

ADDENDUM A

DHHS GENERAL TERMS - SUBAWARDS

Note: This Addendum A cites the Uniform Grant Guidance, 2 CFR §§ 200 et seq. (“UGG”), which applies to awards from the United States Department of Agriculture (USDA), the Department of Housing and Urban Development (HUD), the Department of Labor (DOL), the Environmental Protection Agency (EPA) or other federal agencies that have adopted the UGG. The United States Department of Health and Human Services (HHS) has adopted the UGG, but has implemented and recodified it at 45 CFR §§ 75 et seq.; for awards funded by HHS, those regulations apply. 45 CFR §§ 75 et seq., including 45 CFR §§ 75 Subpart E (“Cost Principles”; UGG equivalent 2 CFR 200 §§ Subpart E) shall apply to block grant awards authorized by the Omnibus Budget Reconciliation Act of 1981 (“block grant subawards”) unless Nebraska statute or regulation has established provisions for the payment costs and services; otherwise, as provided herein, those block grant subawards are governed by 45 CFR §§ 96 et seq.

Definitions: For the purposes of this Addendum, “Federal Funding Agency” means the United States federal agency providing funding for this Subaward. Unless otherwise specified herein, the definitions in 2 CFR §§ 200 Subpart A or 45 CFR § 75.2 shall apply to all terms used herein. For DOL subawards, the definitions in 2 CFR §§ 2900 Subpart A also apply.

1. ACCESS TO RECORDS.

- 1.1. Subrecipient shall provide access for DHHS, or its authorized representative, to any documents, papers, or other records pertinent to Subaward, in order to make audits, examinations, excerpts, and transcripts. The Subrecipient shall provide the same access to the Federal Funding Agency, the Inspectors General, the Comptroller General of the United States, or any of their authorized representatives. These rights also includes timely and reasonable access to Subrecipient’s personnel for the purpose of interview and discussion related to such documents, papers or other records. These rights are not limited to the retention periods included herein but continue as long as the records are retained by Subrecipient.
- 1.2. Subrecipient shall maintain all financial records, supporting documents, statistical records, and all other records pertinent to Subaward, for three (3) years from the date of submission of the final expenditure report.
- 1.3. In addition to the foregoing retention periods, all records must be retained as specified in 2 CFR §§ 200.333 (a) through (f) or 45 CFR §§ 75.361 (a) through (f), as applicable. This includes, but is not limited to: if any litigation, claim, or audit is started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
- 1.4. The above access to record and retention requirements apply for block grant subawards.
- 1.5. *Different Retention Periods Required by Law.*
 - 1.5.1. If the federal law requires a different record retention length, that shall apply. These include but are not limited to subawards with funding from the EPA and HUD, and may be more fully set forth herein.
 - 1.5.2. As required by law, records that fall under the provisions of the Health Insurance Portability and Accountability Act (HIPAA) and all associated rules and regulations, including but not limited to the policies and procedures identified in 45 CFR § 164.316, shall be maintained for six (6) years from the date of their creation or date when the policy or procedures were last in effect.
- 1.6. For subawards funded by HUD Emergency Solutions Grants (ESG), Subrecipient must provide citizens, public agencies, and other interested parties with reasonable access (consistent with federal, state and local laws regarding privacy and obligations of confidentiality) to records regarding any uses of ESG funds the Subrecipient received during the preceding five (5) years.

Source: 2 CFR §§ 200.333 through .337; 45 CFR §§ 75.361 through 75.364; 45 CFR § 160 and § 164, including § 164.316; 24 CFR § 576.500. Other statutes and regulations may apply.

2. ACKNOWLEDGEMENT OF FUNDING.

- 2.1. If Subaward involves funds from HHS, the following applies: Subrecipient must acknowledge federal and DHHS funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with federal and DHHS funds. Subrecipient is required to state: (1) the percentage and dollar amounts of the total program or project costs financed with federal and DHHS funds; and (2) the percentage and dollar amount of the total costs financed by nongovernmental sources.
- 2.2. If this Subaward involves funds from USDA, Subrecipient shall comply with 2 CFR § 415.2, and shall acknowledge USDA and DHHS support of any audiovisual or publication, as set forth in said regulation.
- 2.3. Subrecipient shall comply with any other requirement regarding publications contained herein, with the applicable Federal Notice of Award, and with law.

Source: Departments of Labor, HHS, and Education and Related Agencies Appropriations Bill; 2 CFR § 415.2.

3. AUDIT AND ACCOUNTING RESPONSIBILITIES.

- 3.1. The Subrecipient shall comply with all applicable federal audit requirements, including but not limited to those in 2 CFR § 200 Subpart F or 45 CFR § 75 Subpart F; an audit required by these regulations must be prepared and issued by an independent auditor in accordance with generally accepted government auditing standards. A copy of the audit is to be made electronically available or sent to: Nebraska Department of Health and Human Services, Financial Services, P.O. Box 95026, Lincoln, NE 68509-5026.
- 3.2. Subrecipient shall comply with 2 CFR §§ 200.508 through 200.512 or 45 CFR §§ 75.508 through 75.512, as applicable, including but not limited to: (a) procure or otherwise arrange for the audit required by this part in accordance with § 200.509 (§ 75.509), and ensure it is properly performed and submitted when due in accordance with § 200.512 (§ 75.512); (b) prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with § 200.510 (§ 75.510); (c) promptly follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with § 200.511 (§ 75.511); (d) provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by law.
- 3.3. In addition to, and in no way in limitation of any obligation in this Subaward, Subrecipient shall be liable for audit exceptions, and shall return to DHHS all payments made under this Subaward for which an exception has been taken or that has been disallowed because of such an exception, upon demand from DHHS.
- 3.4. The Subrecipient shall maintain its accounting records in accordance with generally accepted accounting principles. DHHS reserves the right to require Subrecipient to submit required financial reports on the accrual basis of accounting. If Subrecipient's records are not normally kept on the accrual basis, Subrecipient is not required to convert its accounting system but shall develop and submit in a timely manner such accrual information through an analysis of the documentation on hand (such as accounts payable).

Source: 31 U.S.C. §§ 7501 et seq.; 2 CFR §§ 200 Subpart F; 45 CFR §§ 75 Subpart F.

4. AMENDMENT. This Subaward may be modified only by written amendment executed by both parties. No alteration or variation of the terms of Subaward shall be valid unless made in writing and signed by the parties. Notwithstanding the above, DHHS may add additional funding as specifically set forth in the paragraph entitled "Award of Additional Funding" in the Subaward.
5. ASSIGNMENT. The Subrecipient shall not assign or transfer any interest, rights, or duties under this Subaward to any person, firm, or corporation without prior written consent of DHHS. In the absence of such written consent, any assignment or attempt to assign shall constitute material noncompliance with Subaward.
6. CLOSEOUT AND POST-CLOSEOUT.

- 6.1. *Closeout.* The following closeout procedures apply to this Subaward at the end of each Period of Performance:
 - 6.1.1. Subrecipient shall follow all invoicing and liquidation requirements contained in the Subaward.
 - 6.1.2. Consistent with the terms of the federal award, and after all reports are received, DHHS shall make any necessary adjustments upward or downward in the federal share of costs.
 - 6.1.3. DHHS shall make prompt payments, as consistent with the terms set forth herein, for all actual and allowable costs under the terms of this Subaward.
 - 6.1.4. Subrecipient shall immediately return to DHHS any unobligated balance of cash advanced or shall manage such balance in accordance with DHHS instructions.
- 6.2. *Post-Closeout Adjustments and Continuing Responsibilities.* The closeout of the Subaward does not affect any of the following:
 - 6.2.1. The right of DHHS to disallow costs and recover funds on the basis of a later audit or other review. DHHS shall make any cost disallowance determination and notify Subrecipient within the record retention period.
 - 6.2.2. The obligation of Subrecipient to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments.
 - 6.2.3. Audit requirements in 2 CFR § 200 Subpart F or 45 CFR § 75 Subpart F.
 - 6.2.4. As applicable, property management and disposition requirements in 2 CFR §§ 200.310 through 200.316 or 45 CFR §§ 75.317 through 75.323.
 - 6.2.5. Records retention as required Section 1 of this Addendum.
- 6.3. After closeout of the federal award, a relationship created under the federal award may be modified or ended in whole or in part with the consent of DHHS and the Subrecipient, provided the responsibilities of the Subrecipient referred to above, including those for property management as applicable, are considered and provisions made for continuing responsibilities of the Subrecipient, as appropriate.
- 6.4. At the end of the latest running Period of Performance identified in Attachment 1, Subrecipient shall assist and cooperate in the orderly transition and transfer of Subaward activities and operations with the objective of preventing disruption of services, if necessary.

Source: 2 CFR § 200.331 or 45 CFR § 75.352(a)(6); 2 CFR § 200.343 or 45 CFR § 75.386; 45 CFR § 75.309; 2 CFR § 200.344 or 45 CFR § 75.386.

7. COMPLIANCE WITH CIVIL RIGHTS AND EQUAL OPPORTUNITY EMPLOYMENT LAW.

- 7.1. The Subrecipient shall comply with all applicable local, state and federal law regarding civil rights, including but not limited to: Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(d) et seq.; the Rehabilitation Act of 1973, 29 U.S.C. §§ 794 et seq.; the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq.; the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 et seq.; the Age Discrimination Act of 1975, 42 U.S.C. §§ 6101 et seq.; and the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. §§ 48-1101 to 48-1125.
- 7.2. Subrecipient, by execution of Subaward, also understands and acknowledges this Subaward is subject to the following regulations regarding nondiscrimination: 45 CFR §§ 75 et seq. and 45 CFR §§ 80 et seq. (nondiscrimination under programs receiving or benefitting from assistance through HHS); 45 CFR §§ 84 et seq. (nondiscrimination on the basis of handicap in programs and activities receiving or benefitting from federal financial assistance); 45 CFR §§ 85 et seq. (nondiscrimination on the basis of handicap in HHS programs or activities receiving federal financial assistance); 45 CFR §§ 86 et seq. (nondiscrimination on the basis of sex in education programs and activities receiving or benefitting from federal financial assistance); 45 CFR §§ 87 et seq. (Equal Treatment for Faith-Based Organizations); and 45 CFR §§ 91 et seq. (nondiscrimination on the basis of age in HHS programs or activities receiving federal financial assistance).
- 7.3. Violation of the above statutes and regulations will constitute material non-compliance with the terms of this Subaward and may result in any of the Remedies for Noncompliance listed herein, or any other remedy available under law.
- 7.4. To comply with law, including but not limited to Neb. Rev. Stat. § 48-1122, Subrecipient shall insert a similar provision to .1, above, into all subawards and contracts under this Subaward.

Source: Statutes and regulations cited above.

8. CONFIDENTIALITY.

- 8.1. Any and all confidential or proprietary information gathered in the performance of this Subaward, either independently or through DHHS, shall be held in the strictest confidence and shall be released to no one other than DHHS without the prior written authorization of DHHS; provided, however, that contrary provisions in this Subaward shall be deemed to be authorized exceptions to this general confidentiality provision.
- 8.2. If this Subaward involves HUD ESG funds, the Subrecipient shall develop and implement written procedures to ensure:
 - 8.2.1. All records containing personally identifying information (as defined in HUD's standards for participation, data collection, and reporting in a local Homeless Management Information System) of any individual or family who applies for and/or receives DHHS assistance will be kept secure and confidential;
 - 8.2.2. The address or location of any domestic violence, dating violence, sexual assault, or stalking shelter project assisted under this Subaward shall not be made public, except with written authorization of the person responsible for the operation of the shelter; and
 - 8.2.3. The address or location of any housing of a program participant shall not be made public, except as provided under a preexisting privacy policy of the recipient or subrecipient and consistent with state and local laws regarding privacy and obligations of confidentiality.
 - 8.2.4. The confidentiality procedures of Subrecipient shall be in writing and must be maintained in accordance with this section.
- 8.3. For the purposes of this section, "confidential or proprietary information" means any information subject to any legal restriction governing its use or disclosure. This may include, but is not limited to, protected health information as defined by HIPAA.

Source: Various statutes as may apply to the particular information being gathered, including but not limited to HIPAA; 24 CFR § 576.500.

9. CONFLICTS OF INTEREST.

- 9.1. In the performance of this Subaward, Subrecipient shall avoid all conflicts of interest and all appearances of conflicts of interest. Subrecipient shall not acquire an interest either directly or indirectly that will conflict in any manner or degree with performance, and shall immediately notify DHHS in writing of any such instances encountered.
- 9.2. If this Subaward involves funds from HHS, Subrecipient must be in accordance with applicable HHS awarding agency (the organization or component of HHS authorized to make and administer awards) policy. Current policies may be found online.
- 9.3. If this Subaward involves funds from the USDA, Subrecipient must maintain written standards of conduct covering conflict of interest and governing the performance of its employees in the selection, award and administration of federal awards, as consistent with 2 CFR § 400.2(b)(1) and (2).
- 9.4. If this Subaward involves funds from the EPA, Subrecipient shall comply with subsection 1, above, as consistent with the EPA's Final Financial Assistance Conflict of Interest Policy, currently available online at: <https://www.epa.gov/grants/epas-final-financial-assistance-conflict-interest-policy>.
- 9.5. If this Subaward involves ESG funds from HUD, Subrecipient must also follow 24 CFR § 576.404, as applicable.

Source: 2 CFR § 200.112 or 45 CFR § 75.112; 2 CFR § 400.2.

10. COSTS.

- 10.1. Under this Subaward, DHHS shall only pay for actual and allowable costs (as defined in this section) incurred during the Period of Performance.
 - 10.1.1. To be allowable, all costs must be:
 - Necessary for the performance of the subaward activities;
 - Reasonable, as provided in 2 CFR § 200.404 or 45 CFR § 75.404;
 - Allocable to the federal award, as provided in 2 CFR § 200.405 or 45 CFR § 75.405;

- Consistent with all other requirements of the Cost Principles; and
 - Consistent with all other law, regulation, policy, or other requirements applicable to the state or federal funds involved.
- 10.1.2. To be actual, all costs must be finalized and spent by the appropriate dates set forth in Close and Post Close-Out and as otherwise set forth herein.
- 10.2. For HUD subawards, all costs must also meet the requirements of 24 CFR §§ 570 et seq., 24 CFR §§ 574 et seq., and 24 CFR §§ 576 et seq., as applicable.
- 10.3. For DOL subawards, all costs must also meet the requirements of 2 CFR §§ 2900 Subpart E.
- 10.4. If anything in any budget attached to this Subaward conflicts with the regulations cited herein, or with any applicable law or the federal Notice of Award, the regulations, and law and federal Notice of Award, shall govern.
- 10.5. If this Subaward is a block grant award, and if there are not existing statute or regulations governing the manner and method of payment of the particular costs or services, DHHS will apply the requirements in .1 of this section, above, to determine whether the costs shall be paid. Said costs must also be consistent with the requirements for the particular block grant in 45 CFR §§ 96 et seq.
- 10.6. If this Subaward involves both federal and state funds, any requirements applicable to the federal funds shall also be applied to the state funds.

Source: Regulations cited in this section.

11. DATA OWNERSHIP AND INTELLECTUAL PROPERTY.

- 11.1. *Data.* Except as may be otherwise provided in the Federal Notice of Award, DHHS shall own all rights in data resulting from this Subaward. The Federal Funding Agency reserves the right to obtain, reproduce, publish, or otherwise use the data produced under this Subaward, and to authorize others to receive, reproduce, publish, or otherwise use such data for federal purposes.
- 11.2. *Copyright.* As consistent with federal law, Subrecipient may copyright any of the copyrightable material and may patent any of the patentable products produced in conjunction with the Scope of Work under Subaward without written consent from DHHS. DHHS and any Federal Funding Agency hereby reserve a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the copyrightable material for federal or state government purposes.
- 11.3. *Patent.* All patent rights under this Subaward shall be as set forth in the clause contained in 37 C.F.R. § 401.14, and consistent with all other applicable federal law.
- 11.4. This section shall survive termination or expiration of this Subaward.

Source: Various statutes depending on information; 2 CFR § 200.315 or 45 CFR § 75.322; HHS Grants Policy Statement; 37 CFR §§ 401 et seq.; Federal Notices of Award (as applicable).

12. DEBARMENT, SUSPENSION OR DECLARED INELIGIBLE. The Subrecipient certifies that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any state or federal department or agency. The Subrecipient certifies that it is registered with the System of Award Management (SAM) (<https://www.sam.gov>), in good standing, and that the entity will maintain annual certification in accordance with Federal Acquisition Regulations. Failure to comply with this section, including maintaining an active registration and/or good standing with SAM, may result in withholding of payments or immediate termination of the Subaward.

Source: 2 CFR § 200.213 or 45 CFR § 75.213; 2 CFR §§ 180 et seq.; 2 CFR §§ 25 et seq.

13. DOCUMENTS INCORPORATED BY REFERENCE. All references in this Subaward to laws, rules, regulations, guidelines, directives, addenda, and attachments, which set forth standards or procedures to be followed by Subrecipient in discharging its obligations under Subaward, shall be deemed incorporated by reference and made a part of Subaward with the same force and effect as if set forth in full text herein.

14. DRUG-FREE WORKPLACE. Subrecipient certifies that it maintains a drug-free workplace environment to ensure worker safety and workplace integrity. Subrecipient shall provide a copy of its drug-free workplace policy at any time upon request by DHHS.

Source: State of Nebraska Drug-Free Workplace Policy.

15. FEDERAL FINANCIAL ASSISTANCE / FAITH-BASED ACTIVITIES.

15.1. *Federal Financial Assistance*. Subrecipient shall comply with all applicable provisions of 45 C.F.R. §§ 87.1-87.2. The Subrecipient certifies that it shall not use direct federal financial assistance to engage in inherently religious activities, such as worship, religious instruction, or proselytization. This provision, however, does not apply to subawards listed in 45 CFR § 87.2, or to subawards funded with HUD funds.

15.2. *Faith-Based Activities*. If this Subaward involves HUD funds, and as per 24 CFR § 576.406 or 24 CFR § 574.300(c), as applicable, the Subrecipient shall comply with the requirements found in 24 CFR § 5.109 for full participation by Faith-Based and Community Organizations. These requirements may be more fully set forth herein.

Source: 45 C.F.R. §§ 87.1-87.2; 24 CFR § 576.406; 24 CFR § 574.300(c).

16. FORCE MAJEURE. Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under Subaward due to a natural disaster, or other similar event outside the control and not the fault of the affected party ("Force Majeure Event"). A Force Majeure Event shall not constitute noncompliance with Subaward. The party so affected shall immediately give notice to the other party of the Force Majeure Event. Upon such notice, all obligations of the affected party under Subaward which are reasonably related to the Force Majeure Event shall be suspended, and the affected party shall do everything reasonably necessary to resume the work described in the Project Description as soon as possible. Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event and will not suspend any requirements under Subaward.

17. FUNDING AVAILABILITY. DHHS may terminate the Subaward, in whole or in part, in the event funding is no longer available. Should funds not be appropriated, DHHS may terminate the award with respect to those payments for the fiscal years for which such funds are not appropriated. DHHS shall give Subrecipient written notice thirty (30) days prior to the effective date of any termination under this section. DHHS shall give full credit to Subrecipient for noncancelable obligations properly incurred by Subrecipient prior to termination, and costs incurred on, or prior to, the termination date. If the amount contained in any attached budget is greater than the amount contained in Attachment 1, that additional amount does not represent a guarantee of additional funding. Budgets attached to this Subaward may be based on total amount of expected funding, not actually available funding awarded to DHHS from the Federal Funding Agency. Any attached budget only represents a guarantee of the amount of funding included in Attachment 1.

18. GOVERNING LAW.

18.1. Notwithstanding any other provision of Subaward, or any amendment or addendum(s) entered into contemporaneously or at a later time, the parties understand and agree that, (1) the State of Nebraska is a sovereign state and DHHS' authority to subaward is therefore subject to limitation by the State's Constitution, statutes, common law, and regulation; (2) Subaward will be interpreted and enforced under the laws of the State of Nebraska, except where preempted by federal law; (3) any action to enforce the provisions of Subaward must be consistent with federal and state law; (4) the person signing Subaward on behalf of DHHS does not have the authority to waive the State's sovereign immunity, statutes, common law, or regulations; (5) the indemnity, limitation of liability, remedy, and other similar provisions of the final agreement, if any, are entered into subject to the State of Nebraska's Constitution, statutes, common law, regulations, and sovereign immunity; and, (6) all terms of the final Subaward, including but not limited to any clauses concerning third party use, licenses, warranties, limitations of liability, governing law and venue, usage verification, indemnity, liability, remedy or other similar provisions of the final agreement are entered into specifically subject to the State of Nebraska's Constitution, statutes, common law, regulations, and sovereign immunity.

18.2. The parties shall comply with all applicable federal, state, and local law in the performance of Subaward, and with all terms and conditions established by the Federal Funding Agency in the applicable Terms and Conditions or Federal Notice of Award, and in the HHS Grants Policy Statement, if this is applicable and the Subaward involves HHS funds. Legal obligations required hereunder include, but are not limited to: 2 CFR §§ 200 et seq. or 45 CFR §§ 75 et seq., all statutes and regulations specific to the funds involved, and all applicable confidentiality and privacy statutes and regulations, current and as amended, including but not limited to HIPAA.

19. HUMAN TRAFFICKING PROVISIONS. Subrecipient shall comply with and be subject to the requirements of the Trafficking Victims Protection Act of 2000, 22 USC §§ 7101 et seq.

19.1. The Subrecipient, its employees, any subrecipients the Subrecipient may award under this award, and subrecipients' employees may not—

19.1.1. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

19.1.2. Procure a commercial sex act during the period of time that the award is in effect; or

19.1.3. Use forced labor in the performance of the Subaward.

Source: 22 USC §§ 7101 et seq.

20. INDEMNIFICATION.

20.1. The Subrecipient shall defend, indemnify, hold, and save harmless DHHS and its employees, volunteers, agents, and its elected and appointed officials (“the indemnified parties”) from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses (“the claims”), sustained or asserted against DHHS, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of Subrecipient, its employees, consultants, representatives, and agents, except to the extent such Subrecipient’s liability is attenuated by any action of DHHS that directly and proximately contributed to the claims.

20.2. DHHS’ liability is limited to the extent provided by the Nebraska Tort Claims Act, the Nebraska Contract Claims Act, the Nebraska Miscellaneous Claims Act, and any other applicable provisions of law. DHHS does not assume liability for the action of its subrecipients.

20.3. Notwithstanding the above, if Subrecipient is a local governmental agency or political subdivision of the State of Nebraska, nothing in Subaward shall be construed as an indemnification by one party of the other for liabilities of a party or third parties for property loss or damage or death or personal injury arising out of and during the performance of Subaward. Any liabilities or claims for property loss or damages or for death or personal injury by a party or its agents, employees, contractors or assigns or by third persons shall be determined according to applicable law.

21. INDEPENDENT ENTITY. Subrecipient is an independent entity and neither it nor any of its employees shall, for any purpose, be deemed employees of DHHS. The Subrecipient shall employ and direct such personnel as it requires to perform the project activities under the Subaward, exercise full authority over its personnel, and comply with all workers’ compensation, employer’s liability and other federal, state, county, and municipal laws, ordinances, rules and regulations required of an employer completing work as contemplated by this Subaward.

22. INTEGRATION. This written Subaward represents the entire agreement between the parties, and any prior or contemporaneous representations, promises, or statements by the parties, that are not incorporated herein, shall not serve to vary or contradict the terms set forth in this Subaward.

23. LOBBYING.

23.1. No federal or state funds paid under this Subaward shall be paid for any lobbying costs as set forth herein.

23.2. *Lobbying Prohibited by 31 U.S.C. § 1352 and 45 CFR §§ 93 et seq., and Required Disclosures.*

23.2.1. Subrecipient certifies that no federal or state appropriated funds shall be paid, by or on behalf of Subrecipient, 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 award for: (a) the awarding of any federal agreement; (b) the making of any federal grant; (c) the entering into of any cooperative agreement; and (d) the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.

23.2.2. 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 Subaward, Subrecipient shall complete and submit Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

23.3. *Lobbying Activities Prohibited under Federal Appropriations Bills.*

23.3.1. No funds under Subaward 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 of 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 itself.

23.3.2. No funds under this Subaward shall be used to pay the salary or expenses of any grant or subaward 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 normal and recognized executive legislative relationships or participation by an agency or officer of an State, local or tribal government in policymaking and administrative processes within the executive branch of that government.

23.3.3. The prohibitions in the two sections immediately above 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.

23.4. *Lobbying Costs Unallowable Under the Cost Principles.* In addition to the above, no funds shall be paid for executive lobbying costs as set forth in 2 CFR § 200.450(b) or 45 CFR § 75.450(b). If Subrecipient is a nonprofit organization or an Institute of Higher Education, other costs of lobbying are also unallowable as set forth in 2 CFR § 200.450(c) or 45 CFR § 75.450(c).

Source: 31 U.S.C. § 1352; 45 CFR §§ 93 et seq.; Appropriations bills; 2 CFR § 200.450 or 45 CFR § 75.450.

24. **MANDATORY DISCLOSURES.** The Subrecipient must disclose to DHHS, in a timely manner and in writing, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting this Subaward in accordance with 2 CFR § 200.113 or 45 CFR § 75.113, as applicable. Failure to make required disclosures can result in any of the remedies described in 2 CFR § 200.338 or 45 CFR § 75.371, as applicable, including suspension or debarment. (See also 2 CFR § 180 et seq. and 31 U.S.C. § 3321).

Source: 2 CFR § 200.113 or 45 CFR § 75.113.

25. **NEBRASKA NONRESIDENT INCOME TAX WITHHOLDING.** Subrecipient acknowledges that Nebraska law requires DHHS to withhold Nebraska income tax if payments for personal services are made in excess of six hundred dollars (\$600) to any Subrecipient who is not domiciled in Nebraska or has not maintained a permanent place of business or residence in Nebraska for a period of at least six months. This provision applies to: individuals; to a corporation, if 80% or more of the voting stock of the corporation is held by the shareholders who are performing personal services, and to a partnership or limited liability company, if 80% or more of the capital interest or profits interest of the partnership or limited liability company is held by the partners or members who are performing personal services. The

parties agree, when applicable, to properly complete the Nebraska Department of Revenue Nebraska Withholding Certificate for Nonresident Individuals Form W-4NA or its successor. The form is available at: http://www.revenue.nebraska.gov/tax/current/fill-in/f_w4na.pdf

26. **NEBRASKA TECHNOLOGY ACCESS STANDARDS.** The Subrecipient shall review the Nebraska Technology Access Standards, found at <http://www.nitc.nebraska.gov/standards/2-201.html> and ensure that products or services provided under the Subaward comply with the applicable standards. In the event such standards change during Subrecipient's performance, DHHS may create an amendment to the Subaward to request that Subrecipient comply with the changed standard at a cost mutually acceptable to the parties.

27. **NEW EMPLOYEE WORK ELIGIBILITY STATUS.**

27.1. The Subrecipient shall use a federal immigration verification system to determine the work eligibility status of new employees physically performing project activities within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1324(a), known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

27.2. If Subrecipient is an individual or sole proprietorship, the following applies:

27.2.1. The Subrecipient must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at www.das.state.ne.us.

27.2.2. If Subrecipient indicates on such attestation form that he or she is a qualified alien, Subrecipient agrees to provide the U.S. Citizenship and Immigration Services documentation required to verify Subrecipient's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

27.2.3. The Subrecipient understands and agrees that lawful presence in the United States is required and Subrecipient may be disqualified or the Subaward terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. § 4-108.

Source: Neb. Rev. Stat. § 4-108 et seq.

28. **NOTICE OF STATE-DESIGNATED CLUSTER OF PROGRAMS.** Pursuant to 2 CFR § 200.331 or 45 CFR § 75.352, this provision provides notice that DHHS has designated the Public Health Emergency Preparedness / Hospital Preparedness Program grants (CFDAs 93.069 and 93.889, under 93.074) as a Cluster of programs. For auditing purposes, and as set forth in 2 CFR § 200.518 or 45 CFR § 75.518, a Cluster of programs must be considered as one program for Major program determinations.

Source: 2 CFR § 200.17 or 45 CFR § 75.2.

29. **ORDER OF PREFERENCE.**

29.1. Unless otherwise specifically stated in an amendment to this Subaward, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference:

1. Amendments to the Subaward with the most recently dated amendment having highest priority.
2. The Subaward, excluding any attachments, with the following addenda in order of preference: DHHS General Terms – Subawards; DHHS HIPAA Business Associate Agreement Provisions – Subawards (if included); DHHS Insurance Requirements – Subawards (if included).
3. Attachment 1.
4. All other attachments to this Subaward.

29.2. These documents constitute the entirety of the Subaward. Any ambiguity or conflict in the Subaward discovered after its execution, not otherwise addressed herein, shall be resolved in accordance with the rules of interpretation as established in the State of Nebraska, unless other rules are set forth according to federal law.

30. PAYMENT AND PAYMENT REQUESTS.

- 30.1. *Payment.* Unless otherwise provided herein, and if payment is being made by reimbursement, DHHS will make payment to the Subrecipient within 30 days of receipt of Subrecipient's payment request, unless the request is improper or contains deficiencies. Payments may be withheld as set forth in 2 CFR § 200.305(a)(6) or 45 CFR § 75.305(a)(6), as otherwise provided herein, or according to other applicable law.
- 30.2. *Payment Requests.* All requests for payments submitted by Subrecipient shall contain sufficient detail to support payment. Subrecipient must be able to provide source documentation or other verification of all claimed costs, either provided with its request for payment, or available to DHHS.
- 30.3. *ACH.* The Subrecipient shall complete and sign the State of Nebraska Automated Clearing House (ACH) Enrollment Form and obtain the necessary information and signatures from its financial institution. The completed form must be submitted before payments to Subrecipient can be made. ACH Form: http://www.das.state.ne.us/accounting/nis/address_book_info.htm

Source: Neb. Rev. Stat. §§ 81-2401 through 81-2408; 2 CFR § 200.302 or 45 CFR § 75.302.

31. PUBLIC COUNSEL. In the event Subrecipient provides health and human services to individuals on behalf of DHHS under the terms of this award, Subrecipient shall submit to the jurisdiction of the Public Counsel under Neb. Rev. Stat. §§ 81-8,240 through 81-8,254 with respect to the project activities under Subaward. This clause shall not apply to subawards between DHHS and long-term care facilities subject to the jurisdiction of the state long-term care ombudsman pursuant to the Long-Term Care Ombudsman Act.

Source: Neb. Rev. Stat. § 73-401.

32. REMEDIES FOR NON-COMPLIANCE.

- 32.1. DHHS may, if Subrecipient fails to comply with federal statutes, regulations, or with the terms of the Subaward:
- 32.1.1. Impose any of the Specific Conditions listed in 2 CFR § 200.207 or 45 CFR § 75.207;
 - 32.1.2. Temporarily withhold any payments pending the correction of the deficiency by Subrecipient;
 - 32.1.3. Disallow all or part of the cost of the activity or action not in compliance;
 - 32.1.4. Wholly or partly suspend or terminate Subaward (see also Termination, below);
 - 32.1.5. Recommend suspension or debarment proceedings be initiated by the Federal Funding Agency; and
 - 32.1.6. Take any other remedies that may be legally available.
- 32.2. If DHHS imposes items .3, .4, or .6, above, DHHS may withhold future payments or seek repayment to recoup costs paid by DHHS.
- 32.3. If DHHS has determined, in its sole discretion, that this Subaward is also a contract for services as defined in Chapter 73 of the Nebraska Revised Statutes, the following provisions apply:
- 32.3.1. *Corrective Action Plan.* If Subrecipient fails to meet the Scope of Work as set forth in the Subaward, DHHS may require Subrecipient to complete a Corrective Action Plan (hereinafter "CAP").
 - 32.3.1.1. DHHS shall set a deadline for the CAP to be provided to DHHS, but shall provide Subrecipient reasonable notice of said deadline. In its notice, DHHS shall identify each issue to be resolved.
 - 32.3.1.2. The CAP will include, but is not limited to, a written response noting the steps being taken by Subrecipient to resolve each issue(s), including a date that the issue(s) will be resolved.
 - 32.3.1.3. If Subrecipient fails to provide a CAP by the deadline set by DHHS, fails to provide DHHS with a CAP demonstrating the issues regarding performance will be remedied, or fails to meet the deadline(s) set in the CAP for resolution of the issue(s), DHHS may withhold payments (for the work or deliverables) related to the issues identified by DHHS, or exercise any other remedy set forth in this Subaward or available under law.
 - 32.3.2. *Breach of Subaward.* DHHS may terminate the Subaward, in whole or in part, if Subrecipient fails to perform its obligations under the Subaward in a timely and proper

manner. DHHS may, by providing a written notice to Subrecipient, allow Subrecipient to cure a breach within a period of thirty (30) days or longer at DHHS's discretion, considering the gravity and nature of the breach. Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with proof of delivery. Allowing Subrecipient time to cure a breach does not waive DHHS's right to immediately terminate the Subaward for the same or different breach at a different time.

32.3.2.1. DHHS' failure to make payment shall not be a breach, and the Subrecipient shall retain all available statutory remedies and protections.

32.4. Nothing in this section shall preclude the pursuit of other remedies as allowed by law.

Source: 2 CFR § 200.338 or 45 CFR § 75.371.

33. RESEARCH. The Subrecipient shall not engage in research utilizing the information obtained through the performance of Subaward without the express written consent of DHHS. The term "research" shall mean the investigation, analysis, or review of information, other than aggregate statistical information, which is used for purposes unconnected with this Subaward.

Source: Various privacy statutes, rules and regulations depending on information; DHHS Research Policy.

34. SEVERABILITY. If any term or condition of Subaward is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if Subaward did not contain the particular provision held to be invalid.

35. SMOKE FREE. Public Law 103-227, also known as the Pro-Children Act of 1994 ("Act"), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds in Medicare or Medicaid; or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. By signing this Subaward, Subrecipient certifies that Subrecipient will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

Source: Public Law 103-227.

36. SUBRECIPIENTS OR CONTRACTORS UNDER THIS SUBAWARD.

36.1. Subrecipient shall not subaward nor contract any portion of Subaward without written notice to DHHS (a budget attached to this Subaward or approved, in writing, by DHHS shall be considered written notice for this section). DHHS reserves the right to reject a subrecipient or contractor, but such rejection shall not be arbitrary or capricious.

36.2. In contracting or subawarding any portions of Subaward, Subrecipient shall follow 2 CFR §§ 200.318 through 200.326 or 45 CFR §§ 75.327 through 75.335, as applicable. If subawarding out any portion of Subaward, Subrecipient shall monitor the subaward as necessary to ensure that the subaward is used for authorized purposes, in compliance with federal statutes, regulations, and the terms and conditions of the subaward, and that subaward performance goals are achieved. As applicable, Subrecipient shall follow the requirements for pass-through entities, including but not limited to 2 CFR § 200.331 or 45 CFR § 75.352.

36.3. Subrecipient shall maintain copies of all procurement contracts and documentation of its compliance with the provisions cited above.

36.4. Subrecipient shall ensure that all contractors and subrecipients comply with all requirements of this Subaward and applicable federal, state, county and municipal laws, ordinances, rules, and regulations.

Source: 2 CFR §§ 200.318 through 200.326 or 45 CFR §§ 75.327 through 75.335; 2 CFR § 200.331 or 45 CFR § 75.352.

37. SURVIVAL. All provisions hereof that by their nature are to be performed or complied with following the expiration or termination of Subaward, including but not limited to those clauses that specifically state survival, survive the expiration or termination of this Subaward.

38. TERMINATION.

38.1. This Subaward may be terminated in whole or in part as follows:

38.1.1. DHHS may terminate the Subaward if the Subrecipient fails to comply with the terms of this Subaward; for cause; or as otherwise set forth in Addendum A, applicable law, or the Subaward.

38.1.2. The Subrecipient may terminate the Subaward upon sending written notification to DHHS setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if DHHS determines in the case of partial termination that the reduced or modified portion of the Subaward will not accomplish the purposes for which the Federal award was made, DHHS may terminate the Subaward in its entirety. In either case, the effective date shall be as provided by the Subrecipient and as consistent with the period set forth in the Subaward.

38.1.3. DHHS and the Subrecipient may agree to terminate this Subaward; however, the two parties must agree, in writing, upon the termination conditions, including the effective date and, in case of partial termination, the portion to be terminated.

38.2. All notices of termination must be consistent with 2 CFR § 200.339 or 45 CFR § 75.372 and shall provide a notice period and effective date as set forth in this Subaward.

38.3. In addition to the procedures set forth in Close-Out and Post Close-Out, above (if applicable), if this Subaward is terminated by Subrecipient, or by DHHS for any reason including but not limited to Remedies for Noncompliance, the Subrecipient shall not incur new obligations after the notice of termination of the Subaward, and shall cancel as many outstanding obligations as possible. DHHS shall give full credit to Subrecipient for the federal share of noncancelable obligations properly incurred by Subrecipient prior to termination, and costs incurred on, or prior to, the termination date.

Source: 2 CFR § 200.339 or 45 CFR § 75.372.