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

OCT 07 2022



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DIRECTOR

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**REQUEST FOR PROPOSALS (RFP)  
AGING & DISABILITY RESOURCE CENTER  
SOFTWARE AND SERVICES (ADRC) PROGRAM  
RFP#: RFP/DPHSS-2022-002**

**AMENDMENT #1**

- The following Table 1: RFP Schedule without Price Proposal Submission is replaced in its entirety:

**AGING AND DISABILITY RESOURCE CENTER SOFTWARE AND SERVICES  
PROGRAM  
REQUEST FOR PROPOSAL NO.: RFP/DPHSS-2022-002**

**Amended Table 1: RFP Schedule without Price Proposal Submission**

Milestone	From	To
RFP Announcement – RFP Program Specifications are available for pickup and/or public viewing at the Department of Public Health and Social Services (DPHSS), Division of Senior Citizens (DSC) located at 130 University Drive, Suite 8, University Castle Mall, Mangilao from <b>8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m. Chamorro Standard Time (Guam Time)</b> and is downloadable at <a href="https://dphss.guam.gov/rfps/">https://dphss.guam.gov/rfps/</a> in a pdf format.	Friday, September 23, 2022	Friday, November 4, 2022
Cut-Off Date for Receipt of Written Questions – All inquiries, clarifications or questions must be submitted in writing <b>no later than 3:00 p.m. Chamorro Standard Time (Guam Time) on Friday, October 14, 2022.</b>	Friday, October 14, 2022 3:00 p.m. Chamorro Standard Time (Guam Time)	
DPHSS/DSC Response to Written Questions – All inquiries, clarifications or questions shall be responded to <b>no later than 5:00 p.m. Chamorro Standard Time (Guam Time) on Friday, October 21, 2022.</b>	Friday, October 21, 2022 5:00 p.m. Chamorro Standard Time (Guam Time)	
Deadline for RFP Proposal Submission – An original and two (2) copies of the proposal shall be delivered to the Division of Senior Citizens (DSC) Office located at 130 University Drive, Suite 8, University Castle Mall, Mangilao <b>no later than 3:00 p.m. Chamorro Standard Time (Guam Time) on Friday, November 4, 2022.</b>	Friday November 4, 2022 3:00 p.m. Chamorro Standard Time (Guam Time)	

<b>DPHSS, DSC SHALL NOT EVALUATE PROPOSAL RECEIVED AFTER THE DATE AND TIME SPECIFIED.</b>	
1 <sup>ST</sup> Announcement – The Guam Daily Post and Pacific Daily News	Friday, September 23, 2022
2 <sup>nd</sup> Announcement – The Guam Daily Post and Pacific Daily News	Tuesday, September 27, 2022
3 <sup>rd</sup> Announcement – The Guam Daily Post and Pacific Daily News	Friday, October 7, 2022

2. The following language is amended on page 4 of 85, **5. Guam’s Aging and Disability Resource Center**. In the 4<sup>th</sup> paragraph to replace in its entirety:

This procurement is locally funded and federally funded and is in compliance with Guam’s approved HHS ACL Four Year State Plan. DPHSS’ intention is to seek future federal grant funding with regard to this Aging Disability Resource Program and the evolving system change HHS ACL initiative known as No Wrong Door (NWD) System. A NWD System is a network of community-based organizations, such as Aging and Disability Resource Centers, Area Agencies on Aging and Center for Independent Living, and state agencies, coordinating efforts to provide streamlined access and better care coordination for older adults, individuals with disabilities, and their caregivers. For this funding opportunity state/territorial entities that oversee ADRC/NWD System activity are potentially eligible to apply for future Federal funding.

DPHSS, DSC will continue to explore working with other government of Guam entities as to partnering to access the needs of the community, sharing resources or to provide financial support for their programs, and/or collaborate on mitigating burden on government of Guam entities by streamlining access functions.

3. The following language is amended on page 7 of 85, to add:

11. **Applicable of HHS ACL Federal Grant terms and conditions.** The Electronic Code of Federal Regulations (eCFR) <http://www.ecfr.gov> Office of Management and Budget Guidance for Grants and Agreements – Part 200- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) at 2 CFR Part 200 Department of Public Health and Human Services -Part 75- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards (HHS Uniform Guidance) at 45 CFR Part 75.

4. The following language is amended on page 18 of 85, **III INSTRUCTIONS TO OFFERORS**, 8. Deadline for written questions to now read:

8. **Deadline for Written Questions.** The deadline for written questions is no later than 3:00 p.m., Chamorro Standard Time (UTC+10 Guam) **Friday October 14, 2022.**

5. The following language is amended on page 18 of 85, **9. SUBMISSION DEADLINE**, to replace in its entirety to now read:

- a. **An original and two (2) copies** of the proposal shall be delivered to the Division of Senior Citizens Office located at 130 University Drive, Suite 8 University Castle Mall, Mangilao, Guam 96913, **no later than 3:00 p.m. Chamorro Standard Time (UTC+10 Guam), Friday, November 4, 2022.**
- b. **DPHSS, DSC SHALL NOT EVALUATE PROPOSALS RECEIVED AFTER THE DATE AND TIME SPECIFIED.**
- c. **ADDITIONALLY, PROPOSALS TRANSMITTED VIA FACSIMILE OR EMAIL WILL NOT BE ACCEPTED.**
- d. All inquiries, clarifications, or questions must be submitted in writing **no later than 3:00 p.m., Chamorro Standard Time (Guam Time), Friday, October 14, 2022 and shall be responded to no later than 5:00 p.m., Chamorro Standard Time (Guam Time), Friday October 21, 2022.** Inquiries, clarifications, or questions shall contain the RFP number RFP/DPHSS-2022-002 (ADRC) in the subject line and must be addressed as follows:

Department of Public Health and Social Services  
Division of Senior Citizens  
Senior Citizens Assistant Administrator  
Mr. Chad Palomo  
Email: [dsc.procurement@dphss.guam.gov](mailto:dsc.procurement@dphss.guam.gov)  
Telephone: (671) 735-7415 or (671) 735-7421  
Fax: (671) 735-7416

- 6. The following language is amended on page 20 of 85, **IV. CONTRACTING INFORMATION. 4. Renewal Term(s)** to replace “three (3) additional one (1) year periods” to now read: “four (4) additional one (1) year periods”.
- 7. The following language is amended on page 30 of 85, **VII. SCOPE OF SERVICES: PROGRAM SPECIFICATIONS REQUIREMENTS FOR THE AGING AND DISABILITY RESOURCE CENTER SOFTWARE AND SERVICES. 4. Security and Access Requirements** to add:
  - m. When providing the Services to DPHSS, DSC, Contractor shall maintain a written information security program of reasonable and appropriate administrative, physical, and technical safeguards to:
    - i. Ensure the confidentiality, integrity, and availability of DPHSS, DSC and its Customer’s Data stored within, or transmitted to or from, Contractor’s information processing facilities;
    - ii. Protect against reasonably anticipated (i) threats or hazards to the security or integrity of DPHSS, DSC and its Customer’s Data or the Services, and (ii) unauthorized access to, or uses or disclosures of, DPHSS, DSC and its Customer’s Data; and

- iii. Ensure compliance with all applicable laws by Contractor, Contractor's officers, members, employees, subcontractors, and agents, including but not limited to laws relating to the security or privacy of DPHSS, DSC and its Customer's Data.
8. The following language is amended on page 32 of 85, **VII. SCOPE OF SERVICES: PROGRAM SPECIFICATIONS REQUIREMENTS FOR THE AGING AND DISABILITY RESOURCE CENTER SOFTWARE AND SERVICES**. 6. Other Requirements "b" to now read:
- b. **Older Americans Act Performance System (OAAPS) State Reporting Tool** – DPHSS, DSC requires Contractor to provide the application ability to gather and submit client demographic data electronically on a yearly basis to the OAAPS application located at <https://oaaps.acl.gov/welcome>
9. The following language is amended on page 34 of 85, **VII. SCOPE OF SERVICES: PROGRAM SPECIFICATIONS REQUIREMENTS FOR THE AGING AND DISABILITY RESOURCE CENTER SOFTWARE AND SERVICES**. 6. Other Requirements "s" to replace in its entirety, to now read:
- s. **Adult Protective Services Component.** The DPHSS, DSC requires the Contractor to maintain:
    - 1. **Central Registry:** In accordance with section 10GCA Section 2958, P.L. 31-278, the Bureau shall maintain a Central Registry of reports of alleged abuses of elderly or adults with a disability, which shall contain and be limited to the following information:
      - (1) The name, address and birthday of the elderly or adult with a disability.
      - (2) The date or dates and the nature and extent of the suspected abuse.
      - (3) The locality in which the suspected abuse occurred.
      - (4) The name of the person or persons suspected of causing the abuse.
      - (5) The progress of any legal proceedings brought on the basis of suspected abuse.
    - 2. **Substantiated and Unsubstantiated Reports.** Both substantiated and unsubstantiated reports of elderly or adult with a disability abuse shall be placed and maintained in the Central Registry. An investigation of a report of suspected elderly or adult with a disability abuse, that does not determine within ninety (90) days of the date of the initial report that it is a substantiated or an unsubstantiated report, shall be classified as an inconclusive finding. Therefore, all information identifying the named victim and perpetrator or perpetrators shall be expunged.
10. The following language is amended on page 34 of 85, **VII SCOPE OF SERVICES: PROGRAM SPECIFICATIONS REQUIREMENTS FOR THE AGING AND DISABILITY RESOURCE CENTER SOFTWARE AND SERVICES**, 6. Other Requirements to add:

t. National Adult Maltreatment Reporting System (NAMRS)-DPHSS DSC requires the offeror to maintain a comprehensive, national reporting system for state APS programs to now read:

11. The following language is amended on page 49 of 85, **VII SCOPE OF SERVICES: PROGRAM SPECIFICATIONS REQUIREMENTS FOR THE AGING AND DISABILITY RESOURCE CENTER SOFTWARE AND SERVICES. 8.2 Project Deliverables** to add:

**(15) Deliverable 15-Flow Chart**

Contractor agrees to perform and provide all of the services and other deliverables required in Request for Proposal No. DPHSS 2022-002 in the Table of Deliverables and the Work Flow Charts, attached hereto and incorporated herein as if fully re-written.

- a. Contractor is responsible to submit Work Flow Charts for Initial Entry from the consumer/client to access services and Work Flow Chart for Service Providers for the ADRC; and
- b. Contractor is responsible to submit Work Flow Chart for the APS Referral Process.

12. The following language is amended on page 50 of 85, **VIII. CONTRACT TERMS AND CONDITIONS:** paragraph "1" replace "<http://www.guamag.org/>" with "<http://oagguam.org/>".

13. The following language is amended on page 52 of 85, **X. APPENDIX B: MANDATORY FEDERAL PROGRAM FORMS** to now read:

Appendix B-1 Limited English Proficiency Certification

Appendix B-2 Certification of Non-Discrimination

Appendix B-3 Civil Rights Requirements

Appendix B-4 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

Appendix B-5 Compliance with Federal Laws and Regulations

Appendix B-6 Uniform Guidance 2 CFR, Part 200 and 45 CFR, Part 75 for Health and Human Services (HHS) Awards – Contract Provisions

Appendix B-7 Updates to the Uniform Guidance 2 CFR, Part 200 and 45 CFR, Part 75 for Health and Human Services (HHS) Awards – Special Contract Provisions and OMB M-22-11 Initial Implementation Guidance on Application of Buy America Preference in Federal Assistance Programs for Infrastructure (attachment)

14. The following language is amended on page 74 of 85, **APPENDIX B: MANDATORY FEDERAL PROGRAM FORMS** to now read and which are attached:

**APPENDIX B: MANDATORY FEDERAL PROGRAM FORMS**

- Appendix B-1 Limited English Proficiency Certification
- Appendix B-2 Certification of Non-Discrimination
- Appendix B-3 Civil Rights Requirements
- Appendix B-4 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- Appendix B-5 Compliance with Federal Laws and Regulations
- Appendix B-6 Uniform Guidance 2 CFR, Part 200 and 45 CFR, Part 75 for Health and Human Services (HHS) Awards – Contract Provisions
- Appendix B-7 Updates to the Uniform Guidance 2 CFR, Part 200 and 45 CFR, Part 75 for Health and Human Services (HHS) Awards – Special Contract Provisions and OMB M-22-11 Initial Implementation Guidance on Application of Buy America Preference in Federal Assistance Programs for Infrastructure

15. Appendix C: Sample Contract is attached.

16. The following language is added on to now include **APPENDIX E** which is attached:

**Appendix E: National Adult Maltreatment Reporting System (NAMRS), Key Indicators Component Data- Sample Form**

  
**ARTHUR U. SAN AGUSTIN, MHR**  
Procurement Officer DPHSS

**Attachments**

<p><b>ACKNOWLEDGEMENT COPY</b></p> <p>RECEIVED BY: _____ (Print/Sign)</p> <p>DATE: _____</p> <p>COMPANY NAME: _____</p>
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Instructions: Please print, sign and date in blue ink on the Amendment #1 marked Acknowledgment. Copy and submit by email with document in pdf to Ms. Charlene D. San Nicolas [dsc.procurement@dphss.guam.gov](mailto:dsc.procurement@dphss.guam.gov).



**Appendix B-1**

**LIMITED ENGLISH PROFICIENCY CERTIFICATION**

Limited English Proficiency Certification

I certify that Limited English Proficiency persons have meaningful access to any services under any developed (if applicable) program(s). National origin discrimination includes discrimination on the basis of Limited English Proficiency (LEP). Meaningful access may entail providing language assistance services, including oral and written translation when necessary.

SUBMITTED BY:

Signature:	Date:
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Name:	Title:
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Agency:

**Instructions: Authorized Official to sign, date and submit this form with the Proposal.**

## Appendix B-2

### CERTIFICATION OF NON-DISCRIMINATION

#### Certification of Non-Discrimination

Contractor agrees that:

It will comply, with and will insure compliance by its sub-grantees and contractors with the nondiscrimination requirements of the following statutes and regulations:

- Omnibus Crime Control and Safe Streets Act of 1968, as amended, and 42 U.S.C. 3789(d) which prohibits discrimination on the basis of race, color, national origin, religion, or sex in the United States Department of Justice funded programs or activities;
- Title VI of the Civil Rights Act of 1964, and 42 U.S.C. §2000d which prohibits discrimination on the basis of race, color or national origin in the United States Department of Justice funded programs or activities;
- Section 504 of the Rehabilitation Act of 1973, and 29 U.S.C. §794 which prohibits discrimination on the basis of disability in U.S. D.O.E. funded programs or activities;
- Title II of the Americans with Disabilities Act (ADA) of 1990, and 42 U.S.C. §12132, as it relates to discrimination on the basis of disability in the United States Department of Justice funded programs or activities;
- Title IX of the Education Amendments of 1972, and 20 U.S.C. §1681 as it relates to discrimination on the basis of sex the United States Department of Justice funded training or educational programs;
- The Age Discrimination Act 1975, and 42 U.S.C. §6102, as it relates to services discrimination on the basis of age the United States Department of Justice funded programs or activities.

No person shall, on the grounds of race, color, religion, national origin, sex, or disability, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any program or activity funded in whole or in part with funds made available under this title from the U.S. Department of Health and Human Services. The applicant agency also certified that, if required to formulate an Equal Employment Opportunity Plan (EEOP), in accordance with 28 CFR 42.301 et seq., it will maintain a current one on file. Non-compliance with the discrimination regulations may result in the suspension or termination of funding.

In the event that a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, national origin, sex, or disability against a recipient of Federal funds, or any sub-grantee or contractor of that recipient, a copy of such findings must be forwarded to the United States of Department of Health and Human Services.

If your organization is required to develop an EEOP and your organization has received a single award for \$500,000 or more in grant funds, whether directly from the U.S. Department of Health and Human Services or indirectly from a state or local agency as a sub-recipient, your agency must submit a copy of the subject EEOP to the U.S. Department of Health and Human Services for their review and approval.

SUBMITTED BY:

Signature of Authorized Official:

Date:

Name of Authorized Official:

Name of Organization:

**Instructions: Authorized Official to sign, date and submit this form with the Proposal.**



**Appendix B-3**

**CIVIL RIGHTS REQUIREMENTS**

Civil Rights Requirements

Contractor:

Civil Rights Contact Person:

Title/Address:


Telephone Number:

Number of persons employed by the organizational unit:

**Instructions: Authorized Official to sign, date and submit this form with the Proposal.**

**Appendix B-4**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND  
VOLUNTARY EXCLUSION**

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion**

**PROJECT INFORMATION:**

**Project Name:** \_\_\_\_\_

**Project Number:** \_\_\_\_\_

**Principal Contact:** \_\_\_\_\_  
*Firm Name / Contact Name / Title*

\_\_\_\_\_  
*Firm Address/ Phone Number/ Email Address*

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion**

***Contractor-***

(1) The undersigned certifies, by submission of this proposal, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal agencies;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the undersigned is unable to certify to any of the statements in this certification, such Offeror/Bidder/Contractor/Subrecipient shall attach an explanation to this proposal\*.

\*Exceptions will not necessarily result in denial of award, but will be considered in determining Offeror/Bidder/Contractor/Subrecipient responsibility. For any exception noted, indicate to whom it applies, initiating agency, dates of action, and the type of violation.

I, the official named below, hereby swear that I am duly authorized to legally bind the prospective contractor to the above described certification. I am fully aware that this certification is made under penalty of perjury under the laws of Guam.

\_\_\_\_\_  
Signature/Authorized Certifying Official

\_\_\_\_\_  
Typed Name and Title

\_\_\_\_\_  
Prospective Contractor/Organization

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Contractor License No. (if any)

**Instructions: Authorized Official to sign, date and submit this form with the Proposal.**

## Appendix B-5

### **COMPLIANCE WITH FEDERAL LAWS AND REGULATIONS**

**Department of Public Health and Social Services  
Division of Senior Services  
U.S. Department of Health and Human Services  
Administration of Community Living – Older Americans Act Title III  
Federal Grant Funds**

Offeror/Bidder/Contractor/Subrecipient by signing below agree to comply with HHS Requirements which follow:

(See <https://www.acl.gov/grants/managing-grant#3> for a complete listing of Terms and Conditions; including HHS Grants Policy Statement as to the flow-down of clauses and requirements; the Uniform Guidance 2 CFR Part 200 and 45 CFR, Part 75 for HHS Awards – Contract Provisions, and the Notice of Grant Award).

**A. Standards of Conduct for Recipient Employees.**

HHS requires recipients to establish safeguards to prevent employees, consultants, members of governing bodies, and others who may be involved in grant-supported activities from using their positions for purposes that are, or give the appearance of being, motivated by a desire for private financial gain for themselves or others, such as those with whom they have family, business, or other ties. These safeguards must be reflected in written standards of conduct. Except as provided below, HHS does not require a recipient to establish separate standards of conduct if it maintains such standards for its non-grant-supported activities, as long as those standards are consistent with State and local laws and cover, at a minimum, expected conduct in regard to financial interests, gifts, gratuities and favors, nepotism, and such other areas for governmental organizations as political participation and bribery.

The standards also must do the following:

- Address the conditions under which outside activities, relationships, or financial interests are proper or improper.
- Provide for advance notification of outside activities, relationships, or financial interests to a responsible organizational official.
- Include a process for notification and review by the responsible official of potential or actual violations of the standards.
- Specify the nature of penalties that the recipient may impose. These penalties would be in addition to any penalties that HHS or a cognizant Federal agency may impose for infractions that also violate the terms and conditions of award.

Recipients are not required to submit its general standards of conduct to HHS for review or approval. However, a copy must be made available to each of the recipient's officers; each employee and consultant working on the grant-supported program, project, or activity; each member of the governing board, if applicable; and, upon request, the OPDIV. The recipient is responsible for enforcing its standards of conduct, taking appropriate action on individual infractions, and, in the case of financial conflict of interest, informing the GMO if the infraction is related to a research award (see "Other Research-Related Requirements—Financial Conflict of Interest" for the specific regulatory requirements that apply to financial conflict of interest under research grants).

If a suspension or separation action is taken by a recipient against a PI/PD or other key personnel, the recipient must request prior approval of the proposed replacement.

**B. Hatch Act.**

The Hatch Act restricts political activity of executive branch employees of the federal government and District of Columbia government employees (5 U.S.C. 7321–7328) and State or local officers or employees (5 U.S.C. 1501–1528). "State or local officer or employee" means an individual employed by a State or local agency whose principal employment is in connection with an activity that is financed in whole or in part by loans or grants made by the United States or a Federal agency. (Certain State educational or research institutions are excluded from this definition.)

**C. Age Discrimination Act of 1975.**

The Age Discrimination Act of 1975, 42 U.S.C. 6101 *et seq.*, prohibits discrimination on the basis of age in any program or activity receiving Federal financial assistance. The HHS implementing regulations are codified at 45 CFR part 91.

**D. Civil Rights Act of 1964.**

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. The HHS implementing regulations are codified at 45 CFR part 80.

**E. Education Amendments of 1972.**

Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, 1682, 1683, 1685, and 1686, provides that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance. The HHS implementing regulations are codified at 45 CFR part 86.

**F. Rehabilitation Act of 1973.**

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, provides that no otherwise qualified handicapped individual in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. These requirements pertain to the provision of benefits or services as well as to employment. The HHS implementing regulations are codified at 45 CFR parts 84 and 85.

**G. Conflict of Interest.**

Subrecipients or contractors must establish personnel policy to prevent employees, consultants, members of governing bodies, and others involved in grant-supported activities from using their positions for purposes that are, or give the appearance of being, motivated by a desire for private financial gain for themselves or others, such as those with whom they have family, business, or other ties. The personnel policy must:

- Address the conditions under which outside activities, relationships, or financial interests are proper or improper.
- Provide for advance notification of outside activities, relationships, or financial interests to a responsible organizational official.
- Include a process for notification and review by the responsible official of potential or actual violations of the standards.
- Specify the nature of penalties that may be imposed for violations.

Reference pg. II-7 of the [HHS Grants Policy Statement](#)

**H. Drug-Free Workplace.**

The personal policy must include the following:

- The unlawful manufacture, distribution, dispensing, possession, or use of controlled substances is prohibited in the workplace.
- Employees must notify management, as a condition of employment, in writing within five calendar days, if they are convicted of violating a criminal drug statute.
- Appropriate personnel action must be taken, within 30 calendar days, against any employee convicted of violating a criminal drug statute up to and including termination, or require the employee to participate satisfactorily in a federal, state, local, or law enforcement-approved drug abuse assistance or rehabilitation program.
- Federal agencies must be notified in writing, within 10 calendar days, if any employee engaged in the performance of an award is convicted of violating a criminal drug statute.

Reference the Government-wide Requirements for Drug-Free Workplace, [§s 82.3 and 82.4 of 45 CFR Part 82 \(PDF | 172.6 KB\)](#).

**I. Trafficking Victims Protection Act of 2000 (TVPA), as amended 22 U.S.C. 7104(g).**

Provisions applicable to Contractors and subcontractors who are private entities. Contractor and its subcontractor, and their employees associated with performance under this procurement shall not (i) engage in severe forms of trafficking in persons during the period of time that the procurement is in effect; (ii) procure a commercial sex act during the time that the procurement is in effect, or (iii) use forced labor in the performance of services in this procurement as defined in the TVPA as amended or the federal regulations, including but not limited to 2 CFR 175. DPHSS, DSC, the Government of Guam and the United States Department of Public Health and Human Services, Administration for Community Living may terminate any work, contract, grant, subgrant without penalty for any violation of these provisions by the Contractor and its subcontractors and their employees, imputed to the Contractor or its subcontractor using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement)," as implemented by the United States Department of Public Health and Human Services 2 CFR part 376.

Provision applicable to Contractor and subcontractors other than a private entity. DPHSS, DSC, the Government of Guam and the United States Department of Public Health and Human Services, Administration for Community Living may terminate any work, contract, grant, subgrant without penalty, if a Contractor or subcontractor that is a private entity- is determined to have violated an applicable prohibition above in this clause; or has an employee who is determined by the agency official authorized to terminate the contract to have violated an applicable prohibition above in this clause through conduct that is either- associated with performance under this procurement; or imputed to the Contractor or its subcontractors using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement)," as implemented by the United States Department of Public Health and Human Services 2 CFR part 376.

Provisions applicable to any recipient. Contractor and its subcontractors must inform, DPHSS, DSC, the Government of Guam and the United States Department of Public Health and Human Services, Administration for Community Living immediately of any information they receive from any source alleging violation of the above prohibitions in this clause. DPHSS, DSC, the Government of Guam and the United States Department of Public Health and Human Services, Administration for Community Living right to terminate unilaterally that is described above: implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVA), as amended (22 U.S.C. 7104 (g) ), and is in addition to all other remedies available in this contract. Contractor and its subcontractors must include this section in any subcontracts they make in this procurement. The following definitions apply to this section: (1) "Employee" means either: an individual employed by you or a contractor who is engaged in the performance of this procurement; or another person engaged in the performance of services in this procurement not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements. (2) "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. (3) "Private entity": means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25. Includes: a nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b). A for profit organization. (4) "Severe forms of trafficking in persons", "commercial sex acts", and "coercion" have the meaning given at section 103 of TVPA, as amended (22 U.S.C. 7102)

**J. Federal Funding Accountability and Transparency Act (FFATA).**

Contractor is subject to sub-award and executive compensation requirements in the FATA Sub-award Reporting System (FSRS).

See [http://www.acl.gov/Funding\\_Opportunities/Grantee\\_Info/FFATA.aspx](http://www.acl.gov/Funding_Opportunities/Grantee_Info/FFATA.aspx).

In accordance with 2 CFR Chapter 1, Part 170 REPORTING SUB-AWARD AND EXECUTIVE COMPENSATION INFORMATION, Contractors and sub Awardees awarded a federal grant are required to file a FFATA sub-award report by the end of the month following the month in which the prime awardee awards any sub-grant equal to or greater than \$25,000. The reporting requirements are as follows:

- This requirement is for both mandatory and discretionary grants awarded on or after October 1, 2010.

- All sub-award information must be reported by the prime awardee.
- For those new Federal grants as of October 1, 2010, if the initial award is equal to or over \$25,000, reporting of sub-award and executive compensation data is required.
- If the initial award is below \$25,000 but subsequent grant modifications result in a total award equal to or over \$25,000, the award will be subject to the reporting requirements, as of the date the award exceeds \$25,000.
- If the initial award equals or exceeds \$25,000 but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the award continues to be subject to the reporting requirements of the Transparency Act and this Guidance.

**K. Requirements for Federal Funding Accountability and Transparency Act Implementation.**

In September 2010, the Office of Management and Budget issued Interim Final Guidance in the Federal Register (Volume 75, No. 177, September 14, 2010, 2 CFR Part 170) to establish reporting requirements necessary for the implementation of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of Public Law 110-252. This award term implements those requirements and is located at 2 CFR Part 170.

**Appendix A to Part 170—Award Term  
Reporting Subawards and Executive Compensation.**

**a. Reporting of first-tier subawards.**

1. *Applicability.* Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).
2. Where and when to report.
  - i. You must report each obligating action described in paragraph a.1. of this award term to the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS).
  - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
3. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

**b. Reporting of Total Compensation of Recipient Executives.**

1. *Applicability and what to report.* You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
  - i. the total Federal funding authorized to date under this award is \$25,000 or more;
  - ii. in the preceding fiscal year, you received—
    - A. 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
    - B. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
  - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at the Executive Compensation page of the SEC website.)
2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:
  - i. As part of your registration profile at the Central Contractor Registry.
  - ii. By the end of the month following the month in which this award is made, and annually thereafter.



**c. Reporting of Total Compensation of Subrecipient Executives.**

1. *Applicability and what to report.* Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—
  - i. in the subrecipient's preceding fiscal year, the subrecipient received—
    - A. 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
    - B. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
  - ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at the [Executive Compensation](#) page of the SEC website.)
2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:
  - i. To the recipient.
  - ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

**d. Exemptions**

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- i. Subawards, and
- ii. The total compensation of the five most highly compensated executives of any subrecipient.

**e. Definitions.**

For purposes of this award term:

1. "Entity" means all of the following, as defined in 2 CFR part 25:
  - i. A Governmental organization, which is a State, local government, or Indian tribe;
  - ii. A foreign public entity;
  - iii. A domestic or foreign nonprofit organization;
  - iv. A domestic or foreign for-profit organization;
  - v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
2. "Executive" means officers, managing partners, or any other employees in management positions.
3. "Subaward":
  - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
  - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. II .210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
  - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
4. "Subrecipient" means an entity that:
  - i. Receives a subaward from you (the recipient) under this award; and
  - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
5. "Total compensation" means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

i. Salary and bonus.

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- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax-qualified.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

**L. Same-Sex Marriage – United States v. Windsor, 133 S.Ct. 2675 (June 26, 2013); section 3 of the Defense of Marriage Act, codified at 1 USC § 7.**

All grantees are expected to recognize any same-sex marriage legally entered into in a U.S. jurisdiction that recognizes their marriage, including one of the 50 states, the District of Columbia, or a U.S. territory, or in a foreign country so long as that marriage would also be recognized by a U.S. jurisdiction. This applies regardless of whether or not the couple resides in a jurisdiction that recognizes same-sex marriage. However, this does not apply to registered domestic partnerships, civil unions or similar formal relationships recognized under the law of the jurisdiction of celebration as something other than a marriage. Accordingly, recipients must review and revise, as needed, any policies and procedures which interpret or apply Federal statutory or regulatory references to such terms as "marriage," "spouse," family," "household member" or similar references to familial relationships to reflect inclusion of same-sex spouse and marriages. Any similar familial terminology references in HHS statutes, regulations, or policy transmittals will be interpreted to include same-sex spouses and marriages legally entered into as described herein. Federal grant funds from the U.S. Department of Health and Human Services, Administration for Community Living (ACL) are part of this procurement. The ACL has issued guidance as to same-sex marriage and its grant funds. In the event that the guidance applies to this procurement, then Contractor agrees to comply with any and all requirements of the ACL with regard to its guidance on same-sex marriage.

**M. Pilot Program for Enhancement of Contractor Whistleblower Protections.**

Contractors are hereby given notice that the 48 CFR section 3.908, implementing section 828, entitled "Pilot Program for Enhancement of Contractor Whistleblower Protections" of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013(Pub.L. 112-239, enacted January 2, 2013 applies to this procurement. The effective date is for grants and contracts issued on or after July 2, 2013.

Contractor agrees to comply with Section 1553 of the American Recovery and Reinvestment Act of 2009 (ARRA), which states: An employee of any non-Federal employer receiving covered funds may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of— (1) gross mismanagement of a contract or grant relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to ARRA funds. Contractor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of the ARRA.

**N. Certification Regarding Lobbying.**

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any

Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**O. The Consolidated Appropriations Act, 2022 § 202, (P.L. 117-103), enacted March 15, 2022. Salary Restriction.** "None of the funds appropriated in this title shall be used to pay the salary of an individual, through a grant or other extramural mechanism, at a rate in excess of Executive Level II., restricts the amount of direct salary that may be paid to an individual under a ACL grant or cooperative agreement to a rate no greater than Executive Level II of the Federal Executive Pay Scale. Effective January 2022, the Executive Level II salary level is \$203,700. This amount reflects an individual's base salary exclusive of fringe benefits. An individual's institutional base salary is the annual compensation that the recipient organization pays an individual and excludes any income an individual may earn outside the applicant organization duties.

You may not use ACL funds to pay a salary in excess of this rate. This salary limitation also applies to subrecipients under a ACL grant or cooperative agreement. The salary limitation does not apply to payments made to consultants under this award; although, as with all costs, those payments must meet the test of reasonableness and be consistent with the recipient's institutional policy.

Note: an individual's base salary, per se, is not constrained by the statutory provision for a limitation of salary. The rate limitation simply limits the amount that may be awarded and charged to ACL grants and cooperative agreements. For individuals whose salary rates are in excess of Executive Level II, the non-federal entity may pay the excess from non-federal funds.

**P. Gun Control (Section 217)** "None of the funds made available in this title may be used, in whole or in part, to advocate or promote gun control."

**S. Restriction on Distribution of Sterile Needles (Section 522)** "Notwithstanding any other provision of this Act, no funds appropriated in this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug."

**T. Anti-Lobbying (Section 503)**

a. No part of any appropriation contained in this Act or transferred pursuant to section 4002 of Public Law 111-148 shall be used, other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the Congress or any State or local legislature or legislative body, except in presentation to the Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government, except in presentation to the executive branch of any State or local government itself.

b. No part of any appropriation contained in this Act or transferred pursuant to section 4002 of Public Law 111-148 shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed

or pending before the Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.

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c. The prohibitions in subsections (a) and (b) shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.

**U. Federal Awardee Performance and Integrity Information System (FAPIS).**

As required by 2 CFR 200 Appendix XII of the Uniform Guidance, non-federal entities (NFEs) are required to disclose in FAPIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive federal awards (currently active grants, cooperative agreements, and procurement contracts) greater than \$10,000,000 for any period of time during the period of performance of an award/project.

V. The Duncan Hunter National Defense Authorization Act of 2009 (Public Law 110-417) was enacted on October 14, 2008. Section 872 of this Act required the development and maintenance of an information system that contains specific information on the integrity and performance of covered federal agency contractors and grantees. FAPIS was developed to address these requirements. FAPIS provides users access to integrity and performance information from the FAPIS reporting module in the Contractor Performance Assessment Reporting System (CPARS), proceedings information from the Entity Management section of the System for Award Management (SAM) database, and suspension/debarment information from the Performance Information section of SAM. See [2 CFR 200 Appendix XII](#) for full citation.

**X. Prohibition on certain telecommunications and video surveillance service or equipment**

Effective August 13, 2020, HHS issued new provisions to loan, grant or cooperative agreement awards (does not apply to no-competing continuation awards):

As described in CFR 200.216, recipients and subrecipients are prohibited to obligate or spend grant funds (to include direct and indirect expenditures as well as cost share and program) to:

- (1) Procure or obtain,
  - (2) Extend or renew a contract to procure or obtain; or
  - (3) Enter into contract (or extend or renew contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Pub. L. 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- i. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
  - ii. Telecommunications or video surveillance services provided by such entities or using such equipment.
  - iii. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise, connected to the government of a covered foreign country.

Offeror/Bidder/Contractor/Subrecipient agrees to provide DPHSS, DSC a copy of their written policies and procedures in compliance with the above, upon DPHSS, DSC's request.

SUBMITTED BY:

Signature of Authorized Official:

Date:

Name of Authorized Official:

Name of Organization:

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**Instructions: Authorized Official to sign, date and submit this form with the Proposal.**



## Appendix B-6

### **UNIFORM GUIDANCE - CONTRACT CLAUSES**

**Guam Department of Public Health & Social Services  
Division of Senior Citizens  
Federal Funds**

**Uniform Guidance 2 CFR Part 200 (Appendix II) and 45 CFR, Part 75 (Appendix II) for HHS Awards – Contract Provisions**

**Offeror/Bidder/Contractor by signing below acknowledges, to the extent applicable, the following contract clauses apply to it in this procurement; and must be flowed down by Offeror/Bidder/Contractor in its contracts with subcontractors.**

This procurement is funded in whole or part with federal funds (or is anticipated to be funded by federal funds in the future). The undersigned Contractor by affixing its signature below certifies its compliance to following, contract provisions, as applicable. (See 2 CFR Part 200 and 45 CFR, Part 75 for HHS Awards).

**Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards and  
Appendix II to Part 75—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**

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 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(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, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). 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, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). 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

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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, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 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 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 § 200.323.

(K) See § 200.216.

(L) See § 200.322.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014; 85 FR 49577, Aug. 13, 2020]

Signature of Authorized Official:

Date:

Name of Authorized Official:

Name of Organization:

**Instructions: Authorized Official to sign, date and submit this form with the Proposal.**

## Appendix B-7

### **UNIFORM GUIDANCE – SPECIAL PROGRAM CONTRACT CLAUSES**

**Guam Department of Public Health & Social Services  
Division of Senior Citizens  
Federal Funds**

Updates to the Uniform Guidance 2 CFR Part 200 (Appendix II) and 45 CFR, Part 75 (Appendix II) for HHS Awards

**1. Compliance with the Federal Awardee Performance and Integrity Information System**

§ 200.113 Mandatory disclosures. (Uniform Grant)- Federal Awardee Performance and Integrity Information System (FAPIS)

Service Provider shall comply with the non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award including the term and condition outlined in appendix XII to this part are required to report certain civil, criminal, or administrative proceedings to SAM (currently FAPIS). Failure to make required disclosures can result in any of the remedies described in § 200.339. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

[85 FR 49539, Aug. 13, 2020]

**Appendix XII to Part 200 - Award Term and Condition for Recipient Integrity and Performance Matters**

**A. Reporting of Matters Related to Recipient Integrity and Performance**

**1. General Reporting Requirement**

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of [Public Law 110-417](#), as amended ([41 U.S.C. 2313](#)). As required by section 3010 of [Public Law 111-212](#), all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

**2. Proceedings About Which You Must Report**

Submit the information required about each proceeding that:

- a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- b. Reached its final disposition during the most recent five-year period; and
- c. Is one of the following:

- (1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
- (2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;

- (3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or

- (4) Any other criminal, civil, or administrative proceeding if:

- (i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;
- (ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
- (iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

**3. Reporting Procedures**

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under

assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

#### 4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

#### 5. Definitions

For purposes of this award term and condition:

a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

c. Total value of currently active grants, cooperative agreements, and procurement contracts includes -

(1) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and

(2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

B. [Reserved]

[[80 FR 43310](#), July 22, 2015, as amended at [85 FR 49582](#), Aug. 13, 2020]

## 2. Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.

The parties agree to the following contract clauses as applicable to this contract. Service Provider agrees to include them in all contracts as applicable and to flow through the requirement in any subcontracts.

"Contract Provisions for Non-Federal Entity Contracts Under Federal Awards – Uniform Guidance Appendix II B of the Uniform Guidance- 2-CFR Part 200 Contract Provision, to flow through and include the following in all contracts, as applicable.

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, 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 FR 12319, 12935, [3 CFR Part, 1964-1965 Comp.](#), p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at [41 CFR part 60](#), "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(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](#), "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). 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](#), "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor 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](#), "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 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 governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 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 [§ 200.323](#).

(K) See [§ 200.216](#).

(L) See [§ 200.322](#).

[[78 FR 78608](#), Dec. 26, 2013, as amended at [79 FR 75888](#), Dec. 19, 2014; [85 FR 49577](#), Aug. 13, 2020]"

### 3. Domestic preference for procurements.

#### **§ 200.322 Domestic preferences for procurements.**

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products,



or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**4. Prohibition on certain telecommunications and video surveillance services or equipment.**

**200.216 Prohibition on certain telecommunications and video surveillance services or equipment.**

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under [Public Law 115-232](#), section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) See [Public Law 115-232](#), section 889 for additional information.

(d) See also [§ 200.471](#).

**5. Procurement of recovered materials.**

**§ 200.323 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 and Recovery Act. The requirements of Section 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 during the preceding fiscal year exceeded \$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.

**6. (New) Buy American Preference – effective May 14, 2022**

Offerors/Service Providers/Contractors/Subrecipients – are advised that this clause will be updated in the future as more information becomes available from the Federal Grantors.

References: **Build America, Buy America Act (BABAA)**, section 70914 of P.L. 117-58, §§ 70901-52 also known as the Infrastructure Investment and Jobs Act.

**OMB Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Assistance Programs for Infrastructure.**

A copy of OMB M-22-11 is available at:

<https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf>,

Signature of Authorized Official:	Date:
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Name of Authorized Official:
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Name of Organization:
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**Instructions: Authorized Official to sign, date and submit this form with the Proposal.**



## APPENDIX C: SAMPLE CONTRACT

OAG Ref: DPHSS 22-0299

DPHSS, DSC ADRC Software and Services  
Agreement With \_\_\_\_\_  
RFP NO. DPHSS-2022-002

**SOFTWARE AND SERVICES AGREEMENT**  
**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF SENIOR CITIZENS**  
**AGING AND DISABILITY RESOURCE CENTER**  
**WITH**  
**NO WRONG DOOR SYSTEM/ADULT PROTECTIVE SERVICES**  
**RFP NO. DPHSS 2022-002**

*Federally and Locally Funded:*

*CFDA 93.747 APC6 American Rescue Plan (ARP) for APS under SSA Title XX Section 2042(b); P.L. 117-2 under P.L. 115-123 (SSA) Grant No.: 2101GUAPC6-01, NOA July 27, 2022 Project Period: 08-01-2021-09-30-2024, Budget Period: 08-01-2021- 09-30-2024*

*CFDA 93.747 APC6 American Rescue Plan (ARP) for APS under SSA Title XX Section 2042(b); P.L. 117-2 under P.L. 115-123 (SSA) Grant No.: 2101GUAPC6-00, NOA August 3, 2022 Project Period: 08-01-2021-09-30-2023, Budget Period: 08-01-2021-09-30-2023*

*CFDA 93.747 APC5 CRRSA Act, 2021 suppl. funds for APS under SSA Title XX Section 2042(b) P.L. 116-260 under P.L. 115-123 (SSA) Grant No.: 2101GUAPC5-01, NOA No-Cost Extension August 16, 2022, Project Period 04-01-2021 – 09-30-2023, Budget Period 04-01-2021-09-30-2023; APC5 CRRSA Act, 2021 suppl. funds for APS under SSA Title XX Section 2042(b) P.L. 116-260 under P.L. 115-123 (SSA) Grant No.: 2101GUAPC5-00 NOA April 1, 2021 Project Period 04-01-2021- 09-30-2022, Budget Period: 04-01-2021-09-30-2022*

**THIS AGREEMENT** is entered into by and between the Department of Public Health and Social Services (DPHSS) a line agency of the government of Guam whose address is 155 Hesler Place, Hagatna, Guam 96910, on behalf of its Division of Senior Citizens (DSC), and its component Bureau of Adult Protective Services (BAPS) jointly referred to as (DPHSS, DSC) and \_\_\_\_\_ an \_\_\_\_\_ corporation, incorporated in the state of \_\_\_\_\_, whose principal place of business is \_\_\_\_\_, (Contractor).

**WHEREAS**, Guam is an unincorporated territory of the United States and a sovereign entity by act of the United States Congress, The Organic Act of Guam Act of Aug. 1, 1950, as amended, 48 U.S.C. 1421, et. seq.; and whose laws and regulations are available online at the Guam Compiler of Laws website: <http://www.guamcourts.org/Compileroflaws/index.html>; and

**WHEREAS**, Contractor is a commercial provider of the information systems and deliverables as requested in RFP No. DPHSS 2022-002 and represents in its proposal that it can

provide on-time implementation and delivery, as well as support and maintenance, in compliance with all applicable requirements, including but not limited to HIPPA and privacy and cybersecurity; and

**WHEREAS**, the Chief Technology Officer (CTO) of the Guam Office of Technology (OTECH) is the DPHSS, DSC project manager for the major information system services procured under this Agreement and is assisting DPHSS, DSC in keeping with the government of Guam's overall plans and to ensure efficient, effective and on-time implementation and delivery by the Contractor in this project; and

**WHEREAS**, the Director of DPHSS is the procurement officer for RFP No. DPHSS 2022-02, and the contracted for under this Agreement; and

**WHEREAS**, DPHSS, DSC is the administrator for this Fixed Price Agreement entered into in RFP No. DPHSS 2022-02; and

**WHEREAS**, DPHSS, DSC is the administrator of Guam programs and the U.S. Department of Health and Human Services, (HHS), Administration on Community Living (ACL), State Office on Aging (SOA) for Guam (Guam SOA), and DPHSS, DSC pursuant to its HHS ACL approved Guam Four Year State Plan on Aging 2020-2023 administers programs under the Older Americans Act of 1965, as amended by Older American Act Amendments in 2000 and 2006 and as reauthorized in P.L. 114-144 on April 19, 2016, and The Supporting Older Americans Act of 2020 P.L. 116-131 on March 25, 2020; and

**WHEREAS**, DPHSS, DSC HHS ACL programs were further funded under COVID-19 response by law and appropriation year in all multiple titles of statutory Older Americans Act, but in this Agreement Title II HHS ACL discretionary funding for program administration and Aging and Disability Resource Centers (ADRCs) as well other authorized activities that support the Aging Network and Elder Rights activities, Title III grants to states and local entities for supportive and nutrition services, and VII grants for vulnerable elder rights protection; and

**WHEREAS**, DPHSS, DSC as a component of it Guam SOA services administers an Aging and Disability Resource Center Program (ADRC) (originally launched as a collaborative project of the United States Department of Public Health and Human Services, Center for Medicare and Medicaid and Administration for Community Living formerly known as Aging Administration, to streamline access to long-term care support services (LTSS) and is now expanding to other partners and networks ADRCs/No Wrong Door System (NWD) to assist with efforts to streamline access to information about the range of public and private LTSS options available to consumers as a collaborative effort among ACL, CMS and the Department of Veterans Affairs (VA), as well as state funded programs; and

**WHEREAS**, DPHSS, DSC and its Bureau of Adult Protective Services (BAPS) are recipients of HHS ACL Federal grant funds to enhance Adult Protective Services (APS) systems Guam-wide and include innovations and improvements in practice, services, data collection and reporting including but not limited to: the National Voluntary Consensus Guidelines for State APS Systems (Guidelines) to assist states in developing efficient, effective APS Systems and DPHSS, DSC utilizes the Guidelines; and

**WHEREAS**, DPHSS, DSC and its BAPS are recipients of HHS ACL National Adult Maltreatment Reporting System (NAMRS), which is the first comprehensive national reporting system for APS programs. It collects quantitative and qualitative data on APS practices and policies, and the outcome of investigations into the maltreatment of older adults and adults with disabilities. The goal of NAMRS is to provide consistent, accurate national data on the exploitation and abuse of older adults and adults with disabilities, as reported to APS agencies, and DPHSS, DSC and BAPS as part of this agreement, are including NAMRS for its Guam-wide reporting purposes, and for HHS ACL APS NAMRS reporting; and

**WHEREAS**, there is also a local Guam law that requires an ADRC APS Central Registry & Substantiated and Unsubstantiated Reports by 10 GCA Section 2958 P.L. 31-278, codified at 10 GCA Section 2958, that is included in the services in this Agreement, which may receive HHS ACL APS Federal funds in addition to local funding; and

**WHEREAS**, DPHSS, DSC has determined that the relationship between DPHSS, DSC and the federal funds distributed in the program is that of a “contractor” as defined in HHS Uniform Guidance 45 CFR Part 75 § 75.351; and

**WHEREAS**, DPHSS, DSC seeks to enhance and improve DPHSS, DSC Aging and Disability Resource Center program, with the above-mentioned added programs and in compliance with all federal and local laws and regulations through the procurement of software and services that provide:

- An existing, configurable, web-based application consisting of a customer-facing website;
- A resource database and an Information, Referral and Assistance, Electronic Referral (IR&A-E Refer) module;
- Services needed to customize application to meet DPHSS, DSC needs;
- A public website with authorized levels of access;
- Services needed to configure, populate, test, and deploy the application training for end-users; and
- Services needed to host and maintain all parts of the application.

**WHEREAS**, the Director of DPHSS, as Procurement Officer, with the assistance and approval of the Chief Technology Officer of OTECH, as DPHSS, DSC’s Project Manager; issued RFP/DPHSS- 2022-002 for Aging and Disability Service Center Software and Services and have

provided adequate public announcement of the need for such professional information and technology services and specifying the type of information and data required of each offeror and the relative importance of particular qualifications; and

**WHEREAS**, Contractor has submitted a statement of qualifications and an interest in providing such services; and

**WHEREAS**, the award of this contract to Contractor, has been made pursuant to a written finding by the Procurement Officer that Contractor is the best qualified based upon the evaluation factors in the RFP No. DPHSS-2022-002; and

**WHEREAS**, the parties have negotiated compensation which has been determined to be fair and reasonable; and

**WHEREAS**, DPHSS, DSC has determined it does not have adequate personnel or resources to perform the services contemplated in this agreement and it is in the best interest of DPHSS, DSC to have such services performed under contract; and

**WHEREAS**, by submitting its Proposal, Contractor warrants and represents that it possesses the necessary knowledge, resources, and experience to perform the work and services herein described professionally, skillfully and diligently; and

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

## **SECTION I. INCORPORATION AND ORDER OF PRECEDENCE**

The Federal Grant terms and conditions, RFP 2022-002 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 Formula Grant Award HHS, ACL APC6 American Rescue Plan (ARP) for APS under SSA Title XX Section 2042(b); P.L. 117-2 under P.L. 115-123 (SSA) Grant No.: 2101GUAPC6-01
2. APC6 American Rescue Plan (ARP) for APS under SSA Title XX Section 2042(b); P.L. 117-2 under P.L. 115-123 (SSA) Grant No.: 2101GUAPC6-00,
3. Notice of Formula Grant Award HHS, ACL APC5 CRRSA Act, 2021 suppl. funds for APS under SSA Title XX Section 2042(b) P.L. 116-260 under P.L. 115-123 (SSA) Grant No.: 2101GUAPC5-00

4. National Adult Maltreatment Reporting System (NAMRS) | ACL Administration for Community Living <https://acl.gov/programs/elder-justice/national-adult-maltreatment-reporting-system-namrs>
  5. Notice of Formula Grant Award HHS, ACL OAA Title III (as updated)
  6. Older Americans Act as amended through P.L. 114-144 and reauthorized The Supporting Older Americans Act of 2020 P.L. 116-131
  7. HHS 45 CFR Chapter XIII, Subchapter C, Part 1321
  8. ACL program requirements, handbooks and guidance  
URL: <https://www.acl.gov/grants/managing-grant>
  9. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
  10. 45 CFR Part 75, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards
  11. HHS Grants Policy Statement
  12. Federal Funding Accounting and Transparency Act (FFATA)
  13. Anti-Lobbying Restriction for HHS Recipients
  14. Contractor's Mandatory Federal Program Forms  
Appendix B-1 Limited English Proficiency Certification  
Appendix B-2 Certification of Non-Discrimination  
Appendix B-3 Civil Rights Requirements  
Appendix B-4 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion  
Appendix B-5 Compliance with Federal Laws and Regulations  
Appendix B-6 Uniform Guidance 2 CFR, Part 200 and 45 CFR, Part 75 for Health and Human Services (HHS) Awards – Contract Provisions  
Appendix B-7 Updates to the Uniform Guidance 2 CFR, Part 200 and 45 CFR, Part 75 for Health and Human Services (HHS) Awards – Special Contract Provisions and OMB M-22-11 Initial Implementation Guidance on Application of Buy America Preference in Federal Assistance Programs for Infrastructure
- B. Guam SOA Four Year State Plan 2020-2023 (as updated)
- C. Guam APS State Operational Plan 2021-2024 (as updated)
- D. Any contract amendment(s) in reverse chronological order.

This Agreement itself, the

Request for Proposals No. DPHSS 2022-002, then

Contractor's Best and Final Offer (if any required)

Contractor's Proposal, inclusive of All Signed Forms not already included above.

## II. SCOPE OF WORK.

Contractor agrees to perform and provide all of the services and other deliverables required in Request for Proposal No. DPHSS 2022-002 as agreed to by the parties in Attachment A, attached hereto and incorporated herein as if fully re-written.

### **III. CONTRACT TERM.**

1. **Effective Date.** This Agreement shall be effective upon the date of the signature of the Governor of Guam (“the Effective Date”). DPHSS, DSC is not responsible for any ADRC Software and Services RFP No. DPHSS 2022-002 work or services prior to that date and Contractor warrants that no services will be performed under this Agreement prior to the effective date. DPHSS, DSC will provide Contractor with a notice to proceed, and all deliverable due dates will be as set forth in Attachment \_\_, attached and incorporated herein. (The negotiated time table for performance and completion of deliverables and fixed price per deliverable, will be part of Attachment A, or may be a separate attachment).

2. **Initial Term.** The initial term of this Agreement will be from the Effective Date to September 30, 2023 (“the Initial Term”).

3. **Renewal Term(s).** This Agreement will be renewable for up to four (4) one-year Fiscal Years (each one being a “Renewal Term”), at the option of DPHSS, DSC and the best interests of the government of Guam, subject to the allocation, appropriation and available of funds.

4. **Extension Term.** In the event Guam procurement laws and regulations permit OTECH major information technology project service level and maintenance and support as set forth in Section II Scope of Work to be extended after the final Renewal Term, at DPHSS, DSC’s option and in if the best interest of Guam, the parties can agree to an Extension Term, subject to funds being appropriated, allocated, and available. The most recent applicable U.S. Department of Labor Wage Determination will apply to any renewal term.

5. **Multi-Term Contract.** DPHSS, DSC shall notify Contractor on a timely basis in writing that funds are, or are not, available for the continuation of the contract for each succeeding period. In the event of cancellation of this multi-term contract as provided above Contractor will be reimbursed its unamortized, reasonably incurred, nonrecurring costs. In this procurement Offerors submit pricing for the entire time of performance, and the firm fixed price per deliverables and services are set forth in Section IV of the contract.

6. **Multiple Certifications of Funds.** In any Fiscal Year, DPHSS, DSC may make multiple certifications of funds.

### **IV. COMPENSATION.**

1. Subject to the appropriation, allocation and availability of funding, DPHSS, DSC shall compensate Contractor for deliverable and services as set forth in Section II Scope of Work and



(Attachment A, and if other Attachment(s) \_\_) per the fixed price of deliverables completed during the Initial Term, in the total not exceed amount of \_\_\_\_\_, (\$ , . ) on monthly basis for fixed priced deliverables completed and invoiced in the prior month, subject to the following the terms of this Section IV. *(To Be Completed with Total Project Costs)*

2. Certified Written Progress Reports Every Thirty (30) Days Thirty (30) days after the notice to proceed, and the end of each thirty (30) day period after the date provided to proceed therein, and thereafter for the term of the contract, Contractor will certify, by written progress report to DPHSS, DSC, the percentage of the total work completed under the contract which Contractor had performed during the said thirty (30) day period. The itemization shall be categorized by each of the Deliverables listed on the payment schedule.

3. No Performance Bond shall be Required for the Procurement. The parties agree in lieu of a performance bond there will be a hold-back of ten (10%) ("Retainer") of all payments amount until final completion and acceptance of all the deliverables and work covered by this contract until after the project is successfully in "Go Live" and there is commencement of the service level and maintenance and support services. The Retainer will be held as security for the full and proper performance of the contract by Contractor and shall be returned to Contractor at the end of performance of services and upon the acceptance of all deliverables by DPHSS, DSC as set forth in Section II Scope of Work and Attachment A up to the commencement of the monthly service level and maintenance and support services.

4. Time for Completion. It is hereby understood and mutually agreed by Contractor and DPHSS, DSC that the time for completion of performance of each phase of its professional services and delivery of deliverables is an essential part of this contract. If Contractor refuses or fails to perform any of the provisions of this contract within in the time tables agreed it will be deemed a default under this contract. DPHSS, DSC will hold Contractor liable and will enforce the requirements set forth in the "Termination" and "Liquidated Damages" provisions set for in the contract, as well as any other remedies and causes of action it may have as against Contractor.

5. Liquidated Damages – Failure to Meet Performance Requirements. When the Contractor is given notice of delay or nonperformance as specified in the "Termination for Default" of this contract and fails to cure in the time specified, Contractor shall be liable for damages of delay in the amount of one-fourth of one-percent (1%) of the fixed price per outstanding deliverable per calendar day from date set for cure until either the territory reasonably obtains similar supplies or services if Contractor is terminated for default, or until Contractor provides the supplies or services if Contractor is not terminated for default. To the extent that Contractor's delay or nonperformance is excused under the (Excuse for Nonperformance or Delayed Performance) of the Termination for Default Clause of this contract, liquidated damages shall not be due the territory. Contractor remains liable for damages caused other than by delay.

6. Deduction of Damages from Payments. Amounts due to DPHSS, DSC as liquidated damages, may be deducted by DPHSS, DSC from any money payable to Contractor pursuant to this contract. DPHSS, DSC shall notify Contractor in writing of any claim for liquidated damages pursuant to

this provision at least thirty (30) days prior to the date DPHSS, DSC deducts such sums from money payable to Contractor.

7. Review and Approval of Deliverables. The review and approval of all completed work (also referred to as “deliverables”) will be undertaken by the staff of DPHSS, DSC or its designated agents. All completed work must be in conformance with the requirements set forth in this document. DPHSS, DSC staff or its designated agents will review all work after it is completed and submitted by Contractor in accordance with the following, unless otherwise modified and agreed to in writing by the parties:

(i) Completed deliverables and all supporting documentation shall be submitted for review and approval.

(ii) DPHSS, DSC staff shall determine whether or not the deliverables meet the agreed specifications of the contract; and whether or not all time and date requirements have been met.

(iii) If the deliverables are accepted by DPHSS, DSC, Contractor will be so notified in writing through a “Notice of Acceptance” letter.

(iv) If any deliverable or any portion of a deliverable is not acceptable, DPHSS, DSC shall notify the firm in writing of their deficiency (ies).

(v) If any deliverable is determined to be unacceptable, DPHSS, DSC may exercise its rights under the Termination for Default Provision of the contract. If Contractor is permitted to alleviate the deficiency (ies), it will have ten (10) working days from the date of receipt of written notification from DPHSS, DSC to bring the deliverable into compliance with the requirements of the contract.

8. Invoices. Invoices shall contain the following information: (a) Contractor’s name and date of invoice and; (b) contract no. or other authorization, for the delivery of professional services; and (c) a detailed description of the professional services and deliverables actually delivered and; (d) the name, title, phone number, and complete mailing address of the official and office where payment is to be sent and; (e) Contractor’s Federal Tax Identification Number. Failure to provide the above information may result in DPHSS, DSC withholding payment.

9. Final Payment and Release of Claims. Final payment shall be made upon satisfactory delivery and acceptance of all deliverable, products, and professional services as herein specified and performed under the contract. Prior to final payment; and as a condition precedent thereto, Contractor shall execute and deliver to DPHSS, DSC, a release in a form approved by the department of claims against DPHSS, DSC arising under and by virtue of the contract.

10. Responsibility of Contractor. Contractor shall be responsible for the professional and technical accuracy of all work and materials furnished under the contract. Contractor shall, without additional cost to DPHSS, DSC, correct or revise all errors of deficiencies in its work.

11.. DPHSS, DSC’s review, approval, acceptance of, and payment of fees for, services required under the contract shall not be construed to operate as a waiver of any rights under the contract or

of any cause of action arising out of Contractor's failure to perform the services required, and the awarded Contractor shall be and remain liable to the government of Guam for all costs of any kind which may be incurred as a result of Contractor's negligent performance of any of the services required to be performed under the contract.

12. DPHSS, DSC shall pay Contractor pursuant to government of Guam's Prompt Payment Act, 5 GCA Chapter 22 Sections 22502-22507.

13. Access to Records and Other Review. (5 Years- ARPA) Contractor 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 five (5) years from the date of the final payment under the contract, for inspection by DPHSS, DSC, the Public Auditor, and the Inspector General of HHS ACL or their delegates. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the end of the five (5) year period, the records must be kept until all issues are resolved, or until the end of the regular five (5) 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 five (5) years after its final disposition. Contractor shall provide access to any site(s) to DPHSS, DSC, the Public Auditor, and the Inspector General of the HHS ACL, 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. This provision shall survive the expiration or termination of this Agreement.

## **V. CONTRACTUAL TERMS AND CONDITIONS – GOVERNMENT OF GUAM DATA USE IN OR RESIDING ON NON-GOVERNMENT TECHNOLOGY SOFTWARE AND SERVICES.**

1. Project Management. On behalf of DPHSS, DSC the Chief Technology Officer is the Project Manager, pursuant to 5 GCA Chapter 20 Article 2. Contractor's Project Manager will work the Chief Technology Officer so his prior approval/ or concurrent approval signature is also on any documents or request presented by Contractor to the DPHSS, DSC's Procurement Officer, i.e., the Director of DPHSS.

2. Notices. Notice to DPHSS, DSC and Contractor shall be given in the same manner as notices to DPHSS, DSC and Contractor in the RFP, unless otherwise expressly set forth. However, each party may change the address by giving the other party prior written notice in accordance with this section.

3. Rights to Records. All documents and materials, including but not limited to reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical artwork, computation and data prepared by Contractor for the purposes of this contract shall be the sole property of DPHSS, DSC and shall be available to DPHSS, DSC at any time. DPHSS, DSC shall

have the right to use the same without restriction and without compensation to Contractor other than that specifically provided by this contract.

Nothing in this Section V (3) Rights to Records shall abrogate or transfer any intellectual property rights of Contractor in its proprietary information related to methodologies, methods of analysis, ideas, know-how, methods, techniques and skills possessed prior to this contract.

#### 4. Data Use in or Residing on Non-Government of Guam Technology.

(i) Data Ownership, Retention and Retrieval. DPHSS, DSC is subject to applicable laws related to the inspection and production of public records. A public record includes any writing containing information relating to the conduct of the public's business prepared, owned, used or retained by any government of Guam agency in any format, including an electronic format. DPHSS, DSC must retain records according to established retention periods. Records required for ongoing or foreseeable proceeding such as audits, lawsuits or investigations must be retained until release from such official proceedings such as audits, lawsuits or investigations. Thus, to the extent applicable, Contractor shall supply services that comply with the following:

- Archive records according to variable time periods/life cycles';

- Search and retrieve records based upon content;

- Place a litigation hold on records to ensure they are not deleted;

- Grant direct access to DPHSS, DSC for its own search and production of records;

- Preserve meta data;

- Produce electronic records in their native format; and

- Be in compliance with the Americans with Disabilities Act.

DPHSS, DSC owns all of the Confidential Information as defined in 8.1 (ii). Contractor shall not disclose, use, destroy, transfer or otherwise manage those records and data except as provide in the contract or, if the contract is silent, without the express written approval of the Director of DPHSS, DSC.

Contractor shall work with DPHSS, DSC to transfer all of DPHSS, DSC's records and data to DPHSS, DSC on the termination or expiration of this contract.

(ii) Privacy Laws and Confidential Information. Confidential Information is defined as any and all of DPHSS, DSC information and data that is hosted by or resides on Contractor or third-party technology under this contract. It includes that data whose collection, disclosure, protection, and disposition is governed by Guam and Federal laws and regulations including but not limited to personal information; which includes but is not limited to information identifiable to an individual

that relates to a natural person's health, finances, education, business, use or receipt of government services, or other activities, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and other identifying numbers.

In the event Contractor is a covered entity under the United States Department of Health and Human Services HIPAA Business Associate Agreement guidelines at the following URL: <http://www.hhs.gov/hipaa/for-professionals/covered-entities/sample-business-associate-agreement-provisions/index.html>; then Contractor agrees to enter into a HIPAA Business Associate Agreement with DPHSS, DSC.

Contractor shall comply with the Health Insurance Portability and Accountability Act (HIPAA of 1996, 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.

Contractor shall comply with Guam's Social Security Number Confidentiality Act relative to relative to preventing the inappropriate disclosure and misappropriation of social security numbers. P.L. 28-95, codified at §32 Article 7, Chapter 32, Title 5, Guam Code Annotated.

(iii) Data – Privacy and Security Notice. Contractor agrees to provide Twenty-Four (24) hour notice to the government of Guam, DPHSS, DSC and OTECH at the contact information in the RFP and additionally to the Attorney of General of Guam – Attention: Deputy Attorney General, Consumer Protection Division: 590 S. Marine Corps Drive, ITC Bldg., Suite 901, Tamuning, Guam 96913, Fax: 671-472-2493 Email: [ag@oagguam.org](mailto:ag@oagguam.org); of instances in which Contractor reasonably believes that the government of Guam's Confidential Information may have been inappropriately accessed. Additionally, Contractor will supply the government of Guam with a description about the Confidential Information that was accessed as Contractor has available at the time of notice, and will keep the individuals listed below updated promptly as additional details about the nature of the Confidential Information become available.

(iv) Maintaining Data Privacy and Security. Contractor agrees that any revisions by Contractor or any level of subcontractor to any of its security or privacy policy must retain the level of protection provided for Confidential Data that is materially the same or greater than the level of protection provided at the outset of the service term.

(v) Location. Contractor will provide DPHSS, DSC with no less than hundred and eighty (180) days advance written notice in the event that Contractor relocates the infrastructure on which Confidential Information resides to a third-party center that meets Contractor's security and operating standards.

(vi) Decommissioning. On the expiration or termination of this Agreement, Contractor shall keep DPHSS, DSC Confidential Information secure until the departure date specified by DPHSS, DSC. Except as may be necessary to be retained by reason of legal requirements, upon DPHSS, DSC's



written request, Contractor shall confirm in writing that DPHSS, DSC's data has been erased from Contractor's system following the provision of the decommission backup data to DPHSS, DSC.

(vii) Compliance with Data Protection Laws and Regulations. Contractor shall comply with all data protection laws to the extent that such laws, by their terms, are expressly applicable to Contractor's delivery of services under this Agreement and that impose obligations directly upon Contractor in its role as an information technology service provider with respect to services performed under this Agreement.

(viii) Security. When providing the Services to DPHSS, DSC, Contractor shall maintain a written information security program of reasonable and appropriate administrative, physical, and technical safeguards to:

Ensure the confidentiality, integrity, and availability of DPHSS, DSC and its Customer's Data stored within, or transmitted to or from, Contractor's information processing facilities; and

Protect against reasonably anticipated (i) threats or hazards to the security or integrity of DPHSS, DSC and its Customer's Data or the Services, and (ii) unauthorized access to, or uses or disclosures of, DPHSS, DSC and its Customer's Data; and

Ensure compliance with all applicable laws by Contractor, Contractor's officers, members, employees, subcontractors, and agents, including but not limited to laws relating to the security or privacy of DPHSS, DSC and its Customer's Data.

5. Products and Services: Copyright. Contractor warrants that all deliverables, products, services and professional services delivered under this contract will not infringe upon or violate at any time any patent, copyright, trade secret, or other proprietary right of a third party. In the event of a claim by any third party against DPHSS, DSC, then DPHSS, DSC shall promptly notify Contractor and Contractor shall defend such claim in DPHSS, DSC's name, at Contractor's expense, and shall indemnify and hold harmless DPHSS, DSC against any loss, expense, or liability arising out of such claim, whether or not such claim is successful. Contractor must consult with the Attorney General of Guam as to any defense or settlement actions undertaken in keeping with this clause; as well as cooperate fully with the requests of the Attorney General of Guam as the chief attorney for the government of Guam.

6. Right to Publish. Throughout the term of the contract, Contractor shall secure the Director of DPHSS, DSC's written approval prior to the release of any information, whatsoever which pertains to work activities covered by the contract. In the event federal grant funds are in whole or in part, part of the funding for this contract then Contractor shall ensure recognition of the role of the grantor agency. For example, "This project is made possible through federal and local funds administered by the Guam Department of Health and Social Services, Division of Senior Citizens. The Federal Grant Funds are from the United States Department of Health & Human Services, Administration for Community Living. All advertisements by Contractor about the program shall be submitted to DPHSS, DSC prior to distribution to the general public and local media.

7. Ownership of Documents. All briefs, memoranda and other incidental 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.

8. Approval of Contractor Personnel. Contractor certifies that the personnel identified in its response to the RFP are the persons actually assigned to the project. Any additions, deletions, or changes in personnel designated as key personnel in the Contractor's proposal must be submitted to DPHSS, DSC, with the exception of personnel who have terminated employment. Replacements for personnel are subject to the approval by DPHSS, DSC. DPHSS, DSC reserves the right to request replacement of any individual working under this contract.

9. Professional Standards. Contractor agrees to maintain professional standards applicable to its profession. At all times pertinent to this contract Contractor shall maintain all professional certifications and business licenses required in Guam and other states in which it does any portions of professional service in this procurement.

10. Accessibility - Electronic and Information Technology. The services and software that are part of this procurement are required to be in compliance with Title III and all other applicable federal regulations and guidelines (current and as amended in the future).

Contractor warrants that the products and services provided are fully compliant with accessibility standards of WCGA 2.1 Level AA for web-based technology (W3C web-based initiative), and Section 508 of the Rehabilitation Act and the Americans with Disabilities Act for other electronic and information technology and any applicable current and federal and state disability law. Electronic and information technology (EIT) includes information technology and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. The term EIT includes, but is not limited to, the internet and intranet websites, content delivered in digital form, electronic books and electronic books reading systems, search engines and databases, learning management systems, classroom technology and multimedia, personal response systems ("clickers"), and office equipment such as classroom podiums, copiers and fax machines. It also includes any equipment or interconnected system or subsystem of equipment that is used to automatic acquisition, creation, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. This term includes telecommunications products (such as telephones), information kiosks, Automated Teller Machines (ATMs) transaction machines, computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

## **VI. CONTRACTUAL TERMS AND CONDITIONS-GOVERNMENT OF GUAM FIXED PRICE PROFESSIONAL SERVICES.**

1. Changes. By a written amendment to this Agreement, at any time, DPHSS, DSC may, subject to all appropriate adjustments, make changes within the general scope of work agreed to in this Agreement.

(i) Adjustments of Price or Time for Performance. If any such change order increases or decreases Contractor's cost of, or the time required for performance of any part of the work under the contract, whether or not changed by the order, any adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause found at 2 GAR Div.4 Section 6101(6). Failure of the parties to agree to an adjustment shall not excuse the contract from proceeding with the contract as changed, provided that DPHSS, DSC promptly and duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, Contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

(ii) Time Period for Claim. Within 30 days after receipt of a written change order under this clause, unless such period is extended by the Director of DPHSS, DSC in writing, Contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar Contractor's claim unless DPHSS, DSC is prejudiced by the delay in notification. (a) Claims Barred After Final Payment. No claim by Contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract. (b) Other Claims Not Barred. In the absence of such a change order, nothing in this clause shall be deemed to restrict Contractor's right to pursue a claim arising under the contract if pursued in accordance with the clause entitled, "Claims Based on the Director of DPHSS, DSC's Actions or Omissions, Notice of Claim Clause", or for breach of contract.

2. Stop Work Order.

(i) Order to Stop Work. The Director of DPHSS, DSC may, by written order to Contractor, at any time, and without notice to any time, and without notice to any surety, require Contractor to stop all or any part of the work called for by this contract. This order shall be for specified period not exceeding 90 days after the order is delivered to Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work expires, or within any further period to which the parties shall have agreed, DPHSS, DSC shall either: (a) Cancel the stop work order; or (b) Terminate the work covered by such order as provided in the "Termination for Default Clause" or the "Termination for Convenience Clause" of this contract.

(ii) Cancellation or Expiration of the Order. If a stop work order issued under this clause is cancelled at any time during the period specified in the order, or if the period of the order or any

extension thereof expires, the Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contract price shall be modified in writing accordingly, if: (a) the stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and (b) Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Director of DPHSS, DSC decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

(iii) Termination of Stopped Work. If a stop work order is not cancelled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

### 3. Price Adjustments.

(i) Price Adjustment Methods. Any adjustment in contract price pursuant to a clause in this contract shall be made in one or more of the following ways: (a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable; (b) by unit prices specified in the contract or subsequently agreed upon; (c) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon; (d) in such other manner as the parties may mutually agree; or (e) in the absence of agreement between the parties, by a unilateral determination by the Director of DPHSS, DSC of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the Director of DPHSS, DSC in accordance with generally accepted accounting principles and Guam Procurement Laws and Regulations.

(ii). Submission of the Cost or Pricing Data. Contractor shall provide cost or pricing data for any price adjustments subject to the provisions of 2 GAR Division 4 §3118 (Costs or Pricing Data). If such change causes an increase or decrease in the costs of doing the work, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. However, any modification of the contract will be effective only if it is in writing signed by the parties and approved by the Governor of Guam.

4. No Liability. DPHSS, DSC assumes no liability for any claims, accidents, or injuries that may occur to Contractor, its agents, dependents, subcontractors, employees, or employees of its subcontractors. DPHSS, DSC shall not be liable to Contractor for any work performed by Contractor prior to the approval of the contract by the government. Contractor expressly waives any and all claims for services performed in expectation of the contract prior to the approval of the approval of the contract, and if applicable prior to its receipt of a Notice to Proceed.

5. Insurance. Contractor shall procure and maintain in effect Workers Compensation, Commercial General Liability, Automobile Insurance, Professional Liability Errors and Omissions, including Crime Coverage and Cyber-liability insurance coverage for the performance of its professional services set forth in this contract. Contractor shall provide certificates of such insurance to DPHSS, DSC when required and shall immediately report in writing to the Director of DPHSS, DSC any insurance claims filed.

(i) Workers Compensation Insurance. Workers' Compensation Insurance that covers all employees of Contractor working in any capacity in the Contractor's services under this contract, in the amount as required by Guam law.

(ii) Commercial General Liability Insurance. 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. 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 (\$300,000.00) for damages to property. Such policy shall insure the government of Guam and its respective agents and employees with respect to liability as a result of the performance of professional services set forth in this contract.

(iii) Automobile Insurance. Contractor shall be responsible to provide automobile insurance for employees with comprehensive form and include coverage for owned vehicles.

(iv) Professional Liability Errors and Omissions, with coverage of not less than \$1 million per claim/\$1 million general aggregate that shall include a Network Security coverage extension and the cyber-liability insurance described below.

Crime Coverage with coverage of not less than \$5 million single limit per occurrence and \$1 million in the aggregate, which shall at a minimum cover occurrence falling the following categories: Computer Fraud; Robbery, Safe Burglary; Forgery or Alteration; Money and Securities; Employee Dishonesty and Theft; Disappearance and Destruction of Property. Crime Coverage shall include coverage for Contractor employees working on this project; and

Cyber-liability insurance that is part of the Professional Liability Errors and Omissions policy and that includes but is not limited to coverage for first-party costs and third-party claims from (i) failure to protect data, including unauthorized disclosure, use or access, (ii) security failure or privacy breach, (iii) failure to disclose such breaches as required by law, regulation or contract, (iv) notifications, public relations, credit monitoring, postage, advertising, and other services to assist in managing and mitigating a cyber-incident, (v) interruptions of business operations, (vi) network security failure, (vii) cyber-extortion and cyber-terrorism, (viii) communications and media liability (e.g., infringement of copyright, title, slogan, trademark, trade name, trade dress, service mark or service name in the policyholder's covered materials, (ix) EFT, computer, and electronic transmissions fraud, and (x) other cyber-liability and cyber-crime expenses.



6. Indemnity. Contractor agrees to save and hold harmless; DPHSS, its officers, agents, representatives, successors, and assigns other governmental 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 Contractor, Contractor's officers, agents, servants, and employees under this contract.

7. Retention and Access Requirements for Records. (See Section IV (13) above)

8. Termination.

(i) Termination for Defaults.

(a) Default. If Contractor refuses or fails to perform any of the provisions of the contract with such diligence as will ensure its completion within the time specified in the contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of the contract DPHSS, DSC may notify Contractor in writing of the delay or non-performance and if not cured in ten days or any longer time specified in writing by DPHSS, DSC, the Director of DPHSS, DSC may terminate Contractor's right to proceed with the contract or such part of the contract 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 supplies or services in a manner and upon terms deemed appropriate by DPHSS, DSC. Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar professional services.

(b) Contractor's Duties. Notwithstanding termination of the contract and subject to any directions from the government, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in possession of Contractor in which DPHSS, DSC has an interest.

(c) Compensation. Payment for completed supplies delivered and accepted by DPHSS, DSC shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by Contractor and the Director of DPHSS, DSC; if the parties fail to agree, the Director of DPHSS, DSC shall set an amount subject to Contractor's rights under Guam laws and regulations. DPHSS, DSC may withhold from the amount due Contractor, such sums as the Director of 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.

(d) Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work here under which endangers such performance) if Contractor has notified DPHSS, DSC within 15 days after the cause of the delay and the failure arises out of causes such

as: acts of God; act of the public enemy; acts of 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, Contractor shall not be deemed to be in default, unless the professional services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, DPHSS, DSC shall ascertain the facts and extent of such failure, and, if the Director of DPHSS, DSC determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor'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 "Termination for Convenience". As used in this clause the term "subcontractor" means subcontractor at any tier.

(e) Erroneous Termination for Default. If, after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this contract, the rights and obligations of the parties shall be the same as the if the notice of termination had been issued under the clause entitled "Termination for Convenience".

(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 the contract.

(ii) Liquidated Damages. It is agreed that in the event Contractor is given notice of delay or nonperformance as specified in the Termination for Default Clause of the contract and fails to cure in the time specified, it would be impracticable or extremely difficult to fix actual damage and therefore, the Contractor agrees that on breach of this contract it will pay DPHSS, DSC as liquidated damages, and not as a penalty, the in the amount of one-fourth of one-percent (1%) of outstanding deliverable per calendar day from date set for cure until either the territory reasonably obtains similar supplies or services if Contractor is terminated for default, or until Contractor provides the supplies or services if Contractor is not terminated for default. To the extent that the contract's delay or nonperformance is excused under of this contract, liquidated damages shall not be due DPHSS, DSC. Contractor remains liable for damages caused other than by delay.

(iii) Termination for Convenience.

(a) Termination. DPHSS, DSC may, when the interest of DPHSS, DSC so requires, terminate the contract in whole or in part, for the convenience of DPHSS, DSC. DPHSS, DSC shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective.

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

(c) Right to Deliverables and Supplies. DPHSS, DSC require Contractor to transfer title and deliver to DPHSS, DSC in the manner and to the extent directed by DPHSS, DSC: completed professional service deliverables; and such partially completed professional service deliverables that may then exist, including, plans, drawings, information, and contract rights ("deliverables") as Contractor has specifically developed, produced or specially acquired for the performance of the terminated part of the contract. Contractor shall, upon direction of DPHSS, DSC, protect and preserve all intellectual property and other property; Contractor may control or be in possession Contractor, in which DPHSS, DSC has an interest in under this contract. If DPHSS, DSC does not exercise this right and with, first, there being an express condition that there is no implication of any breach of contract by DPHSS, DSC in its exercise of its right to terminate the contract for convenience; then to the extent to which there is any property governed by the Uniform Commercial Code of Guam, Contractor shall use best efforts to sell such property in accordance with the standards of that law.

(d) Compensation When There Is A Termination for Convenience. Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data to the extent required by §3118 (Cost or Pricing Data) of the GAR bearing on such claim. If Contractor fails to file a termination claim within one year from the effective date of termination, DPHSS, DSC may pay Contractor, if at all, an amount set in accordance with this contract.

DPHSS, DSC and Contractor may agree to a settlement provided Contractor as has filed a termination claim supported by cost or pricing data to the extent required by §3118 (Costs or Pricing Data) to the Guam Procurement Regulations and that the settlement not exceed the total contract price plus settlement costs reduced by payments previously made by DPHSS, DSC, the proceeds of any sales of deliverables, supplies and materials under this contract, and the contract price of the work not terminated.

Absent complete agreement under this contract, then the disputes resolution clause of this contract shall apply.

## 9. Mandatory Disputes Clause.

(i) DPHSS, DSC and Contractor agree to attempt resolution of all controversies which arise under, or are by virtue of, this procurement and any resulting contract through mutual agreement. If the controversy is not resolved by mutual agreement, then Contractor shall request DPHSS, DSC in writing to issue a final decision within sixty days after receipt of the written request. If DPHSS, DSC 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 Contractor may proceed as though DPHSS, DSC had issued a decision adverse to Contractor.

(ii) DPHSS, DSC shall immediately furnish a copy of the decision to Contractor, by certified mail with a return receipt requested, or by any other method that provides evidence of receipt.

(iii) DPHSS, DSC's decision shall be final and conclusive, unless fraudulent or unless Contractor appeals the decision.

(iv) This subsection applies to appeals of DPHSS, DSC's decision on a dispute. For money owed by or to DPHSS, DSC under this contract, Contractor shall appeal the decision in accordance with the Government Claims Act by initially filing a claim with the Office of the Attorney General no later than eighteen (18) months after the decision is rendered by DPHSS, DSC or from the date when a decision should have been rendered. For all other claims by or against DPHSS, DSC arising under this contract, the Office of the Public auditor has jurisdiction over the appeal from the decision of DPHSS, DSC. Appeals to the Office of the Public Auditor must be made within sixty (60) days of the government's decision or from the date the decision should have been made.

(v) Contractor shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws.

(vi) Contractor shall comply with DPHSS, DSC's decision and proceed diligently with performance of the contract pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, the contract, except where Contractor claims a material breach of the contract by DPHSS, DSC. However, if DPHSS, DSC determines in writing that continuation of professional services under the contract is essential to the public's health or safety, then Contractor shall proceed diligently with performance of the contract notwithstanding any claim of material breach by DPHSS, DSC.

10. Claims Against DPHSS, DSC. The Government Claims Act (5 GCA §6101, et seq.) applies only with respect to claims of money owed by or to DPHSS, DSC under the contract resulting from this Request for Proposals. Contractor consents to the jurisdiction of and the forum of the courts of Guam with respect to any claims subject to the Guam Claims Act. Contractor waives any and all rights it may otherwise have to contest the same or to proceed in a different jurisdiction or forum. For a copy of the Guam Claims Act, please visit the web site of Guam's Compiler of Laws. <http://www.guamcourts.org/CompilerofLaws/index.html>.

11. **Physical Liability.** If it becomes necessary for Contractor, either as principal, agent, or employee, to enter upon the premises or property of the government of Guam in order to perform professional services, construct, erect, inspect, make delivery or remove property under the contract, Contractor agrees to take, use, provide and make all proper, necessary and sufficient precautions, safeguards and protections against the occurrence of any accidents, injuries, or damage to any person or property during the progress of the professional services or work that is part of this contract, and to be responsible for, and to indemnify and save harmless the government of Guam from payment of all sums of money by reason of all or any such accidents, injuries or damages that may occur upon or about such services or work, and fines, penalties and the loss incurred for or by reason of the violation of ordinance, regulations, or the laws of Guam or the Federal government, while the services are being performed or work is in progress. Contractor will carry insurance to indemnify the government of Guam against any claims for loss, damage, or injury to property or persons arising out of performance of Contractors or its employs or agents, including but not limited to, the use, misuse or failure of any equipment used by Contractor, its employees or agents, and shall provide certificated of such insurance to the government of Guam when required.

12. **Liability.** Contractor assumes responsibility for its personnel providing services hereunder and will make all deductions for social security and withholding taxes and for contributions to employment compensation funds and shall maintain at Contractor's expense all necessary insurance for its employees including but not limited to worker's compensation and liability insurance for each employee.

13. **Taxes.** Contractor is responsible for paying its Business Privilege Tax on payments received under the contract. If any work is to be performed on Guam, then Contractor may be subject to Guam Income Taxes as well as all other applicable taxes on Guam transactions. Specific information on Guam taxes may be obtained from the Director of the Department of Revenue and Taxation, Government of Guam, PO Box 23607, GMF Guam 96921.

13.1 **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 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.

14. **Licensing.** Contractor shall maintain all professional certifications and business licenses applicable to its profession, professional development and as to as to its scope of work/scope of services under this contract.

15. **Disclosure of Ownership, Influence, Commissions and Conflicts of Interest.**



Contractor's signed and dated OAG Form 002 Affidavit Disclosing Ownership, Influence, Commissions and Conflicts of Interest, is incorporated in this Agreement.

Contractor represents that it shall promptly make any disclosures not previously made, required by 5 GCA Ch 5 § 5233 (c), (d) and (e), and update changes in the identities or other required information, interests, or conflicts of the person required to be disclosed as part of Form AG 002 Affidavit Disclosing Ownership, Influence, Commissions and Conflicts of Interest pursuant to § 5233 (g).

Contractor shall make new disclosures and update changes in the identities and or required information, interests, or conflicts of the person required to be disclosed by submitting a (new) signed and dated AG 002 Affidavit Disclosing Ownership, Influence, Commissions and Conflicts of Interest to DPHSS. The form is available by request to the agency, or by download on the Guam Office of Attorney General's Procurement Forms website at <http://oagguam.org/>. Guam Procurement Law, 5 GCA Chapter 5 § 5233 is available on the Guam Compiler of Laws website at: <http://www.guamcourts.org/CompilerofLaws/GCA/05gca/5gc005.PDF>.

Contractor acknowledges that the disclosures made under 5 GCA Ch 5 §5233 shall remain in the public portion of the procurement record.

Contractor acknowledges that failure to comply promptly and fully with 5 GCA § 5233 shall constitute a material breach of this Agreement.

16. Ethical Standards. With respect to this contract and any other contract that Contractor may have, or wish to enter into, with any government of Guam agency, 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.

17. Prohibition against Gratuities and Kickbacks. With respect to this contract and any other contract that Contractor may have or wish to enter into with any government of Guam agency, Contractor represents that it 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.

18. Prohibition against Contingent Fees. Contractor represents that he has not retained any person or agency upon an agreement or understanding for a percentage, commission, brokerage, or other contingent arrangement, except for retention of bona fide employees or bona fide established commercial selling agencies, to solicit or secure this contract or any other contract with the government of Guam or its agencies.

19. Restriction on Employment of Sex Offenders. Contractor warrants that no person in his employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated, or convicted of an offense defined in Article 2 of Chapter 28 of

Title 9 of the Guam Code Annotated regardless of the jurisdiction in which the conviction was obtained, shall provide services on behalf of Contractor relative to this contract on government of Guam property; with “government of Guam property” for the purposes of this clause in this professional service contract also including; “ any place that Contractor, of its subcontractor have contact with the people of Guam as part of the professional services being rendered”. If any person employed by Contractor and providing professional services under this contract is convicted subsequent to the parties entering into this contract, then Contractor warrants that it will notify DPHSS, DSC of the conviction within twenty-four hours (24) of the conviction, and will immediately remove such convicted person from providing professional services under this contract. If Contractor is found to be in violation of any of the provisions of this paragraph, then DPHSS, DSC shall give notice to Contractor to take corrective action. Contractor shall take corrective action within twenty-four hours of notice from the government, and Contractor shall notify the government when action has been taken. If Contractor fails to take corrective steps within twenty-four hours (24) of notice from DPHSS, DSC, then DPHSS, DSC in its sole discretion may suspend the contract temporarily.

#### 20. Wage and Benefit Compliance.

(a) Contractor with regard to all person its employs whose purpose in whole or in part is the direct delivery of services contracted for with the government in this contract, shall pay such employees in accordance with the Wage Determination for Guam and the Northern Marianas 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. 5 GCA § 5801. The Contractor 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 this contract is awarded to Contractor shall be used to determine wages and benefits which shall be paid to employees pursuant to this clause. 5 GCA § 5801

(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. 5 GCA § 5801

(d) In addition to the 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. Contractor shall pay a minimum of ten (10) paid holidays per annum per employee. 5 GCA § 5802

(e) Any violation of Contractor’s 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 the payment of all back wages and benefits due. 5 GCA § 5803

(f) In addition to any and all other breach of contract actions DPHSS, DSC may have under this procurement, in the event there is a violation in the process set forth above, Contractor 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 Contractor shall not be awarded any contract by any instrumentality of the government. A Contractor who has been placed on probationary status, or has been assessed a monetary penalty pursuant to 5 G.C.A. Article 13 Title 5 may appeal such penalty or probationary status to the Superior Court of Guam. 5 GCA § 5804

(g) Contractor's Declaration of Compliance with Wage Determination Laws AG Procurement Form 006 with the most recent Wage Determination for Guam and the Northern Marianas Islands issued and promulgated by the U.S. Department of Labor is part of this procurement. Contractor agrees to provide upon written request by DPHSS, DSC 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 DPHSS, DSC Contractor shall submit source documents as to those individuals providing direct services in part or whole under the contract, and Contractor's payments to them of such wages and benefits.

## 21. Claims Based on the Director of DPHSS, DSC's Actions of Omissions.

(i) 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 Contractor for additional compensation, damages, or an extension of time for completion, Contractor shall continue with performance of the contract in compliance with the directions or orders of such officials, but by so doing, Contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided: (a) Contractor shall have given written notice to the Director of DPHSS, or designee of such officer: (i) prior to the commencement of the work involved, if at that time Contractor knows of the occurrence of such action or omission; (ii) within thirty (30) days after Contractor knows of the occurrence of such action or omission, if Contractor did not have such knowledge prior to the commencement of the work; or (iii) within such further time as may be allowed by the Director of DPHSS in writing. (b) This notice shall state that Contractor regards the act or omission as a reason which may entitle Contractor 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. The notice required above should describe as clearly as practicable, at the time it is given, the reasons why

Contractor believes that additional compensation, damages, or an extension of time may be remedies to which Contractor is entitled; and (c) Contractor 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.

(ii) Limitations of Clause. Nothing herein contained, however, shall excuse Contractor from compliance with any rules of law precluding any government of Guam officers and employees 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.

(iii) Adjustment of Price. Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the terms of this contract and the laws and regulations of Guam.

22. Technology Access for Blind or Visually Impaired. Contractor acknowledges that no government funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired.

23. Electronic Data Protection Act of 2012. Contractor acknowledges that any digital copier machine or digital copier machine services must be fully compliant with 5 GCA Chapter 14; and shall include equipment or software that erases storage media.

24. Nondiscrimination in Employment. Contractor agrees: i) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, age, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (ii) to include a provision similar to that in Subsection (i) above in any subcontract except a subcontract for standard commercial supplies or raw materials; and (iii) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

25. 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).

26. 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).

27. Financial Exploitation of the Elderly and Individuals with Disabilities. Service Provider is advised there is a (new) P.L. 35-50 (effective Nov, 25, 2019) codified at 9 GCA Chapter 32, Relative to Protecting Elderly Persons and Disabled Adults from Financial Exploitation by Providing Criminal Punishment for Those Who Harm Elderly Persons and Individuals with Disabilities. Elderly person means a person fifty-five years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunction, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired." And "Individual with a disability mean a person eighteen (18) years of age or older who suffers a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one (1) or more physical or mental limitations that restrict a person's ability to perform the normal activities of daily living. Service Provider shall not violate 9 GCA Ch. 32 in its services under this Agreement.

28. Suspension or Debarment. Contractor 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](http://www.sam.gov).

29. Federal Funding Accountability and Transparency Act of 2006. Contractor agrees to provide DPHS, 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).

30. Regulations on Nondiscrimination. Contractor 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.

40. Drug and Smoke-Free Workplace. Contractor will comply with Federal and Local Drug and smoke-free workplace laws and requirements [Federal Drug-Free Workplace Act of 1988, the Governor's Circular No. 889-26 (Governor's Policy Statement Establishing a Drug-Free Workplace) and Clean Indoor Air Act of 1992, P.L. 116-34 Chapter I115 20 (lapsed into law August 24, 2018, codified at 5 GCA Chapter 37.

41. Restricting the Use of Mobile Phones While Driving a Vehicle, and Providing For Public Education Requirements Regarding Such Restrictions. Contractor 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).

42. Program Fraud and False or Fraudulent Statements or Related Act. Contractor acknowledges that 5 GCA, Chapter 7 False Claims and Whistleblower Act applies to Contractor's action pertaining to this contract. See P.L. 34-116: XII:20 (lapsed into law August 24, 2018, codified at 5 GCA Chapter 37).

43. Health Insurance Portability and Accountability Act (HIPAA). Contractor 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.

44. Social Security Number Confidentiality Act. Contractor 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).

45. Equal Employment Opportunity. Contractor is an equal opportunity employer. Contractor will not discriminate on the basis of race, religion, color, sex, sexual preference, age, national origin or disability. Contractor will ensure that employees are treated equally during employment without regard to their race, religion, color, sex, sexual preference, age, national origin, or disability.

46. 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 Contractor 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.

47. Equal Treatment for Faith-Based Organizations. Contractor will comply with the HHS regulations regarding the equal treatment of religious organizations in HHS programs, 45 C.F.R. Part 87.

48. Pro-Children Act of 1994. In accordance with 20 U.S.C. 6081 et seq., Contractor certifies that Contractor, its employees, agents, contractors, and subcontractors will not permit smoking in any portion of an indoor facility owned or leased or contracted for by Contractor and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18.

49. Policies on Limited English Proficient Persons. Contractor 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).

50. Compliance with American with Disabilities Act (ADA). Contractor must meet all requirement of the American with Disabilities Act, as applicable.

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

Contractor agrees in keeping with 2 CFR §200.321(6) with the following:

Contractor 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.

52. Conflict of Interest.

In keeping with 2 CFR §200.112 Contractor agrees as follows:

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

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

Thus, Contractor agrees to refrain from any practices, activities or relationships which could reasonably be considered to be in conflict with Contractor'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 Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, Contractor 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, Contractor will maintain a written code of standards governing the performance of its agent(s) engaged in the award and administration of contracts.

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

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

54. Funds Availability. Financial obligations of the government of Guam payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

55. Termination for Financial Exigency. (Federal Funds) 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. Contractor may submit a claim in the same manner as is set forth for the termination for convenience claim.

## **VII. CONTRACTUAL TERMS AND CONDITIONS – FEDERAL GOVERNMENT PROGRAMS.**

1. Contractor shall comply with all applicable Federal laws and regulations applicable to this Agreement.
2. Contractor's Federal Forms are incorporated into this Agreement and include the Uniform Guidance Mandatory Assurances, and Appendix II Contract Provisions.

Appendix B-1 Limited English Proficiency Certification

Appendix B-2 Certification of Non-Discrimination

Appendix B-3 Civil Rights Requirements

Appendix B-4 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

Appendix B-5 Compliance with Federal Laws and Regulations

Appendix B-6 Uniform Guidance 2 CFR, Part 200 and 45 CFR, Part 75 for Health and Human Services (HHS) Awards – Contract Provisions

Appendix B-7 Updates to the Uniform Guidance 2 CFR, Part 200 and 45 CFR, Part 75 for Health and Human Services (HHS) Awards – Special Contract Provisions and OMB M-22-11 Initial Implementation Guidance on Application of Buy America Preference in Federal Assistance Programs for Infrastructure

3. Contractor shall comply with any updates to the applicable Federal laws and regulations applicable to this Agreement; including but not limited to any updates to HIPPA, and privacy, security and cybersecurity, and any HHS CMS or ACL guidelines or standards applicable to the ADRC/NWD/APS programs.

*4. The specific Federal Fund Notices of Award that are applicable to this Agreement are set forth in italics, immediately under the Title to this Agreement, and may be updated in future amendments to this Agreement, in the event there are additional types of Federal Funds received applicable to this Agreement.*

5. Cost Principles, and Audit Requirements for Federal Awards.

Contractor shall comply Section 200.203 (6) Single Audit Requirements.

6. Contractor shall comply 2 CFR §200.216 Prohibition on certain telecommunications and video surveillance services or equipment, and flow through the requirements in its contracts.

§200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) See Public Law 115-232, section 889 for additional information.



(d) See also §200.471.

**7. Contractor shall comply with Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**

Guam is a “state” within the meaning of 2 C.F.R. §200.317 and follows the policies and procedures it uses for procurements from its non-Federal funds, and in compliance with §200.317 utilizes the attached appendices in its vendor contracts, which individually signed, dated and certified by its vendors, and incorporated herein as if fully rewritten. Contractor shall where applicable flow through to their subcontractors.

**VIII MISCELLANEOUS.**

**1. General Compliance with Laws.** The Contractor shall comply with all federal and local laws and regulations applicable to the professional services performed.

**2. Integration.** This Agreement shall supersede any and all other prior agreements, either oral or in writing, between the parties with respect to the retainer of the chosen Contractor, and contains all the covenants and agreements between such parties with respect to the retainer in any manner whatsoever. Each party to the contract shall acknowledge that no agreements otherwise have been made by any party, or anyone acting on behalf of any party, which are not embodied within the contract, and that no other agreement, statement, or promise not contained in the contract will be valid or binding.

**3. Severable Provisions.** If any provision of the contract shall be deemed by a court of competent jurisdiction to be invalid, then such provision shall be deemed stricken from the contract and the contract shall be enforced according to its valid and subsisting terms and provisions.

**4. Survival.** All warranties, intellectual property rights, confidentiality obligations and indemnification clauses shall be deemed to have been relied upon the other party, and shall survive completion of this contract and shall not merge in the performance of any party hereto.

**5. No Liability.** Guam DPHSS DSC assumes no liability for any claims, accidents, or injuries that may occur to the Contractor, its agents, dependents, subcontractors, employees, or employees of its subcontractors except to the extent caused by Guam. Guam DPHSS DSC shall not be liable to the Contractor for any work performed by the Contractor prior to the approval of the contract by the government. The Contractor expressly waives any and all claims for services performed in expectation of the contract prior to the approval of the approval of the contract, and if applicable prior to its receipt of a Notice to Proceed.

**6. Disclaimer.** All statistical and fiscal information contained in the RFP, and any or attachments of this contract reflect the information available to the government at the time of preparation of the above-cited documents. DPHSS, DSC does not warrant the accuracy of any such information and shall not be liable for any errors or the results of errors, which may be discovered, at any time, to exist in those statements.

7. Omissions. In the event that DPHSS, DSC or Contractor discovers any material omission in the provisions of the contract that is believed to be essential to the successful performance of the contract, each may so inform the other in writing and DPHSS, DSC and Contractor shall, therefore, promptly negotiate in good faith with respect to such matters for the purpose of making such reasonable adjustments as may be necessary to perform the objective of the contract.

8. Sovereign Immunity. The Territory of Guam was established by act of the U.S. Congress and is a sovereign entity. Guam's sovereign immunity is only waived to the extent it is expressly waived by Guam's Legislature. See 48 U.S.C. §1421(a). Guam waives its sovereign immunity in 5 GCA Chapter 6 Government Claims Act, and in 5 GCA Chapter 5 § 5480. Guam DPHSS, is a line agency of the government of Guam and does not waive sovereign immunity by entering into this Agreement and specifically retain all immunities and defenses available to Guam as a sovereign. The parties agree that any ambiguity in this Agreement will not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity will construed in favor of sovereign immunity.

9. Binding Arbitration Prohibited. The government of Guam does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Contract or incorporated herein by reference shall be null and void.

10. Severable Provisions. If any provision of the contract shall be deemed by a court of competent jurisdiction to be invalid, then such provision shall be deemed stricken from the contract and the contract shall be enforced according to its valid and subsisting terms and provisions.

11. Assignments. This Agreement or any sums due to Contractor may not be assigned without the prior written approval of DPHSS, DSC.

12. 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.

13. Binding Signatory. This Agreement and any modification hereto, is not binding until approved by the Governor of Guam.

THERE IS NO SIGNATURE PAGE OR OTHER ATTACHMENTS TO THIS SAMPLE DOCUMENT AT THIS TIME.

## Appendix E



## KEY INDICATORS COMPONENT DATA

### **PRA Public Burden Statement:**

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number (OMB 0985-0054). Public reporting burden for this collection of information is estimated to average per response as follows for each component of the collection: Agency Component – 7 hours; Key Indicator Component – 32 hours; Case Component – 125 hours. These estimates include the time for gathering and maintaining the data needed and completing and reviewing the collection of information. The obligation to respond to this collection is voluntary. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Administration for Community Living,

U.S. Department of Health and Human Services, 330 C Street, SW, Washington, DC 20201-0008,  
Attention: Stephanie Whittier Eliason, at 202.795.7467 and [Stephanie.WhittierEliason@acl.hhs.gov](mailto:Stephanie.WhittierEliason@acl.hhs.gov)

*The Key Indicators Component data will be entered directly onto an online form on the NAMRS website on an annual basis. The reporting period is the federal fiscal year (October–September). This component includes aggregated counts of key statistics and is submitted only by those states that cannot submit the Case Component.*

**Table 1—Investigations**

Element Category/No.	Element Name	Element Description/ Categories	Required	Field Entry Format	Instructions
<b>Investigations Closed</b>					
K1	Investigations Closed	Number of investigations closed during the reporting period.	Yes	Numeric - 10 integers	Investigation could have been received in previous reporting period, but must have been closed during current reporting period. Closed investigations include those completed and resulted in a finding (e.g., substantiated, unsubstantiated). Closed investigations also include those where the investigation was not completed due to reasons such as client refused services. Do not include investigation closed due to administrative reasons such as opened in error.
K1.1	Comment	Provide additional information on the number of investigations closed during the reporting period.	No	Text - 5,000 characters	

**Table 2—Clients**

Element Category/No.	Element Name	Element Description/ Categories	Required	Field Entry Format	Instructions
<b>Clients who received investigations</b>					Count each client in each investigation. If a client was the subject of two investigations, count twice.
K2	Clients who received an investigation	Number of clients involved in an investigation that was closed or completed during the reporting period.	Yes	Numeric - 10 integers	

K2.1	Comment	Provide additional information on how number of clients was determined.	No	Text - 5,000 characters	
<b>Clients who received interagency coordination</b>					Count each client once for each investigation in which he/she received one or more interagency coordination activities.

Element Category/No.	Element Name	Element Description/ Categories	Required	Field Entry Format	Instructions
K3	Clients who received interagency coordination	Number of clients referred to an agency in which an interagency coordination was part of the investigation.	No	Numeric - 10 integers	Examples of agencies include law enforcement or prosecutorial offices, protection and advocacy or Client Advocacy Program (CAP), state licensing agency, State Medicaid Fraud Control Unit (MFCU), and Long Term Care Ombudsman Program.
K3.1	Comment	Provide additional information on how number of clients who received interagency coordination was determined.	No	Text - 5,000 characters	
<b>Clients by case closure reason</b>					This includes the number of clients by case closure reason whose case was closed for a specific reason.  A client is counted for each case closure. There can only be one primary case closure reason per client per case.
K4.1		Investigation completed	No	Numeric - 10 integers	
K4.2		Investigation completed and protective services case completed	No	Numeric - 10 integers	
K4.3		Investigation unable to be completed (non-specific)	No	Numeric - 10 integers	
K4.3.1		Investigation unable to be completed due to death of client during investigation	No	Numeric - 10 integers	



K4.3.2		Investigation unable to be completed due to refusal of client	No	Numeric - 10 integers	
K4.4		Protective services case opened but not completed (non-specific)	No	Numeric - 10 integers	
K4.4.1		Protective services case closed due to death of client	No	Numeric - 10 integers	
K4.4.2		Protective services case closed due to client decision to not continue	No	Numeric - 10 integers	
K4.5		Other	No	Numeric - 10 integers	
K4.6		Unknown	No	Numeric - 10 integers	
K4.7	Comment	Provide additional information on how number of clients by case closure reason was determined.	No	Text - 5,000 characters	

**Table 3—Victims**

Element Category/No.	Element Name	Element Description/ Categories	Required	Field Entry Format	Instructions
<b>Clients found to be victims</b>					A victim is counted once for each investigation in which a maltreatment was substantiated, no matter how many maltreatments were substantiated.
K5	Clients found to be victims	Number of victims in which at least one maltreatment disposition was substantiated per investigation.	Yes	Numeric - 10 integers	
K5.1	Comment	Provide additional information on how number of victims was determined.	No	Text - 5,000 characters	
<b>Victims by Age</b>					<p>The victim's age is computed by subtracting the client's date of birth from the investigation start date. An estimated age can be used.</p> <p>The victim's age is counted once per each investigation in which the client was found to be a victim.</p> <p>Age could differ between investigations.</p>

K6.1		18-29 years	No	Numeric - 10 integers	
K6.2		30-39 years	No	Numeric - 10 integers	
K6.3		40-49 years	No	Numeric - 10 integers	
K6.4		50-59 years	No	Numeric - 10 integers	
K6.5		60-69 years	No	Numeric - 10 integers	
K6.6		70-74 years	No	Numeric - 10 integers	
K6.7		75-84 years	No	Numeric - 10 integers	
K6.8		85 and older	No	Numeric - 10 integers	
K6.9		Unknown	No	Numeric - 10 integers	
K6.10	Comment	Provide additional information on how age was computed.	No	Text - 5,000 characters	

Element Category/No.	Element Name	Element Description/ Categories	Required	Field Entry Format	Instructions
<b>Victims by race</b>					A multiracial victim is counted for each race identified. For example, if the victim is Asian and White, the victim should be counted in both race categories. If specific races cannot be identified for the multiracial victim, the victim is counted in "other" category.
K7.1		American Indian or Alaska Native	No	Numeric - 10 integers	
K7.2		Asian	No	Numeric - 10 integers	
K7.3		Black or African American	No	Numeric - 10 integers	
K7.4		Native Hawaiian or Other Pacific Islander	No	Numeric - 10 integers	
K7.5		White	No	Numeric - 10 integers	
K7.6		Other	No	Numeric - 10 integers	
K7.7		Unknown	No	Numeric - 10 integers	

K7.8	Comment	Provide additional information on how number of victims by race was determined.	No	Text - 5,000 characters	
<b>Victims by ethnicity</b>					Count each victim once per investigation.
K8.1		Hispanic, Latino/a, or Spanish	No	Numeric - 10 integers	
K8.2		Not Hispanic, Latino/a, or Spanish	No	Numeric - 10 integers	
K8.3		Unknown	No	Numeric - 10 integers	
K8.4	Comment	Provide additional information on how number of victims by ethnicity was determined.	No	Text - 5,000 characters	
<b>Victims by gender identity</b>					Count each victim once per investigation.
K9.1		Male	No	Numeric - 10 integers	
K9.2		Female	No	Numeric - 10 integers	
K9.3		Transgender	No	Numeric - 10 integers	
K9.4		Unknown	No	Numeric - 10 integers	
K9.5	Comment	Provide additional information on how number of victims by gender was determined.	No	Text - 5,000 characters	

Element Category/No.	Element Name	Element Description/ Categories	Required	Field Entry Format	Instructions
<b>Victims receiving benefits</b>					A victim is counted once per investigation in which he/she received one or more benefits.
K10	Victims who received one or more benefits	Number of victims who received one or more federal and/or state benefits.	No	Numeric - 10 integers	The types of benefits include but are not limited to: Medicaid, Medicare, public subsidized housing, Social Security Disability Insurance, Social Security retirement benefits, Supplemental Security Income, Temporary Assistance for Needy Families, and veterans' disabled benefits.
K10.1	Comment	Provide additional information on how number of victims by receipt of benefits was determined.	No	Text - 5,000 characters	

<b>Victims with disabilities</b>					A victim is counted once per investigation in which he/she was identified as having one or more disabilities.
K11	Victims with one or more disabilities	Number of victims with one or more disabilities.	No	Numeric - 10 integers	
K11.1	Comment	Provide additional information on how number of victims with one or more disabilities was determined.	No	Text - 5,000 characters	
<b>Victims with behavioral conditions</b>					A victim is counted once per investigation in which he/she was screened as having one or more behavioral conditions.
K12	Victims with one or more screened or diagnosed behavioral conditions	Number of victims with one or more screened or diagnosed behavioral conditions.	No	Numeric - 10 integers	The types of diagnoses include, but are not limited to: alcohol use disorder, anxiety, bipolar disorder, dementia, depression, schizophrenia and other psychotic disorders, substance use disorder, and traumatic brain injury.
K12.1	Comment	Provide additional information on how number of victims with a behavioral condition was determined.	No	Text - 5,000 characters	
<b>Victims by maltreatment type</b>					<p>A victim is counted each time he/she was substantiated as a victim of a specific maltreatment type.</p> <p>For example, if a person was found to be a victim of neglect in two investigations, the count for neglect would be two for that victim.</p>

Element Category/No.	Element Name	Element Description/ Categories	Required	Field Entry Format	Instructions
K13.1		Abandonment	No	Numeric - 10 integers	
K13.2		Emotional abuse	No	Numeric - 10 integers	
K13.3		Exploitation (non-specific)	No	Numeric - 10 integers	
K13.3.1		Financial exploitation	No	Numeric - 10 integers	
K13.3.2		Other exploitation	No	Numeric - 10 integers	
K13.4		Neglect	No	Numeric - 10 integers	
K13.5		Physical abuse	No	Numeric - 10 integers	
K13.6		Sexual abuse	No	Numeric - 10 integers	
K13.7		Suspicious death	No	Numeric - 10 integers	
K13.8		Self-neglect	No	Numeric - 10 integers	
K13.9		Other	No	Numeric - 10 integers	
K13.10		Unknown	No	Numeric - 10 integers	
K13.11	Comment	Provide additional information on how number of victims by maltreatment type was determined.	No	Text - 5,000 characters	
<b>Victims with guardian or conservator</b>					A victim is counted once per investigation in which he/she was screened as having one or more guardians or conservators.
K14	Victims with guardian or conservator at start of investigation	Number of victims with guardian or conservator at start of investigation.	No	Numeric - 10 integers	
K14.1	Comment	Provide additional information on how number of victims by one or more guardians or conservators was determined.	No	Text - 5,000 characters	



<b>Victims who received or were referred for services</b>					<p>A victim is counted once per investigation in which he/she received or was referred for one or more services.</p> <p>If a client received multiple services and also was referred for multiple services in one investigation, he/she is counted only once.</p>
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Element Category/No.	Element Name	Element Description/ Categories	Required	Field Entry Format	Instructions
K15	Victims who received services or were referred for services by APS	Number of victims who received services or were referred for services by APS.	No	Numeric - 10 integers	
K15.1	Comment	Provide additional information on how number of victims by services was determined.	No	Text - 5,000 characters	

**Table 4–Perpetrators**

Element Category/No.	Element Name	Element Description/ Categories	Required	Field Entry Format	Instructions
<b>Perpetrators by age</b>					<p>The perpetrator age is computed by subtracting the person's date of birth from the investigation start date. An estimated age can be used.</p> <p>Count each perpetrator once per client per investigation.</p> <p>If a person was the perpetrator of two clients in one investigation, the person is counted twice.</p>
K16.1		17 and younger	No	Numeric - 10 integers	
K16.2		18-29 years	No	Numeric - 10 integers	
K16.3		30-39 years	No	Numeric - 10 integers	
K16.4		40-49 years	No	Numeric - 10 integers	

K16.5		50-59 years	No	Numeric - 10 integers	
K16.6		60-69 years	No	Numeric - 10 integers	
K16.7		70-74 years	No	Numeric - 10 integers	
K16.8		75-84 years	No	Numeric - 10 integers	
K16.9		85 and older	No	Numeric - 10 integers	
K16.10		Unknown	No	Numeric - 10 integers	
K16.11	Comment	Provide additional information on how number of perpetrators by age was determined.	No	Text - 5,000 characters	
<b>Perpetrators by gender identity</b>					
K17.1		Male	No	Numeric - 10 integers	

Element Category/No.	Element Name	Element Description/ Categories	Required	Field Entry Format	Instructions
K17.2		Female	No	Numeric - 10 integers	
K17.3		Transgender	No	Numeric - 10 integers	
K17.4		Unknown	No	Numeric - 10 integers	
K17.5	Comment	Provide additional information on how number of perpetrators by gender was determined.	No	Text - 5,000 characters	
<b>Perpetrators with kinship relationship</b>					
K18	Perpetrators who had a kinship relationship to the victim	Number of perpetrators related to the victim by affinity (blood, adoption, marriage, etc.)	No	Numeric - 10 integers	Count each perpetrator once per client per investigation.  If a person was the perpetrator of two clients in one investigation and is related to one victim and not the second, the perpetrator is counted only once.

K18.1	Comment	Provide additional information on how number of perpetrators by kinship relationship was determined.	No	Text - 5,000 characters	
<b>Perpetrators with association to victim</b>					Count each perpetrator once per client per investigation. If a person was the perpetrator of two clients in one investigation and has one or more caregiving relationships to one victim and not the second, the perpetrator is counted only once.
K19	Perpetrators who had one or more associations to victim	Number of perpetrators with one or more caregiving relationships to the victim.	No	Numeric - 10 integers	
K19.1	Comment	Provide additional information on how number of perpetrators by association to the victim was determined.	No	Text - 5,000 characters	

Element Category/No.	Element Name	Element Description/ Categories	Required	Field Entry Format	Instructions
<b>Perpetrators with legal remedy recommendations</b>					Count each perpetrator once per client per investigation.  If a person was the perpetrator of two clients in one investigation and had one or more legal remedies recommended or sought related to one victim and none with the second, the perpetrator is counted only once.
K20	Perpetrators for whom one or more legal remedies on behalf of the victim were recommended or sought	Number of perpetrators for whom at least one legal remedy was recommended or sought.	No	Numeric - 10 integers	

K20.1	Comment	Provide additional information on how number of perpetrators by legal remedy was determined.	No	Text - 5,000 characters	
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