



EDDIE BAZA CALVO
GOVERNOR

RAY TENORIO
LIEUTENANT GOVERNOR

GOVERNMENT OF GUAM
DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES
DIPATTAMENTON SALUT PUPBLEKO YAN SETBISION SUSIAT



LEO G. CASIL
ACTING DIRECTOR

JUL 27 2018

**REQUEST FOR PROPOSALS (RFP)
ADULT DAY CARE (ADC) SERVICES PROGRAM
RFP#: RFP/DPHSS-2018-006**

AMENDMENT #1

1. The following language is amended on page 15 of 168, 7. **DEADLINE** to now read:
 - d. All inquiries, clarifications, or questions must be submitted in writing **no later than 3:00 p.m., Chamorro Standard Time (Guam Time), Thursday, July 26, 2018** and shall be responded to **no later than 5:00 p.m., Chamorro Standard Time (Guam Time), Monday, July 30, 2018**. Inquiries, clarifications, or questions shall contain the RFP number RFP/DPHSS-2018-006 (ADC) in the subject line and must be addressed as follows:

Ms. Charlene D. San Nicolas
Program Coordinator IV
Department of Public Health and Social Services
Division of Senior Citizens

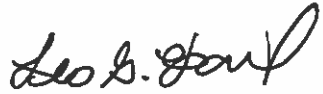
Deliver to: 130 University Drive, Suite 8, University Castle Mall
Mangilao, Guam 96913

Email to: charlene.sannicolas@dphss.guam.gov

Fax to: (671) 735-7416
2. The following language is amended on page 39 of 160, item (12) **Offerors are required to submit Monthly Program Reports.** (b) to now read:
 - (12) **Offerors are required to submit Monthly Program Reports.**
 - (b) **Within 5 Days.** The end of Fiscal Year (September) or end of contact (expiration, termination, or cancellation) reports are due, no later than 3:00 p.m. five (5) working days at the end of the month being reported on, or the date the contract ends. In the event the contract ends during a month, please note it is five (5) working days, from the date the contract ends, i.e. pro-rata.

Timely submission of Monthly Program Reports is required because DPHSS has reporting requirements it needs to meet as well.

3. Amendment to **SECTION XIX. APPENDICES SAMPLE CONTRACT, Appendix D-1** Sample Service Provider Agreement which is attached.
4. The following language is amended on page 167 of 168, Appendix E-6 to now read:
Appendix E-7 Do's and Don'ts as to Reports, Invoices, and Payments which is attached.
5. No other changes.


LEO G. CASIL
Acting Director, DPHSS

Attachments

ACKNOWLEDGEMENT COPY:	
RECEIVED BY:	_____
	(Print/Sign)
COMPANY NAME:	_____
DATE:	_____

Instructions: Please print, sign and date in blue ink on the Amendment #1 marked Acknowledgement Copy and submit by email with document in pdf to Ms. Monica D. Untalan at monica.untalan@dphss.guam.gov

ADULT DAY CARE (ADC) SERVICES PROGRAM
RFP/DPHSS-2018-006 (ADC)
Amendment #1

Attachments

XIX. APPENDICES SAMPLE CONTRACT

Appendix D-1 Sample Service Provider Agreement

XX. APPENDICES ADDITIONAL INFORMATION

Appendix E-7 Do's and Don'ts as to Reports,
Invoices, and Payments

APPENDIX D-1 SAMPLE CONTRACT

**SERVICE PROVIDER AGREEMENT
ADULT DAY CARE (ADC) SERVICES PROGRAM
BETWEEN
THE DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES
DIVISION OF SENIOR CITIZENS
GUAM STATE OFFICE ON AGING
AND
(AWARDED -SERVICE PROVIDER)**

RFP/DPHSS-2018-006

Federally and Locally Funded. Federal grant funds from HHS ACL OAA Title III – Grant, Title III-B Supportive Services, CFDA 93.044. Programs; prime award to DPHSS, DSC are passed through as a sub-grant award, as well as local government of Guam Matching and Over Match Funds.

THIS AGREEMENT is made by and between the Department of Public Health and Social Services, Division of Public Health, Division of Senior Citizens, Office on State Aging (DPHSS, DPHSS, DSC) a line agency of the government of Guam, whose address is 123 Chalan Kareta, Mangilao, Guam 96913-6304, and [*Formal Legal Name of Service Provider*] (Service Provider, Contractor or Subrecipient) whose address is [*Address*].

WHEREAS, DPHSS provides Guam-wide programs in keeping with the Older Americans Act, as amended through P.L. 114-144 (Older Americans Act, OAA), through its Division of Senior Citizens (DSC), Guam State Office on Aging (Guam SOA) through the use of non-profit, and for-profit qualified service providers.

WHEREAS, one of DPHSS, DSC's system of care Older Americans Act, Title III-B Supportive Services programs is its Adult Day Care Services Program, which DPHSS, DSC administers in keeping with: The United States Department of Health and Human Services (HHS), Administration for Community Living (ACL) formerly known as Administration on Aging (AOA), Older American Act Title III – Grants for State and Community Programs on Aging, CFDA 93.044, its HHS approved, Guam SOA Four Year State Plan 2015-2019, annual Prime Grant Award(s), Federal Appropriation Act(s) requirements, and the Uniform Administration Requirements, Cost Principals and Audit Requirements (Uniform Guidance 2 CFR Part 200) and the Uniform Guidance Administration Requirements Cost Principals and Audit Requirements for HHS (Uniform Guidance for HHS 45 CFR Part 75) and all applicable Federal and government of Guam laws, regulations, rules and guidance.

WHEREAS, DPHSS, DSC solicited qualified subrecipient service providers through the request for proposal process in RFP/DPHSS-2018-006 Adult Day Care Services (RFP 2018-006), describing the objectives of the program, the type of services required, specifying the type of data

(information, reports, and performance objectives) required of each offeror and the relative importance of particular qualifications, and that an award would be made in keeping with the evaluation factors set forth in in RFP 2018-006.

WITNESSETH, DPHSS, DSC and Service Provider, in consideration of mutual covenant hereinafter set forth, agree as follows:

SECTION I. INCORPORATION AND ORDER OF PRECEDENCE

The Federal Grant terms and conditions, RFP 2018-006 and Contractor's proposal are incorporated by reference into this Agreement as if fully-rewritten herein. In the event of any conflict among these documents, the following order and precedence shall apply:

- A. Federal Grant Fund requirements:
 - 1. Notice of Prime Grant Award HHS, ACL OAA Title III (as updated)
 - 2. Older Americans Act as amended through P.L. 114-144
 - 3. HHS 45 CFR Chapter XIII, Subchapter C, Part 1321
 - 4. ACL program requirements, handbooks and guidance
URL: <https://www.acl.gov/grants/managing-grant>
 - 5. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
 - 6. 45 CFR Part 75, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards
 - 7. HHS Grants Policy Statement
 - 8. Federal Funding Accounting and Transparency Act (FFATA)
 - 9. Anti-Lobbying Restriction for HHS Recipients
- B. Guam SOA Four Year State Plan 2015-2019 (as updated)
- C. Any contract amendment(s) in reverse chronological order
- D. This Agreement itself inclusive of attachments
 - 1. Attachment A - *Program Specifications, Prioritization of Services, Program Personnel Responsibilities, Requirements, Certification and Training, Administrative Requirements, Program Monies, Annual Audit*
 - 2. Attachment B - *Service Provider Negotiated and Approved Program Budget*
 - 3. Attachment C – *Notice of Grant Award (Notice of Prime Award)*
 - 4. Attachment D – *Subaward Data*
- E. RFP 2018-006
- F. Contractor's Proposal, inclusive of all signed forms

SECTION II. SCOPE OF SERVICES

Service Provider shall provide the services set forth in RFP 2018-006. A copy of RFP 2018-006 Program Specifications, Prioritization of Services, Program Personnel Responsibilities, Requirements, Certification and Training, Administrative Requirements, Program Monies, Annual Audit is attached to this Agreement as Attachment A for easy reference purposes.

SECTION III. CONTRACT TERM

- 3.1 **Effective Date.** The effective date of this Agreement will be the date of signature by the Governor of Guam or October 1, 2018, whichever is later (the Effective Date). DPHSS, DSC will issue a written Notice to Proceed to Service Provider after the Effective Date of this Agreement. Service Provider warrants that no services under this Agreement will be provided prior to the Effective Date.
- 3.2 **Initial Term.** The initial term of the contract shall be from the Effective Date through September 30, 2019.
- 3.3 **Renewal Term.** The contract may be renewed at the option of DPHSS, DSC for up to three (3) additional one (1) year periods (each a Renewal Term), upon satisfactory performance in keeping with the objectives of the federal grant and the terms of this Agreement, and subject to the appropriation, allocation, and availability of funds.
- 3.4 **Extension.** Additionally there shall be a special monthly extension period after the final Renewal Term on a month to month basis (each being a "Monthly Extension Period") or in special circumstances a combination of monthly periods for two or three months, to begin immediately after the expiration of the Final Renewal Term, provided that in no event may the parties agree to more than six (6) Monthly Extension Periods, singularly or in combination. The Monthly Extension Periods may be agreed to by the parties only if DPHSS, DSC is unable to continue the services uninterrupted under a new contract after a new solicitation and procurement undertaken by DPHSS, DSC. Any Monthly Extension Period is subject to Service Providers satisfactory performance of the objectives of the federal grant and terms of this Agreement, and the appropriation, allocation, and availability of funds.
- 3.5 **In the event funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, this Agreement shall be canceled and Service Provider shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in price of supplies or services delivered under the contract.**

SECTION IV. COMPENSATION FOR SERVICES

Subject to the appropriation, allocation, and availability of funds, DPHSS, DSC will compensate Service Provider for services performed pursuant to Section II. Scope of Services and the agreed to Service Provider Negotiated and Approved Program Budget set forth in more detail in

Attachment B attached hereto and incorporated herein as if fully rewritten for the Initial Term in the not exceed amount of _____ (\$) for the Initial Term.

The parties agree to negotiate in good faith as to compensation for any future Renewal Term.

SECTION V. NOTICES

Notices required by this Agreement shall be made in writing and delivered via U.S. mail postage (prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means (provided that receipt is confirmed). Any notice delivered or sent as described above shall be effective on the date received. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

If to DPHSS, DSC SOA:

[NAME]
[TITLE]
[AGENCY]
[STREET ADDRESS]
[CITY, STATE, ZIP]
[TELEPHONE #]
[FAX #]
[E-MAIL ADDRESS]

If to Service Provider:

[NAME]
[TITLE]
[AGENCY]
[STREET ADDRESS]
[CITY, STATE, ZIP]
[TELEPHONE #]
[FAX #]
[E-MAIL ADDRESS]

SECTION VI. FINANCIAL ACCOUNTABILITY AND GRANT ADMINISTRATION

6.1 Financial Management. Service Provider shall maintain a financial management system and financial records and shall administer funds received pursuant to this Agreement in accordance with all applicable federal and Guam requirements. Service Provider shall maintain detailed, itemized documentation and records of all income received and expenses incurred pursuant to this Agreement.

- 6.2 **Limitations on Expenditures.** Service Provider shall not be reimbursed or otherwise compensated for any expenditures incurred or services provided prior to the Effective Date or following the earlier of the expiration, cancellation or termination of this Agreement. DPHSS, DSC will only reimburse Service Provider for documented expenditures incurred during the Agreement that are: (i) reasonable and necessary to carry out the services; (ii) documented by contracts or other evidence of liability consistent with established DPHSS, DSC and Service Provider procedures; and (iii) incurred in accordance with all applicable requirements for the expenditure of funds payable under this Agreement.

SECTION VII. COOPERATION IN MONITORING AND EVALUATION

- 7.1 **DPHSS, DSC Responsibilities.** DPHSS, DSC will monitor, evaluate and provide guidance and direction to Subrecipient in the conduct of approved services performed under this Agreement. DPHSS, DSC has the responsibility to determine whether Service Provider has spent funds in accordance with applicable laws, regulations, including the federal audit requirements and agreements and shall monitor the activities of Subrecipient to ensure that Service Provider has met such requirements. DPHSS, DSC may require Service Provider to take corrective action if deficiencies are found.

7.2 **Service Provider -Subrecipient Responsibilities.**

- A. Service Provider will permit DPHSS, DSC to carry out monitoring and evaluation activities, including any performance measurement system required by applicable law, regulation, funding sources guidelines or by the terms and conditions of the applicable Notice of Prime Award (Attachment C) and Service Provider agrees to ensure, to the greatest extent possible, the cooperation of its agents, employees and board members in such monitoring and evaluation efforts. This provision shall survive the expiration or termination of this Agreement.
- B. Service Provider will cooperate fully with any reviews or audits of the activities under this Agreement by authorized representatives of DPHSS, DSC, Guam Public Auditor, HHS ACL or their authorized delegates, and Service Provider agrees to ensure to the extent possible the cooperation of its agents, employees and board members in any such reviews and audits. This provision shall survive the expiration or termination of this Agreement.
- C. Service Provider will ensure timely submission of all Monthly/Annual/Closing/Transition Reports and Data.

7.3 **Federal and Local Government of Guam Funding – Allowable Costs**

This procurement is funded with federal and local funds and is governed by the cost principles of the Office of Management and Budget (OMB). Allowable costs are those costs identified in the relevant OMB circulars and in the grant program’s authorizing legislation. All costs in this procurement must be reasonable, allocable, and necessary to the project, and they must also comply with Federal and the Government of Guam funding

statutes and regulations. See Cost Principles for Educational Institutions; Title 2 CFR Part 220, Cost Principles for State, Local and Indian Tribal Governments, Title 2 CFR Part 225, Cost Principles for Non-Profit Organizations, Title 2 CFR Part 230, the Federal Acquisition Regulations as well 2 GAR Division 4 Chapter 7 Cost Principles.

A. Improper Payments

Any item of expenditure by Service Provider under the terms of this Agreement which is found by auditors, investigators, and other authorized representatives of DPHSS, the Government of Guam Public Auditor, HHS ACL, the U.S. Government Accountability Office or the Comptroller General of the United States, or their delegates, to be improper, unallowable, in violation of federal or Guam law or the terms of the Notice of Grant Award or this Agreement, or involving any fraudulent, deceptive, or misleading representations or activities of Service Provider, shall become Service Provider's liability, to be paid by Service Provider from funds other than those provided by DPHSS, DSC under this Agreement or any other agreements between DPHSS and Service Provider. This provision shall survive the expiration or termination of this Agreement.

B. Audited Financial Statements

In any fiscal year in which Service Provider expends \$750,000 or more in federal awards during such fiscal year, including awards received as a subrecipient, Service Provider must comply with the federal audit requirements contained in the Uniform Guidance, 45 CFR Part 75, including the preparation of an audit by an independent Certified Public Accountant in accordance with the Single Audit Act Amendments of 1996, 31 U.S.C. 7501-7507, and with Generally Accepted Accounting Principles. If Service Provider expends less than \$750,000 in federal awards in any fiscal year, it is exempt from federal audit requirements, but its records must be available for review by DPHSS, the Government of Guam Public Auditor, appropriate officials of HHS ACL, the U.S. Government Accountability Office or the Comptroller General of the United States, or their delegates, and it must still have a financial audit performed for that year by an independent Certified Public Accountant. Service Provider will provide DPHSS, DSC with a copy of Service Provider's most recent audited financial statements, federal Single Audit report, if applicable (including financial statements, schedule of expenditures of federal awards, schedule of findings and questioned costs, summary of prior audit findings, and corrective action plan, if applicable), and management letter within thirty (30) days after execution of this Agreement and thereafter within nine (9) months following the end of Service Provider's most recently ended fiscal year.

C. Closeout

Final payment request(s) under this Agreement must be received by DPHSS, DSC no later than thirty (30) days from the earlier of the expiration date, cancellation date or termination date of this Agreement. No payment request will be accepted by DPHSS, DSC after this date without authorization from DPHSS, DSC. In consideration of the execution of this Agreement by DPHSS, DSC Service Provider agrees that acceptance of final payment from DPHSS, DSC will constitute

an agreement by Service Provider to release and forever discharge DPHSS, its agents, employees, representatives, affiliates, successors and assigns from any and all claims, demands, damages, liabilities, actions, causes of action or suits of any nature whatsoever, which Service Provider has at the time of acceptance of final payment or may thereafter have, arising out of or in any way relating to any and all injuries and damages of any kind as a result of or in any way relating to this Agreement. Service Provider's obligations to DPHSS, DSC under this Agreement shall not terminate until all closeout requirements are completed to the satisfaction of DPHSS, DSC. Such requirements shall include, without limitation, submitting final reports to DPHSS, DSC and providing any closeout-related information requested by DPHSS, DSC by the deadlines specified by DPHSS, DSC. This provision shall survive the expiration or termination of this Agreement.

SECTION VIII. PROCUREMENT STANDARDS – SUBRECIPIENT – FEDERAL GRANT FUNDS

Service Provider is a subrecipient of DPHSS, DSC in carrying out the program services that are part of this Agreement and shall utilized and adhere to 5 GCA §§5001-5805, and 2 GAR Division 4 §§1101-12601, and the Federal and Guam laws, regulations and requirements applicable to acquisition of supplies and services under this program.

DPHSS, DSC passes through to Service Provider the requirements of all federally funded contracts set forth in 45 Part 75 Appendix II, and the Contractor shall flow through the requirements to its vendors and contractors, as applicable.

45 CFR Part 75 HHS Procurement Standards.

§ 75.326 Procurement by states.

When procuring property and services under a federal award, a state must follow the same policies and procedures it uses for procurement from its non-Federal funds. The state will comply with § 75.331 and ensure that every purchase order or other contract includes any clauses required by § 75.335. All other non-Federal entities, including subrecipients of a state, will follow §§ 75.327 through 75.335.

§ 75.331 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation Act. The requirements of § 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeding \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing

an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§ 75.335 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to this part.

45 CFR Part 75 Appendix II.

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

- A. Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- B. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- C. Equal Employment Opportunity. Except as otherwise provided under 41 CFR part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, Equal Employment Opportunity (30 FR12319, 12935, 3 CFR1964-1965 Comp. p. 339) as amended by Executive Order 11375, amending Executive Order 1126 Relating to Equal Employment Opportunity and implementing regulations at 41 CFR part 60.
- D. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR part 5). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported

violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR part 3). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- E. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- F. **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of “funding agreement” under 37 CFR 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR part 401 and any implementing regulations issued by the awarding agency.
- G. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—**Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- H. **Debarment and Suspension (Executive Orders 12549 and 12689) –** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR part 180 that implement Executive Orders 12549 (3

CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- I. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- J. See § 75.331 Procurement of recovered materials.

SECTION IX. CONTRACT TERMS AND CONDITIONS

9.1 INDEPENDENT CONTRACTOR RELATIONSHIP

The relationship of Service Provider to DPHSS, DSC is that of an independent contractor and not of an employee/employer. It is expressly understood that any individual performing services under this Agreement on behalf of Service Provider shall not be deemed to be an employee or independent contractor of DPHSS, DSC and such individual shall not be entitled to tax withholding, workers' compensation, unemployment compensation or any employee benefits, statutory or otherwise, from DPHSS, DSC. Service Provider agrees that it is solely responsible for the reporting and payment of income, social security and other employment taxes due to the proper taxing authorities with respect to such personnel. Service Provider agrees to indemnify, defend and hold harmless DPHSS, DSC and its directors, officers, employees and agents from and against any and all costs, losses, damages, liabilities, expenses, demands and judgments, including court costs and attorney's fees, relating to the reporting and payment of income, social security and other employment taxes and the provision of employee benefits (including but not limited to workers' compensation, unemployment insurance and health insurance coverage or assessable payments required under the Patient Protection and Affordable Care Act, P.L.111-148) with respect to such individual performing services under this Agreement on behalf of Service Provider. This provision shall survive the expiration or termination of this Agreement.

9.2 COMPLIANCE WITH GRANT AGREEMENT AND APPLICABLE LAWS

A. Compliance with Notice of Grant Award, and this Agreement

Service Provider will perform all activities funded by this Agreement in accordance with: (i) the Notice of Grant Award attached hereto as Attachment C, including any amendments thereto; (ii) the Subaward Data attached hereto as Attachment D,

including any amendments thereto; (iii) the Scope of Services, (iv) the able contract provisions for non-federal entity contracts under federal awards required under Appendix II to the Uniform Guidance 45 CFR Part 75 HHS and “Required Contract Provisions”. In addition Service Provider shall cooperate fully with DPHSS, DSC in its carrying out Guam SOA Four Year Plan, and DPHSS, DSC efforts to comply with the Older Americans Act, applicable Appropriation Act, and the requirements of the Notice of Prime Award, including any amendments thereto.

B. Compliance with Applicable Laws

Service Provider will perform all activities funded by this Agreement in accordance with all applicable federal and Guam laws. The term “federal and Guam laws” as used in this Agreement shall mean all applicable statutes, rules, regulations, executive orders, directives or other laws, including all laws as presently in effect and as may be amended or otherwise altered during the Term of this Agreement, as well as all such laws which may be enacted or otherwise become effective during the Term of this Agreement. The term “federal and Guam laws” shall include, without limitation:

1. **Authorizing Statute and Regulations.** The HHS ACL Federal Award Authorizing Statute and Regulations, as well as program policies and guidelines issued by HHS ACL.
2. **Grants Administration Regulations.** *See Section 1 above.*
3. **Administrative Requirements; Cost Principles; Audit Requirements.** Service Provider will comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards, 45 CFR Part 75; iv) Restrictions on Lobbying.
4. **Restrictions on Lobbying.** Service Provider will comply with the restrictions on lobbying set forth in 45 CFR Part 93. If the Subaward exceeds \$100,000, Service Provider must execute and deliver to DPHSS the certification in the format set forth in Appendix A to Part 93 “Certification Regarding Lobbying”. In addition, Service Provider will comply with the applicable restrictions on lobbying contained in the federal appropriations act through which funds for the Subaward were appropriated.
5. **Covenant Against Contingent Fees.** Service Provider represents and warrants that no person or entity has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. In the event of a breach or violation of this representation and warranty, DPHSS, DSC shall have the right to annul this Agreement without liability or, in its discretion, to offset against amounts it owes Service Provider under this Agreement or otherwise recover from Service Provider the full amount of such

commission, percentage, brokerage, or contingent fee, and to seek any other legal remedies available to it as a result of such breach.

6. **Suspension and Debarment.** Service Provider represents that neither it nor any of its principals has been debarred, suspended or determined ineligible to participate in federal assistance awards or contracts as defined in regulations implementing Office of Management and Budget Guidelines on Government wide Debarment and Suspension (Nonprocurement) in Executive Order 12549. Service Provider further agrees that it will notify DPHSS, DSC immediately if it or any of its principals is placed on the list of parties excluded from federal procurement or nonprocurement programs available at www.sam.gov.
7. **DUNS Number.** Service Provider agrees and acknowledges that DPHSS, DSC may not grant the Subaward and Service Provider may not receive the Subaward unless Service Provider has provided its Data Universal Numbering System (“DUNS”) number to DPHSS, DSC. The DUNS number is the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify business entities.
8. **Federal Funding Accountability and Transparency Act of 2006.** Service Provider agrees to provide DPHSS, DSC with all information requested by DPHSS, DSC to enable DPHSS, DSC to comply with the reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (P.L. 109-282, as amended by section 6202 of P.L. 110-252).
9. **Regulations on Nondiscrimination.** Service Provider will comply with the HHS regulations on nondiscrimination in HHS programs or activities receiving federal financial assistance at 45 CFR Parts 80, 84, 86 and 91.
10. **Drug-Free Workplace.** Service Provider will comply with the requirements of the Drug-Free Workplace Act of 1988, 42 U.S.C. § 701 et seq. and 2 C.F.R. 182, and the applicable HHS regulations set forth in 45 CFR Part 82, which require all programs and activities receiving federal assistance to maintain a drug-free workplace.
11. **Equal Treatment for Faith-Based Organizations.** Service Provider will comply with the HHS regulations regarding the equal treatment of religious organizations in HHS programs, 45 C.F.R. Part 87.
12. **Pro-Children Act of 1994.** In accordance with 20 U.S.C. 6081 et seq., Service Provider certifies that Service Provider, its employees, agents, contractors, and subcontractors will not permit smoking in any portion of an indoor facility owned or leased or contracted for by Service Provider and

used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18.

13. **Policies on Limited English Proficient Persons.** Service Provider must have written policies that are consistent with the HHS Office for Civil Rights policy document, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (August 4, 2003).
14. **Licences, Certifications, Permits, Accreditation.** Service Provider will procure, and keep current any license, certification, permit or accreditation required by federal and Guam laws, regulations and guidelines. Service Provider will submit to DPHSS, DSC proof of any licensure, certification, permit or accreditation upon request.
15. **Other DPHSS Agreements.** Service Provider shall fulfill all other agreements with DPHSS and shall comply with all federal and Guam laws, regulations and guidelines applicable to programs funded by such agreements.

C. **EMPLOYMENT LAWS AND POLICIES**

1. **Non-Discrimination in Employment.** Service Provider shall not discriminate against any qualified employee or applicant for employment because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, religion, genetic information, or disability. Service Provider shall comply with all applicable provisions of federal and Guam laws prohibiting discrimination in employment.
2. **Salary Limitation.** Funds provided to Service Provider under this Agreement shall not be used to pay the salary of an individual at a rate in excess of federal Executive Level II.

SECTION X. **SPECIAL PROGRAM TERMS AND CONDITIONS**

- 10.1 **Compliance with All Applicable Laws and Regulations.** Service Provider will comply with all applicable laws, rules, regulations and policies of both the United States Government and the government of Guam.
- 10.2 **Grantor Recognition.** Service Provider will ensure recognition of the role of the Federal grantor agency in providing services. When a press release is issued or interview is given for any activity funded in whole or in part through this Agreement, reference shall be given as to the funding source and funding agency. Service Provider will prominently identify in all publications and advertisements that funding for the item(s) is provided through the DPHSS, DSC to include all activities, facilities, and items utilized pursuant to this

procurement. For example, *“This project is made possible through funds under Title IIIB Older Americans Act of 1965, as amended, administered by the Department of Public Health and Social Services, Division of Senior Citizens.”* All advertisements by Service Provider about the program shall be submitted to the DPHSS, DSC prior to distribution to the general public and local media.

- 10.3 **Standards of Conduct.** Service Provider is required to uphold the highest standards of conduct of for its program personnel in administering services to the elderly. All program personnel shall abide by a zero tolerance of encouraging, accepting and receiving any type of loan, monetary gift or gratuity or any other form of financial gain from clients or their families.
- 10.4 **Removal and Termination or Suspension of Program Personnel.** DPHSS, DSC retains the absolute right and authority to demand removal and termination or suspension from the program for reasonable cause any personnel employed, either hourly, salary, or sub-contracted by Service Provider, when DPHSS, DSC determines this management intervention is required to be executed to safeguard the program. A disregard of Federal and local laws, regulations, policies, and non-compliance or non-performance with a contracted provision or provisions, but not limited to, shall be considered reasonable cause. Service Provider agreed to include this provision in its Personnel Policy and Procedures used in the management of its personnel.
- 10.5 **Facilities and Personnel.** Service Provider will provide facilities and personnel required to meet the changing needs of the program. Service Provider will ensure that changes to the program requiring a consolidation, merger or relocation of facilities and personnel during the contract period are transitioned in a professional and timely manner, including modifications to the approved program budget and Agreement, as practicable.
- 10.6 **Program Inventory.** Service Provider will submit an inventory listing of non-expendable property to be used by the program which is not acquired through a prior contract for this program.
- 10.7 **Requests for Program Changes.** Service Provider will submit a written request for changes in its program administration and service, including changes in budgeted positions, budget object classes and sub-categories, facilities relocation, personnel assignments, etc., to the DPHSS, DSC within 30 calendar days prior to the implementation of the proposed changes. Program and service changes and budget modifications are required to be approved by the DPHSS, DSC with adequate justification. Budget Modifications shall be submitted no later than August 1st of each contract period. Service Provider accepts and acknowledges that DPHSS, DSC has the final authority to approve changes in the administrative, service and financial components of the program.
- 10.8 **Monitoring.** Service Provider and DPHSS, DSC agree that DPHSS, DSC may in an unannounced manner, monitor Service Providers services. Monitoring may include, but is not limited to, on-site observations of activities and/or program personnel, volunteers and student interns, facility inspections, and discussions with clients, their primary caregiver or

legal representative regarding the effectiveness of the program. All documents related to the operations and delivery of services is subject to review by DPHSS, DSC.

- 10.9 **Program Specific Audit.** DPHSS, DSC reserves the right to have a Program Specific Audit performed by an independent auditing firm on this program and in the event that should occur Service Provider will fully cooperate in the process.
- 10.10 **Annual Program Report (APR).** In the event Service Provider objects to any findings in the APR, Service Provider must appeal in writing their objections to DPHSS, DSC within 10 working days from Service Provider's receipt of the APR or the findings will be considered accepted. In the event of an appeal, the appeal, and any supporting documents, shall become a part of the APR.
- 10.11 **Report of Abuse or Neglect of Seniors and Adults with a Disability.** Service Provider will ensure when there are suspected cases abuse or neglect of Seniors and Adults with a Disability that there is an immediate verbal report and a written report within 48 hours to the Bureau of Adult Protective Services, DSC or its contracted Vendor of Guma Serenidad, an emergency receiving home with a Crisis Intervention Hotline. (Ref. P.L. 31-278, Title 10 GCA, Chapter 2).
- 10.12 **Report of Abuse or Neglect of Children.** Service Provider will ensure that there is an immediate verbal report of suspected cases of abuse or neglect of children and provide a written report within 48 hours to the Child Protective Services Unit, Bureau of Social Services Administration (Ref. P.L. 20-209, Title 19 GCA, Chapter 13).
- 10.13 **Procurement Procedures and Records.** Service Provider will ensure Federal and local procurement laws and regulations are complied with in accordance with 45 CFR Part 92, Uniform Administrative Requirements 2 CFR, Part 200 and 45 CFR, Part 75 for HHS Awards. All equipment and other non-expendable property acquired through the Agreement shall be the property of the DPHSS, DSC.
 - A. Notification of all procurement of equipment and services of Five Thousand Dollars (\$5,000.00) or more prior to awarding the contract shall be made to the DPHSS, DSC within five (5) working days prior to actual acquisition of equipment or services. This provision applies to all funding sources of the program, to include but is not limited to, voluntary contributions, grants, awarding of this contract and program income.
 - B. This notification shall not apply to the approved program budget and subsequent Budget Modifications as the approval of these requests fulfills the intent to be notified of procurement activity of Five Thousand Dollars (\$5,000.00) or more prior to awarding of the contract.
 - C. Service Provider will follow written procurement policies in keeping with the procurement requirements set forth in 2 CFR, §200.318 through §200.326 Contract provisions, including complying with and flowing down were applicable the flow

down provision in 2 CFR, Part 200 Appendix II and 45 CFR, Part 75 Appendix II for HHS Awards. *(New Part of Uniform Guidance 2 CFR, Part 200)*.

10.14 Service Provider will comply with Royalty- Free Rights to Use Software or Documentation Developed.

A. **Royalty-Free Rights to Use Software or Documentation Developed.** The federal government reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal government purposes, the copyright in any work developed under a grant, sub-grant, or contract under a grant or sub-grant or any rights of copyright to which a contractor purchases ownership.

B. **Rights In Data, Documents and Computer Software or Other Intellectual Property.**

All intellectual property including without limitation, databases, software, documents, research, programs and codes, as well as all, reports, studies, data, photographs, negatives or other documents, drawings or materials developed by the subrecipient specifically for the performance of its obligations under this contract shall be the exclusive property of DPHSS, DSC.

To the extent that such materials developed by contractor contain pre-existing materials of contractor or the third parties, contractor or third parties shall retain ownership of such materials and contractor hereby grants DPHSS, DSC a license to use such materials solely for the purposes of this contract and for the term hereof. Unless otherwise stated, all such materials, which are the exclusive property of DPHSS, DSC, shall be delivered to DPHSS, DSC by contractor upon completion, termination, or cancellation of this contract. The contractor shall not use, willingly allow or cause to have such materials used for any purpose other than the performance of contractor's obligations under this contract without a prior written consent of DPHSS, DSC. All documentation, accompanying the intellectual property or otherwise, shall comply with DPHSS, DSC requirements which include but is not limited to all documentation being in a paper, human readable format which is useable by one who is reasonably proficient in the given subject area.

DPHSS, DSC shall retain all ownership rights in any software or modification thereof and associated documentation, developed, and/or designed specifically for DPHSS, DSC with Federal grant funds. The U.S. Department of Health and Human Services, Administration for Community Living, a federal agency, reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes; Federal fund grant software, modifications and documentation. Proprietary operating and vendor software packages which are provided hereunder at established catalog or market prices and sold or leased to the general public shall not be subject to the ownership provisions in this section.

Service Provider will identify and define any software that is required to be developed or used to support the requirements of this Agreement. Unless there is express federal grantor approval, federal funds may not be used for the development of proprietary operating and vendor software packages.

C. Proprietary Information.

Proprietary information for the purpose of this Agreement is information relating to a party's research, development, trade secrets, business affairs, internal operations and management procedures and those of its customers, clients or affiliates, but does not include information lawfully obtained by third parties, which is in the public domain, or which is developed independently.

Neither party shall use or disclose directly or indirectly without prior written authorization any proprietary information concerning the other party obtained as a result of this contract. Any proprietary information removed from DPHSS, DSC's site by Service Provider in the course of providing services under this Agreement will be accorded at least the same precautions as are employed by Service Provider for similar information in the course of its own business.

10.15 Access to Records and Other Review.

Service Provider, including its subcontractors, if any, shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of the final payment under the contract, for inspection by DPHSS, DSC, the Public Auditor, and the Inspector General of the United States Department of Health and Human Services, Administration for Community Living, or their delegates. Each subcontract by contractor pursuant to this contract shall include a provision containing the conditions of this section.

If any litigation, claim, negotiation, audit, or other action involving the records has been started before the end of the three (3) year period, the records must be kept until all issues are resolved, or until the end of the regular three (3) year period, whichever is later.

Records for non-expendable property acquired in whole or in part, with funds from this contract funds must be retained for three (3) years after its final disposition.

Service Provider will provide access to any site(s) to DPHSS, DSC, the Public Auditor, and the Inspector General of the United States Department of Health and Human Services, Administration of Community Living, or their delegates. The rights of access in this section shall not be limited to the required retention period but shall last as long as the records are kept.

10.16 Ownership of Documents.

All briefs, memoranda and incidental to Service Provider's work or materials furnished hereunder shall be and remain the property of DPHSS, DSC including all publication rights

and copyright interests, and may be used by DPHSS, DSC without any additional cost to DPHSS, DSC.

10.17 Contracting with small and minority businesses, women's business enterprises.

Service Provider agree in keeping with 2 CFR §200.321(6) with the following:

Service Provider agrees to affirmatively takes steps listed in §200.321 (1)-(5) to contract with small and minority businesses, women's business enterprises, and labor surplus area firms in its subcontracting process.

- A. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- B. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- D. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- E. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

10.18 Conflict of Interest.

In keeping with 2 CFR §200.112 Service Provider agrees as follows:

During the term of this Agreement, Service Provider will not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with Service Provider fully performing its obligations under this Agreement.

Additionally, Service Provider acknowledges that, in governmental contracting, even the appearance of a conflict of interest is harmful to the interests of DPHSS, DSC.

Thus, Service Provider agrees to refrain from any practices, activities or relationships which could reasonably be considered to be in conflict with Service Provider's fully performing its obligations to DPHSS, DSC under the terms of this Agreement, without the prior written approval of DPHSS, DSC.

In the event that Service Provider is uncertain whether the appearance of a conflict of interest may reasonably exist, Service Provider shall submit to DPHSS, DSC a full disclosure statement setting forth the relevant details for DPHSS, DSC's consideration and

direction. Failure to promptly submit a disclosure statement or to follow DPHSS, DSC's direction in regard to the apparent conflict will be grounds for termination of the contract.

Further, Service Provider will maintain a written code of standards governing the performance of its agent(s) engaged in the award and administration of contracts.

Neither Service Provider nor its agent(s) shall participate in the selection, or in the award or administration of a contract or subcontract supported by Federal or Local funds under this Agreement, if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

The employee, officer or agent;

Any member of the employee's immediate family (which includes a spouse, children, parents, brothers and sisters, grandparents and grandchildren, mothers-in-law and fathers-in-law, brothers-in-law and sisters-in-law, daughters-in-law and sons-in-law. Stepsiblings, stepchildren and stepparents shall also be regarded as immediate family. 5 GCA Ch 5 Article 11 Section 5610 (g) Immediate Family (P.L. 31-016)];

The employee's partner; or

An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

Neither Service Provider nor its agent(s) will solicit nor accept gratuities, favors, or anything of monetary value from Service Provider's potential subcontractor's, or parties to sub-agreements.

Service Provider will comply with Ethics in Public Contracting 5 GCA Chapter 5 Article 11 Ethics in Public Contracting and 2 GAR Division 4 Chapter 11.

10.19 Termination for Financial Exigency.

In addition to any other right of termination between the parties, DPHSS, DSC shall have the right to terminate this Agreement for financial exigency by giving contractor at least thirty (30) days prior written notice. For the purposes of this provision, a financial exigency shall be a determination made by the Director of DPHSS, DSC based on the Guam legislature failure to fund this contract or in the event the United States Department of Health and Human Services, Administration for Community Living fails to fund DPHSS, DSC for this program. If notice of such termination is so given, this Agreement shall terminate on the expiration of the time period specified in the notice, and the liability of the parties hereunder for further performance of the terms of this Agreement shall thereupon cease, but the parties shall not be released from the duty to perform their obligations up to the date of termination or those obligations involved in closeout of federal and local funds. Service Provider may submit a claim in the same manner as is set forth for the termination for convenience claim.

10.20 Taxes.

Service Provider will pay all taxes and other such amounts required by federal, state, and local laws, including but not limited to federal and social security taxes, workers' compensation, unemployment insurance and sales taxes.

10.21 Non-Resident Tax Withholding.

A nonresident person without a valid Guam business license residing outside of Guam, shall be subject to a withholding assessment, the equivalent of the Guam Business Privilege Tax (BPT), which shall be the equal to four percent (4%) of the total value of a contract awarded by all government of Guam contracts for professional services as a cost of doing business with the government of Guam. See P.L. 33-166 (effective June 30, 2016) codified at 11 GCA Chapter 71 Section 71114.

10.22 Renewal of Agreement. Upon notification by DPHSS, DSC, Service Provider will submit to the DPHSS, DSC a proposed program budget for the succeeding fiscal year in the format provided. In addition to the proposed program budget, the following is required to be submitted:

- A. List of new government contracts awarded during the current period by title and contract amount.
- B. Tax-exempt organizations shall attach a copy of their latest Annual Information Return including Form 990, schedules and supporting documents [Ref. 26 CFR Part 301 §6104(d)].
- C. A partnership, sole proprietorship, or corporation shall submit a notarized affidavit that lists the name and address of any person who has held more than ten percent (10%) of the outstanding interest or shares in the organization at any time during the current contract period.
 - 1. The affidavit shall contain the number of shares or the percentage of all assets of the organization that were held by each such person during the current contract period.
 - 2. The affidavit shall contain the name and address of any person who has received or is entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to this Agreement and contract and shall also contain the amounts of any such commission, gratuity or other compensation.

10.23 Program Database. Service Provider will assist in DPHSS, DSC's unified automated information system that supports and promotes a coordinated and comprehensive system of care. Service Provider will collaborate with other DPHSS, DSC SOA Title IIIB Service Providers and Vendors.

- A. Service Provider will have its program personnel attend training, maintain and enter data, generate reports and conduct all necessary transactions in support of this effort

which will assist Service Provider in complying with the reporting requirements of this program.

- B. Orientation and training on the access and use of the Program Database will be coordinated and/or provided by the DPHSS, DSC and/or the software company contracted to maintain the system at no cost to Service Provider, with the exception of program personnel's time to attend the orientation, training and technical assistance activities in support of the Program Database.
- C. **Service Provider's failure to comply with this section may result in non-payment or other corrective/actions.**

10.24 Administrative Program Performance. (PERFORMANCE – DISCREPANCY)

Service Provider's performance includes timely, complete, accurate, financial and statistical and other program required program information. DPHSS, DSC SOA federal funding is performance based. Service Provider's amount invoiced for a reporting month is subject to a penalty/assessment (reduction) in the amount of 10% of the amount invoiced, for any reporting month in which an administrative discrepancy (submission of incomplete, inaccurate, or late financial, statistical, and other required program information) is identified by DPHSS, DSC. The 10% reduction to the amount invoiced shall be calculated after disallowed cost to the Monthly Program Invoice (MPI) amount. Delay in submitting accurate and complete Monthly Program Reports (MPR) will delay the processing of the MPI.

- A. **Monthly Program Invoice (MPI).** The following apply:
 - 1. For each reporting month, if the Monthly Program Report (MPR) is inaccurate, incomplete or missing, the Monthly Program Invoice (MPI) shall be processed at 90%.
 - 2. In the event discrepancies are identified for three (3) months within a contract year, with the three (3) months not having to be consecutive, subsequent MPI shall be processed at 80%.
 - 3. Upon Service Provider being notified by DPHSS, DSC that the discrepancies have been resolved, Service Provider shall submit a MPI for the amount due to them.
 - 4. The MPI withheld will be processed by DPHSS, DSC within 10 working days.
- B. DPHSS, DSC shall decrease the amount due to Service Provider for any financial discrepancies identified and validated throughout this Agreement, (including Initial Term, Renewal Term(s) and any Extension Period(s).
- C. **Charges Not Paid Out.** Service Provider will not invoice DPHSS, DSC for charges not paid out. DPHSS, DSC shall decrease the amount due to Service Provider for charges that are identified as not being paid yet. If this oversight occurs on more than two (2) occasions, Service Provider's non-compliance with the manner in which program expenses are charged to the DPHSS, DSC for payment, in addition to other

corrective actions DPHSS, DSC may require of Service Provider, DPHSS, DSC may bring such non-compliance to the attention of the General Services Agency (GSA) and the Federal grantor office for guidance and advisement as to what other remedies should be pursued. Such charges (Charges Not Paid Out) shall be considered a questioned cost and shall be deducted from the MPI until such time the amounts charged are cleared for payment by DPHSS, DSC. Upon notification by DPHSS, DSC that the discrepancies have been resolved, an invoice in the amount due shall be submitted to DPHSS, DSC for processing within ten (10) working days.

- D. **Late Reporting.** There is a MPI reduction of \$1,000.00 when the Monthly Program Report (MPR), or any part of this report, is submitted late without due cause as approved by DPHSS, DSC. The request to submit the MPR late is required to be sent to the DPHSS, DSC no later than 10:00 a.m. the day prior to the due date of the MPR. If the due date falls on a weekend or holiday, the due date shall be the next working day.
 - E. **Program Personnel and Client Files and Records.** Service Provider's MPI shall be decreased by \$100.00 for each program personnel file, client file or client record determined to be deficient, i.e. any file or record that is incomplete, missing inaccurate, outdated or expired.
 - F. **Charging of Unauthorized Positions.** Service Provider's MPI shall be reduced for any charges invoiced for positions that are not authorized for this program. Further, if the DPHSS, DSC determines that such a charge was submitted by Service Provider, Service Provider's MPI shall be reduced by \$100.00 for each time the unauthorized and erroneous charge was made to DPHSS, DSC.
 - G. **Annual Audit.** Service Provider's MPI shall be reduced by \$500.00 when the Annual Audit is submitted late to the DPHSS, DSC.
 - H. **Client Survey.** Service Provider's MPI shall be reduced by \$1,000.00 for the late submission of the annual Client's Survey; late is defined as being submitted after the due date of July 31st of each contract term.
 - I. **Incident Report.** Service Provider's MPI shall be reduced by \$25.00 for each incident report submitted late.
- 10.25 **Unauthorized Services.** Any unauthorized services rendered by Service Provider will be considered a disallowed cost and shall be deducted from the program invoice.
- 10.26 **Compensation for Services.** Service Provider will be compensated upon the clearance of Monthly Program Reports by DPHSS, DSC.
- A. Payment will be based upon ACTUAL COSTS submitted less disallowed costs and penalties, as applicable. Allowable compensation based upon the aggregate of the ACTUAL COSTS submitted may be LESS THAN the agreed upon compensation

but in no event shall it exceed the agreed upon compensation, unless otherwise provided for.

- B. Service Provider is not authorized to sub-contract under this Agreement without DPHSS, DSC's prior approval. In the event there are any subcontractors permitted under this Agreement, Service Provider will provide DPHSS, DSC with copies of all sub-contracts entered into that will be charged to this Agreement. The Monthly Program Invoices (MPI) shall be decreased by the amount charged for all charges determined to be sub-contracted by Service Provider and where no sub-contract has been approved by DPHSS, DSC, and/or a copy of the sub-contract agreement has been received by the DPHSS, DSC. Once supporting documents are provided that support the charges in the MPI, Service Provider may then submit a MPI for the amount due to them.
- C. Service Provider's approved program budget with its respective Object Categories will be used by DPHSS, DSC to process program invoices. RFP.
 - 1. No additional costs are allowable without the prior approval of the DPHSS, DSC. Any cost above the agreed amounts shall be at the expense of Service Provider.
 - 2. Personnel costs associated to direct services of this Agreement will be submitted in an itemized format as stipulated by the DPHSS, DSC.
 - 3. Non-payment by the government of Guam shall not be considered as grounds for suspension of services by Service Provider.
- D. An equitable adjustment to compensation for services may be authorized by the DPHSS, DSC if the physical scope of work, time for performance, or services requested are increased or decreased over that agreed to. Requests for modification shall be addressed to the DPHSS, DSC justifying the adjustment within each Object Category.
- E. **Final Payment and Release of Claims.** Final payment shall be made upon satisfactory delivery and acceptance of all services as herein specified and performed under this Agreement. Prior to final payment and as a condition precedent thereto, Service Provider shall execute and deliver to the DPHSS, DSC a release, in a form approved by the DPHSS, DSC, of claims against the government of Guam arising under and by virtue of the Agreement.
- F. **Prompt Payment Act.** The negotiated and agreed upon amount of compensation shall comply with the provisions of Title 5 GCA, Division 2, Chapter 22, Article 5, Prompt Payment Act --- Interest on Late Payment by the Government.

10.27 **Professional Standards.** Service Provider will maintain professional standards applicable to its profession, professional development, and other services. At all times pertinent to this Agreement, Service Provider will maintain all professional certifications and business

licenses required in Guam and other states in which it does any portions of services in this Agreement.

- A. Service Provider will be responsible for the professional and technical accuracy of all work and materials furnished. Service Provider will, without additional cost to the DPHSS, DSC, correct or revise all errors or deficiencies in its work.
- B. DPHSS, DSC's review, approval, acceptance of, and payment of fees for services required shall not be construed to operate as a waiver of any rights or of any cause of action arising out of Service Provider's failure of performance and Service provider will remain liable to DPHSS, DSC for all costs of any kind which may be incurred by DPHSS, DSC as a result of Service Provider's negligent performance of any of the services performed.
- C. **Proper Hygiene.** All Service Provider's program personnel, volunteers and student interns will practice good hygiene and maintain a professional appearance. They will be neat, clean, and well-groomed and are expected to serve as role models in the upkeep of one's personal hygiene.
- D. **Dress Code.** All Service Provider's program personnel, volunteers and student interns will wear clothing that is professional in appearance. Program personnel, volunteers and student interns providing direct services to clients will wear scrubs and close-toed shoes for safety. The program personnel, volunteers and student interns who perform custodial or maintenance work are able to wear denim in the performance of their duties. Uniforms purchased through program funds or monies shall only bear the name of the program, i.e. Adult Day Care Services Program.

10.28 **Program Transition.** In the event of a program transition, Service Provider will take all steps necessary to ensure a smooth and professional transition of the program to DPHSS, DSC's new service provider, to prevent any interruption of services to the clients and to preserve the integrity of the program.

- A. Service Provider will immediately prepare to relinquish all program related information, files, equipment, service contributions and program income (contributions, donations, and gifts) remaining balances and all other operational, administrative, and service documents and/or items to DPHSS, DSC's new service provider.
- B. Service Provider will designate a person(s) to work with DPHSS, DSC in the transition process to DPHSS, DSC's new service provider. Service Provider will provide the name of the designee, in an expedited manner (within 30 minutes, but not more than an hour) upon request by DPHSS, DSC and or upon notification of: another service provider being awarded a new contract, expiration, cancellation, termination or non-renewal.

- C. Service Provider will timely transfer all program files in the transition process as instructed by DPHSS, DSC. Service Provider will make the transfer of all program files within five (5) working days of the final MPI due date.
 - D. Service Provider will cooperate with DPHSS, DSC's oversight of the transfer of all program related information, files, equipment, monies, etc., to DPHSS, DSC's new service provider.
 - E. All costs in the physical transfer of program files, equipment, etc. in the transition process will be at Service Provider's expense.
 - F. Service Provider's smooth transition process is part of Service Provider's compliance with this Agreement and in keeping with Service Provider's compliance with the Older Americans Act Title III program services Guam-wide.
- 10.29 **Nepotism.** Service Provider if a "Non-Profit" organizations, will ensure no employee supervises relatives to the first degree. Service Provider will ensure no more than two (2) members of an immediate family shall be employed under this program. Immediate family means spouse; children; parents; brothers and sisters; grandparents and grandchildren; mothers-in-law and fathers-in-law; brothers-in-law and sisters-in-law; and daughters-in-law and sons-in-law. Stepsiblings, stepchildren and stepparents shall also be regarded as immediate family.
- 10.30 **Special Reporting Requirements for Non-Profit Organizations.** In the event Service Provider is a "Non-Profit" organization, it will also comply with the following requirements. In the event one of Service Provider's subcontractors is a "Non-Profit" organization the provisions of this clause is required to also apply its "Non-Profit" subcontractor's information in the same manner and time periods.
- A. Non-profit organizations are required to maintain accurate financial records of all monies paid to it under any contract in the procurement.
 - B. Non-profit organizations are required to provide to DPHSS, DSC a budgetary breakdown by Object Category as to all services under this Agreement. An initial proposed budgetary breakdown was required as part of the initial cost proposal of contractor and it is included as part of the Scope of Services as subsequently agreed and approved between Contractor and DPHSS, DSC.
 - C. Contractor must provide written notification to DPHSS, DSC of all procurement of equipment and services of Twenty-Five Thousand Dollars (\$25,000.00) or more prior to awarding the contract therefore.
 - D. Contractor shall provide access to DPHSS, DSC or its duly authorized representative, and of government of Guam auditors, to any and all appropriate records for the purpose of audit and examination of books, documents, papers, and records of funds expended as part of this Agreement. Contractor shall upon written

request by DPHSS, DSC provide source documentation, including but not limited to copies of checks or receipts, employee pay statement, inventory receipt, attendance records, utility bills.

- E. Contractor is subject to the Single Audit Rules and shall provide annually to the DPHSS, DSC copies of its Audit Reports for all time periods covered as part of this Agreement.
 - F. Contractor shall provide certified detailed inventory listing of each fiscal year's purchases under this Agreement to the DPHSS, DSC as well as a Fiscal Year-end report of all expenditures of funds under this Agreement, no later than five (5) working days after September of each contract term.
 - G. In the event contractor fails to timely provide any reports or items set forth in this section to DPHSS, DSC after prior written reasonable notice by DPHSS, DSC to contractor and contractor's failure to cure the contract default, DPHSS, DSC in addition to other contractual rights and remedies under this Agreement, may withhold payment of Ten Percent (10%) of any amounts that are invoiced under this Agreement by contractor.
- 10.31 **Public Law 30-168, Prohibiting Discrimination for the Government of Guam Programs Solely on the Basis of Conviction of Status Offense.** Service Provider will comply with the provisions of this mandate in which *No* private entity that receives government of Guam funding for any of its program may, *solely* on the basis of conviction of a status offense, discriminate against any person who would otherwise be eligible. Status offenses referenced above relates to truancy, possession of alcohol, or possession of tobacco.
- 10.32 **Restricting the Use of Mobile Phones While Driving a Vehicle, and Providing For Public Education Requirements Regarding Such Restrictions.** Service Provider will ensure compliance relative to the restrictions on the Use of Mobile Phones While Driving (Ref. P.L. 31-194, GCA Chapter 3 Title 16).
- 10.33 **Drug and Smoke-Free Workplace.** Service Provider will ensure compliance with Federal and local drug and smoke-free workplace laws and requirements [Federal Drug-Free Workplace Act of 1988, the Governor's Circular No. 89-26 (Governor's Policy Statement Establishing a Drug-Free Workplace) and Clean Indoor Air Act of 1992, P.L. 21-139, Title 10 GCA, Chapter 90].
- 10.34 **Health Insurance Portability and Accountability Act (HIPAA).** Service Provider will comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 P.L. 104-191 and the Federal "Standards for Privacy of Individually Identifiable Health Information" promulgated thereunder at 45 CFR Parts 160 and 164, Subparts A and E.

- 10.35 **Social Security Number Confidentiality Act.** Service Provider will comply relative to preventing the inappropriate disclosure and misappropriation of social security numbers (Ref. P.L. 28-95, Article 7, Title 5 GCA, Chapter 32).
- 10.36 **Equal Employment Opportunity.** Service Provider is an equal opportunity employer. Service Provider will not discriminate on the basis of race, religion, color, sex, sexual preference, age, national origin or disability. Service Provider will ensure that employees are treated equally during employment without regard to their race, religion, color, sex, sexual preference, age, national origin, or disability.
- 10.37 **Reporting Requirements for Non-Profit Organizations, Guam Public Law of Annual Appropriations Act Special Reporting Requirements for Non-Profit Organizations).** Non-compliance with reporting requirements as set forth in this annual provision of law will subject the non-profit Service Provider to a three percent (3%) reduction of its appropriation(s) and the overseeing agency's contract with the non-profit contractor shall so provide, unless otherwise prescribed by law.
- 10.38 **Public Law 26-109. Section 2, §41210(b), Article 2, Chapter 41, Division 5, Title 17 GCA.** Service Provider will comply with the provision of this mandate with emphasis on the employment of two percent (2%) of its workforce with severe disabilities in coordination with the Division of Vocational Rehabilitation Administrator, Department of Integrated Services for Individuals with a Disability (DISID) for placement. In the event Service Provider is unable to employ due to the lack of individuals with disabilities who are able to work, Service Provider will shall utilize funds for the purchase of supplies produced by non-profit organizations employing individuals with disabilities. Efforts to comply with this specification shall be documented by Service Provider and is subject to review and inspection by the DPHSS, DSC.
- 10.39 **Financial Management System.** Service Provider will ensure the organization possesses an accounting system that meets the standards of the Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments, in financial reporting, accounting records, internal control, budget control, allowable cost, source documentation and cash management. The Service Provider will ensure its accounting system shall permit timely development of all necessary cost data in the form required by the DPHSS, DSC and is in accordance with generally accepted accounting principles. Service Provider's accounting system is subject to review and approval by DPHSS, DSC in accordance with 5 GCA, §5236.
- 10.40 **Allowable Costs.** This procurement is funded in part with federal funds and is governed by the cost principles of the Office of Management and Budget (OMB). Allowable costs are those costs identified in the relevant OMB circulars and in the grant program's authorizing legislation. All costs in this procurement must be reasonable, allocable, and necessary to the project, and they must also comply with Federal and the government of Guam funding statutes and regulations. See Cost Principles for Educational Institutions; Title 2 CFR Part 220, Cost Principles for State, Local and Indian Tribal Governments, Title

2 CFR Part 225, Cost Principles for Non-Profit Organizations, Title 2 CFR Part 230, the Federal Acquisition Regulations as well 2 GAR Division 4 Chapter 7 Cost Principles.

SECTION XI. Government of Guam – Cost Reimbursement Terms and Conditions

11.1 Compensation for Services.

- A. **Annual and Monthly Compensation.** Service Provider's compensation shall be per the agreed FY 2019 Program Budget, labeled as Attachment B to this Agreement and attached hereto and incorporated herein as if fully re-written. In the event there is an option to renew then the Program Budget for that fiscal year will be in keeping with the scope of services of the request for proposal, fair and reasonable cost pricing and mutually agreed upon negotiated approved budget subject to appropriation, allocation and availability of funds.
- B. **Invoicing and Payments.** All compensation is to the appropriation, allocation and availability of funds, upon completion of the services and receipt of any deliverables and a monthly invoice in the form agreed to by the parties. Payment shall be based upon actual costs, as defined in 2 GAR Division 4 §7101(1), submitted less disallowed costs and penalties, as applicable. Compensation based upon the aggregate of actual cost submitted may be less than the agreed upon compensation, but in no event shall it exceed the agreed upon compensation. The invoice should reflect only those service fees incurred for the current billing period. Each invoice should also include the total amount billed from the inception of the current year contract. All invoices are subject to review and approval by DPHSS, DSC. The acceptance and payment of any invoice will not be deemed a waiver of any of DPHSS, DSC's rights under this Agreement.
- C. **Final Payment.** DPHSS, DSC shall make final payment delivery and acceptance of all services mentioned herein specified and performed. Prior to final payment and as a condition precedent thereto, Service Provider shall execute and deliver to the DPHSS, DSC a release, in a form provided by the DPHSS, DSC, of claims against the DPHSS, DSC and the government of Guam arising under and by virtue of the contract. Additionally prior to final payment and as condition precedent thereto, Service Provider will ensure a smooth program transition; and shall immediately provide the DPHSS, DSC with all program related information, files, equipment, service contributions/program income (contributions, donations, and gifts) remaining balances and all other operational and administrative and service documents and/or items.
- D. **Allowable Costs – Cost Reimbursement.** Service Provider agrees to comply with the following standards of financial management:
 - 1. **Financial Records.** Service Provider will provide complete, accurate, and current financial disclosures of the project or program in accordance with any financial reporting requirements, as set forth in the financial provisions.

2. **Accounting Records.** Service Provider will continuously maintain and update records identifying the source and use of funds. The records shall contain information pertaining to the contract, authorizations, obligations, unobligated balances, assets, outlays, and income.
3. **Internal Control.** Service Provider will maintain effective control over and accountability for all funds and assets. Service Provider will keep effective internal controls to ensure that all the DPHSS, DSC funds received are separately and properly allocated to the activities described in this Agreement. Service Provider will adequately safeguard all such property and shall ensure that it is used solely for authorized purposes.
4. **Source Documentation.** Service Provider will support all accounting records with source documentation. These documentations include, but are not limited to, cancelled checks, paid bills, payrolls, contract and sub-grant contract documents, and so forth. All costs invoiced by contract in this contract must be reasonable, lawful, allocable, and accounted for in accordance with generally accepted accounting principles set forth in 2 GAR Division 4 §7101 or in any federal assistance instrument applicable to this Agreement.
5. **Reimbursable Cost Principles.** Service Provider will support all accounting records with source documentation. These documentations include, but are not limited to, cancelled checks, paid bills, payrolls, contract and sub-grant and/or contract documents and so forth.
6. **Allowable Cost.** Total allowable cost of the contract is the sum of allowable direct costs actually incurred in the performance of the contract in accordance with the terms of the contract, plus the properly allowable indirect costs, less any applicable credits. Costs shall be allowed to the extent they are: reasonable as defined in 2 GAR Division 4 §7101 (d); and allocable, as defined in 2 GAR Division 4 §7101(e) and lawful under any applicable law; and not unallowable under 2 GAR Division 4 §7101(f). In the case of costs invoiced for reimbursement, they must be actually incurred or accrued and accounted for in accordance with generally accepted accounting principles.
7. **Applicable Credits.** Applicable credits are receipts or price reductions which reduce expenditures allocable to contracts as direct or indirect costs, as defined in 2 GAR Division 4 §7101(h). In the event Service Provider receives discounts, rebates and or other applicable credits accruing to or received by Service Provider or any subcontractor under this Agreement, to the extent those credits are allocable to the allowable portion of the cost billed to the DPHSS, DSC; allowable costs will be paid to Service Provider, net of all discounts, rebates and other such applicable credits. Service

Provider will separately identify for each cost submitted for payment to the DPHSS, DSC the amount of cost that is allowable; must identify all unallowable costs; or Service Provider will exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification.

8. Service Provider will identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the DPHSS, DSC for payment and individually identify the amount as a discount, rebate or in case of other applicable credits, the nature of the credit. DPHSS, DSC may permit Service Provider to report this information on a less frequent basis than monthly, but no less frequently than annually. Service Provider will identify the method by which it will report discounts, rebates and other applicable credits allocable to this Agreement that are not reported prior to conclusion of this Agreement.

SECTION XII. ADDITIONAL CONTRACT TERMS AND CONDITIONS

- 12.1 **General Compliance with Laws and Requirements.** Service Provider will comply will all Federal and Guam law, regulations, guidance and requirements applicable to the work.
- 12.2 **Indemnity.** Service Provider will save and hold harmless the DPHSS, DSC, its officers, agents, representatives, successors and assigns and other government agencies from any and all suits or actions of every nature and kind, which may be brought forth or on account of any injury, death, or damage arising or growing out of the acts or omissions of Service Provider, Service Provider's officers, agents, servants or employees under this Agreement.
- 12.3 **Retention and Access to Records and Other Review.** Service Provider, including its subcontractors, will maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and will make such materials available at their respective offices at all reasonable times during this Agreement period and for three (3) years from the date of the final payment under this Agreement, for inspection by the Government. Each subcontract by Service Provider pursuant to this Agreement shall include a provision containing the conditions of this section.
- 12.4 **Ownership of Documents.** All briefs, memoranda and other incidental work or materials furnished hereunder shall be and remain the property of the DPHSS, DSC including all publication rights and copyright interests and may be used without any additional cost to the DPHSS, DSC.
- 12.5 **Changes.** DPHSS, DSC may at any time, by written order make any changes in the professional services to be performed hereunder. If such changes cause an increase or decrease in the costs of doing the professional services under this Agreement, or in the time

required for this performance, an equitable adjustment shall be made and this Agreement shall be modified in writing accordingly.

12.6 Claims Based on Government's Actions or Omissions. Claims Based on Government's Actions or Omissions Clause, are as follows:

A. Notice of Claim. If any action or omission on the part of the Director of DPHSS, or designee of such officer, requiring performance changes within the scope of the contract constitutes the basis for a claim by Service Provider for additional compensation, damages, or an extension of time for completion, Service Provider will continue with performance of the contract in compliance with the directions or orders of such officials, but by so doing, Service Provider shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

1. Service Provider shall have given written notice to the Director of DPHSS, or designee of such officer:
 - (a) prior to the commencement of the work involved, if at that time Service Provider knows of the occurrence of such action or omission;
 - (b) within 30 days after Service Provider knows of the occurrence of such action or omission, if Service Provider did not have such knowledge prior to the commencement of the work; or
 - (c) within such further time as may be allowed by the Director of DPHSS in writing.

This notice shall state that Service Provider regards the act or omission as a reason which may entitle Service Provider to additional compensation, damages, or an extension of time. The Director of DPHSS or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Director of DPHSS or designee of such officer.

2. The notice required by Subparagraph (a) of this Paragraph describes as clearly as practicable at the time the reasons why Service Provider believes that additional compensation, damages, or an extension of time may be remedies to which Service Provider is entitled; and
3. Service Provider maintains and, upon request, makes available to the Director of DPHSS within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

B. Limitations of Clause. Nothing herein contained, however, shall excuse Service Provider from compliance with any rules of law precluding any government of

Guam officers and any contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.

C. **Adjustments of Price.** Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.”

12.7 **Governing Law.** The laws of Guam shall govern the validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties to this Agreement.

12.8 **Consent to Jurisdiction.** Service Provider hereby expressly consents to the jurisdiction of and the forum of the courts of Guam with respect to any and all claims which may arise by reason of this Agreement, except as otherwise may be provided by the Guam Procurement Law. Service Provider waives any and all rights it may otherwise have to contest the same or to proceed in a different jurisdiction or forum.

12.9 **Claims against Government.** DPHSS, DSC is a line agency of the government of Guam. Service Provider expressly recognizes that the Government Claims Act (Title 5 of the Guam Code Annotated, Chapter 6) applies with respect only to claims of money owed by or to Service Provider against the DPHSS, DSC if the claim arises out of or in connection with this Agreement. Service Provider also expressly recognizes that all other claims by Service Provider against DPHSS, DSC are subject to the Guam Procurement Law (Title 5 of the Guam Code Annotated, Chapter 5).

Service Provider agrees that they will, within thirty (30) days after any claim accrues arising out of or in connection with the Agreement provided herein, give written notice to the DPHSS, DSC and the Attorney General of Guam of such claim, setting forth in detail all the facts relating thereto and the basis for such claim, and that he will not institute any suit or action against DPHSS, DSC in any court or tribunal in any jurisdiction based on any such claim later than one (1) year after such filing. Any action or suit on any claim shall not include any item or matter not specifically mentioned in the proof of claim above specified. It is agreed that if such action or suit is instituted, proof by Service Provider of its compliance with the provisions of this paragraph shall be a condition precedent to any recovery, and that this paragraph does not constitute a waiver of any applicable statutes of limitations.

12.10 **Termination for Defaults:**

A. **Default.** If Service Provider refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this Agreement, The Director of DPHSS may notify Service Provider in writing of the delay or non-performance and if not cured in ten days or any longer time specified in writing by Director of DPHSS, such officer may terminate Service Provider’s

right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part DPHSS, DSC may procure similar professional services in a manner and upon terms deemed appropriate by DPHSS, DSC. Contractor shall continue performance of this Agreement to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar professional services, goods or services.

- B. **Service Provider's Duties.** Notwithstanding termination of this Agreement and subject to any directions from DPHSS, DSC, Service Provider shall take timely, reasonable, and necessary action to protect and preserve property in possession of Service Provider in which DPHSS, DSC has an interest.

- C. **Compensation.** Payment for completed professional services delivered and accepted by DPHSS, DSC shall be per the Compensation for Services section agreed to in this Agreement. DPHSS, DSC may withhold from amounts due Service Provider such sums as DPHSS, DSC deems to be necessary to protect DPHSS, DSC against loss because of outstanding liens or claims of former lien holders and to reimburse DPHSS, DSC for the excess costs incurred in procuring similar professional services. Service Provider may pursue its rights under the Mandatory Disputes section of this Agreement, and the Guam Procurement Laws and Regulations if it disagrees with DPHSS, DSC's decision with regard to compensation.

- D. **Excuse for Nonperformance or Delayed Performance.** Except with respect to defaults of subcontractors, Service Provider shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms (including any failure by Service Provider to make progress in the prosecution of the work hereunder which endangers such performance) if Service Provider has notified the Director of DPHSS within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the territory and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Service Provider shall not be deemed to be in default, unless the supplies or services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Service Provider to meet the contract requirements. Upon request of Service Provider, the Director of DPHSS shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Service Provider's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of DPHSS, DSC under the clause entitled (in fixed-price contracts, "Termination" for Convenience in cost-

reimbursement contracts) "Termination". (As used in this Paragraph of this clause the term "subcontractor" means subcontractor at any tier.)

- E. **Erroneous Termination for Default.** If, after notice of termination of Service Provider's right to proceed under the provisions of this clause, it is determined for any reason that Service Provider was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of DPHSS, DSC, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this Agreement does not contain a clause providing for termination for convenience of DPHSS, DSC, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to Service Provider's rights under Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations.
- F. **Additional Rights and Remedies.** The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.
- G. **Liquidated Damages.** To the extent applicable to this Agreement, when Service Provider is given notice of delay or nonperformance as specified above in the Termination for Default Clause of this contract and fails to cure in the time specified, Service Provider shall be liable for damages for delay in the amount of one-fourth of one-percent (1%) of outstanding order per calendar day from date set for cure until either the territory reasonably obtains similar supplies or services if Service Provider is terminated for default, or until Service Provider provides the supplies or services if Service Provider is not terminated for default. To the extent that Service Provider's delay or nonperformance is excused under the Paragraph Excuse for Nonperformance or Delayed Performance of the Termination for Default Clause of this Agreement, liquidated damages shall not be due DPHSS, DSC. Service Provider remains liable for damages caused other than by delay.
- H. **In Other Situations.** If the contract will not have a termination for Default Clause or the liquidated damages are to be assessed for reasons other than delay, the Director of DPHSS may approve the use of any appropriate liquidated damages clause.

12.11 Termination for Convenience.

- A. **Termination.** The Director of DPHSS may, when the interest of DPHSS, DSC so require, terminate this contract in whole or in part, for the convenience of DPHSS, DSC. DPHSS, DSC shall give written notice of the termination to Service Provider specifying the part of the contract terminated and when termination becomes effective.

- B. Service Provider's Obligations.** Service Provider shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. Service Provider shall also terminate outstanding orders and subcontracts as they relate to the terminated professional services. Service Provider shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated professional services. DPHSS, DSC may direct Service Provider to assign Service Provider's right, title, and interest under terminated orders or subcontracts to DPHSS, DSC. Service Provider must still complete the professional services not terminated by the notice of termination and may incur obligations as are necessary to do so.

In the event there are any deliverables and/or reports due per this Agreement, Service Provider and DPHSS, DSC shall meet and set up the delivery dates for those items if not set forth in the written notice of termination.

- C. Compensation.** Service Provider shall invoice DPHSS, DSC in keeping with the Compensation for Services section of this Agreement for Service Provider's professional services performed up to the date of termination.

12.12 Program Transition. In the event of a termination or expiration of this Agreement, Service Provider will take all steps necessary to ensure a smooth and professional transition of the program to prevent any interruption of the services to the clients and to preserve the integrity of the program. Service Provider will immediately prepare to relinquish all program related information, files, major equipment items, services contributions, and program income (contributions, donations, and gifts) remaining balances and all other operational, administrative and services documents and/or items to DPHSS, DSC.

12.13 Mandatory Disputes Resolution Clause.

- A. Disputes- Contractual Controversies.** DPHSS, DSC and Service Provider agree to attempt resolution of all controversies which arise under, or are by virtue of, this Agreement through mutual agreement. If the controversy is not resolved by mutual agreement, then Service Provider shall request the Director of DPHSS, or his designee, in writing to issue a final decision within sixty days after receipt of the written request in keeping with 5 GCA § 5427 (c). The Director of DPHSS or his designee shall immediately furnish a copy of the decision to Service Provider, by certified mail with a return receipt requested, or by any other method that provides evidence of receipt.
- B. Absence of a Written Decision within Sixty Days.** If the Director of DPHSS, or his designee does not issue a written decision within sixty days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then Service Provider may proceed as though the Director of DPHSS, or their designee had issued a decision adverse to Service Provider.

- C. Appeals to the Office of Public Accountability. The Director of DPHSS, or his designee's decision shall be final and conclusive, unless fraudulent or unless the Contractor appeals the decision administratively to the Public Auditor in accordance with 5 GCA § 5706.
- D. Disputes – Money Owed To or By the Government of Guam. This subsection applies to appeals of the government of Guam's decision on a dispute. For money owed by or to the government of under this Agreement, Service Provider shall appeal the decision in accordance with the "Government Claims Act", 5 GCA § 6101 etc. seq., by initially filing a claim with the Office of the Attorney General no later than eighteen months after the decision is rendered by the government of Guam or from the date when a decision should have been rendered. For all other claims by or against the government of Guam arising under this contract, the Office of the Public Auditor has jurisdiction over the appeal from the decision of the government of Guam. Appeals to the Office of the Public Auditor must be made within sixty days of government of Guam's decision or from the date the decision should have been made.
- E. Exhaustion of Administrative Remedies. Service Provider shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws.
- F. Performance of Contract Pending Final Resolution by the Court. Service Provider shall comply with the government of Guam's decision and proceed diligently with performance of this Agreement pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, this contract, except where Service Provider claims a material breach of this contract by DPHSS, DSC. However, if the Director of DPHSS determines in writing that continuation of services under this contract is essential to the public's health or safety, then Service Provider shall proceed diligently with performance of this Agreement notwithstanding any claim of material breach by the DPHSS, DSC.
- G. Amendments to this Agreement, will be made in writing and executed in the same manner as this Agreement. This Agreement is for federal fund subrecipient professional services on a cost-reimbursement basis, and included a mix of federal and local funds. The Director of DPHSS, determined the clauses included in the solicitation as signified by his signature on the solicitation for purposes of 5 GCA 5 GCA, Division 1, Article 6 §5350(d).

12.14 **Ethical Standards.** With respect to this Agreement and any other contract that the Contractor may have, or wish to enter into, with any government of Guam agency, the Contractor represents that it has not knowingly influenced, and promises that it will not knowingly influence, any government employee to breach any of the ethical standards set forth in the Guam Procurement Law and in any of the Guam Procurement Regulations.

- 12.15 **Prohibition Against Gratuities and Kickbacks.** With respect to this Agreement and any other contract that the Contractor may have, or wish to enter into, with any government of Guam agency, the Contractor represents that he has not violated, is not violating, and promises that it will not violate, the prohibition against gratuities and kickbacks set forth in the Guam Procurement Regulations.
- 12.16 **Prohibition Against Contingent Fees.** The Contractor represents that it has not retained any person or agency upon an agreement or understanding for a percentage, commission, brokerage, or other contingent arrangements, except for retention of bona fide employees or bona fide established commercial selling agencies, to solicit or secure this Agreement or any other contract with the government of Guam or its agencies.
- 12.17 **Prohibition Against Employment of Sex Offenders.** Contractor warrants that no person providing services on behalf of the Contractor who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28 Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry shall work for his employer on the property of the government of Guam other than a public highway; and that if any person providing services on behalf of the Contractor is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense that as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, the employee will be immediately removed from working on the property of the government of Guam and that the Director of the DPHSS be informed of such within twenty-four (24) hours of such conviction.

Contractor, after notice from DPHSS, DSC of a violation of this provision, shall, within twenty-four (24) hours, take corrective action and shall report such action to DPHSS, DSC. Failure to take corrective action within the stipulated period may result in the temporary suspension of the contract at the discretion of the Director of the DPHSS.

- 12.18 **Government Not Liable.** DPHSS, DSC assumes no liability for any accident or injury that may occur to the Contractor, his/her agents, dependents, or personal property during any travel mandated by the terms of this Agreement. Further, DPHSS, DSC shall not be liable to the Contractor for any work performed by the Contractor prior to the approval of the Agreement by DPHSS, DSC and the Contractor, hereby expressly waives any and all claims for services performed in expectation of an Agreement prior to its approval by DPHSS, DSC.
- 12.19 **Prevailing Wages Compliance with USDOL Wage Determination.**
- A. Service Provider with regard to all persons its employs who purpose in whole or in part is the direct delivery of service contracted for with the DPHSS, DSC under this Agreement, shall pay such employee(s) in accordance with the Wage Determination for Guam and the Northern Mariana Islands issued and promulgated by the U.S. Department of Labor for such labor as is employed in the direct

deliverance of deliverables to the government of Guam. §5802 GCA Ch5 Title 5. Service Provider shall be responsible for flowing down this obligation to its subcontractors.

- B. The Wage Determination most recently issued by the U.S. Department of Labor at the time a contract was awarded to Service Provider shall be used to determine wages and benefits which shall be paid to employees pursuant to this clause. §5801 GCA Ch5 Title 5.
- C. Should any contract contain a renewal clause, then at the time of renewal adjustments there shall be stipulations contained in that contract for applying the Wage Determination, so that the Wage Determination promulgated by the U.S. Department of Labor on a date most recent to the renewal date shall apply. §5801 GCA Ch5 Title 5.
- D. In addition to Wage Determination detailed above, health and similar benefits for employees having a minimum value as detailed in the Wage Determination issued and promulgated by the U.S. Department of Labor shall apply. Service Provider shall pay a minimum of ten (10) paid holidays per annum per employee. §5802 GCA Ch5 Title 5.
- E. Any violation of Service Provider or its subcontractors obligations of this section shall be investigated by the Guam Department of Labor and may include a monetary penalty assessment by the Guam Department of Labor of no less than One Hundred Dollars (\$100.00) per day, and no more than One Thousand Dollars (\$1,000.00) per day, until such time as a violation has been corrected, as well as payment of all back wages and benefits due. §5803 GCA Ch5 Title 5.
- F. In addition to any and all other breach of contract DPHSS, DSC may have under this Agreement, in the event there is a violation in the process set forth in subsection (e) above, Service Provider may be placed on probationary status by the Chief Procurement Officer of the General Service Agency, or its successor, for a period of one (1) year. During the probationary status, a Service Provider shall not be awarded any contract by any instrumentality of the government of Guam. A Service Provider who has been placed on probationary status, or has been assessed a monetary penalty pursuant to 5 GCA Article 13 Title 5 may appeal such penalty or probationary status to the Superior Court of Guam. §5804 GCA Ch5 Title 5.
- G. Service Provider along with all proposed Offerors and submitter under this procurement were required to submit a Declaration of Compliance with Wage Determination laws as part of this procurement with a copy of the most recent Wage Determination for Guam and the Northern Marianas Islands issued and promulgated by the U.S. Department of Labor. §5805 GCA Ch5 Title 5.
- H. The most recent USDOL Wage Determination Rate Revision at that the date of this contract or at the time of any renewal or extension to this Agreement shall apply.

Service Provider upon written request by the government of Guam will provide written certification of its compliance with its obligations as part of each invoice, along with the names of any employees, their positions, and detailed wage and benefits paid in keeping with this section. Additionally upon request by government of Guam, Service Provider will submit source documents as to those individuals who provide direct services in part or whole under this Agreement and its payments to them of such wages and benefits.

12.20 **INSURANCE.** Service Provider agrees to procure and maintain in effect Workers Compensation, Commercial General Liability, and Professional Liability Insurance coverage. Service Provider will provide certificates of such insurance to DPHSS, DSC when required and shall immediately report in writing to the DPHSS, DSC any insurance claims filed. Service Provider is responsible for maintaining insurance coverage throughout this Agreement.

- A. Workers Compensation Insurance in the form and amount required by the law of the government of Guam to cover all employees working in any capacity in executing this contract.
- B. Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than One Million Dollars (\$1,000,000.00) per occurrence and/or combined single-limit bodily injury and property damage. The Contractor shall ensure the insurance is issued by a company authorized to do business on Guam with minimum limits of not less than One Million Dollars (\$1,000,000.00) for bodily injuries or death per occurrence, and not less than Three Hundred Thousand Dollars (\$300,000.00) for damages to property. Such policy shall insure the Government and their respective agents and employees with respect to liability as a result of the ownership, maintenance, use or operation of vehicles pursuant to the Agreement.
- C. Professional Liability Insurance in a form acceptable to the Government and with a limit of liability of not less than One Million Dollars (\$1,000,000.00).

12.21 **Privacy Rights.** Service Provider will comply with all federal and Guam laws and regulation as to the privacy rights of individuals and as to any records and information of individuals providing services under this contract, including but not limited to the following:

- A. **HIPAA.** Health Insurance Portability and Accountability Act (HIPAA of 1006, P.L. 104-1991 and the Federal "Standards for Privacy of Individually identifiable Health Information" promulgated under 45 CFR Part 160 and Part 164, Subparts A and E., and
- B. **Client Confidentiality.** Service Provider will ensure information obtained directly or indirectly from a recipient client under this Agreement shall be kept confidential and not released in a form that identifies the person

without informed consent of the person, or of his or her legal representative, unless the disclosure is required by court order or for program monitoring by authorized federal, Guam, or local monitoring agencies. (Ref. 45 CFR 1321.51). Privacy Rule Standards for Privacy of Individually Identifiable Health Information, Ref. 45 CFR Part 160 and Part 164, Subparts A and E.

- 12.22 **Severability Provision.** The provision of this Agreement will be deemed severable, and the unenforceability of any one or more provisions will not affect the enforceability of any other provisions. In addition, if any provision of this Agreement, for any reason is declared to be unenforceable, the parties will substitute and enforceable provision that, to the maximum extent possible in accordance with applicable law, preserves the original intentions and economic positions of the parties.
- 12.23 **No Waiver.** No failure or delay by either party in exercising any right, power or remedy will operate as a waiver of such right, power or remedy, and no waiver will be effective unless it is in writing and signed by the waiving party. If either party waives any right, power or remedy, such waiver will not waive any successive or other right, power or remedy the party may have under this Agreement.
- 12.24 **Assignment, Successors and Assigns.** Service Provider may not assign or otherwise transfer this Agreement or any of the rights that it grants without the prior written consent of DPHSS, DSC. Any purported assignment in violation of the preceding sentence will be void and of no effect. This Agreement will be binding upon the parties' respective successors and permitted assigns.
- 12.25 **Binding Signatory.** This Agreement and any modification hereto, is not binding until approved by the Attorney General and Governor of Guam.

Further the parties sayeth naught.

SAMPLE CONTRACT
Not for Execution
Attachments – Not attached

Attachment A - *Program Specifications, Prioritization of Services, Program Personnel Responsibilities, Requirements, Certification and Training, Administrative Requirements, Program Monies, Annual Audit*

Attachment B - *Service Provider Negotiated and Approved Program Budget*

Attachment C - *Notice of Grant Award (Notice of Prime Award)*

Attachment D - *Subaward Data*

APPENDIX D-1 SAMPLE CONTRACT
ATTACHMENT A
Scope of Services

To Be Completed At Time of Contract
See: RFP 2018-006

1. *Attachment A - Program Specifications, Prioritization of Services, Program Personnel Responsibilities, Requirements, Certification and Training, Administrative Requirements, Program Monies, Annual Audit*

**APPENDIX D-1 SAMPLE CONTRACT
ATTACHMENT B
Compensation**

Service Provider Negotiated and Approved Program Budget

(To Be Completed At Time of Contract)

**APPENDIX D-1 SAMPLE CONTRACT
ATTACHMENT C
Notice of Grant Award**

(Formerly RFP Appendix D-2)

(TO BE RECEIVED)

**APPENDIX D-1 Sample Contract
ATTACHMENT D
Subaward Data Sheet**

(Formerly RFP Appendix D-3)

(To Be Completed Once Service Provider Selected)

XIX. APPENDICES ADDITIONAL INFORMATION

**Appendix E-7 Do's and Don'ts as to Reports,
Invoices, and Payments**

RFP/DPHSS-2018-006 (ADC)
 Section XX, Appendix E-7
 Do's and Don'ts as to Reports, Invoices, and Payments

Do's:

1. Program Reporting Requirements. Certify the following to be true and correct:
 We certify and attest that program reporting requirements, as contractually required, have been met and we are submitting our Monthly Program Report and Invoice.
 - 1.1. I am providing DPHSS, DSC in a timely manner, with complete and accurate financial, statistical and other pertinent informational reports as required.
 - 1.2. I have reviewed all fiscal documents and have determined the information to be accurately and properly reported.
 - 1.3. I have reviewed the invoice for this reporting month and we have determined that expenditures are in line with the program budget for the Fiscal Year.
 - 1.4. I have reviewed the statistical information for this reporting month and we have taken steps to address any and all areas requiring action and have determined the data provided on this report to be accurate and complete.
 - 1.5. I have reviewed the narrative portions for this reporting month and we have taken steps needed to address any and all areas requiring action on our part, as appropriate and necessary.

2. Ensure all Program Reporting Requirements are complete, accurate, and received by the DPHSS, DSC in the format provided and are required to include:

	Name of Document
1.	Transmittal Page (signed by Executive or Program Director and Program Manager)
2.	Invoice <div style="text-align: center;">No.: _____ Amount: _____</div>
3.	Expenditure Report by Object Class and Sub-Categories
4.	Expenditure Report of Personnel Costs
5.	Accounts Receivable Activity Report
6.	Program Income Report
7.	Program Income Expenditure Report
8.	Monthly Statistical Report
9.	Monthly Program Summary
10.	Client Listing

3. Ensure Monthly Program Reports are submitted as follows:

- 3.1. **Within 10 Days.** The Monthly Program Reports are due no later than 3:00 p.m. ten (10) working days after the end of each reporting month, with the exception of the end of the Fiscal Year (September) or end of contract (expiration, termination, or cancellation) reports.
- 3.2. **Within 5 Days.** The end of Fiscal Year (September) or end of contract (expiration, termination, or cancellation) reports are due, no later than 3:00 p.m. five (5) working days at the end of the month being reported on, or the date the contract ends. In the event the contract ends during a month, please note it is five (5) working days, from the date the contract ends, i.e. pro-rata.

Timely submission of Monthly Program Reports is required because DPHSS has reporting requirements it needs to meet as well.

Don'ts:

1. Submit incomplete, inaccurate, or late financial, statistical, and other required program information which may result in Administrative Program Performance (see Page 73 of 168 of this RFP).
2. Submit late Monthly Program Reports (any part) which may result in a reduction to the Service Provider's Monthly Program Invoice (MPI) in the amount of \$1,000.00 (see Page 74 of 168 of this RFP).

XIX. APPENDICES ADDITIONAL INFORMATION

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Invoices, and Payments**

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