

## EXHIBIT C



# TEXAS

## Health and Human Services

**Health and Human Services (HHS)**  
**Additional Provisions – Grant Funding**  
**Version 1.0**  
**Effective: February 2021**

## TABLE OF CONTENTS

1. TURNOVER PLAN.....	4
2. TURNOVER ASSISTANCE.....	4
3. TRADEMARK LICENSE .....	4
4. TRADEMARK OWNERSHIP .....	5
5. ELECTRICAL ITEMS .....	5
6. DISASTER SERVICES.....	5
7. NOTICE OF A LICENSE ACTION.....	6
8. EDUCATION TO PERSONS IN RESIDENTIAL FACILITIES.....	6
9. CONSENT TO MEDICAL, DENTAL, PSYCHOLOGICAL, AND SURGICAL TREATMENT OF A CHILD .....	6
10. TELEMEDICINE/TELEHEALTH SERVICES .....	6
11. SERVICES AND INFORMATION FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY .....	7
12. THIRD PARTY PAYORS .....	7
13. HIV/AIDS MODEL WORKPLACE GUIDELINES .....	8
14. MEDICAL RECORDS RETENTION.....	8
15. INTERIM EXTENSION AMENDMENT .....	8
16. ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY AND SECURITY STANDARDS .....	8
17. PROJECT COMMENCEMENT .....	10
18. DUPLICATION OF FUNDING .....	11
19. NOTICE OF CRIMINAL ACTIVITY AND DISCIPLINARY ACTIONS.....	11
20. NOTICE OF GRANT AGREEMENT/CONTRACT ACTION.....	11
21. NOTICE OF BANKRUPTCY .....	11
22. NOTICE OF CHANGE OF CONTACT PERSON OR KEY PERSONNEL.....	12
23. NOTICE OF INSOLVENCY, INCAPACITY, OR OUTSTANDING UNPAID OBLIGATIONS .....	12
24. SUBGRANTEE REQUIREMENTS .....	12
25. CONFLICT OF INTEREST.....	12
26. DISCOUNTS .....	14
27. ADULT ABUSE, NEGLECT, EXPLOITATION.....	14

<b>28. GRANTEE’S NOTIFICATION OF ORGANIZATION CHANGE.....</b>	<b>14</b>
<b>29. BREACH OF GRANT AGREEMENT AND LIQUIDATED DAMAGES .....</b>	<b>14</b>

## **ADDITIONAL PROVISIONS**

The terms and conditions of these Additional Provisions are incorporated into and made a part of the Grant Agreement. Terms included in these Additional Provisions and not otherwise defined have the meanings assigned to them in HHS Uniform Terms and Conditions, Exhibit B.

For any Provisions requiring communication to the SUD Mailbox, Grantee/Contractor shall email: [SUD.Contracts@hhs.texas.gov](mailto:SUD.Contracts@hhs.texas.gov).

For any Provisions requiring communication to the Program Mailbox, Grantee/Contractor shall email: [SUPrevention@hhs.texas.gov](mailto:SUPrevention@hhs.texas.gov).

### **1. TURNOVER PLAN**

System Agency, in its sole discretion, may require Grantee/Contractor to develop and submit a Turnover Plan at any time during the term of the Grant Agreement/Contract. Grantee/Contractor must submit the Turnover Plan to System Agency for review and approval. The Turnover Plan must describe Grantee/Contractor's policies and procedures that will ensure:

- i. The least disruption in the implementation and performance of grant-funded activities during Turnover; and
- ii. Full cooperation with System Agency or its designee in transferring the performance and obligations of the Grant Agreement/Contract.

### **2. TURNOVER ASSISTANCE**

Grantee/Contractor will provide any assistance and actions reasonably necessary to enable System Agency or its designee to effectively close out the Grant Agreement/Contract and transfer the performance and obligations of the Grant Agreement/Contract to another Grantee/Contractor or to System Agency if necessary. Grantee/Contractor agrees that this obligation survives the termination, regardless of whether for cause or convenience, or the expiration of the Grant Agreement/Contract and remains in effect until completed to the satisfaction of System Agency.

### **3. TRADEMARK LICENSE**

System Agency grants to Grantee/Contractor, for the term of the Grant Agreement/Contract, a limited non-exclusive, royalty-free, non-assignable, non-transferable license to reproduce System Agency's trademarks on published materials in the United States related to the performance of the Grant Agreement/Contract, provided that such license is expressly conditional upon, and subject to, the following:

- i. Grantee/Contractor is in compliance with all provisions of the Grant Agreement/Contract;
- ii. Grantee/Contractor's use of the trademarks is strictly in accordance with the quality standards and in conformance with the reproduction requirements set forth in this Grant

- Agreement/Contract or as otherwise communicated by System Agency;
- iii. Grantee/Contractor takes no action to damage the goodwill associated with the trademarks, and refrains from any attempt to contest, attack, dispute, challenge, cancel and/or oppose System Agency's right, title and interest in the trademarks or their validity;
  - iv. Grantee/Contractor makes no attempt to sublicense any rights under this trademark license; and
  - v. Grantee/Contractor complies with any marking requests System Agency may make in relation to the trademarks, including without limitation to use the phrase "Registered Trademark", the registered trademark symbol "®" for registered trademarks, and the symbol "™" for unregistered trademarks.

#### **4. TRADEMARK OWNERSHIP**

Grantee/Contractor acknowledges and agrees that the trademarks remain the exclusive property of System Agency, that all right, title and interest in and to the trademarks is exclusively held by System Agency, and all goodwill associated with such trademarks inures solely to System Agency.

#### **5. ELECTRICAL ITEMS**

All electrical items purchased under this Grant Agreement/Contract or used in the performance of approved and eligible grant-funded activities must meet all applicable Occupational Safety and Health Administration (OSHA) standards and regulations, and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers Association (NEMA).

#### **6. DISASTER SERVICES**

In the event of a local, state, or federal emergency, including natural, man-made, criminal, terrorist, and/or bioterrorism events, declared as a state disaster by the Governor, or a federal disaster declared by the appropriate federal official, Grantee/Contractor may be called upon to assist the System Agency in providing the following services:

- i. Community evacuation;
- ii. Health and medical assistance;
- iii. Assessment of health and medical needs;
- iv. Health surveillance;
- v. Medical care personnel;
- vi. Health and medical equipment and supplies;
- vii. Patient evacuation;
- viii. In-hospital care and hospital facility status;
- ix. Food, drug and medical device safety;
- x. Worker health and safety;
- xi. Mental health and substance abuse;
- xii. Public health information;
- xiii. Vector control and veterinary services; and
- xiv. Victim identification and mortuary services.

## **7. NOTICE OF A LICENSE ACTION**

Grantee/Contractor shall notify the assigned System Agency contract manager in writing of any action impacting Grantee/Contractor's license to provide services under this Grant Agreement/Contract within five business days of becoming aware of the action and include the following:

- i. Reason for such action;
- ii. Name and contact information of the local, state or federal department or agency or entity;
- iii. Date of the license action; and
- iv. License or case reference number.

## **8. EDUCATION TO PERSONS IN RESIDENTIAL FACILITIES**

- A. Grantee/Contractor shall ensure that all persons, who are housed in System Agency licensed or funded residential facilities and are 22 years of age or younger, have access to educational services as required by Texas Education Code § 29.012.
- B. Grantee/Contractor shall notify the local education agency or local early intervention program not later than the third calendar day after the date a person who is 22 years of age or younger is placed in Grantee/Contractor's residential facility.

## **9. CONSENT TO MEDICAL, DENTAL, PSYCHOLOGICAL, AND SURGICAL TREATMENT OF A CHILD**

Unless a federal law applies, before a Grantee/Contractor or its subcontractor can provide medical, dental, psychological or surgical treatment to a minor without parental consent, informed consent must be obtained as required by Texas Family Code Chapter 32.

## **10. TELEMEDICINE/TELEHEALTH SERVICES**

If Grantee/Contractor or its subcontractor provides grant-funded telemedicine/telehealth services, these services shall be in accordance with the Grantee/Contractor's written procedures, applicable law, the Grantee's/Contractor's or subcontractor's licensing board rules, and System Agency equipment standards, if applicable. Grantee/Contractor's procedures for providing telemedicine/telehealth service must include the following requirements:

- i. Consider any contraindications to the use of telemedicine/telehealth;
- ii. Qualified staff members to ensure the safety of the individual being served by telemedicine/telehealth at the remote site;
- iii. Safeguards to ensure confidentiality and privacy in accordance with state and federal laws;
- iv. Use by credentialed licensed providers providing clinical care within the scope of their licenses;
- v. Demonstrated competency in the operations of the system by all staff members who are involved in the operation of the system and provision of the services prior to initiating the protocol;
- vi. Priority in scheduling the system for clinical care of individuals;
- vii. Quality oversight and monitoring of satisfaction of the individuals served; and
- viii. Management of information and documentation for telemedicine/telehealth services that ensures timely access to accurate information between the two sites.

Telemedicine/telehealth Services does not include chemical dependency treatment services provided by electronic means under 25 Texas Administrative Code Rule §448.911.

#### **11. SERVICES AND INFORMATION FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY**

- A. Grantee/Contractor shall take reasonable steps to provide services and information both orally and in writing, in appropriate languages other than English, to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits and activities. Meaningful access may entail providing language assistance services, including oral interpretation and written translation, if necessary. More information can be found at <https://www.lep.gov/>.
- B. Grantee/Contractor shall identify and document on the client records the primary language/dialect of a client who has limited English proficiency and the need for translation or interpretation services and shall not require a client to provide or pay for the services of a translator or interpreter.
- C. Grantee/Contractor shall make every effort to avoid use of any persons under the age of 18 or any family member or friend of the client as an interpreter for essential communications with a client with limited English proficiency, unless the client has requested that person and using the person would not compromise the effectiveness of services or violate the client's confidentiality and the client is advised that a free interpreter is available.

#### **12. THIRD PARTY PAYORS**

- A. Except as provided in this Grant Agreement/Contract, Grantee/Contractor shall screen all clients and may not bill the System Agency for services eligible for reimbursement from third party payors, who are any person or entity who has the legal responsibility for paying for all or part of the services provided, including commercial health or liability insurance carriers, Medicaid, or other federal, state, local and private funding sources.
- B. As applicable, the Grantee/Contractor shall:
  - i. Enroll as a provider in Children's Health Insurance Program and Medicaid if providing approved services authorized under this Grant Agreement/Contract that may be covered by those programs and bill those programs for the covered services;
  - ii. Provide assistance to individuals to enroll in such programs when the screening process indicates possible eligibility for such programs;
  - iii. Allow clients that are otherwise eligible for System Agency services, but cannot pay a deductible required by a third party payor, to receive services and bill the System Agency for the deductible;
  - iv. Not bill the System Agency for any services eligible for third party reimbursement until all appeals to third party payors have been exhausted;
  - v. Maintain appropriate documentation from the third party payor reflecting attempts to obtain reimbursement;
  - vi. Bill all third party payors for services provided under this Grant Agreement/Contract before submitting any request for reimbursement to System Agency; and
  - vii. Provide third party billing functions at no cost to the client.

### **13. HIV/AIDS MODEL WORKPLACE GUIDELINES**

- A. Grantee/Contractor shall implement DSHS's HIV-STD Policy No. 090.021, HIV/AIDS Model Workplace Guidelines for Businesses, State Agencies, and State Contractors, accessible at <http://www.dshs.state.tx.us/hivstd/policy/policies.shtm>.
- B. Grantee/Contractor shall also educate employees and clients concerning HIV and its related conditions, including AIDS, in accordance with the Texas Health & Safety Code §§ 85.112-114.

### **14. MEDICAL RECORDS RETENTION**

Grantee/Contractor shall retain medical records in accordance with 22 TAC §165.1(b) or other applicable statutes, rules and regulations governing medical information.

### **15. INTERIM EXTENSION AMENDMENT**

- A. Prior to or on the expiration date of this Grant Agreement/Contract, the Parties agree that this Grant Agreement/Contract can be extended as provided under this section.
- B. The System Agency shall provide written notice of interim extension amendment to the Grantee/Contractor under one of the following circumstances:
  - i. Continue provision of services in response to a disaster declared by the governor; or
  - ii. To ensure that services are provided to clients without interruption.
- C. The System Agency will provide written notice of the interim extension amendment that specifies the reason for it and period of time for the extension.
- D. Grantee/Contractor will provide and invoice for services in the same manner that is stated in the Grant Agreement/Contract.
- E. An interim extension under subsection (B)(i) of this section shall extend the term of the Grant Agreement/Contract not longer than 30 days after governor's disaster declaration is declared unless the Parties agree to a shorter period of time.
- F. An interim extension under subsection (B)(i) of this section shall be a one-time extension for a period of time determined by the System Agency.

### **16. ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY AND SECURITY STANDARDS**

- A. Applicability
  - i. This section applies to the procurement or development of Information and Communication Technology (ICT) for Health and Human Services (HHS), or any changes to HHS's ICT. This section also applies if the Grant Agreement/Contract requires Grantee/Contractor to perform a service or supply goods that include ICT that: (i) HHS employees are required or permitted to access; or (ii) members of the public are required or permitted to access. This section does not apply to incidental uses of ICT in the performance of a Grant Agreement/Contract, unless the parties agree that the ICT will become property of the state or will be used by HHS's Client/Recipient after completion of the Grant Agreement/Contract.
  - ii. Nothing in this section is intended to prescribe the use of particular designs or technologies or to prevent the use of alternative technologies, provided they result in substantially equivalent or greater access to and use of a product / service.
- B. Definitions



The legacy term “Electronic and Information Resources” (EIR) and the term “Information and Communication Technology” (ICT) are considered equivalent in meaning for the purpose of applicability of HHS Uniform Terms and Conditions, policies, accessibility checklists, style guides, Grant Agreement/Contract specifications, and other Grant Agreement/Contract management documents. To the extent that any other of the following definitions conflict with definitions elsewhere in this Grant Agreement/Contract, the following definitions are applicable to this section only.

- i. **“Accessibility Standards”** refers to the Information and Communication Technology Accessibility Standards and the Web Accessibility Standards/Specifications under the Web Content Accessibility Guidelines version 2.0 Level AA, (WCAG 2.0).
  - ii. **“Information and Communication Technology (ICT)”** is any information technology, equipment, or interconnected system or subsystem of equipment for which the principal function is the creation, conversion, duplication, automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, reception, or broadcast of data or information. Examples of ICT are electronic content, telecommunications products, computers and ancillary equipment, software, information kiosks and transaction machines, videos, IT services, and multifunction office machines which copy, scan, and fax documents.
  - iii. **“Information and Communication Technology Accessibility Standards”** refers to the accessibility standards for information and communication technology contained in the Web Content Accessibility Guidelines version 2.0 Level AA.
  - iv. **“Web Accessibility Standards/Specifications”** refers to the web standards contained in WCAG 2.0 Level AA.
  - v. **“Products”** means information resources technologies that are, or are related to, ICT.
  - vi. **“Service”** means the act of delivering information or performing a task for employees, clients, or members of the public through a method of access or delivery that uses ICT.
- C. **Accessibility Requirements**  
 Under Texas Government Code Chapter 2054, Subchapter M, and implementing rules of the Texas Department of Information Resources, HHS must procure Products or Services that comply with the Accessibility Standards when such Products or Services are available in the commercial marketplace or when such Products or Services are developed in response to a procurement solicitation. Accordingly, Grantee/Contractor must provide ICT and associated Product and/or Service documentation and technical support that comply with the Accessibility Standards.
- D. **Evaluation, Testing and Monitoring**
- i. HHS may review, test, evaluate and monitor Grantee/Contractor’s Products, Services and associated documentation and technical support for compliance with the Accessibility Standards. Review, testing, evaluation and monitoring may be conducted before and after the award of a grant agreement/contract. Testing and monitoring may include user acceptance testing.
  - ii. Neither (1) the review, testing (including acceptance testing), evaluation or monitoring of any Product or Service, nor (2) the absence of such review, testing, evaluation or monitoring, will result in a waiver of the State’s right to contest the Grantee/Contractor’s assertion of compliance with the Accessibility Standards.

- iii. Grantee/Contractor agrees to cooperate fully and provide HHS and its representatives timely access to Products, Services, documentation, and other items and information needed to conduct such review, evaluation, testing and monitoring.
- E. Representations and Warranties
  - i. Grantee/Contractor represents and warrants that: (a) as of the effective date of the Grant Agreement/Contract, the Products, Services and associated documentation and technical support comply with the Accessibility Standards as they exist at the time of entering the Grant Agreement/Contract, unless and to the extent the Parties otherwise expressly agree in writing; and (b) if the Products will be in the custody of the state or an HHS agency's client or recipient after the Grant Agreement/Contract expiration or termination, the Products will continue to comply with such Accessibility Standards after the expiration or termination of the Grant Agreement/Contract term, unless HHS and/or Client/Recipient, as applicable uses the Products in a manner that renders it noncompliant.
  - ii. In the event Grantee/Contractor should have known, becomes aware, or is notified that the Product and associated documentation and technical support do not comply with the Accessibility Standards, Grantee/Contractor represents and warrants that it will, in a timely manner and at no cost to HHS, perform all necessary steps to satisfy the Accessibility Standards, including but not limited to remediation, repair, replacement, and upgrading of the Product, or providing a suitable substitute.
  - iii. Grantee/Contractor acknowledges and agrees that these representations and warranties are essential inducements on which HHS relies in awarding this Grant Agreement/Contract.
  - iv. Grantee/Contractor's representations and warranties under this subsection will survive the termination or expiration of the Grant Agreement/Contract and will remain in full force and effect throughout the useful life of the Product.
- F. Remedies
  - i. Pursuant to Texas Government Code Sec. 2054.465, neither Grantee/Contractor nor any other person has a cause of action against HHS for a claim of a failure to comply with Texas Government Code Chapter 2054, Subchapter M, and rules of the Department of Information Resources.
  - ii. In the event of a breach of Grantee/Contractor's representations and warranties, Grantee/Contractor will be liable for direct and consequential damages and any other remedies to which HHS may be entitled. This remedy is cumulative of any and all other remedies to which HHS may be entitled under this Grant Agreement/Contract and other applicable law.

## 17. PROJECT COMMENCEMENT

The Grantee shall begin the grant-funded project <<on or before *insert date*>> <<within 90 days of the original start date of the grant term or grant execution date, whichever is later,>>, unless otherwise approved by System Agency. If project commencement is delayed, the Grantee must submit in writing to the assigned contract manager, the steps taken to initiate the project, the reasons for the delay, and the expected start date. System Agency may require Grantee to take immediate remedial or corrective action in response to any delay.

## **18. DUPLICATION OF FUNDING**

A. If Grantee receives any funding that is duplicative of funding received under this Grant Agreement/Contract that cannot be used for new or expanded eligible grant activities, Grantee shall notify the assigned contract manager as soon as possible. System Agency may issue an amendment modifying budget and/or project activities to eliminate duplication. Additionally, Grantee understands that duplicative funding that cannot be re-programmed to support new or expanded grant-funded activities within the program's scope may be de-obligated from this Grant Agreement/Contract and returned to System Agency.

## **19. NOTICE OF CRIMINAL ACTIVITY AND DISCIPLINARY ACTIONS**

- A. Grantee/Contractor shall immediately report in writing to its assigned System Agency contract manager when Grantee/Contractor learns of or has any reason to believe it or any person with ownership or controlling interest in Grantee/Contractor, or their agent, employee, subcontractor or volunteer who is providing services under this Grant Agreement/Contract has been placed on community supervision, received deferred adjudication, or been indicted for or convicted of a criminal offense relating to involvement in any financial matter, federal or state program or felony sex crime.
- B. Grantee/Contractor shall not permit any person who engaged, or was alleged to have engaged, in any activity subject to reporting under this section to perform direct client services or have direct contact with clients, unless otherwise directed in writing by the System Agency.

## **20. NOTICE OF GRANT AGREEMENT/CONTRACT ACTION**

Grantee/Contractor shall notify the assigned System Agency contract manager if Grantee/Contractor has any grant agreement or contract suspended or terminated for cause by any local, state or federal department or agency or nonprofit entity within five business days of becoming aware of the action and include the following:

- i. Reason for such action;
- ii. Name and contact information of the local, state or federal department or agency or entity;
- iii. Effective start date of the grant agreement/contract;
- iv. Date of suspension or termination; and
- v. Grant agreement/contract or case reference number.

## **21. NOTICE OF BANKRUPTCY**

Grantee/Contractor shall notify in writing the assigned System Agency contract manager of its plan to seek bankruptcy protection within five business days of such action by Grantee/Contractor.

## **22. NOTICE OF CHANGE OF CONTACT PERSON OR KEY PERSONNEL**

The Grantee/Contractor shall notify in writing the assigned System Agency contract manager within ten business days of any change to the Grantee/Contractor's Contact Person or Key Personnel.

## **23. NOTICE OF INSOLVENCY, INCAPACITY, OR OUTSTANDING UNPAID OBLIGATIONS**

Grantee/Contractor shall notify in writing its assigned System Agency contract manager of any insolvency, incapacity, or outstanding unpaid obligations of Grantee/Contractor owed to the Internal Revenue Service or the State of Texas, or any agency or political subdivision of the State of Texas within five business days of the date of Grantee/Contractor's becoming aware of such.

## **24. SUBGRANTEE REQUIREMENTS**

- A. Grantees are prohibited from awarding a sub-agreement with for-profit organizations under this Grant agreement.
- B. Grantee shall establish written policies and procedures for competitive procurement and monitoring of subgrant agreements and will develop a subgrant agreement monitoring plan.
- C. Monitor subGrantees for both financial and programmatic performance and will maintain pertinent records.
- D. Not grant agreement with a subGrantee, at any tier, that is debarred, suspended, or excluded from or ineligible for participation in federal assistance programs or if the subGrantee would be otherwise ineligible to abide by the terms of this Grant agreement.
- E. Grantee's will require that all subGrantees certify they are/have:
  - 1. In good standing with all state and federal funding and regulatory agencies;
  - 2. Not currently debarred, suspended or otherwise excluded from participation in federal grant programs;
  - 3. Not delinquent on any repayment agreements;
  - 4. Not had a required license or certification revoked;
  - 5. Not ineligible under the terms of the Grant agreement; and
  - 6. Not had a System Agency grant agreement terminated for cause.

## **25. CONFLICT OF INTEREST**

- A. Grantee warrants to the best of its knowledge and belief, except to the extent already disclosed to System Agency, there are no facts or circumstances that could give rise to a Conflict of Interest and further that Grantee or Grantee Agents have no interest and will not acquire any direct or indirect interest that would conflict in any manner or degree with their performance under the Grant agreement. Grantee shall, and require Grantee Agents, to establish safeguards to prohibit Grant agreement Agents from using their positions for a purpose that constitutes or presents the appearance of personal or Organizational Conflict of Interest, or for personal gain. Grantee and Grantee Agents will operate with complete independence and objectivity without actual, potential or apparent Conflict of Interest with

- respect to the activities conducted under the Grant agreement.
- B. Grantee agrees that, if after Grantee's execution of the Grant agreement, Grantee discovers or is made aware of a Conflict of Interest, Grantee shall immediately and fully disclose such interest in writing to System Agency. In addition, Grantee shall promptly and fully disclose any relationship that might be perceived or represented as a conflict after its discovery by Grantee or by System Agency as a potential conflict. System Agency reserves the right to make a final determination regarding the existence of Conflicts of Interest, and Grantee agrees to abide by System Agency's decision
- C. System Agency considers Grantee's that serve as a curriculum developer and receive HHSC funding to provide participant services for the curriculum as a dual relationship and a conflict of interest that requires disclosure. Grantee's that meet these criteria are required to do the following:
1. Maintain three cost centers in accordance with 2 C.F.R. Part 200. A cost center is defined as a department or function within an organization that does not directly add to profit but still costs the organization money to operate.
    - i. Cost Center No. 1: Grantee shall document expenditures and revenues for curriculum training;
    - ii. Cost Center No. 2: Grantee shall document expenditures and revenues for activities as curriculum developer;
    - iii. Cost Center No. 3: Grantee shall document expenditures and revenue for providing prevention services.
  2. Grantee acknowledges and agrees that it may not benefit financially in its dual role as curriculum developer and prevention provider.
  3. If a Grantee develops a curriculum that is available for System Agency-funded prevention services during the grant period, Grantee must notify System Agency in writing within 30 days prior to availability.
- D. No member of Grantee's governing body, or officer or employee of Grantee shall vote for, confirm or act to influence the employment, compensation or change in status of any person related within the second degree of affinity or the third degree of consanguinity (as defined in Texas Government Code Chapter 573) to the member of the governing body or the officer or any employee authorized to employ or supervise such person. This prohibition does not prohibit the continued employment of a person who has been continuously employed for a period of two years prior to the election, appointment or employment of the officer, employee, or governing body member related to such person in the prohibited degree. These restrictions also apply to the governing body, officers, and employees of Grantee's subGrantees.
- E. If System Agency determines that Grantee was aware of a Conflict of Interest and did not disclose the conflict to System Agency, such nondisclosure will be considered a material breach of the Grant agreement. Furthermore, such breach may be submitted to the Office of the Attorney General, Texas.

## **26. DISCOUNTS**

If Grantee at any time during the term of the Grant agreement provides a discount on the final grant agreement costs, Grantee shall notify HHSC in writing at least ten (10) calendar days prior to the effective date of the discount. HHSC will generate a Purchase Order Change Notice and send a revised Purchase Order to Grantee.

## **27. ADULT ABUSE, NEGLECT, EXPLOITATION**

Grantee shall;

- A.** Take all steps necessary, to protect the health, safety and welfare of its clients and participants.
- B.** Develop and implement written policies and procedures for abuse, neglect and exploitation.
- C.** Notify appropriate authorities of any allegations of abuse, neglect or exploitation as required by 25 TAC § 448.703.

## **28. GRANTEE'S NOTIFICATION OF ORGANIZATION CHANGE**

Within 10 business days, Grantee shall submit notice to the SUD Mailbox and Program Mailbox regarding changes to the Grantee legal name, contact information, organizational structure due to merger or acquisition, or any change in form of business, legal standing, or authority to do business in Texas.

## **29. BREACH OF GRANT AGREEMENT AND LIQUIDATED DAMAGES**

### **A. Grant Agreement Monitoring and Enforcement**

System Agency will monitor Grantee for programmatic and financial compliance with this Grant Agreement. System Agency, upon request, may provide assistance to Grantee regarding actions which may be implemented by Grantee to mitigate or resolve its substandard performance.

If Grantee's performance does not comply with the Grant Agreement, System Agency may, in addition to the remedies set forth elsewhere in the Grant Agreement, impose remedies which may include any or all of the following:

- 1. Accelerated monitoring of Grantee's performance;
- 2. Additional or ad hoc reporting by Grantee, at no additional cost to System Agency, to address performance issues;
- 3. Compliance by Grantee, at no additional cost to System Agency, with the performance improvement activities and timelines specified in a written corrective action plan(s) approved by System Agency; and/or
- 4. Assessment of liquidated damages in accordance with Section 29.E. below.

## **B. Liquidated Damages**

For the liquidated damages specified in this section, Grantee agrees that (1) the measure of damages in the event of a default or breach by Grantee may be difficult or impossible to calculate, (2) the liquidated damages and any amounts assessed in connection therewith are neither a penalty nor a forfeiture, and (3) the amount of liquidated damages are a reasonable forecast of just compensation for the default or breach by Grantee.

Liquidated damages will not be assessed if System Agency determines that Grantee is not responsible for the delay or failure of the applicable requirement. For the avoidance of doubt, any liquidated damages remedy associated with non-compliance with the HHS Data Use Agreement will be specified within the HHS Data Use Agreement and not in this section.

## **C. Grant Agreement Enforcement Process**

System agency will implement the progression of grant agreement remedies upon identification of substandard performance. System Agency may impose grant agreement remedies as allowable in grant agreement, which may not be reflected in this section, based on the significance of the grant agreement breach or substandard performance.

## **D. Liquidated Damages Regarding Unmet Deliverables**

System Agency shall apply liquidated damages for late, incomplete, or inaccurate deliverables. System Agency shall consider a deliverable “not received” if the deliverable has not been submitted to System Agency in the required submission system by the due date, is incomplete, or inappropriate (including but not limited to: submitted using wrong template, completed incorrectly, or demonstrates unacceptable service delivery). System Agency shall issue a daily liquidated damages based on the average cost of one hour of work for HHSC staff, assessed at \$40 per business day.

## **E. Liquidated Damages Regarding Unmet Performance Measures**

1. System Agency will conduct an annual analysis 45 calendar days following the close of each fiscal year for all performance measures in accordance with the Grant Agreement. The fiscal year starts September 1st of each year and ends August 31st of each year.
2. Performance measures documented immediately below in Section 29.E.3. that do not meet at least 70% of the annual goal will result in liquidated damages as set forth in Section 34.E.4. below.
3. System Agency shall apply liquidated damages for substandard performance to the following Performance Measures for each Prevention program ID. The liquidated damages shall be enforced upon annual performance measures not meeting 70% of the fiscal year cumulative performance goal.

**Community Coalition Partnership (CCP)**

1. Number of in-kind hours of volunteer work from community members.
2. Number of adults participating in coalition activities.
3. Number of youth participating in coalition activities.

**Prevention Resource Center (PRC)**

1. Number of voluntary compliance checks successfully conducted on-site with tobacco retailers.
2. Number of times that local, county, or regional data is shared.

**Youth Prevention Services (YPI, YPS, YPU)**

1. Number of unduplicated youth receiving prevention education/skills training per year (approved evidence-based curriculum)
2. Number of unduplicated adults receiving prevention education/skills training per year (approved evidence-based curriculum)
3. Number of youth in positive alternatives conducted per month
4. Number of youth attending prevention/behavioral health promotion presentations

4. The System Agency shall recoup a percentage of Grantee's reimbursed expenditures for the fiscal year. The liquidated damages amounts will be calculated according to the following formula:

$$L=[0.001T(70-P)](E/T)$$

L: total liquidated damages amount in dollars,

T: total program ID HHSC Share amount,

P: percentage below 70% multiplied by 100 (to give a whole number rather than percentage) rounded to the nearest whole number, and

E: total program ID funds expended over the fiscal year.

The calculation result is the liquidated damage amount to be recouped. The liquidated damages amount will increase as the percentage of measures goal goes down [data for P, ref. above] and is mitigated based on percentage of funds expended. Per this formula the absolute maximum liquidated damages in the event of 100% funds expenditure with zero services provided for the designated measures, would be 7% of the total contract value.

**F. Grantee Repayment**

System Agency may elect to collect liquidated damages as set-off against payments due to Grantee or that become due at any time after assessment of liquidated damages. System Agency may take repayment from funds available under this Grant agreement, active or expired, or any subsequent renewal, in amounts necessary to fulfill Grantee's



repayment obligations. System Agency may also elect to collect liquidated damages through direct assessment and demand for payment delivered to Grantee.

**G. Notice of Liquidated Damages**

System Agency will formally notify Grantee in writing when liquidated damages actions are imposed, stating the nature of the action, the reasons for imposing, and the method of appealing. Grantee must submit a written appeal, within ten (10) calendar days of receipt of the notice, to the SUD email box, [SUD.Contracts@hhs.texas.gov](mailto:SUD.Contracts@hhs.texas.gov) and copy the assigned contract manager.

A submitted appeal must:

1. Include documented proof that Grantee submitted the information by the due date or received an exemption from the System Agency.
2. Demonstrate the findings on which the Liquidated Damage and/or sanction are based are either invalid or do not warrant the action(s).

If System Agency determines the liquidated damage is warranted, System Agency's decision is final, and the remedy shall be imposed.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**