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GENERAL TERMS AND CONDITIONS

1. Definitions

A. *Agreement* shall mean the Master Agreement entered into between Contractor and ASTHO, including the Scope of Work, these General Terms and Conditions, and any other Addendums, attachments, and exhibits.

B. *Services* shall mean those services Contractor is to provide pursuant to the Agreement, including any Scope of Work.

C. *Work* shall mean all work, deliverables, documents, data, goods, and other materials produced, developed, collected, or authored by Contractor pursuant to the Agreement.

D. *Concerned Funding Agency* means the U.S. Department of Health and Human Services or any other governmental entity providing funding, in whole or in part, related to the Agreement.

2. Relationship

The Contractor is an independent contractor, and the relationship between ASTHO and the Contractor shall be solely contractual and not in the nature of a partnership, joint venture, or general agency. Neither party may speak nor act on behalf of the other, nor legally commit the other.

3. Ownership Rights

The services provided by the Contractor pursuant to the Agreement shall be “work for hire” and therefore all Work shall be sole and exclusive property of ASTHO. To the extent that the Services, or any part of them, may not constitute work for hire under the law, Contractor hereby transfers to ASTHO all right, title, and interest in and to the Work.

Notwithstanding the foregoing, should the Work incorporate pre-existing materials owned by Contractor, Contractor shall retain all ownership rights to those materials, and ASTHO shall have a perpetual, irrevocable, royalty-free license to utilize the pre-existing materials as incorporated in the Work.

Without limiting the foregoing, ASTHO shall have access to the Work at any time during the term of the Agreement.

4. Warranties and Representations

The Contractor warrants and represents that: (a) the Services shall conform to the Scope of Work in all respects; (b) the Work shall be original to the Contractor and shall not infringe the copyright or other rights of any party; (c) the Contractor possesses, and shall employ, the resources necessary to perform the Services in conformance with the Agreement; (d) the Services shall be performed, and the Work produced, in accordance with high standards of expertise, quality, diligence, professionalism, integrity, and timeliness; and (e) the Contractor has no interest, relationship, or bias that could present a financial, philosophical, business, or other conflict with the performance of the Work or create a perception of a conflict or a lack of independence or objectivity in performing the Work.

5. Time of the Essence

Time is of the essence in respect of the Services to be performed and Work to be produced by the Contractor.

6. Compliance with the Law

The Contractor shall at all times act in accordance with all applicable governmental laws and regulations.

7. Key Personnel

Any personnel identified in the Scope of Work as individuals who will be performing the Services or producing the Work may not be changed without the written approval of ASTHO.

8. Publicity and Media

The Contractor shall not make any public statements or communications relating to the existence or performance of the Agreement, including the Services and the Work, or conduct any interviews or respond to any inquiries, concerning the same, without the express written consent of ASTHO. All media inquiries shall be directed to ASTHO Public Relations Office at pr@astho.org.

When issuing statements, press releases, publications, requests for proposals, bid solicitations and other documents, such as toolkits, resource guides, websites, and presentations, Contractor must include the following acknowledgment of support and disclaimer:

Conference/Meeting/Seminar Materials Disclaimer: If a conference/meeting/seminar is funded under this Agreement, the Contractor must include the following statement on conference materials, including promotional materials, agenda, and internet sites:

Funding for this conference was made possible (in part) by Grant Number [REDACTED], CFDA [REDACTED], from the U.S. Department of Health and Human Services/Centers for Disease Control and Prevention. The views expressed in written conference materials or publications and by speakers and moderators do not necessarily reflect the official policies of the Department of Health and Human Services, nor does the mention of trade names, commercial practices, or organizations imply endorsement by the U.S. Government.

Audio Visual Production Disclaimer: Audiovisual” means any product containing visual imagery, sound, or both, such as motion pictures, films, videotapes, podcasts, live or recorded radio or television programs or public service announcements, slide shows, filmstrips, audio recordings, multimedia presentations, or exhibits where visual imagery, sound, or both are an integral part. “Production” refers to the steps and techniques used to create a finished audiovisual product, including, but not limited to, design, layout, scriptwriting, filming or taping, fabrication, sound recording, and editing.

If an audio-visual production is funded under this Agreement, the Contractor must include the following statement:

The production of this [type of audiovisual (motion picture, television program, etc.)] was supported by Grant Number [REDACTED], CFDA [REDACTED], from the US Department of Health and Human Services/Centers for Disease Control and Prevention]. Its contents are solely the responsibility of [Contractor/Contractor Agency name] and do not necessarily represent the official views of the U.S. Department of Health and Human Services/Centers for Disease Control and Prevention.

Logo Use for Conference and Other Materials: Neither the Department of Health and Human Services (HHS) nor the CDC logo may be displayed if such display would cause confusion as to the funding source or give false appearance of Government endorsement. Use of the HHS name or logo is governed by U.S.C. Part 1320b-10, which prohibits misuse of the HHS name and emblem in written communication. A non-federal entity is unauthorized to use the HHS name or logo governed by U.S.C. Part 1320b-10. The appropriate use of the HHS logo is subject to review and approval of the HHS Office of the Assistant Secretary for Public Affairs (OASPA). Moreover, the HHS Office of the Inspector General has authority to impose civil monetary penalties for violations (42 CFR Part 1003).

Accordingly, neither the HHS nor the CDC logo can be used by the Contractor without the express, written consent of ASTHO and the Concerned Funding Agency. ASTHO Public Relations Office can assist with facilitating such a request. It is the responsibility of the Contractor to request consent for use of the logo in sufficient detail to ensure a complete depiction and disclosure of all uses of the ASTHO and Government logos. In all cases for utilization of Government and ASTHO logos, the Contractor must ensure written consent is received. Further, the HHS and CDC logo cannot be used by the Contractor without a license agreement setting forth the terms and conditions of use.

9. Assignment and Subcontracting

The Contractor shall not assign or subcontract any portion of the Agreement, or its obligations or rights thereunder, without the prior written consent of ASTHO. Any attempted assignment or subcontracting in violation of this provision shall be void.

10. Review and Coordination

To ensure adequate review and evaluation of the Services and Work, and proper coordination among interested parties, ASTHO shall be kept fully informed concerning the progress of the Work and Services to be performed hereunder, and, further, ASTHO may require the Contractor to meet with designated officials of ASTHO from time to time to review the same.

11. Inspection of Work

The Contractor shall comply with any request to make the Work available, in its then current status, to authorized representatives of ASTHO and/or of any Concerned Funding Agency for inspection and review in order to assess compliance with, and progress toward completion of, the Agreement. The Contractor shall fully cooperate in any such inspection and review.

12. Confidential Information

Any information regarding ASTHO that is not generally publicly known or available, whether or not such information would constitute a trade secret under statutory or common law, that is disclosed to or discovered by the Contractor during the course of the Agreement (hereinafter, "Confidential Information") shall be considered confidential and proprietary to ASTHO, and the Contractor shall maintain all Confidential Information in confidence; shall employ reasonable efforts to ensure the security of the Confidential Information; and shall not disclose the Confidential Information to any third party or use the Confidential Information except as necessary to perform the Services or produce the Work.

Should the Contractor receive a subpoena directing disclosure of any Confidential Information, the Contractor shall immediately inform ASTHO and cooperate fully with ASTHO in responding to the subpoena.

13. Financial Record Keeping and Inspection

The Contractor warrants that it shall, during the term of the Agreement and for a period of three (3) years following the date of submission of the final expenditure report, maintain accurate and complete financial records, including accounts, books, and other records related to charges, costs, disbursements, and expenses, in accordance with generally accepted accounting principles and practices, consistently applied. ASTHO, directly or through its authorized agents, auditors or other independent accounting firm, at its own expense, and the Concerned Funding Agency directly or through its duly authorized representatives, shall have the right, from time to time, upon at least ten (10) days' notice, to audit, inspect, and copy the Contractor's records. The Contractor shall fully cooperate, including by making available such of its personnel, records, and facilities as are reasonably requested by ASTHO or the Concerned Funding Agency. This Section shall remain in force during the term of the Agreement and for the three (3) years following the termination or expiration of the Agreement. If an audit, litigation, or other action involving the records is started before the end of the three (3) year period, Contractor agrees to maintain the records until the end of the three (3) year period or until the audit, litigation, or other action is completed, whichever is later.

The Contractor further acknowledges and agrees that in the event the Contractor has expenditures of \$750,000 or more in total federal awards, including this Agreement, Contractor shall be subject to audit by the federal government as provided for under OMB Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (Omni Circular). Contractor further agrees to cooperate and to promptly furnish any requested information in the course of any audit of ASTHO by the federal government under the Omni Circular.

14. Remedies

The Contractor acknowledges that monetary damages alone will not adequately compensate ASTHO in the event of a breach by the Contractor of the restrictions imposed and set forth in Sections paragraph 12 and 13, and therefore the Contractor hereby agrees that in addition to all remedies available to ASTHO at law or in equity, including, any applicable State trade secrets law, ASTHO shall be entitled to interim restraints and permanent injunctive relief for enforcement thereof, and to an accounting and payment of all receipts realized by the Contractor as a result of such breach.

15. Allowable Costs

Allowable costs shall be determined in accordance with the Omni Circular as well as by the terms of the agreement between ASTHO and the Concerned Funding Agency, and any rules of, or guidelines issued by, the Concerned Funding Agency. The Contractor is responsible for reimbursing ASTHO in a timely and prompt manner for any payment made under this subcontract, which is subsequently determined to be unallowable by ASTHO, the Concerned Funding Agency, or other appropriate Federal or State officials.

16. Concerned Funding Agency

The Contractor shall comply with all rules, regulations, policies, and requirements of the Concerned Funding Agency applicable to agreements such as this Agreement. Without limiting the foregoing, when the Concerned Federal Agency is HHS, these shall include in particular: the HHS Grants Policy Statement; **the salary rate limitation prohibiting HHS funds from being used to pay the direct salary of an individual at a rate in excess of the federal Executive Schedule Level II (see table below)**; and the prohibition on utilizing HHS funds in connection with federal lobbying activity funds (45 CFR Part 93).

Executive Level II Salary Rates	
January 1, 2020 - September 30, 2020	\$197,300
January 1, 2021 - September 30, 2021	\$199,300

Contractor confirms that it has disclosed to the Concerned Funding Agency in writing and on a timely basis (a) any potential conflict of interest in accordance with applicable Agency policy; and (2) all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

This Agreement is subject to the terms of any agreement between ASTHO and a Concerned Funding Agency and in particular may be terminated by ASTHO without penalty or further obligation if the Concerned Funding Agency terminates, suspends, or materially reduces its funding for any reason. Additionally, the payment obligations of ASTHO under this Agreement are subject to the timely fulfillment by Concerned Funding Agency of its funding obligations to ASTHO.

17. Flow-down Provisions

The Contractor agrees to assume, as to ASTHO, the same obligations and responsibilities that ASTHO assumes toward the Concerned Funding Agency under those Federal Acquisition Regulations (FAR), if any, and applicable Concerned Funding Agency acquisition regulations, if any, that are mandated by their own terms or other law or regulation to flow-down to subcontractors or subgrantees, and therefore the Agreement incorporates by reference, and the Contractor is subject to, all such mandatory flow-down clauses. Such clauses, however, shall not be construed as bestowing any rights or privileges on the Contractor beyond what is allowed by or provided for in the Agreement, or as limiting any rights or privileges of ASTHO otherwise allowed by or provided for in the Agreement. The Contractor also agrees to flow-down these same provisions to any lower-tier subcontractors.

This Agreement incorporates one or more FAR clauses by reference, with the same force and effect as if they were given in full context. The incorporation of the FAR clauses applies only to the grant funding identified in this Agreement.

18. Term and Termination

The Agreement shall be for such term as is set forth in the Agreement. The Agreement may be terminated by ASTHO prior to the end of any term on fifteen (15) days written notice.

In addition, this Agreement may be terminated by either party on written notice should the other party: (a) fail to cure a material breach within ten (10) days of delivery of written notice; (b) become insolvent; (c) be the subject of a bankruptcy filing; or (d) cease doing business.

All contracts in excess of the small purchase threshold fixed at 41 U.S.C.403(11) (currently \$250,000) shall contain suitable provisions for termination by ASTHO, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe the conditions under which the contract may be terminated for default, including termination of the award for failure of the Contractor to meet the outcomes/goals as

indicated in their scope of work (SOW) or workplans, as well as conditions where the contract may be terminated due to circumstances beyond the control of the Contractor.

Upon termination, the Contractor shall deliver to ASTHO: all Work, whether in final or draft form, that has been produced as of the date of termination; all Confidential Information; and any materials or items previously provided to the Contractor by ASTHO. Upon receipt thereof by ASTHO, the Contractor shall be paid for work performed through the date of termination.

In all instances of terminations, the Contractor shall use best efforts to not incur new costs and expenses after the notice of termination, and shall cancel as many outstanding obligations as possible.

19. Indemnification

Should one party (the “Indemnified Party”) incur or suffer any liability, damage, or expense, including reasonable attorney’s fees, in connection with the defense of a legal proceeding brought by a third party arising out of the negligent or other wrongful actions of the other party (the “Indemnifying Party”), then the Indemnifying Party shall indemnify and hold harmless the Indemnified Party for such liability, damage, or expense. Notwithstanding the foregoing, **in the event the Contractor is prohibited by law** from contractually obligating itself to provide indemnification, this Section shall be void.

20. Special Damages

Neither party shall be liable to the other for consequential or indirect damages, including lost profits, or for punitive damages, arising from breach of the Agreement.

21. Limitation of Liability

Notwithstanding any other provision of the Agreement, under no circumstances shall the liability of ASTHO to the Contractor exceed the total amount of compensation to be paid to the Contractor.

22. Insurance

The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of coverage in respect of all risks which may be incurred by the Contractor, arising out

of the Contractor’s performance of the Agreement, in respect of death or personal injury, or loss of or damage to property. The Contractor shall produce to ASTHO, on request, copies of all insurance policies referred to in this condition or other evidence confirming the existence and extent of the coverage given by those policies, together with receipts or other evidence of payment of the latest premiums due under those policies. Notwithstanding the foregoing, **in the event the Contractor is prohibited by law** from contractually obligating itself to obtain insurance coverage as required above, this Section shall be void.

23. Governing Law; Forum Selection.

This contract is deemed made in the Commonwealth of Virginia and shall be governed by, subject to, and construed in accordance with the laws of the Commonwealth of Virginia (without giving effect to its conflict of law rules). All actions, suits, or proceedings between the parties hereto with respect to the Agreement shall be litigated in the State or federal courts located in the Commonwealth of Virginia. Notwithstanding the foregoing, **in the event the Contractor is prohibited by law** from contractually designating the law of any other State as being controlling, then this Agreement shall be governed by, subject to, and construed in accordance with the laws of the State of residence of the Contractor, and the forum selection provision shall be void.

24. Waiver

No failure or delay by either party to exercise any right, power or remedy will operate as a waiver of the same, nor will any partial exercise preclude any further exercise of the same or some other right, power or remedy.

25. Entire Agreement

The Agreement constitutes the entire agreement between the parties relating to the subject matter of the contract. The Agreement supersedes all prior negotiations, representations, and undertakings, whether written or oral.

26. Modification

The Agreement may not be modified except by further written agreement signed by the parties. The parties may enter into a change letter that modifies any aspect of the Agreement or any Addendum or Attachment, including the Scope or Services, rather than issuing a new version of the affected document.

27. Severability

If for any reason any part of the Agreement is held to be unenforceable, illegal, or invalid, that unenforceability, illegality or invalidity will not affect any other provisions, which will continue in full force and effect.

28. Successors and Assigns

The Agreement shall be binding on the parties' respective successors, heirs, and permitted assigns.

29. Survival

Those provisions that logically would survive termination or that impose requirements beyond the stated term, and this Section 29, shall survive termination of this the Agreement.

30. Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights.

(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908. Specifically, no employee of Contractor may be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to those federal employees and other persons listed in 41 U.S.C. 4712(a)(2) information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.

(b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation (FAR).

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold (*currently \$250,000*) as described in section 2.101 of FAR.

31. Required Disclosures for Federal Awardee Performance and Integrity Information System (FAPIIS).

Consistent with 45 CFR 75.113, Contractor must disclose in a timely manner, in writing to ASTHO, with a copy to the HHS Office of Inspector General (OIG), all information related to violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award.

32. 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.

33. Domestic Preferences for Procurement - “Maximizing Use of American-Made Goods, Products, and Materials (E.O. 13881):” The Executive Order proposed significant changes to promote the Buy American Act, 41 U.S.C. §§ 8301-8305, proposing the policy of the United States to buy American and to maximize, consistent with law, the use of goods, products, and materials produced in the United States. The proposed rule revives heightened restrictions for commercially available-off-the-shelf (“COTS”) products. The Buy American Act (“BAA”) restricts the country of origin of goods bought by the U.S. government, requiring the purchase of “manufactured articles, materials, and supplies that have been manufactured in the United States substantially all from articles, materials, or supplies, mined, produced, or manufactured, in the United States.” 41 U.S.C. § 8302(a). Numerous exceptions are available, however, allowing the government to purchase foreign-made products in many situations, particularly where a domestic alternative is not available or is too expensive. It is this last exception at which the new proposed rule takes particular aim.

Under the current FAR rules (particularly Subparts 25.1, 25.2, and 25.5), a domestic end product is one where: (1) the end-product is manufactured in the United States, and (2) more than 50 percent of the cost of all component parts are manufactured in the United States. FAR 25.101. The agencies anticipated to be impacted by this executive order include the Departments of Defense and Commerce, the National Aeronautics and Space Administration, the General Services Administration, and the Executive Office of the President. The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts.