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Performing Agency or its employees. System Agency shall not be liable for any taxes resulting from the contract.

## **ARTICLE III. STATE AND FEDERAL FUNDING**

### **3.1 EXCESS OBLIGATIONS PROHIBITED**

The Contract is subject to termination or cancellation, without penalty to the System Agency, either in whole or in part, subject to the availability of state funds. System Agency is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If System Agency becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either System Agency's or Performing Agency's delivery or performance under the Contract impossible or unnecessary, the Contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, System Agency will not be liable to Performing Agency for any damages that are caused or associated with such termination, or cancellation, and System Agency will not be required to give prior notice.

### **3.2 NO DEBT AGAINST THE STATE**

This Contract will not be construed as creating any debt by or on behalf of the State of Texas.

### **3.3 DEBT AND DELINQUENCIES**

Performing Agency agrees that any payments due under the Contract shall be directly applied towards eliminating any debt or delinquency it has to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.

### **3.4 REFUNDS AND OVERPAYMENTS**

- A. At its sole discretion, the System Agency may:
- i. withhold all or part of any payments to Performing Agency to offset overpayments, unallowable or ineligible costs made to the Performing Agency, or if any required financial status report(s) is not submitted by the due date(s); or,
  - ii. require Performing Agency to promptly refund or credit - within thirty (30) calendar days of written notice - any funds erroneously paid by System Agency which are not expressly authorized under the Contract.
- B. "Overpayments," as used in this Section, include payments:
- i. made by the System Agency that exceed the maximum allowable rates;
  - ii. that are not allowed under applicable laws, rules, or regulations; or,
  - iii. that are otherwise inconsistent with this Contract, including any unapproved expenditures. Performing Agency understands and agrees that it will be liable to the System Agency for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Contract. Performing Agency further understands and agrees that reimbursement of such disallowed costs shall be paid by Performing Agency from funds which were not provided or otherwise made available to Performing Agency under this Contract.

## **ARTICLE IV. WARRANTY, AFFIRMATIONS, ASSURANCES, AND CERTIFICATIONS**

### **4.1 WARRANTY**

Performing Agency warrants that all Work under this Contract shall be completed in a manner consistent with standards under the terms of this Contract, in the applicable trade, profession, or industry; shall conform to or exceed the specifications set forth in the Contract; and all Deliverables shall be fit for ordinary use, of good quality, and with no material defects. If System Agency, in its sole discretion, determines Performing Agency has failed to complete Work timely or to perform satisfactorily under conditions required by this Contract, the System Agency may require Performing Agency, at its sole expense, to:

- i. Repair or replace all defective or damaged Work;
- ii. Refund any payment Performing Agency received from System Agency for all defective or damaged Work and, in conjunction therewith, require Performing Agency to accept the return of such Work; and,
- iii. Take necessary action to ensure that Performing Agency's future performance and Work conform to the Contract requirements.

### **4.2 CONTRACT AFFIRMATIONS**

Performing Agency certifies that, to the extent Contract Affirmations are incorporated into the Contract under the Signature Document, the Performing Agency has reviewed the Contract Affirmations and that Performing Agency is in compliance with all requirements.

### **4.3 FEDERAL ASSURANCES**

Performing Agency certifies that, to the extent federal assurances are incorporated into the Contract under the Signature Document, the Performing Agency has reviewed the federal assurances and that Performing Agency is in compliance with all requirements.

### **4.4 FEDERAL CERTIFICATIONS**

Performing Agency certifies that, to the extent federal certifications are incorporated into the Contract under the Signature Document, the Performing Agency has reviewed the federal certifications and that Performing Agency is in compliance with all requirements. In addition, Performing Agency certifies that it is and shall remain in compliance with all applicable federal laws, rules, and regulations, as they may pertain to this Contract.

## **ARTICLE V. INTELLECTUAL PROPERTY**

### **5.1 OWNERSHIP OF WORK PRODUCT**

- A. All right, title, and interest in the Work Product, including all Intellectual Property Rights therein, is exclusively owned by System Agency. Performing Agency and Performing Agency's employees will have no rights in or ownership of the Work Product or any other property of System Agency.
- B. Any and all Work Product that is copyrightable under United States copyright law is deemed to be "work made for hire" owned by System Agency, as provided by Title 17 of the United States Code. To the extent that Work Product does not qualify as a "work made for hire" under applicable federal law, Performing Agency hereby irrevocably assigns and

transfers to System Agency, its successors and assigns, the entire right, title, and interest in and to the Work Product, including any and all Intellectual Property Rights embodied therein or associated therewith, and in and to all works based upon, derived from, or incorporating the Work Product, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing.

- C. Performing Agency agrees to execute all papers and to perform such other acts as System Agency may deem necessary to secure for System Agency or its designee the rights herein assigned.
- D. In the event that Performing Agency has any rights in and to the Work Product that cannot be assigned to System Agency, Performing Agency hereby grants to System Agency an exclusive, worldwide, royalty-free, transferable, irrevocable, and perpetual license, with the right to sublicense, to reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, make, have made, use, sell and offer for sale the Work Product and any products developed by practicing such rights.
- E. The foregoing does not apply to Incorporated Pre-existing Works or Third Party IP that are incorporated in the Work Product by Performing Agency. Performing Agency shall provide System Agency access during normal business hours to all Vendor materials, premises, and computer files containing the Work Product.

## 5.2 PERFORMING AGENCY'S PRE-EXISTING WORKS

- A. To the extent that Performing Agency incorporates into the Work Product any works of Performing Agency that were created by Performing Agency or that Performing Agency acquired rights in prior to the Effective Date of this Contract ("**Incorporated Pre-existing Works**"), Performing Agency retains ownership of such Incorporated Pre-existing Works.
- B. Performing Agency hereby grants to System Agency an irrevocable, perpetual, non-exclusive, royalty-free, transferable, worldwide right and license, with the right to sublicense, to use, reproduce, modify, copy, create derivative works of, publish, publicly perform and display, sell, offer to sell, make and have made, the Incorporated Pre-existing Works, in any medium, with or without the associated Work Product.
- C. Performing Agency represents, warrants, and covenants to System Agency that Performing Agency has all necessary right and authority to grant the foregoing license in the Incorporated Pre-existing Works to System Agency.

## 5.3 THIRD PARTY IP

- A. To the extent that any Third Party IP is included or incorporated in the Work Product by Performing Agency, Performing Agency hereby grants to System Agency, or shall obtain from the applicable third party for System Agency's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for System Agency's internal business purposes only,
  - i. to use, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Third Party IP and any derivative works thereof embodied in or delivered to System Agency in conjunction with the Work Product, and
  - ii. to authorize others to do any or all of the foregoing.
- B. Performing Agency shall obtain System Agency's advance written approval prior to incorporating any Third Party IP into the Work Product, and Performing Agency shall

notify System Agency on delivery of the Work Product if such materials include any Third Party IP.

- C. Performing Agency shall provide System Agency all supporting documentation demonstrating Performing Agency's compliance with this **Section 5.3**, including without limitation documentation indicating a third party's written approval for Performing Agency to use any Third Party IP that may be incorporated in the Work Product.

#### **5.4 AGREEMENTS WITH EMPLOYEES AND SUBCONTRACTORS**

Performing Agency shall have written, binding agreements with its employees and subcontractors that include provisions sufficient to give effect to and enable Performing Agency's compliance with Performing Agency's obligations under this **Article V**.

#### **5.5 DELIVERY UPON TERMINATION OR EXPIRATION**

No later than the first calendar day after the termination or expiration of the Contract or upon System Agency's request, Performing Agency shall deliver to System Agency all completed, or partially completed, Work Product, including any Incorporated Pre-existing Works, and any and all versions thereof. Performing Agency's failure to timely deliver such Work Product is a material breach of the Contract. Performing Agency will not retain any copies of the Work Product or any documentation or other products or results of Performing Agency's activities under the Contract without the prior written consent of System Agency.

#### **5.6 SURVIVAL**

The provisions and obligations of this **Article V** survive any termination or expiration of the Contract.

#### **5.7 SYSTEM AGENCY DATA**

- A. As between the Parties, all data and information acquired, accessed, or made available to Performing Agency by, through, or on behalf of System Agency or System Agency contractors, including all electronic data generated, processed, transmitted, or stored by Performing Agency in the course of providing data processing services in connection with Performing Agency's performance hereunder (the "**System Agency Data**"), is owned solely by System Agency.
- B. Performing Agency has no right or license to use, analyze, aggregate, transmit, create derivatives of, copy, disclose, or process the System Agency Data except as required for Performing Agency to fulfill its obligations under the Contract or as authorized in advance in writing by System Agency.
- C. For the avoidance of doubt, Performing Agency is expressly prohibited from using, and from permitting any third party to use, System Agency Data for marketing, research, or other non-governmental or commercial purposes, without the prior written consent of System Agency.
- D. Performing Agency shall make System Agency Data available to System Agency, including to System Agency's designated vendors, as directed in writing by System Agency. The foregoing shall be at no cost to System Agency.
- E. Furthermore, the proprietary nature of Performing Agency's systems that process, store, collect, and/or transmit the System Agency Data shall not excuse Performing Agency's performance of its obligations hereunder.

## ARTICLE VI. PROPERTY

### 6.1 USE OF STATE PROPERTY

- A. Performing Agency is prohibited from using State Property for any purpose other than performing services authorized under the Contract.
- B. State Property includes, but is not limited to, System Agency's office space, identification badges, System Agency information technology equipment and networks (*e.g.*, laptops, portable printers, cell phones, iPads or tablets, external hard drives, data storage devices, any System Agency-issued software, and the System Agency Virtual Private Network (VPN client)), and any other resources of System Agency.
- C. Performing Agency shall not remove State Property from the continental United States. In addition, Performing Agency may not use any computing device to access System Agency's network or e-mail while outside of the continental United States.
- D. Performing Agency shall not perform any maintenance services on State Property unless the Contract expressly authorizes such services.
- E. During the time that State Property is in the possession of Performing Agency, Performing Agency shall be responsible for:
  - i. all repair and replacement charges incurred by State Agency that are associated with loss of State Property or damage beyond normal wear and tear, and
  - ii. all charges attributable to Performing Agency's use of State Property that exceeds the Contract scope. Performing Agency shall fully reimburse such charges to System Agency within ten (10) calendar days of Performing Agency's receipt of System Agency's notice of amount due. Use of State Property for a purpose not authorized by the Contract shall constitute breach of contract and may result in termination of the Contract and the pursuit of other remedies available to System Agency under contract, at law, or in equity.

### 6.2 DAMAGE TO GOVERNMENT PROPERTY

- A. In the event of loss, destruction, or damage to any System Agency or State of Texas owned, leased, or occupied property or equipment by Performing Agency or Performing Agency's employees, agents, Subcontractors, and suppliers, Performing Agency shall be liable to System Agency and the State of Texas for the full cost of repair, reconstruction, or replacement of the lost, destroyed, or damaged property.
- B. Performing Agency shall notify System Agency of the loss, destruction, or damage of equipment or property within one (1) business day. Performing Agency shall reimburse System Agency and the State of Texas for such property damage within 10 calendar days after Performing Agency's receipt of System Agency's notice of amount due.

### 6.3 PROPERTY RIGHTS UPON TERMINATION OR EXPIRATION OF CONTRACT

In the event the Contract is terminated for any reason, or upon its expiration State Property remains the property of the System Agency and must be returned to the System Agency by the end date of the Contract or upon System Agency's request.

## **ARTICLE VII. RECORD RETENTION, AUDIT, AND CONFIDENTIALITY**

### **7.1 RECORD MAINTENANCE AND RETENTION**

- A. Performing Agency shall keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to the System Agency, the Texas State Auditor's Office, the United States Government, and their authorized representatives sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal rules, regulations, and statutes.
- B. Performing Agency shall maintain and retain legible copies of this Contract and all records relating to the performance of the Contract including supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These records shall be maintained and retained by Performing Agency for a minimum of seven (7) years after the Contract expiration date or seven (7) years after the completion of all audit, claim, litigation, or dispute matters involving the Contract are resolved, whichever is later.

### **7.2 AGENCY'S RIGHT TO AUDIT**

- A. Performing Agency shall make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, supporting documents kept current by Performing Agency pertaining to the Contract for purposes of inspecting, monitoring, auditing, or evaluating by System Agency and the State of Texas.
- B. In addition to any right of access arising by operation of law, Performing Agency and any of Performing Agency's affiliate or subsidiary organizations, or subcontractors shall permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. If the Contract includes federal funds, federal agencies that shall have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that shall have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority.
- C. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Performing Agency shall produce original documents related to this Contract.
- D. The System Agency and any duly authorized authority shall have the right to audit billings both before and after payment, and all documentation that substantiates the billings.
- E. Performing Agency shall include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any subcontract it awards.



### **7.3 RESPONSE/COMPLIANCE WITH AUDIT OR INSPECTION FINDINGS**

- A. Performing Agency must act to ensure its and its subcontractors' compliance with all corrections necessary to address any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle, or any other deficiency identified in any audit, review, or inspection of the Contract and the services and Deliverables provided. Any such correction will be at Performing Agency's or its Subcontractor's sole expense. Whether Performing Agency's action corrects the noncompliance shall be solely the decision of the System Agency.
- B. As part of the services, Performing Agency must provide to System Agency upon request a copy of those portions of Performing Agency's and its subcontractors' internal audit reports relating to the services and Deliverables provided to the State under the Contract.

### **7.4 STATE AUDITOR'S RIGHT TO AUDIT**

- A. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- B. The Performing Agency shall comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code.

### **7.5 CONFIDENTIALITY**

Performing Agency shall maintain as confidential and shall not disclose to third parties without System Agency's prior written consent, any System Agency information including but not limited to System Agency Data, System Agency's business activities, practices, systems, conditions and services. This section will survive termination or expiration of this Contract. The obligations of Performing Agency under this section will survive termination or expiration of this Contract. This requirement must be included in all subcontracts awarded by Performing Agency.

## **ARTICLE VIII. CONTRACT REMEDIES AND EARLY TERMINATION**

### **8.1 CONTRACT REMEDIES**

To ensure Performing Agency's full performance of the Contract and compliance with applicable law, the System Agency reserves the right to hold Performing Agency accountable for breach of contract or substandard performance and may take remedial or corrective actions, including, but not limited to:

- i. suspending all or part of the Contract;
- ii. requiring the Performing Agency to take specific actions in order to remain in compliance with the Contract;
- iii. recouping payments made by the System Agency to the Performing Agency found to be in error;

- iv. suspending, limiting, or placing conditions on the Performing Agency's continued performance of Work; or
- v. imposing any other remedies, sanctions, or penalties authorized under this Contract or permitted by federal or state law.

## **8.2 TERMINATION FOR CONVENIENCE**

The System Agency may terminate the Contract, in whole or in part, at any time when, in its sole discretion, the System Agency determines that termination is in the best interests of the State of Texas. The termination will be effective on the date specified in the System Agency's notice of termination.

## **8.3 TERMINATION FOR CAUSE**

Except as otherwise provided by the U.S. Bankruptcy Code, or any successor law, the System Agency may terminate the Contract, in whole or in part, upon either of the following conditions:

### **i. Material Breach**

The System Agency will have the right to terminate the Contract in whole or in part if the System Agency determines, in its sole discretion, that Performing Agency has materially breached the Contract or has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction and such violation prevents or substantially impairs performance of Performing Agency's duties under the Contract. Performing Agency's misrepresentation in any aspect of Performing Agency's Solicitation Response, if any, or Performing Agency's addition to the System for Award Management (SAM) will also constitute a material breach of the Contract.

### **ii. Failure to Maintain Financial Viability**

The System Agency may terminate the Contract if, in its sole discretion, the System Agency has a good faith belief that Performing Agency no longer maintains the financial viability required to complete the Work, or otherwise fully perform its responsibilities under the Contract.

## **8.4 PERFORMING AGENCY RESPONSIBILITY FOR SYSTEM AGENCY'S TERMINATION COSTS**

If the System Agency terminates the Contract for cause, the Performing Agency shall be responsible to the System Agency for all costs incurred by the System Agency and the State of Texas to replace the Performing Agency. These costs include, but are not limited to, the costs of procuring a substitute vendor and the cost of any claim or litigation attributable to Performing Agency's failure to perform any Work in accordance with the terms of the Contract.

# **ARTICLE IX. GENERAL PROVISIONS**

## **9.1 AMENDMENT**

The Contract may only be amended by an Amendment executed by both Parties.

## **9.2 INSURANCE**

- A. Unless otherwise specified in this Contract, Performing Agency shall acquire and maintain, for the duration of this Contract, insurance coverage necessary to ensure proper fulfillment of this Contract and potential liabilities thereunder with financially sound and

reputable insurers licensed by the Texas Department of Insurance, in the type and amount customarily carried within the industry as determined by the System Agency. Performing Agency shall provide evidence of insurance as required under this Contract, including a schedule of coverage or underwriter's schedules establishing to the satisfaction of the System Agency the nature and extent of coverage granted by each such policy, upon request by the System Agency. In the event that any policy is determined by the System Agency to be deficient to comply with the terms of this Contract, Performing Agency shall secure such additional policies or coverage as the System Agency may reasonably request or that are required by law or regulation. If coverage expires during the term of this Contract, Performing Agency must produce renewal certificates for each type of coverage.

- B. These and all other insurance requirements under the Contract apply to both Performing Agency and its subcontractors, if any. Performing Agency is responsible for ensuring its subcontractors' compliance with all requirements.

### **9.3 LIMITATION ON AUTHORITY**

- A. The authority granted to Performing Agency by the System Agency is limited to the terms of the Contract.
- B. Performing Agency shall not have any authority to act for or on behalf of the System Agency or the State of Texas except as expressly provided for in the Contract; no other authority, power, or use is granted or implied. Performing Agency may not incur any debt, obligation, expense, or liability of any kind on behalf of System Agency or the State of Texas.
- C. Performing Agency may not rely upon implied authority and is not granted authority under the Contract to:
- i. Make public policy on behalf of the System Agency;
  - ii. Promulgate, amend, or disregard administrative regulations or program policy decisions made by State and federal agencies responsible for administration of a System Agency program; or
  - iii. Unilaterally communicate or negotiate with any federal or state agency or the Texas Legislature on behalf of the System Agency regarding System Agency programs or the Contract. However, upon System Agency request and with reasonable notice from System Agency to the Performing Agency, the Performing Agency shall assist the System Agency in communications and negotiations regarding the Work under the Contract with state and federal governments.

### **9.4 LEGAL OBLIGATIONS**

Performing Agency shall comply with all applicable federal, state, and local laws, ordinances, and regulations, including all federal and state accessibility laws relating to direct and indirect use of information and communication technology. Performing Agency shall be deemed to have knowledge of all applicable laws and regulations and be deemed to understand them.

### **9.5 CHANGE IN LAWS AND COMPLIANCE WITH LAWS**

Performing Agency shall comply with all laws, regulations, requirements and guidelines applicable to a vendor providing services and products required by the Contract to the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as amended throughout the term of the Contract. System Agency reserves the right, in its sole discretion,

to unilaterally amend the Contract to incorporate any modifications necessary for System Agency's compliance, as an agency of the State of Texas, with all applicable state and federal laws, regulations, requirements and guidelines.

#### **9.6 E-VERIFY PROGRAM**

Performing Agency certifies that for contracts for services, Performing Agency shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the Contract to determine the eligibility of:

- i. all persons employed by Performing Agency to perform duties within Texas; and
- ii. all persons, including subcontractors, assigned by the Performing Agency to perform Work pursuant to the Contract within the United States of America.

#### **9.7 PERMITTING AND LICENSURE**

At Performing Agency's sole expense, Performing Agency shall procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Performing Agency to provide the goods or services required by this Contract. Performing Agency shall be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law. Performing Agency shall be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract.

#### **9.8 SUBCONTRACTORS**

Performing Agency may not subcontract any or all of the Work and/or obligations under the Contract without prior written approval of the System Agency. Subcontracts, if any, entered into by the Performing Agency shall be in writing and be subject to the requirements of the Contract. Should Performing Agency subcontract any of the services required in the Contract, Performing Agency expressly understands and acknowledges that in entering into such subcontract(s), System Agency is in no manner liable to any subcontractor(s) of Performing Agency. In no event shall this provision relieve Performing Agency of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the Contract.

#### **9.9 INDEPENDENT PERFORMING AGENCY**

Performing Agency and Performing Agency's employees, representatives, agents, subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services under the Contract. Neither Performing Agency nor System Agency is an agent of the other and neither may make any commitments on the other party's behalf. Performing Agency shall have no claim against System Agency for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. The Contract shall not create any joint venture, partnership, agency, or employment relationship between Performing Agency and System Agency.

#### **9.10 GOVERNING LAW AND VENUE**

This Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under

the Contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the System Agency.

#### **9.11 SEVERABILITY**

If any provision of the Contract is held to be illegal, invalid or unenforceable by a court of law or equity, such construction will not affect the legality, validity or enforceability of any other provision or provisions of this Contract. It is the intent and agreement of the Parties this Contract shall be deemed amended by modifying such provision to the extent necessary to render it valid, legal and enforceable while preserving its intent or, if such modification is not possible, by substituting another provision that is valid, legal and enforceable and that achieves the same objective. All other provisions of this Contract will continue in full force and effect.

#### **9.12 SURVIVABILITY**

Expiration or termination of the Contract for any reason does not release Performing Agency from any liability or obligation set forth in the Contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the Contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.

#### **9.13 FORCE MAJEURE**

Neither Party shall be liable to the other for any delay in, or failure of performance of, any requirement included in the Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.

#### **9.14 DISPUTE RESOLUTION**

- A. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the Contract. If the Performing Agency's claim for breach of contract cannot be resolved informally with the System Agency, the claim shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Performing Agency shall submit written notice, as required by Chapter 2260, to the individual identified in the Contract for receipt of notices. Any informal resolution efforts shall in no way modify the requirements or toll the timing of the formal written notice of a claim for breach of contract required under §2260.051 of the Texas Government Code. Compliance by the Performing Agency with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.
- B. The contested case process provided in Chapter 2260 is the Performing Agency's sole and exclusive process for seeking a remedy for an alleged breach of contract by the System Agency if the Parties are unable to resolve their disputes as described above.

- C. Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by the System Agency, the Performing Agency shall continue performance and shall not be excused from performance during the period of any breach of contract claim or while the dispute is pending. However, the Performing Agency may suspend performance during the pendency of such claim or dispute if the Performing Agency has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

**9.15 NO IMPLIED WAIVER OF PROVISIONS**

The failure of the System Agency to object to or to take affirmative action with respect to any conduct of the Performing Agency which is in violation or breach of the terms of the Contract shall not be construed as a waiver of the violation or breach, or of any future violation or breach.

**9.16 MEDIA RELEASES**

- A. Performing Agency shall not use System Agency’s name, logo, or other likeness in any press release, marketing material, or other announcement without System Agency’s prior written approval. System Agency does not endorse any vendor, commodity, or service. Performing Agency is not authorized to make or participate in any media releases or public announcements pertaining to this Contract or the services to which they relate without System Agency’s prior written consent, and then only in accordance with explicit written instruction from System Agency.
- B. Performing Agency may publish, at its sole expense, results of Performing Agency performance under the Contract with the System Agency’s prior review and approval, which the System Agency may exercise at its sole discretion. Any publication (written, visual, or sound) will acknowledge the support received from the System Agency and any Federal agency, as appropriate.

**9.17 NO MARKETING ACTIVITIES**

Performing Agency is prohibited from using the Work for any Performing Agency or third-party marketing, advertising, or promotional activities, without the prior written consent of System Agency. The foregoing prohibition includes, without limitation, the placement of banners, pop-up ads, or other advertisements promoting Performing Agency’s or a third party’s products, services, workshops, trainings, or other commercial offerings on any website portal or internet-based service or software application hosted or managed by Performing Agency as part of the Work.

**9.18 PROHIBITION ON NON-COMPETE RESTRICTIONS**

Performing Agency shall not require any employees or subcontractors to agree to any conditions, such as non-compete clauses or other contractual arrangements that would limit or restrict such persons or entities from employment or contracting with the State of Texas.

**9.19 SOVEREIGN IMMUNITY**

Nothing in the Contract shall be construed as a waiver of the System Agency’s or the State’s sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the System Agency or the State of Texas. The failure to enforce, or any delay in the enforcement of, any privileges, rights,

defenses, remedies, or immunities available to the System Agency or the State of Texas under the Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. System Agency does not waive any privileges, rights, defenses, or immunities available to System Agency by entering into the Contract or by its conduct prior to or subsequent to entering into the Contract.

## **9.20 ENTIRE CONTRACT AND MODIFICATION**

This Contract constitutes the entire agreement of the Parties and is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Any additional or conflicting terms in any future document incorporated into the Contract will be harmonized with this Contract to the extent possible.

## **9.21 COUNTERPARTS**

This Contract may be executed in any number of counterparts, each of which will be an original, and all such counterparts will together constitute but one and the same Contract.

## **9.22 CIVIL RIGHTS**

- A. Performing Agency shall comply with all applicable state and federal anti-discrimination laws, including:
  - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d, *et seq.*);
  - ii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
  - iii. Americans with Disabilities Act of 1990 (42 U.S.C. §12101, *et seq.*);
  - iv. Age Discrimination Act of 1975 (42 U.S.C. §6101, *et seq.*);
  - v. Title IX of the Education Amendments of 1972 (20 U.S.C. §1681, *et seq.*);
  - vi. Food and Nutrition Act of 2008 (7 U.S.C. §2011, *et seq.*); and
  - vii. The System Agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement.
- B. Performing Agency shall comply with all amendments to these laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any service or other benefit provided by Federal or State funding, or otherwise be subjected to discrimination.
- C. Performing Agency shall comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a Performing Agency from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. Civil rights laws require Performing Agency to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. Performing Agency shall take reasonable steps to provide services and information, both orally and in writing and electronically, in appropriate languages other than English, to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.
- D. Performing Agency shall post applicable civil rights posters in areas open to the public informing clients of their civil rights and including contact information for the

HHS Civil Rights Office. The posters are available on the HHS website at:  
<http://hhscx.hhsc.texas.gov/system-support-services/civil-rights/publications>

- E. Performing Agency shall comply with Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 28 CFR Subpart G § 42.503, and Americans with Disabilities Act of 1990 and its implementing regulations at 28 CFR Subpart B §35.130 which includes requiring Performing Agency to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the Performing Agency can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.
- F. Performing Agency shall comply with federal regulations regarding equal treatment for faith-based organizations under 45 C.F.R. Part 87 or 7 C.F.R. Part 16, as applicable. Performing Agency shall not discriminate against clients or prospective clients on the basis of religion or religious belief, and shall provide written notice to beneficiaries of their rights.
- G. Upon request, Performing Agency shall provide the HHSC Civil Rights Office with copies of the Performing Agency's civil rights policies and procedures.
- H. Performing Agency must notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under this Contract. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. This notice must be directed to:

HHSC Civil Rights Office  
701 W. 51<sup>st</sup> Street, Mail Code W206  
Austin, Texas 78751  
Phone Toll Free: (888) 388-6332  
Phone: (512) 438-4313  
Fax: (512) 438-5885.

### **9.23 ENTERPRISE INFORMATION MANAGEMENT STANDARDS**

Performing Agency shall conform to HHS standards for data management as described by the policies of the HHS Chief Data and Analytics Officer. These include, but are not limited to, standards for documentation and communication of data models, metadata, and other data definition methods that are required by HHS for ongoing data governance, strategic portfolio analysis, interoperability planning, and valuation of HHS System data assets.

### **9.24 DISCLOSURE OF LITIGATION**

- A. The Performing Agency must disclose in writing to the contract manager assigned to this Contract any material civil or criminal litigation or indictment either threatened or pending involving the Performing Agency. "Threatened litigation" as used herein shall include governmental investigations and civil investigative demands. "Litigation" as used herein shall include administrative enforcement actions brought by governmental agencies. The Performing Agency must also disclose any material litigation threatened or pending involving subcontractors, consultants, and/or lobbyists. For purposes of this section, "material" refers, but is not limited, to any action or pending action that a reasonable person knowledgeable in the applicable industry would consider relevant to the Work under the Contract or any development such a person would want to be aware of in order to stay fully apprised of the total mix of information relevant to the Work, together with any litigation



threatened or pending that may result in a substantial change in the Performing Agency's financial condition.

- B. This is a continuing disclosure requirement; any litigation commencing after Contract Award must be disclosed in a written statement to the assigned contract manager within seven calendar days of its occurrence.

**9.25 NO THIRD-PARTY BENEFICIARIES**

The Contract is made solely and specifically among and for the benefit of the Parties named herein and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the Contract as a third-party beneficiary or otherwise.

**9.26 BINDING EFFECT**

The Contract shall inure to the benefit of, be binding upon, and be enforceable against, each Party and their respective permitted successors, assigns, transferees, and delegates.

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## **HEALTH AND HUMAN SERVICES CONTRACT AFFIRMATIONS**

The term “System Agency” used in these affirmations means HHS or any of the agencies of the State of Texas that are overseen by HHSC under authority granted under Texas law and the officers, employees, authorized representatives, and designees of those agencies. These agencies include: HHSC and the Department of State Health Services.

By entering into this Contract, Contractor affirms, without exception, understands, and agrees to comply with the following items through the life of the Contract:

**1.** Contractor represents and warrants that these Contract Affirmations apply to Contractor and all of Contractor's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this Contract and any related Solicitation.

**2. Complete and Accurate Information**

Contractor represents and warrants that all statements and information provided to System Agency are current, complete, and accurate. This includes all statements and information in this Contract and any related Solicitation Response.

**3. Public Information Act**

Contractor understands that System Agency will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material prepared and submitted in connection with this Contract or any related Solicitation may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

**4. Contracting Information Requirements**

Contractor represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J (Additional Provisions Related to Contracting Information), Chapter 552 of the Government Code, may apply to the Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

**5. Assignment**

- A. Contractor shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from HHSC. Any attempted assignment in violation of this provision is void and without effect.
- B. Contractor understands and agrees the System Agency may in one or more transactions assign, pledge, or transfer the Contract. This assignment will only be made to another State agency or a non-state agency that is contracted to perform agency support. Upon receipt of System Agency's notice of assignment, pledge, or transfer, Contractor shall cooperate with System Agency in giving effect to such assignment, pledge, or transfer, at no cost to System Agency or to the recipient entity

**6. Terms and Conditions Attached to Response**

Contractor accepts the Solicitation terms and conditions unless specifically noted by exceptions advanced in the form and manner directed in the Solicitation, if any, under which this Contract was awarded. Contractor agrees that all exceptions to the Solicitation, as well as terms and conditions advanced by Contractor that differ in any manner from System Agency's terms and conditions, if any, are rejected unless expressly accepted by System Agency in writing.

**7. System Agency Right to Use**

Contractor agrees that System Agency has the right to use, produce, and distribute copies of and to disclose to System Agency employees, agents, and contractors and other governmental entities all or part of this Contract or any related Solicitation Response as System Agency deems necessary to complete the procurement process or comply with state or federal laws.

**8. Release from Liability**

Contractor generally releases from liability and waives all claims against any party providing information about the Contractor at the request of System Agency.

**9. Dealings with Public Servants**

Contractor has not given, has not offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract or any related Solicitation, or related Solicitation Response.

**10. Financial Participation Prohibited**

Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

**11. Prior Disaster Relief Contract Violation**

Under Sections 2155.006 and 2261.053 of the Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

**12. Child Support Obligation**

Under Section 231.006(d) of the Texas Family Code regarding child support, Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive the specified payment and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate.

**13. Suspension and Debarment**

Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R. Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Contractor's subcontracts, if any, if payment in whole or in part is from federal funds.

**14. Excluded Parties**

Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order 13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*," published by the United States Department of the Treasury, Office of Foreign Assets Control.'

**15. Foreign Terrorists Organizations**

Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

**16. Executive Head of a State Agency**

In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Contractor certifies that it is not (1) the executive head of an HHS agency, (2) a person who at any time during the four years before the date of this Contract was the executive head of an HHS agency, or (3) a person who employs a current or former executive head of an HHS agency.

**17. Human Trafficking Prohibition**

Under Section 2155.0061 of the Texas Government Code, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive this contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

**18. Franchise Tax Status**

Contractor represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.

**19. Debts and Delinquencies**

Contractor agrees that any payments due under this Contract shall be applied towards any debt or delinquency that is owed to the State of Texas.

**20. Lobbying Prohibition**

Contractor represents and warrants that payments to Contractor and Contractor's receipt of appropriated or other funds under this Contract or any related Solicitation are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code (relating to use of appropriated money or state funds to employ or pay lobbyists, lobbying expenses, or influence legislation).

**21. Buy Texas**

Contractor agrees to comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.

**22. Disaster Recovery Plan**

Contractor agrees that upon request of System Agency, Contractor shall provide copies of its most recent business continuity and disaster recovery plans.

**23. Technology Access**

- A. Contractor expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Contractor represents and warrants to System Agency that the technology provided to System Agency for purchase (if applicable under this Contract or any related Solicitation) is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:
  - i. providing equivalent access for effective use by both visual and non-visual means;
  - ii. presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and
  - iii. being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.
- B. For purposes of this Section, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as

assistive devices or services which would constitute reasonable accommodations under the Americans With Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

- C. In accordance with Section 2157.005 of the Texas Government Code, the Technology Access Clause contract provision remains in effect for any contract entered into before September 1, 2006.

**24. Computer Equipment Recycling Program**

If this Contract is for the purchase or lease of computer equipment, then Contractor certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.

**25. Television Equipment Recycling**

If this Contract is for the purchase or lease of covered television equipment, then Contractor certifies that it is compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.

**26. Cybersecurity Training**

- A. Contractor represents and warrants that it will comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program.
- B. Contractor represents and warrants that if Contractor or Subcontractors, officers, or employees of Contractor have access to any state computer system or database, the Contractor, Subcontractors, officers, and employees of Contractor shall complete cybersecurity training pursuant to and in accordance with Government Code, Section 2054.5192.

**27. Restricted Employment for Certain State Personnel**

Contractor acknowledges that, pursuant to Section 572.069 of the Texas Government Code, a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving Contractor may not accept employment from Contractor before the second anniversary of the date the Contract is signed or the procurement is terminated or withdrawn.

**28. Disclosure of Prior State Employment**

If this Contract is for consulting services under Chapter 2254 of the Texas Government Code, in accordance with Section 2254.033 of the Texas Government Code, Contractor certifies that it does not employ an individual who was employed by System Agency or another agency at any time during the two years preceding the submission of any related

Solicitation Response related to this Contract or, in the alternative, Contractor has disclosed in any related Solicitation Response the following:

- i. the nature of the previous employment with System Agency or the other agency;
- ii. the date the employment was terminated; and
- iii. the annual rate of compensation at the time of the employment was terminated.

**29. No Conflicts of Interest**

- A. Contractor represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to System Agency under this Contract or any related Solicitation and that Contractor's provision of the requested goods and/or services under this Contract and any related Solicitation will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
- B. Contractor agrees that, if after execution of the Contract, Contractor discovers or is made aware of a Conflict of Interest, Contractor will immediately and fully disclose such interest in writing to HHSC. In addition, Contractor will promptly and fully disclose any relationship that might be perceived or represented as a conflict after its discovery by Contractor or by HHSC as a potential conflict. HHSC reserves the right to make a final determination regarding the existence of Conflicts of Interest, and Contractor agrees to abide by HHSC's decision.

**30. Fraud, Waste, and Abuse**

Contractor understands that System Agency does not tolerate any type of fraud. The agency's policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. All employees or contractors who suspect fraud, waste or abuse (including employee misconduct that would constitute fraud, waste, or abuse) are required to immediately report the questionable activity to both the Health and Human Services Commission's Office of the Inspector General at 1-800-436-6184 and the State Auditor's Office. Contractor agrees to comply with all applicable laws, rules, regulations, and System Agency policies regarding fraud including, but not limited to, HHS Circular C-027.

**31. Antitrust**

The undersigned affirms under penalty of perjury of the laws of the State of Texas that:

- A. in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Contractor has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;
- B. in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Contractor has violated any federal antitrust law; and
- C. neither I nor any representative of the Contractor has directly or indirectly communicated any of the contents of this Contract and any related Solicitation Response to a competitor of the Contractor or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Contractor.

**32. Legal and Regulatory Actions**

Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency proceeding, investigation, or other action pending or threatened against Contractor or any of the individuals or entities included in numbered paragraph 1 of these Contract Affirmations within the five (5) calendar years immediately preceding execution of this Contract or the submission of any related Solicitation Response that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to System Agency's consideration of entering into this Contract. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has provided to System Agency a complete, detailed disclosure of any such court or governmental agency proceeding, investigation, or other action that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to System Agency's consideration of entering into this Contract. In addition, Contractor acknowledges this is a continuing disclosure requirement. Contractor represents and warrants that Contractor shall notify System Agency in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update System Agency shall constitute breach of contract and may result in immediate contract termination.

**33. No Felony Criminal Convictions**

Contractor represents that neither Contractor nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, have been convicted of a felony criminal offense or that if such a conviction has occurred Contractor has fully advised System Agency in writing of the facts and circumstances surrounding the convictions.

**34. Unfair Business Practices**

Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

**35. Entities that Boycott Israel**

Pursuant to Section 2271.002 of the Texas Government Code, Contractor certifies that either:

- i. it meets an exemption criteria under Section 2271.002; or
- ii. it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this Solicitation. If Contractor refuses to make that certification,



Contractor shall state here any facts that make it exempt from the boycott certification:

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**36. E-Verify Program**

Contractor certifies that for contracts for services, Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of this Contract to determine the eligibility of:

- i. all persons employed by Contractor to perform duties within Texas; and
- ii. all persons, including subcontractors, assigned by Contractor to perform work pursuant to this Contract within the United States of America.

**37. Professional or Consulting Contract**

If this Contract is an employment contract, a professional services contract under Chapter 2254 of the Texas Government Code, or a consulting services contract under Chapter 2254 of the Texas Government Code, Contractor represents and warrants that neither Contractor nor any of Contractor's employees including, but not limited to, those authorized to provide services under the contract, were former employees of an HHS Agency during the twelve (12) month period immediately prior to the date of the execution of the contract.

**38. Former Agency Employees**

Contractor represents and warrants, during the twelve (12) month period immediately prior to the date of the execution of this Contract, none of its employees including, but not limited to those who will provide services under the Contract, was an employee of an HHS Agency. Pursuant to Section 2252.901, Texas Government Code (relating to prohibitions regarding contracts with and involving former and retired state agency employees), Contractor will not allow any former employee of the System Agency to perform services under this Contract during the twelve (12) month period immediately following the employee's last date of employment at the System Agency.

**39. Disclosure of Prior State Employment**

If this Contract is for consulting services,

A. In accordance with Section 2254.033 of the Texas Government Code, a Contractor providing consulting services who has been employed by, or employs an individual who has been employed by, HHSC or another State of Texas agency at any time during the two years preceding the submission of Contractor's offer to provide services must disclose the following information in its offer to provide services. Contractor hereby certifies that this information was provided and remains true, correct, and complete:

- i. Name of individual(s) (Respondent or employee(s));
- ii. Status;
- iii. The nature of the previous employment with HHSC or the other State of Texas agency;

- iv. The date the employment was terminated and the reason for the termination; and
  - v. The annual rate of compensation for the employment at the time of its termination.
- B. If no information was provided in response to Section A above, Contractor certifies that neither Contractor nor any individual employed by Contractor was employed by HHSC or any other State of Texas agency at any time during the two years preceding the submission of Contractor's offer to provide services.

**40. Abortion Funding Limitation**

Contractor understands, acknowledges, and agrees that, pursuant to Article IX, Section 6.25 of the General Appropriations Act (the Act), to the extent allowed by federal and state law, money appropriated by the Texas Legislature may not be distributed to any individual or entity that, during the period for which funds are appropriated under the Act:

- i. performs an abortion procedure that is not reimbursable under the state's Medicaid program;
- ii. is commonly owned, managed, or controlled by an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program; or
- iii. is a franchise or affiliate of an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program. The provision does not apply to a hospital licensed under Chapter 241, Health and Safety Code, or an office exempt under Section 245.004(2), Health and Safety Code. Contractor represents and warrants that it is not ineligible, nor will it be ineligible during the term of this Contract, to receive appropriated funding pursuant to Article IX, Section 6.25.

**41. Funding Eligibility**

Contractor understands, acknowledges, and agrees that, pursuant to Chapter 2272 of the Texas Government Code, except as exempted under that Chapter, HHSC cannot contract with an abortion provider or an affiliate of an abortion provider. Contractor certifies that it is not ineligible to contract with HHSC under the terms of Chapter 2272 of the Texas Government Code. If Contractor refuses to make that certification, Contractor shall state here any facts that make it exempt from the certification:

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**42. False Representation**

Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.

**43. False Statements**

Contractor represents and warrants that all statements and information prepared and submitted by Contractor in this Contract and any related Solicitation Response are current, complete, true, and accurate. Contractor acknowledges any false statement or material

misrepresentation made by Contractor during the performance of this Contract or any related Solicitation is a material breach of contract and may void this Contract. Further, Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.

**44. Permits and License**

Contractor represents and warrants that it will comply with all applicable laws and maintain all permits and licenses required by applicable city, county, state, and federal rules, regulations, statutes, codes, and other laws that pertain to this Contract.

**45. Drug-Free Workplace**

Contractor represents and warrants that it shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §701 et seq.) and maintain a drug-free work environment.

**46. Equal Employment Opportunity**

Contractor represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.

**47. Federal Occupational Safety and Health Law**

Contractor represents and warrants that all articles and services shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15).

**48. Signature Authority**

Contractor represents and warrants that the individual signing this Contract Affirmations document is authorized to sign on behalf of Contractor and to bind the Contractor.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

Authorized representative on behalf of Contractor must complete and sign the following:

Harris County Hospital District

Legal Name of Contractor

Harris Health System

Assumed Business Name of Contractor, if applicable (D.B.A. or 'doing business as')

Harris

Texas County(s) for Assumed Business Name (D.B.A. or 'doing business as')

Attach Assumed Name Certificate(s) for each County



Signature of Authorized Representative

8/18/20

Date Signed

Esmaeil Porsa

Printed Name of Authorized Representative  
First, Middle Name or Initial, and Last Name

M.D. – President and CEO

Title of Authorized Representative

2525 Holly Hall

Physical Street Address

Houston, Texas 77054

City, State, Zip Code

Mailing Address, if different

713-566-3940

Phone Number

City, State, Zip Code

N/A

Fax Number

Kathryn.crary@harrishealth.org

Email Address

086976214

DUNS Number

74-1536936

Federal Employer Identification Number

Texas Payee ID No. – 11 digits

Texas Franchise Tax Number

Texas Secretary of State Filing  
Number

**Maternal Opioid Misuse (MOM) Model**

**Special Terms and Conditions**

**Recipient: Texas Health and Human Services Commission**

1. **General.** In addition to all Standard Terms and Conditions and Program Terms and Conditions, Recipient is subject to the following Special Terms and Conditions. The Centers for Medicare and Medicaid Services (CMS) may add or otherwise amend these Special Terms and Conditions as necessary at any point during MOM Model performance.
  
2. **Restriction of Funds.** In addition to any other funding restrictions set forth in these Terms and Conditions or elsewhere in this Notice of Award, Recipient is subject to the funding restrictions set forth below. Please review MOM Model NOFO, Appendix A, "Guidance for Preparing a Budget Request and Narrative" for further guidance on these requirements:
  - a. **Personnel and Fringe Benefits.** Recipient may not draw down funds for a position identified below until Recipient demonstrates that the hiring process for the position is complete and CMS provides prior approval. Funds are restricted in the amount of \$80,068 for Personnel and \$26,767 for Fringe Benefit costs.

	<b>Funding Restricted Pending Receipt by CMS of Required Information and CMS Prior Approval</b>	
<b>Position Title</b>	<b>Personnel</b>	<b>Fringe Benefits</b>
Program Specialist V	<b>\$61,871</b>	<b>\$20,684</b>
Program Specialist VI	<b>\$18,197</b>	<b>\$6,084</b>

**b. Sub-Recipient Budgets:**

- i. **Sub-Recipients.** Recipient may not draw down funds for the second-tier sub-recipients identified below until Recipient demonstrates that a formal agreement between Recipient and the second-tier sub-recipient has been finalized, and CMS provides prior approval. Each second-tier sub-recipient agreement shall include the information set forth below, and Recipient shall upload each such agreement to GrantSolutions as a standalone Grant Note. GrantSolutions can be accessed via the following link: <https://www.grantsolutions.gov>.

1. Statement of Work
2. Period of Performance
3. Method of Accountability
4. Itemized Budget and Budget Justification, including a breakdown of tasks and amount budgeted for each task.

<b>Second-Tier Sub-recipient</b>	<b>Funding Restricted Pending Receipt by CMS of Required Information (see 2.a-d.) and CMS Prior Approval</b>
Baylor College of Medicine	<b>\$168,047.00</b>
Santa Maria Hostel	<b>\$40,975.00</b>
PCIC	<b>\$78,900.00</b>

ii. **Contractual.** Recipient may not draw down **\$25,000** in funds for the SBIRT Contractor listed in the Subrecipient tab until Recipient provides the following information to CMS, and CMS provides prior approval:

1. Name of Contractor
2. Method of Selection
3. Period of Performance
4. Scope of Work
5. Method of accountability
6. Itemized Budget and Budget Justification, including a breakdown of tasks and amount budgeted for each task.

3. **Enhanced Reporting Requirements Related to Changes to the State Medicaid Program.**

In order for CMS to assess its progress toward implementing its coverage and payment strategy, Recipient shall provide updated State Plan Amendment/Medicaid Waiver timelines on a monthly basis, in addition to the quarterly reporting requirements in section 10b. of the Program Terms and Conditions (Implementing Necessary Changes to the Medicaid Program, State Plan Amendment/Medicaid Waiver Timeline). Monthly timelines are subject to all requirements in Section 10 of the Program Terms and Conditions and shall be uploaded to GrantSolutions as a standalone Grant Note by the last day of each month, beginning on January 31, 2020 and continuing on a monthly basis until CMS has approved all changes to the state Medicaid plan required to implement Recipient's Model Implementation Plan. GrantSolutions can be accessed via the following link: <https://www.grantsolutions.gov>.

4. **Enrollment and Waitlist Policy.** Recipient shall propose an enrollment and waitlist policy, subject to CMS prior approval, that includes the following information, as set forth in MOM NOFO A.4.6.3.2 (Implementation Plan) of the NOFO:

- a. A clear statement indicating whether the applicant proposes to impose a maximum number of MOM Model Beneficiaries that Recipient would serve at a given time;
- b. An explanation for why it believes an enrollment maximum is necessary;
- c. How the enrollment maximum will be designed and implemented (including the existing Medicaid authority that would permit a beneficiary cap, the number of

enrollees who would be permitted to enroll over a specified time period, and a waitlist policy); and,

- d. How the applicant proposes to ensure access to usual care for Medicaid beneficiaries who seek Model Services if enrollment is closed due to the cap.

No later than 60 Days after the start of the project period, Recipient shall submit its proposed enrollment and waitlist policy in writing as a standalone Grant Note in GrantSolutions.

**Centers for Medicare & Medicaid Services**  
**Standard<sup>1</sup> Grant/Cooperative Agreement<sup>2</sup> Terms and Conditions**

1. **Recipient.** The Recipient is the Grantee designated in the Notice of Award (NoA).
2. **Acceptance of Application & Terms of Agreement.** Initial drawdown of funds by the Recipient constitutes acceptance of this award.
3. **Notice of Funding Opportunity (NOFO).** All relevant project requirements outlined in the NOFO apply to this award and are incorporated into these terms and conditions by reference.
4. **Uniform Administrative Requirements, Cost Principles, and Audit Requirements.** This award is subject to 45 CFR Part 75 [available at <http://www.ecfr.gov/cgi-bin/text-idx?node=pt45.1.75&rgn=div5>], which implements 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (“Uniform Guidance”) for the U.S. Department of Health & Human Services (HHS) operating divisions, effective December 26, 2014. All recipients must comply with Subparts A-F unless as described immediately below under *Cost Principles* and *Audit Requirements*.
  - Uniform Administrative Requirements. All Recipients must comply with Subparts A-D of 45 CFR Part 75.
  - Cost Principles. Centers for Medicare and Medicaid Services (CMS) grant awards provide for reimbursement of actual, allowable costs incurred and are subject to the Federal cost principles. The cost principles establish standards for the allowability of costs, provide detailed guidance on the cost accounting treatment of costs as direct or indirect, and set forth allowability and allocability principles for selected items of cost. Applicability of a particular set of cost principles depends on the type of organization. CMS recipients must comply with the cost principles set forth in HHS regulations at 45 CFR Part 75, Subpart E with the following exceptions: (1) hospitals must follow Appendix IX to part 75 and commercial (for-profit) organizations are subject to the cost principles located at 48 CFR subpart 31.2<sup>3</sup>.

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<sup>1</sup> Standard Terms and Conditions include all possible grants administrative requirements for CMS awards. All standard terms and conditions apply unless the requirement is not applicable based on the project awarded. Recipients should contact their assigned Grants Management Specialist if they have questions about whether an administrative term and condition applies.

<sup>2</sup> A Cooperative Agreement is an alternative assistance instrument to be used in lieu of a grant whenever substantial Federal involvement with the recipient during performance is anticipated. The difference between grants and cooperative agreements is the degree of Federal programmatic involvement rather than the type of administrative requirements imposed. Therefore, statutes, regulations, policies, and the information contained in these Standard Terms and Conditions that are applicable to grants also apply to cooperative agreements, unless otherwise stated.

<sup>3</sup> There are no cost principles specifically applicable to grants to for-profit organizations. Therefore, the cost principles for commercial organizations set forth in the FAR (48 CFR subpart 31.2) generally are used to determine allowable costs under CMS grants to for-profit organizations. As provided in those costs principles, allowable travel costs may not exceed those established by the FTR (available on-line at <http://gsa.gov/portal/content/104790>). The cost principles in 45 CFR 75, Appendix IX, determine allowable costs under CMS grants to proprietary hospitals.



- Direct and Indirect Costs: There is no universal rule for classifying certain costs as either direct or indirect (also known as Facilities & Administration (F&A) costs) under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost incurred for the same purpose be treated consistently in like circumstances either as a direct or F&A cost in order to avoid double-charging of Federal awards. Guidelines for determining direct and F&A costs charged to Federal awards are provided in 45 CFR §§75.412 to 75.419. Requirements for development and submission of indirect (F &A) cost rate proposals and cost allocation plans are contained in Appendices III-VII and Appendix IX to Part 75.
  - Commercial (For-Profit) Organizations: Indirect Costs are allowable under awards to for-profit organizations. For-profit organizations must still obtain a negotiated indirect cost rate agreement which covers the grant supported activities and the applicable period of performance. For-profit entities which receive the preponderance of their federal awards from HHS may contact the Division of Financial Advisory Services (DFAS), Indirect Cost Branch, available at <http://oamp.od.nih.gov/dfas/indirect-cost-branch> to negotiate an indirect cost rate. Otherwise, for-profit organizations are limited to the 10% de minimis rate in accordance with 45 CFR §75.414(f).
- Cost Allocation: In accordance with 45 CFR §75.416 and
  - Appendix V to Part 75 – *State/Local Governmentwide Central Service Cost Allocation Plans*, each state/local government will submit a plan to the U.S. Department of Health & Human Services Cost Allocation Services for each year in which it claims central service costs under Federal awards. Guidelines and illustrations of central service cost allocation plans are provided in a brochure published by the U.S. Department of Health & Human Services entitled “*A Guide for State, Local and Indian Tribal Governments: Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government*.” A copy of this brochure may be obtained from the HHS' Cost Allocation Services at <https://rates.psc.gov>. A current, approved cost allocation plan must be provided to CMS if central service costs are claimed.
  - Appendix VI to Part 75 – *Public Assistance Cost Allocation Plans*, state public assistance agencies will develop, document and implement, and the Federal Government will review, negotiate, and approve, public assistance cost allocation plans in accordance with Subpart E of 45 CFR part 95. The plan will include all programs administered by the state public assistance agency. Where a letter of approval or disapproval is transmitted to a state public assistance agency in accordance with Subpart E, the letter will apply to all Federal agencies and programs. This Appendix (except for the requirement for certification) summarizes the provisions of Subpart E of 45 CFR part 95.

- **Audit Requirements.** The audit requirements in 45 CFR Part 75, Subpart F apply to each recipient fiscal year that begins on or after December 26, 2014. A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with 45 CFR 75 and must submit an audit reporting package to the Federal Audit Clearinghouse (FAC), the OMB designated repository of record. In accordance with 45 CFR 75.513(c)(1), HHS grant awarding agencies are required to ensure that single or program-specific audits are completed and reported by recipients within nine months after the end of the audit period (recipient fiscal year end date). **Recipients must comply with the following:**

- i. **Within 30 days of the award issue date on the Notice of Award,** Recipient must submit a Grant Note labeled "Recipient Fiscal Year" as the Subject to GrantSolutions which documents the fiscal year start and end date for the non-Federal entity;
- ii. **Within 3 business days of submission of the audit reporting package to FAC,** provide certification (to include evidence of submission) to the CMS Grants Management Specialist (GMS) as a Grant Note in GrantSolutions labeled: "FAC Certification" (Subject)/ "FAC\_CERT\_mm.dd.yyyy" (File Name).;

**OR**

- iii. **Within 90 days following the non-Federal entity's fiscal year end date,** recipients must certify in writing to the CMS GMS that their entity did not expend more than \$750,000 during their fiscal year as a Grant Note in GrantSolutions labeled: "FAC Certification" (Subject)/ "FAC\_CERT\_mm.dd.yyyy" (File Name). Records must still be available for review or audit by appropriate officials of CMS, pass-through entity, and Government Accountability Office (GAO).

For questions and information concerning the FAC submission process, please contact the Federal Audit Clearinghouse (entity which assists Federal cognizant and oversight agencies in obtaining audit data and reporting packages) at 888-222-9907 or <https://harvester.census.gov/facweb/Default.aspx>.

As explained under 45 §75.501(h), *For-profit subrecipient*, since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The agreement with the for-profit subrecipient must describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits. See also §75.352 Requirements for pass-through entities.

Commercial Organizations (including for-profit hospitals) should consult §75.216 for limitations on profit and program income. As explained in 45 CFR §75.501 and §75.216, commercial organizations have two options regarding audits:

- (1) A financial related audit (as defined in the Government Auditing Standards, GPO Stock #020-000-00-265-4) of a particular award in accordance with Government Auditing Standards. In those cases where the recipient receives awards under only one HHS program, or, if awards are received under multiple HHS programs, a financial related audit of all HHS awards in accordance with Government Auditing Standards; or
- (2) An audit that meets the requirement contained in 45 CFR part 75, subpart F (as explained above).

**For-profit entities should submit audits directly to the following electronic address:**

[KC\\_OIG\\_Audit@cms.hhs.gov](mailto:KC_OIG_Audit@cms.hhs.gov)

**(Do not send audits of for-profit entities to FAC)**

For information related to potential consequences for failure to apply with the aforementioned audit requirements, please see Standard Term and Condition 33. *Remedies for Non-Compliance* and 45 CFR §75.371, *Remedies for noncompliance*.

5. **The HHS Grants Policy Statement (HHS GPS).** This award is subject to the requirements of the HHS GPS that are applicable to the Recipient based on the Recipient type and the purpose of this award [available at <http://www.hhs.gov/sites/default/files/grants/grants/policies-regulations/hhsgps107.pdf>]. The general terms and conditions in the HHS GPS will apply as indicated unless there are statutory, regulatory, or award-specific requirements to the contrary. Although the HHS GPS is meant to be consistent with applicable statutory or regulatory requirements, the current 2007 version has not been updated to parallel the new HHS regulations. The HHS regulation, 45 CFR Part 75, effective December 26, 2014, therefore supersedes information on administrative requirements, cost principles, and audit requirements for grants and cooperative agreement included in the current HHS Grants Policy Statement where differences are identified.
6. **Prior Approval Requirements.** Recipients must consult and comply with prior approval requirements outlined under 45 CFR §75.407, *Prior written approval (prior approval)*.
7. **Revision of Budget and Program Plans.** Recipients must consult and comply with requirements outlined under 45 CFR §75.308, *Revision of budget and program plans*. Please note that CMS is not waiving any prior approval requirements outlined in this section. Additionally, in accordance with §75.308(e), CMS requires prior approval where the transfer of funds among direct cost categories or programs, functions and activities in which the Federal share of the project exceeds the Simplified Acquisition Threshold (\$250,000) and the **cumulative amount** of such transfers exceeds or is expected to exceed **10 percent** of the total budget as last approved. CMS cannot permit a transfer that would cause any Federal appropriation to be used for purposes other than those consistent with the appropriation.

**8. Rearrangement, Alteration, Reconversion, and Capital Expenditures.** Recipient may not incur direct costs for rearrangement, alteration, reconversion, or capital expenditures without prior written approval by CMS (refer to 45 CFR §§75.439 and 75.462).

- Capital expenditures means expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that **materially increase their value or useful life** (refer to 45 CFR §75.2, *Definitions*).
- Capital assets means tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with Generally Accepted Accounting Principles (GAAP). Capital assets include:
  - (1) Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, lease-purchase, exchange, or through capital leases; and
  - (2) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance). (refer to 45 CFR §75.2, *Definitions*)
- Maintenance and Repair Costs: Costs incurred for utilities, insurance, security, necessary maintenance, janitorial services, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life must be treated as capital expenditures. These costs are only allowable to the extent not paid through rental or other agreements (refer to 45 CFR §75.452).

**9. Conference and Travel Costs.** For attendance at any conference<sup>4</sup>, including those sponsored by CMS, recipients must submit a detailed breakdown of costs associated with attending the conference for prior written approval. All costs must be individually itemized. This breakdown should include all costs associated with travel to the conference and a brief narrative explaining the program related purpose/how attending the conference will further the objectives of the program. As noted in 45 CFR §75.432, *Conferences*, allowable conference costs paid by the non-Federal entity as a sponsor or host of the conference may include rental of facilities, speakers' fees, costs of meals and refreshments<sup>5</sup>, local transportation, and other items incidental to such conferences. Conference hosts/sponsors must exercise discretion and

<sup>4</sup> OMB Memorandum M-12-12 employs, and HHS has adopted the following definition for a conference from the Federal Travel Regulation (FTR): A "conference" is defined as "[a] meeting, retreat, seminar, symposium or event that involves attendee travel. The term 'conference' also applies to training activities that are considered to be conferences under 5 CFR 410.404."

<sup>5</sup> Per page II-36 of the HHS Grants Policy Statement, meals are generally unallowable except for the following:

- Subjects and patients under study;
- Where specifically approved as part of the project or program activity (not grantee specific), e.g., in programs providing children's services; and
- As part of a per diem or subsistence allowance provided in conjunction with allowable travel.

Guest meals are not allowable (see also II-36 of HHS GPS).

judgment in ensuring that conference costs are appropriate, necessary and managed in a manner that minimizes costs to the Federal award. All federally funded travel must be tracked through a travel log which includes: traveler/position, destination, length of stay, mileage, per diem, reason for the trip, airfare, and any other reimbursable expenses. Recipients must also consult and comply with requirements outlined under 45 CFR §75.474, *Travel Costs*.

**10. Technology Costs.** As defined in 45 CFR §75.2, *Definitions*, equipment means tangible personal property (including information technology systems), having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000. Supplies means all tangible personal property other than those described in *Equipment*. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or \$5,000, regardless of the length of its useful life. See also the definitions in 45 CFR §75.2 of *Capital assets, Computing devices, General purpose equipment, Information technology systems, and Special purpose equipment*. All technology items, regardless of classification as equipment or supply must still be individually tagged and recorded in an equipment/technology database. This database should include any information necessary to properly identify and locate the item. For example: serial # and physical location of equipment (e.g. laptops, tablets, etc.). **In addition, purchase of Technology items (both those classified as equipment and those classified as supplies), over and above that which is already approved in the budget must be approved by the Grants Management Specialist (regardless of acquisition cost).**

**11. Prohibited Uses of Grant or Cooperative Agreement Funds.** The following list contains costs that are prohibited for all CMS programs. Recipient should consult the Program Terms and Conditions for other prohibited costs specific to the grant or cooperative agreement program.

- To match any other Federal funds.
- To provide services, equipment, or supports that are the legal responsibility of another party under Federal, State, or Tribal law (e.g., vocational rehabilitation or education services) or under any civil rights laws. Such legal responsibilities include, but are not limited to, modifications of a workplace or other reasonable accommodations that are a specific obligation of the employer or other party.
- To provide goods or services not allocable to the approved project.
- To supplant existing State, local, tribal, or private funding of infrastructure or services, such as staff salaries, etc.
- To be used by local entities to satisfy State matching requirements.
- To pay for construction.
- To pay for capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life as a direct cost except with the prior written approval of the Federal awarding agency.
- In accordance with 45 CFR §75.476, the cost of independent research and development, including their proportionate share of indirect costs, are unallowable.
- In accordance with 45 CFR §75.216(b), except for grants awarded under the Small Business Innovative Research (SBIR) and Small Business Technology Transfer Research (STTR) programs (15 U.S.C. 638), no HHS funds may be

paid as profit to any recipient even if the recipient is a commercial (for-profit) organization. Profit is any amount in excess of allowable direct and indirect costs.

- To expend funds related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the Congress or any state government, state legislature or local legislature or legislative body.

**12. Reporting Requirements.** Recipients must comply with the frequency and content requirements outlined in the Program Terms and Conditions of award. Failure to submit programmatic and financial reports on time may be basis for withholding financial assistance payments, suspension, termination or denial of continued funding. Recipient’s failure to timely submit such reports may result in a designation of “high risk” for the recipient organization and may jeopardize potential future funding from the U.S. Department of Health & Human Services. The general information and guidance for financial and programmatic reporting provided below supplements the specifics included in the Program Terms and Conditions.

Prior to closeout of the grant, Recipients must submit a tangible personal property report. Specific information is provided below and will be reiterated in the pre-closeout letter sent to all Recipients.

FINANCIAL REPORTING

Quarterly Financial Reporting

Recipient must report, on a quarterly basis, cash transaction data via the Payment Management System (PMS) using the Federal Financial Report (SF-425 or FFR) form. The FFR combines the information that grant recipients previously provided using two forms: the Federal Cash Transactions Report (PSC-272) and the Financial Status Report (SF-269). Cash transactions data is reflected through completion of lines 10a-10c on the FFR. Recipient must include information on indirect costs if approved as part of grant award. The quarterly FFR is due within (30) days after the end of each quarter. Reporting deadlines are outlined below.

For disbursement activity during the months of:

- October 1 through December 31 (1<sup>st</sup> Quarter)
- January 1 through March 31 (2<sup>nd</sup> Quarter)
- April 1 through June 30 (3<sup>rd</sup> Quarter)
- July 1 through September 30 (4<sup>th</sup> Quarter)

The FFR is due on:

- January 30
- April 30
- July 30
- October 30

Instructions on how to complete the FFR can be found (after logging on) at: <https://pms.psc.gov/pms-user-guide/federal-financial-report.html>.

Semi-Annual, Annual, and Final Expenditure Reporting

Recipient must also report on Federal expenditures, Recipient Share (if applicable), and Program Income (if applicable and/or allowable) at least annually. Frequency of expenditure reporting, whether semi-annually or annually, is stipulated in the Program Terms and Conditions of award. This information is reflected through completion of lines 10.d through 10.o of the FFR. Recipient must complete an online FFR form via the GrantSolutions.gov FFR module (not the Payment Management System as is used for quarterly FFRs) or submit a

completed FFR form as a Grant Note to GrantSolutions.gov to comply with expenditure reporting requirements.<sup>6</sup> Recipients should follow program specific guidance. As appropriate, all parts of the form (lines 1-9 and 10.d-13) must be completed except for lines 10.a-10.c. Recipient must include information on indirect costs if approved as part of grant award. GrantSolutions can be accessed via the following link <https://www.grantsolutions.gov>.

The final FFR must show cumulative expenditures under the award and any unobligated balance of federal funds and as appropriate, all other parts of the form must be completed except for line items 10.a through 10.c. Final, federal cash information (lines 10.a through 10.c) will be reported to the Payment Management System based upon the quarterly schedule established for submission of these reports (see *Quarterly Financial Reporting* section within this term and condition). The final expenditure report cannot show any unliquidated obligations.

Semi-annual expenditure reports are due no later than 30 days following the applicable six-month period. Annual FFRs are due no later than 90 days following the applicable budget period end date or 12-month period for multi-year budget periods and final FFRs are due no later than 90 days following the project period end date.

Per 45 CFR §75.309(b), a non-Federal entity must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the final FFR. This deadline may be extended with prior written approval from the CMS Grants Management Specialist.

#### PROGRAMMATIC REPORTING

In accordance with 45 CFR §75.301, *Performance Measurement*, Recipients must relate financial data to performance accomplishments of the Federal award and provide cost information to demonstrate cost effective practices (e.g., through unit cost data). Performance will be measured in a way that will help CMS and other non-Federal entities to improve program outcomes, share lessons learned, and spread the adoption of promising practices.

#### TANGIBLE PERSONAL PROPERTY REPORTING

The Tangible Personal Property Report (SF-428) is a standard form to be used by awarding agencies to collect information related to tangible personal property when required by a Federal financial assistance award. This form allows recipients to request specific disposition of federally-owned property and acquired equipment. This form also provides a means for calculating and transmitting appropriate compensation to CMS for residual unused supplies. The form consists of the cover sheet (SF-428) and three attachments to be used as required: Annual Report, SF-428-A; Final (Award Closeout) Report, SF-428-B; and a Disposition Request/Report, SF-428-C. A Supplemental Sheet, SF-428-S, may be used to provide detailed individual item information.

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<sup>6</sup> The use of the dual systems (GrantSolutions and PMS) is not applicable for those entities engaged in a pilot program with PMS. Recipients will be notified in the Program Terms and Conditions if annual and final expenditure FFRs should be submitted to PMS.

Recipients are required to complete the SF-428-B and the SF-428-S (as applicable) at the time of award closeout. The report covers federally owned property, acquired equipment with an acquisition cost of \$5,000 or more, and residual unused supplies with a total aggregate fair market value exceeding \$5,000 not needed for any other federally sponsored programs or projects.

### PATENTS AND INVENTIONS

In accordance with 45 CFR §75.322(c), all Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401. If applicable, Recipients must report any inventions on an annual basis using the non-competing continuation application or annual progress report for multi-year budget periods. A Final Invention Statement and Certification (Form HHS 568) must be completed and submitted within 90 days following the expiration or termination of a grant or cooperative agreement. The Statement must include all inventions which were conceived or first actually reduced to practice during the course of work under the grant or award, from the original effective date of support through the date of completion or termination. The Statement shall include any inventions reported previously for grants and cooperative agreements as part of a non-competing continuation application or annual progress report. Recipients must also provide details about all inventions that have been licensed but not patented, and include details on income resulting from HHS-funded inventions and patents. Unpatented research products or resources—research tools—may be made available through licensing to vendors or other investigators. Income earned from any resulting fees must be treated as program income. This reporting requirement is applicable to grants and cooperative agreements issued by the U.S. Department of Health & Human Services in support of research and research-related activities. For further guidance, please see the HHS Grants Policy Statement: *Patents and Inventions* and *Inventions Reporting*.

- 13. Payment.** The Division of Payment Management (DPM) does not award grants. The issuance of grant awards and other financial assistance is the responsibility of the awarding agencies. Once an award is made, the funds are posted in recipient accounts established in the Payment Management System (PMS). Recipients may then access their funds by using the PMS funds request process.

The PMS funds request process enables Recipients to request funds using a Personal Computer with an Internet connection. The funds are then delivered to the recipient via Electronic Funds Transfer (EFT). If you are a new grant recipient, please go to <https://pms.psc.gov/grant-recipients/access-newuser.html> to find information to register in PMS. If you need further help with that process, please contact the One-DHHS Help Desk via email at [pmssupport@psc.gov](mailto:pmssupport@psc.gov) or call (877) 614-5533 for assistance.

- 14. Continuation of Funding.** The recipient must submit a non-competing continuation application each year as a prerequisite to continued funding if a project period is comprised of multiple budget periods. The initial NoA identifies the project period, which may include multiple 12-month budget periods. Continued funding is contingent on adequate progress, compliance with the terms and conditions of the previous budget period, and the availability of funds. Non-competing application instructions will be provided by the Grants Management Specialist to recipients prior to applicable budget period end dates.



**15. Funding for Recipients.** All funding provided under this award shall be used by the Recipient exclusively for the program referenced in the Notice of Award and described in the Notice of Funding Opportunity and delineated in the Recipient's approved proposal. This includes any approved revisions, as applicable, made subsequent to the Recipient's approved proposal. Per 45 CFR §75.309(a), a non-Federal entity may charge to the Federal award only allowable costs incurred during the period of performance (except as described in 45 CFR §75.461) and any costs incurred before the HHS awarding agency or pass-through entity made the Federal award that were authorized by the Federal awarding agency or pass-through entity. Funds available to pay allowable costs during the period of performance include both Federal funds awarded and carryover balances. Any funds used for any purpose other than for the approved program, including disallowed costs, should be returned to the United States Treasury. Instructions for returning funds including interest earned in excess of \$500 are available at <https://pms.psc.gov/grant-recipients/returning-funds-interest.html>.

**16. Public Reporting.** When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing the project funded in whole or in part with Federal money, all Recipients receiving Federal funds, including but not limited to State, local, tribal governments and recipients of Federal research grants, shall clearly state: (1) the percentage of the total costs of the program or project which will be financed with Federal money; (2) the dollar amount of Federal funds for the project or program; and (3) the percentage and dollar amount of the total costs of the project or program that is financed by nongovernmental sources. See also, Standard Terms and Conditions 17. Acknowledgement of Sponsors and 18. Use of Data and Work Products.

**17. Acknowledgement of Sponsors.** All publications, press announcements, posters, oral presentations at meetings, seminars, and any other information-dissemination format, including but not limited to electronic/digital media that is related to this project must include a formal acknowledgement of support as well as a disclaimer as follows: "This [project/publication/program/website] [is/was] supported by the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services (HHS) as part of an award totaling \$XX with xx percentage financed with nongovernmental sources. The contents are those of the author(s) and do not necessarily represent the official views of, nor an endorsement, by CMS, HHS or the U.S. Government."

- (a) It is the policy of the Department of Health and Human Services (HHS) that the results and accomplishments of the activities it funds should be made available to the public. The Recipient is expected to make the results and accomplishments of its activities available to the research community and to the public at large. The Recipient shall submit the following to the CMS Project Officer for review and comment unless specified otherwise in the Program Terms and Conditions:
- (i) At least 30 days prior to its release, publications that report results from or describe information obtained through this award. Note: One copy of each publication, regardless of format, resulting from work performed under an HHS project must accompany the annual or final progress report submitted to CMS.
  - (ii) At least 30 days prior to its release, any formal presentation of any report or statistical or analytical material based on information obtained through this award. Formal presentation includes papers, articles, professional publication, speeches, and testimony.

- (iii) At least 30 days prior to their release, presentation-related material, such as abstracts, power point presentations or other slide decks, posters, and videos.
- (iv) At least 30 days prior to release, all public materials including but not limited to, brochures, recruitment materials, informational materials, advertisements, website copy, website pages, videos, and op-ed articles.
- (v) At least 7 days prior to release, any press release or media advisory concerning the outcome of activities supported through this award.
- (vi) At least 7 days prior to release, all media interviews, media requests, releases of information, filming, and broadcasts.

For 1 year after completion of the project, the Recipient shall continue to submit for review and comment all publications, presentations, and communications resulting from this award or based on information obtained through this award, including papers, articles, professional publications, power point presentations, posters, speeches, announcements, and testimony in any format, including digital technology.

(b) It is the policy of the Department of Health and Human Services that the Recipient must communicate to CMS how the dollar amounts and funding percentages are calculated, including whether or not indirect costs have been incorporated. Recipient must submit this information to CMS for review and comment for each applicable type of result/accomplishment according to the same timeline schedule outlined in 17(a).

(c) Specifically excluded from the review and comment process are internal presentations, information discussions, in general, class lectures, and informal meetings and conversations with community leaders. However, if such a presentation or slide deck is later re-purposed for a public event, it will need to be submitted in advance for CMS review.

(d) One copy of each publication resulting from work performed under an HHS grant-supported project must accompany the final progress report.

**18. Use of Data and Work Products.** At any phase of the project, including the project's conclusion, the Recipient, if so requested by the CMS Project Officer, shall submit copies of analytic data file(s) with appropriate documentation, representing the data developed/used in end-product analyses generated under the award. The analytic file(s) may include primary data collected, acquired or generated under the award and/or data furnished by CMS. The content, format, documentation, and schedule for production of the data file(s) will be agreed upon by the Principal Investigator/Project Director and the CMS Project Officer. The negotiated format(s) could include both file(s) that would be limited to CMS's internal use and file(s) that CMS could make available to the general public.

All data provided by CMS will be used for the research described in this grant award only and in connection with the Recipient's performance of its obligations and rights under this program. Recipient has an obligation to collect and secure data for future monitoring by CMS. The Recipient will return any data provided by CMS or copies of data at the conclusion of the project. All proprietary information and technology of the Recipient are and shall remain the sole property of the Recipient.

In the course of this research, whenever the Principal Investigator/Project Director determines that a significant new finding has been developed, he/she will communicate it to the CMS Project Officer before formal dissemination to the general public. The Recipient shall notify CMS of research conducted for publication.

- 19. System of Award Management and Universal Identifier Requirements.** This award is subject to the requirements of 2 CFR part 25, Appendix A which is specifically incorporated herein by reference. For the full text of 2 CFR part 25, refer to **Attachment A** to these Standard Terms and Conditions. To satisfy these requirements, Recipient must maintain an active registration in the System for Award Management (SAM) database. Please consult the SAM website (<https://www.sam.gov/SAM/>) for more information.
- 20. Trafficking in Persons.** This award is subject to the requirements of Section 106 (g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104). For the full text of the award term, refer to **Attachment B** to these Standard Terms and Conditions.
- 21. Subaward Reporting and Executive Compensation.** This award is subject to the reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by Section 6202 of Public Law 110-252 and implemented by 2 CFR Part 170. Recipients must report information for each first-tier subaward of \$25,000 or more in Federal funds and executive total compensation for the Recipient's and Subrecipients' five most highly compensated executives as outlined in Appendix A to 2 CFR Part 170. Information about the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) is available at [www.fsrs.gov](http://www.fsrs.gov). For the full text of the award term, refer to **Attachment C** to these Standard Terms and Conditions.
- 22. Employee Whistleblower Protections.** All Recipients must inform their employees in writing of employee whistleblower rights and protections under 41 U.S.C. 4712 in the predominant native language of the workforce. For the full text of the award term, re *Pilot Program for Enhancement of Contractor Employee Whistleblower Protections*, refer to **Attachment D** to these Standard Terms and Conditions.
- 23. Conflict of Interest Policies.** In accordance with 45 CFR §75.112, these terms and conditions establish the conflict of interest policy requirements for recipients receiving federal discretionary grant funding from CMS. Recipient must comply with the conflict of interest policy requirements outlined in **Attachment E** to these Standard Terms and Conditions.
- 24. Recipient Integrity and Performance.** In accordance with Appendix XII to 45 CFR part 75, Recipient must comply with reporting requirements for matters related to recipient integrity and performance. For the full text of the award term, refer to **Attachment F** to these terms and conditions.
- 25. Accessibility Provisions.** Recipients of federal financial assistance (FFA) from HHS must administer their programs in compliance with federal civil rights laws that prohibit discrimination on the basis of race, color, national origin, disability, age and, in some circumstances, religion, conscience, and sex. This includes ensuring programs are accessible to persons with limited English proficiency. The HHS Office for Civil Rights provides guidance on complying with civil rights laws enforced by HHS. Please see

<https://www.hhs.gov/civil-rights/for-providers/provider-obligations/index.html>; and <http://www.hhs.gov/ocr/civilrights/understanding/section1557/index.html>.

- Recipients of FFA must ensure that their programs are accessible to persons with limited English proficiency. HHS provides guidance to recipients of FFA on meeting their legal obligation to take reasonable steps to provide meaningful access to their programs by persons with limited English proficiency. Please see <https://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/fact-sheet-guidance/index.html> and <https://www.lep.gov>. For further guidance on providing culturally and linguistically appropriate services, recipients should review the National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care at <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=53>.
- Recipients of FFA also have specific legal obligations for serving qualified individuals with disabilities. Please see <http://www.hhs.gov/ocr/civilrights/understanding/disability/index.html>.
- HHS funded health and education programs must be administered in an environment free of sex discrimination, including sexual harassment. Please see: <https://www.hhs.gov/civil-rights/for-individuals/sex-discrimination/index.html>; <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>; and <https://www.eeoc.gov/eeoc/publications/upload/fs-sex.pdf>.
- Recipients of FFA must also administer their programs in compliance with applicable federal religious nondiscrimination laws and applicable federal conscience protection and associated anti-discrimination laws. Collectively, these laws prohibit exclusion, adverse treatment, coercion, or other discrimination against persons or entities on the basis of their consciences, religious beliefs, or moral convictions. Please see: <https://www.hhs.gov/conscience/conscience-protections/index.html>; and <https://www.hhs.gov/conscience/religious-freedom/index.html>.

Recipients should review and comply with the reporting and review activities regarding accessibility requests outlined in Attachment G, to these Standard Terms and Conditions.

Please contact the HHS Office for Civil Rights for more information about obligations and prohibitions under federal civil rights laws at <https://www.hhs.gov/ocr/about-us/contact-us/index.html> or call 1-800-368-1019 or TDD 1-800-537-7697.

**26. Fraud, Waste, and Abuse.** The HHS Office of the Inspector General (OIG) maintains a toll-free number (1-800-HHS-TIPS [1-800-447-8477]) for receiving information concerning fraud, waste, or abuse under grants and cooperative agreements as well as the HHS OIG website at <https://oig.hhs.gov/fraud/report-fraud/index.asp>. Information also may be submitted by email to [hhstips@oig.hhs.gov](mailto:hhstips@oig.hhs.gov) or by mail to Office of the Inspector General, U.S. Department of Health & Human Services, Attn: HOTLINE, 330 Independence Ave., SW, Washington, DC 20201. Such reports are treated as sensitive material and submitters may decline to give their names if they choose to remain anonymous.

**27. Human Subjects Protection.** If applicable to Recipient's program, the Recipient bears ultimate responsibility for protecting human subjects under the award, including human subjects at all sites, and for ensuring that a Federal-wide Assurance (FWA) approved by the Office for Human Research Protections (OHRP) and certification of Institutional Review Board (IRB) review and approval have been obtained before human subjects research can be conducted at each collaborating site. For more information about OHRP, FWA, and IRBs, please see the following link: <http://www.hhs.gov/ohrp/index.html>. Recipients may not draw funds from the payment system, request funds from the paying office, or make obligations against Federal funds for research involving human subjects at any site engaged in nonexempt research for any period not covered by both an OHRP-approved assurance and IRB approval consistent with 45 CFR Part 46. Costs associated with IRB review of human research protocols are not allowable as direct charges under grants and cooperative agreements unless such costs are not covered by the organization's indirect cost rate.

HHS requires Recipients and others involved in grant/cooperative agreement-supported research to take appropriate actions to protect the confidentiality of information about and the privacy of individuals participating in the research. Investigators, IRBs, and other appropriate entities must ensure that policies and procedures are in place to protect identifying information and must oversee compliance with those policies and procedures.

**28. Project and Data Integrity.** Recipient shall protect the confidentiality of all project-related information that includes personally identifying information.

The Recipient shall assume responsibility for the accuracy and completeness of the information contained in all technical documents and reports submitted. The CMS Project Officer shall not direct the interpretation of the data used in preparing these documents or reports.

At any phase in the project, including the project's conclusion, the Recipient, if so requested by the CMS Project Officer, must deliver to CMS materials, systems, or other items used, developed, refined or enhanced in the course of or under the award. The Recipient agrees that CMS shall have a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use and authorize others to use the items for Federal government purposes.

**29. Public Policy Requirements.** By signing the application, the Authorized Organizational Official (AOR) certifies that the organization will comply with applicable public policies. Once a grant is awarded, the recipient is responsible for establishing and maintaining the necessary processes to monitor its compliance and that of its employees and, as appropriate, subrecipients and contractors under the grant with these requirements. Recipient should consult these terms and conditions, the applicable Appropriations Law, and Exhibit 3 of the HHS Grants Policy Statement, titled *Public Policy Requirements*, located in Section II, pages 3-6, for information on potentially applicable public policy requirements. Additional potentially applicable public policy requirements not included within these sources include:

- Military Recruiting and Reserve Officer Training Corps Access 10 U.S.C. §983 [all types of applications and awards to Institutions of Higher Education]
- Text Messaging While Driving (EO 13513) [all awards]
- Ban on Cloning of Human Beings (Presidential memorandum of March 4, 1997) [all awards]

See also Standard Term and Condition 44. FY 2019 Appropriations Provision.

- 30. Green Procurement.** To mitigate the environmental impacts of acquisition of IT and other products/equipment, Recipients are encouraged to: (1) participate in “Green procurement” based on the HHS Affirmative Procurement Plan ([http://www.responsiblepurchasing.org/UserFiles/File/HHS\\_Affirmative%20Procurement%20Plan\\_2006.pdf](http://www.responsiblepurchasing.org/UserFiles/File/HHS_Affirmative%20Procurement%20Plan_2006.pdf)) and similar guidance from the Environmental Protection Agency (EPA) and the President’s Council on Environmental Quality (CEQ); (2) use electronic products that are Energy Star® compliant and Electronic Product Environmental Assessment Tool (EPEAT) Silver registered or higher when available; (3) activate Energy Star® features on all equipment when available; (4) use environmentally sound end-of-life management practices, including reuse, donation, sale and recycling of all electronic products.
- 31. Withdrawal.** If the Recipient decides to withdraw from this award prior to the end of the project period, it must provide written notification (both hard copy and via email) to the CMS Grants Management Specialist at least fifteen (15) days in advance of the date of official withdrawal and termination of these terms. The letter must be signed by the AOR and other appropriate individuals with authority. CMS will not be liable for any withdrawal close-out costs that are borne by the Recipient. Recipients have three (3) days to return all unused grant funds.
- 32. Mandatory Disclosures.** Consistent with 45 CFR §75.113, applicants and recipients must disclose in a timely manner, in writing to CMS, with a copy to the HHS Office of the Inspector General (OIG), all information related to violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. Additionally, subrecipients must disclose, in a timely manner, in writing to the prime recipient (pass through entity) and the HHS OIG, all information related to violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. Disclosures must be sent in writing to CMS and to the HHS OIG at the following addresses:

U.S. Department of Health & Human Services  
Centers for Medicare & Medicaid Services  
Office of Acquisition and Grants Management  
Attn: Director, Division of Grants Management, Mandatory Grant Disclosures  
7500 Security Blvd, Mail Stop B3-30-03  
Baltimore, MD 21244-1850

Materials should also be scanned and emailed to your Grants Management Specialist.

**AND**

U.S. Department of Health & Human Services  
Office of Inspector General  
ATTN: Mandatory Grant Disclosures, Intake Coordinator  
330 Independence Avenue, SW, Cohen Building  
Room 5527  
Washington, DC 20201

Fax: (202) 205-0604 (Include "Mandatory Grant Disclosures" in subject line) or  
Email: [MandatoryGranteeDisclosures@oig.hhs.gov](mailto:MandatoryGranteeDisclosures@oig.hhs.gov)

Failure to make required disclosures can result in any of the remedies described in 45 CFR §75.371, *Remedies for noncompliance*, including suspension or debarment (See 2 CFR parts 180 & 376 and 31 U.S.C. 3321).

- 33. Remedies for noncompliance.** If a non-Federal entity fails to comply with Federal statutes, regulations, or the terms and conditions of a Federal award, the HHS awarding agency or pass-through entity may impose additional conditions, as described in 45 CFR §75.207, *Specific award conditions*. If the HHS awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the Federal awarding agency or pass-through entity may take one or more actions as set forth in 45 CFR §75.371, *Remedies for noncompliance*.
- 34. Suspension and Debarment Regulations.** Recipient must comply with 45 CFR §75.213, which states that non-federal entities and contractors are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689 at 2 CFR parts 180 and 376. These regulations restrict awards, subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.
- 35. Termination.** CMS may terminate this grant agreement, or any part hereof, if the Recipient materially fails to comply with the terms and conditions of this award, or provisions of law pertaining to agreement performance. Materially fails includes, but is not limited to, violation of the terms and conditions of the award; failure to perform award activities in a satisfactory manner; improper management or use of award funds; or fraud, waste, abuse, mismanagement, or criminal activity. In addition, CMS may terminate this award if the Recipient fails to provide the Government, upon request, with adequate written and signed assurances of future performance. CMS will promptly notify the Recipient in writing of such termination and the reasons for it, together with the effective date. Recipient may terminate this award as set forth in 45 CFR §75.372, *Termination*.
- 36. Bankruptcy.** In the event the Recipient or one of its subrecipients enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Recipient agrees to provide written notice of the bankruptcy to the CMS Grants Management Specialist and CMS Project Officer (PO). This written notice shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing and sent to the CMS Grants Management Specialist and PO. This notice shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, a copy of any and all of the legal pleadings, and a listing of Government grant and cooperative agreement numbers and grant offices for all Government grants and cooperative agreements against which final payment has not been made.
- 37. Disposition of Federally Owned Property, Equipment, and Residual Unused Supplies.** Upon completion (or early termination) of a project, Recipient must take appropriate disposition actions. Recipients of funding from CMS should proceed in accordance with the guidance provided within this term and condition.

Recipient must complete and submit the **SF-428-B Tangible Personal Property Report, Final Report** (also see Standard Term and Condition #12, Reporting Requirements). The Tangible Personal Property Report (SF-428) is a standard form to be used by awarding agencies to collect information related to tangible personal property when required by a Federal financial assistance award. This form allows recipients to request specific disposition of federally-owned property and acquired equipment. This form also provides a means for calculating and transmitting appropriate compensation to CMS for residual unused supplies. As noted in 1.b of this report, if your agency is in possession of Federally-owned property or acquired equipment (defined as nonexpendable personal property with an acquisition cost of \$5,000 or more under the award), you must also submit a **SF-428-S, Supplemental Sheet**, that lists and reports on all Federally-owned or acquired equipment under the specific grant or cooperative agreement award. If there is no tangible personal property to report, select "d." in section 1 of the SF-428-B and indicate "none of the above." Recipient must request specific disposition instructions from CMS if the Recipient has federally-owned property or if the following guidance is insufficient for the Recipient to properly complete disposition.

- Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to CMS.
- Except as provided in 45 CFR §75.319(b), items of equipment with a current per-unit fair market value in excess of \$5,000 may be retained by the non-Federal entity or sold. If there is no longer a use for the equipment under the original project or program or for other activities currently or previously supported by CMS or other HHS awarding agencies, except as otherwise provided in Federal statutes and regulations, CMS is entitled to an amount calculated by multiplying the current market value or proceeds from sale by CMS's percentage of participation in the cost of the original purchase. If the equipment is sold, CMS may permit the non-Federal entity to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.
- Reportable Residual Unused Supplies, which in the aggregate exceed \$5,000 in fair market value which cannot be used by the original project or program nor are needed for other activities currently or previously supported by CMS, other HHS awarding agencies, or another Federal agency, must be retained by the Recipient for use on other activities or sold, but Recipient must, in either case, compensate the Federal government for its share. CMS is entitled to an amount calculated by multiplying the current fair market value or proceeds from sale by CMS's percentage of participation in the cost of the original purchase.
- In certain instances, the non-Federal entity may transfer title to the property to the Federal government or to an eligible third party subject to prior approval by CMS. In such cases, the non-Federal entity must be entitled to compensation for its attributable percentage of the current fair market value of the property.

**38. Affirmative Duty to Track All Parties to the Award.** Recipient must at a minimum regularly track all parties to the award in both the GSA database that is known as the System for Award Management (SAM) and The Office of the Inspector General (OIG) List of Excluded Individuals and Entities (LEIE). The purpose of this affirmative duty is to track all



parties that include health care, commercial, non-profit, and other people and entities in order to report immediately to the CMS Project Officer (PO) and Grants Management Specialist those that cannot participate in federal programs or receive federal funds. The Recipient cannot have any persons or entities on the award that cannot participate in federal programs or receive federal funds. If any of these systems are not publicly available, then the Recipient must comply with the purpose and intent of this requirement using a process that meets at least the level of scrutiny provided by these databases.

The Recipient shall provide the CMS PO and Grants Management Specialist with the National Provider Identifier (NPI), Tax ID, and EIN, as applicable, of all Key Personnel and/or Entities to the award that may include Subrecipients. This list shall be provided to CMS as a Grant Note in GrantSolutions within thirty (30) days from the start of the award and must be maintained up-to-date in real time throughout the award.

- 39. Pass Through Entities, Subrecipients, and Contractors.** As outlined in 45 CFR §75.351, *Subrecipient and contractor determinations*, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or contractor. A pass-through entity means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program (45 CFR §75.2, *Definitions*). As described in 45 CFR §75.351, a subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient while a contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. Characteristics for both types of relationships are included in 45 CFR §75.351. All pass-through entities must ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the information outlined in 45 CFR §75.352, *Requirements for pass-through entities*, at the time of subaward and if any of these data elements change, include the changes in subsequent subaward modifications.
- 40. Subrecipient Equal Treatment.** The Recipient must comply with 45 CFR Part 87, including the provision that no State or local government Recipient nor any intermediate organization receiving funds under any program shall, in the selection of service providers, discriminate for or against an organization's religious character or affiliation.
- 41. Recipient's Responsibility for Subrecipients.** The Recipient is responsible for the performance, reporting, and spending for each Subrecipient. The Recipient will ensure the timeliness and accuracy of required reporting for each site of service and Subrecipient under the award. The Recipient is responsible for the performance and progress of each site of service or Subrecipient toward the goals and milestones of the program. The Recipient will take necessary corrective action for any site of service or Subrecipient that is not meeting the goals and milestones of the program, as set forth in the NOFO.
- 42. Nondiscrimination.** The Recipient and Subrecipients will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended

(42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee- 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

**43. Reservation of Rights.** Nothing contained in this Agreement is intended or shall be construed as a waiver by the United States Department of Justice, the Internal Revenue Service, the Federal Trade Commission, HHS Office of the Inspector General, or CMS of any right to institute any proceeding or action against Recipient for violations of any statutes, rules or regulations administered by the Government, or to prevent or limit the rights of the Government to obtain relief under any other federal statutes or regulations, or on account of any violation of this Agreement or any other provision of law. The Agreement shall not be construed to bind any Government agency except CMS, and this Agreement binds CMS only to the extent provided herein, unless prohibited by law. The failure by CMS to require performance of any provision shall not affect CMS's right to require performance at any time thereafter, nor shall a waiver of any breach or default result in a waiver of the provision itself.

**44. FY 2019 Appropriations Provision.** U.S. Department of Health & Human Services (HHS) recipients must comply with all terms and conditions outlined in their grant award(s), including grant policy terms and conditions contained in applicable HHS Grants Policy Statements, and requirements imposed by program statutes and regulations, Executive Orders, and HHS grant administration regulations, as applicable; as well as any requirements or limitations in any applicable appropriations acts.

This award is subject to the "Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019, and Continuing Appropriations Act, 2019," Public Law 115-245, signed on September 28, 2018. As is noted under Division B, Title II, General Provisions, Section 202, none of the funds appropriated in this title shall be used to pay the salary of an individual, through a grant or other extramural mechanism, at a rate in excess of Executive Level II. This salary cap applies to direct salaries and to those salaries covered under indirect costs, also known as facilities and administrative (F & A) costs<sup>7</sup>. Please consult the following link to determine the applicable current salary cap: <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/EX.pdf>.

Recipients must comply with all General Provisions included within the Appropriations Law for Health and Human Services (HHS) as applicable unless the provision is specific to another HHS agency other than the Centers for Medicare and Medicaid Services. Recipient should

<sup>7</sup> Per the HHS Grants Policy Statement, page II-39 (Salaries and Wages), "If there is a salary limitation, it does not apply to consultant payments or to contracts for routine goods and services, but it does apply to subrecipients (including consortium participants)." Though the salary limitation does not apply to consultant costs, recipient must still provide justification to include examples of typical market rates for this service in your area.

review General Provisions 201-234. These provisions are summarized via <https://www.congress.gov/bill/115th-congress/house-bill/6157>. Refer to Division B, Title II, Department of Health and Human Services.