

ATTACHMENT B
SAMPLE GRANT AGREEMENT

The state of North Dakota, acting through its North Dakota Department of Health and Human Services, {Division} (Grantor), has determined the services identified in the Scope of Service paragraph below form an appropriate basis for the expenditure of funds allocated to Grantor.

{Grantee} (Grantee), {Address from PTP}, {City}, {State} {Zip}, proposes to provide those services.

Grantor and Grantee therefore enter into the following:

1. TERM OF GRANT

This Grant runs from {Month} {Day}, {Year}, through {Month} {Day}, {Year}.

a. No Automatic Renewal

This Grant will not automatically renew.

b. Renewal Option

Grantor may renew this Grant upon satisfactory completion of the initial Grant term. Grantor reserves the right to execute up to three options to renew this Grant under the same terms and conditions for a period of 24 months each. Grantor will provide written notice to Grantee of its intent to renew this Agreement at least 30 days before the Agreement's expiration date. The estimated dollar amount for renewal options is dependent upon continued federal funding. Grantor and Grantee may negotiate the firm fixed rate at each renewal option.

2. SCOPE OF SERVICE

Grantee shall develop and implement a Partial Hospitalization Program (PHP) for children and adolescents as outlined in Grantor's Notice of Funding Opportunity and Grantee's proposal, dated _____, which are both made a part of this Grant by their reference here.

3. COMPENSATION

- a. Grantor, upon receipt and approval of SFN 1763 Request for Reimbursement or other form required by Grantor, shall reimburse Grantee for allowable expenses incurred. "Allowable expenses" are defined by the Uniform Administrative Requirement, Cost Principles, and Audit Requirements for Federal Awards cited under Section 11 of this Grant. The total amount paid under this Grant may not exceed \${Total Dollar Amount}. No funds will be paid for services until they have been provided. Grantee shall submit its request for reimbursement to Grantor monthly. Grantee shall submit its final reimbursement request to Grantor no later than 30 days after the expiration or

termination of this Grant. Grantor may not pay Grantee until Grantee signs and returns to Grantor the Certification of the 2 CFR Part 200 Informational Guide, which is made a part of this Grant by its reference here.

- b. Payment for services under this Grant may include federal monies. Anticipated funding at the time this Grant is executed is listed below. The funding source of actual payments and the federal program can be verified by contacting DHHS' Finance Division.
- c. Anticipated Funding:

Federal	\$	State	\$
Other	\$	Unknown	\$

Assistance Listing Number

Federal Award Identification Number:

Federal Award Date:

Unique Entity ID Number:

This award is not for Research and Development.

d. Five-Year Commitment Period

- 1) Grantee shall operate the funded Partial Hospitalization Program (PHP) for a minimum period of five (5) consecutive years from the grant start date. If Grantee discontinues, suspends, or materially changes the funded PHP in a manner that renders it non-operational before the completion of the Five-Year Commitment Period, Grantee shall repay a portion of the grant funds on a pro-rated basis based on the percentage of the Five-Year Commitment Period not completed.

Example: If the PHP terminates after three (3) years, Grantee shall repay an amount equal to two-fifths (40 percent) of the total amount paid under this Grant.

The repaid amount must include any unspent grant funds and the applicable pro-rated portion of funds already expended.

- 2) Grantee shall provide written notice to Grantor at least thirty (30) days prior to anticipated discontinuation, suspension, or material change which renders the PHP non-operational. Failure to provide adequate notice does not eliminate the repayment obligation.
- 3) Any repayment owed under these terms must be remitted within ninety (90) days or a negotiated timeframe of the PHP's discontinuation or the effective date of the material change that triggers repayment.

- 4) Upon notice of discontinuation, suspension, or material change, Grantor shall assess the PHP's operational period and determine the final repayment amount. Grantor's determination must be provided in writing and is final.
- 5) Grantor may waive or reduce repayment obligations in cases of extraordinary circumstances, such as unforeseeable regulatory changes or events beyond the Grantee's control. Any waiver must be granted in writing.
- 6) These repayment obligations survive the termination of the Grant and remain enforceable until all required repayment amounts have been satisfied.

4. TERMINATION

a. Termination by Mutual Agreement or Notice

This Grant may be terminated at any time by mutual consent of both parties executed in writing, or upon 30-days' written notice by either party, with or without cause.

b. Termination for Lack of Funding or Authority

Grantor may terminate the whole or any part of this Grant, effective upon delivery of written notice to Grantee or on any later date stated in the notice, under any of the following conditions:

- 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or for the indicated term. The Grant may be modified by mutual consent of the parties in writing to accommodate a reduction in funds.
- 2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Grant or are no longer eligible for the funding proposed for payments authorized by this Grant.
- 3) If any license, permit, or certificate required by law or rule, or by the terms of this Grant, is for any reason denied, revoked, suspended, or not renewed.

Termination of this Grant under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

c. Termination for Cause

Grantor may terminate this Grant effective upon delivery of written notice to Grantee, or any later date stated in the notice:

- 1) If Grantee fails to provide services required by this Grant within the time specified or within any extension agreed to by Grantor; or
- 2) If Grantee fails to perform any of the other provisions of this Grant, or so fails to pursue the work in a way that endangers performance of this Grant in accordance with its terms.

The rights and remedies of Grantor provided in this section are not exclusive and are in addition to any other rights and remedies provided by law or under this Grant.

5. NONPERFORMANCE

Failure by Grantee to perform the terms of this Grant constitutes a breach of contract and will result in the termination of the Grant. If a breach by Grantee renders the Grant impossible of performance by Grantee and is caused by circumstances beyond the control of Grantee, and through no fault of Grantee, the Grant will be terminated and Grantor may set off, against any liability or obligations owed to Grantee under this Grant or otherwise, any amounts paid for individual items of work which are incomplete at the time of the breach.

6. FORCE MAJEURE

Neither party shall be held responsible for delay or default caused by fire, flood, riot, terrorism, pandemics, acts of God, or war if the event is beyond the party's reasonable control, and the affected party gives notice to the other party immediately upon occurrence of the event that caused, or is reasonably expected to cause, the delay or default.

7. GRANTEE'S UNDERSTANDING OF TERM OF FUNDING

Grantee understands that this Grant is a one-time grant, and acknowledges that it has received no assurances that this Grant may be extended beyond its expiration date.

8. GRANTEE ASSURANCES

Grantee agrees to comply with the applicable assurances set forth in the Grantee Assurances found in Attachment A, which is part of this Grant.

9. AUTHORITY TO CONTRACT

Grantee may subcontract with qualified providers of services, provided that any subcontract acknowledges the binding nature of this Grant, and incorporates this Grant, together with its attachments as appropriate. Grantee is solely responsible for the performance of any subcontractor. Grantee may not contract for or on behalf of or incur obligations on behalf of Grantor. Grantee may not assign or otherwise transfer or delegate any right or duty without Grantor's express written consent.

10. INDEPENDENT ENTITY

Grantee is an independent entity under this Grant. Grantee, its employees, agents, or representatives are not employees of Grantor for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the Federal Unemployment Act, the North Dakota Unemployment Compensation Law, and the North Dakota Workforce Safety and Insurance Act. No part of this Grant may be construed to represent the creation of an employer/employee relationship between Grantor and Grantee. Grantee retains sole and absolute discretion in the manner and means of carrying out Grantee's activities and responsibilities under this Grant, except to the extent specified in this Grant.

11. AUDIT RESPONSIBILITY AND EXPENSE ALLOWABILITY

Grantee agrees to keep financial records necessary to fully disclose the complete financial status of the Grant. Grantee must submit documentation supporting requests for reimbursement for review by Grantor or its agents, upon request. If Grantee has expended federal funds (when considering all sources) during Grantee's fiscal year at the amount specified in 2 CFR Part 200 Uniform Grant Guidance, which is made a part of this grant by reference here, that CFR must be followed pursuant to the Single Audit Act of 1984, Public Law 98-502; and the Single Audit Act Amendments of 1996, Public Law 104-156.

Additionally, Grantee agrees to spend all assistance received from Grantor in accordance with applicable laws and regulations from the 2 CFR Part 200 Informational Guide.

12. RETENTION OF RECORDS

Grantee agrees to retain records for at least three years following completion of this Grant or, if subject to audit, from the date the audit is completed and closed, whichever occurs later. Program records must be maintained for a period of six years or until an audit is completed and closed, whichever occurs later. All records, regardless of physical form, and the accounting practices and procedures of Grantee relevant to this Grant are subject to examination by the North Dakota State Auditor, the Auditor's designee, Grantor Contract Monitoring, or federal auditors and Grantee must be able to provide them at any reasonable time. State, State Auditor, Auditor's designee, or Grantor Contract Monitoring shall provide reasonable notice.

13. CONTINGENT LIABILITY

During the term of this Grant, and for three years after this Grant expires or is terminated, Grantee agrees to reimburse Grantor for any claims submitted by Grantor for financial participation in the cost of this Grant to the extent those claims are disallowed by any agency for failure on the part of Grantee to comply with this Grant or any federal or state statutory or regulatory provisions which govern the source of funding. Grantor agrees to give Grantee prompt written notice of any disallowed claims subject to reimbursement by Grantee. Any amount disallowed as described is a debt owing to Grantor. Action may be brought by Grantor as allowed by law.

14. INDEMNITY

Grantee agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers, and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by Grantee to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under North Dakota Century Code § 54-12-08. Grantee also agrees to reimburse the State for all costs, expenses, and attorneys' fees incurred if the State prevails in an action against Grantee in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this Grant.

15. INSURANCE

- a. Grantee shall provide certificate of insurance and any endorsements to Grantor electronically via to:

Name: Kyle J. Nelson
Email Address: klynelson@nd.gov
Email Subject Line: Certificate of Insurance -

- b. Grantee shall secure and keep in force during the term of this Grant and Grantee shall require all subcontractors, prior to commencement of an agreement between Grantee and the subcontractor, to secure and keep in force during the term of this Grant, from insurance companies, government self-insurance pools, or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:
- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$2,000,000 per occurrence.
 - 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$500,000 per person and \$2,000,000 per occurrence.
 - 3) Workers' compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this Grant.
 - 4) Employer's liability or "stop gap" insurance of not less than \$2,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
- c. The insurance coverages listed above must meet the following additional requirements:
- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of Grantee.

- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- 3) The duty to defend, indemnify, and hold harmless the State under this Grant shall not be limited by the insurance required in this Grant.
- 4) The state of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy on a primary and noncontributory basis, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights, and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this Grant or by the contractual indemnity obligations of Grantee.
- 5) A "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State.
- 6) Grantee shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this Grant. All endorsements shall be provided as soon as practicable.
- 7) Failure to provide insurance as required in this Grant is a material breach of contract entitling State to terminate this Grant immediately.
- 8) Grantee shall provide at least 30-day notice of any cancellation or material change to the policies or endorsements. Grantee shall provide on an ongoing basis, current certificates of insurance during the term of the Grant. A renewal certificate will be provided 10 days prior to coverage expiration. An updated, current certificate of insurance shall be provided in the event of any change to a policy.

16. NOTICE

Any notice or other communication required under this Grant must be given by registered or certified mail and is complete on the date mailed when addressed to the parties at the following addresses:

{Grantee}

Error! Reference source not found. OR

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ND Department of Health and
Human Services

Error! Reference source not found.

Error! Reference source not found. Behavioral Health
Division

600 E. Boulevard Ave, Dept 325
Bismarck, ND 58505

Notice provided under this provision does not meet the notice requirements for monetary claims against Grantor found at North Dakota Century Code § 32-12.2-04.

17. INTEGRATION, MODIFICATION, AND CONFLICT IN DOCUMENTS

This Grant constitutes the entire Grant between Grantee and Grantor. There are no understandings, agreements, or representations, oral or written, not specified within this Grant. No alteration, amendment, or modification of this Grant is effective unless it is reduced to writing, signed by the parties, and attached to the Grant.

All terms and conditions contained in any end user agreements (e.g., automated click-throughs, shrink wrap, or browse wrap) are specifically excluded and null and void, and shall not alter the terms of this Grant. Clicking shall not represent acknowledgement or agreement to any terms or conditions contained in those agreements.

If any inconsistency exists between this Grant and other provisions of collateral contractual grants which are made a part of this Grant by reference or otherwise, the provisions of this Grant control.

18. SEVERABILITY

If any term of this Grant is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms will not be affected and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Grant does not contain the illegal or unenforceable term.

19. APPLICABLE LAW AND VENUE

This Grant is governed by and construed according to the laws of the state of North Dakota. Any action to enforce this Grant must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

20. ASSIGNMENT

Grantee may not assign this Grant without Grantor's express written consent, provided, however, that Grantee may assign its rights and obligations hereunder in the event of a change of control or sale of all or substantially all of its assets related to this Grant, whether by merger, reorganization, operation of law, or otherwise.

Should the assignee be a business or entity with whom Grantor is prohibited from conducting business, Grantor shall have the right to terminate without cause. This Grant is equally binding on the respective parties and their successors and assigns.

21. SPOILIATION – PRESERVATION OF EVIDENCE

Grantee shall promptly notify Grantor of all potential claims that arise or result from this Grant. Grantee shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to Grantor the opportunity to review and inspect the evidence, including the scene of an accident.

22. WORKS FOR HIRE

Grantee acknowledges that all work(s) under this Grant is "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to Grantor all rights and interests Grantee may have in the work(s) it prepares under this Grant, including any right to derivative use of the work(s). All software and related materials developed by Grantee in performance of this agreement for Grantor shall be the sole property of Grantor, and Grantee hereby assigns and transfers all its right, title, and interest therein to Grantor. Grantee shall execute all necessary documents to enable Grantor to protect Grantor's intellectual property rights under this section.

23. WORK PRODUCT, EQUIPMENT, AND MATERIALS

All work product, equipment, and materials created or purchased under this Grant belong to Grantor and must be delivered to Grantor at Grantor's request upon expiration or termination of this Grant.

24. CONFIDENTIAL INFORMATION

Grantee shall not use or disclose any information it receives from Grantor under this Grant that Grantor has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Grant or as authorized in advance by Grantor. Grantor shall not disclose any information it receives from Grantee that Grantee has previously identified as confidential and that Grantor determines, in its sole discretion, is protected from mandatory public disclosure under a specific exception to the North Dakota open records law found in N.D.C.C. § 44-04-18. The duty of Grantor and Grantee to maintain confidentiality of information under this section continues beyond the term of this Grant, including any extensions or renewals.

25. COMPLIANCE WITH PUBLIC RECORDS LAWS

Grantee understands that, except for disclosures prohibited in this Grant, Grantor must disclose to the public upon request any records it receives from Grantee. Grantee further understands that any records obtained or generated by Grantee under this Grant, except for records that are confidential under this Grant, may be

open to the public upon request under certain circumstances under the North Dakota open records law. Grantee agrees to contact Grantor immediately upon receiving a request for information under the open records law and to comply with Grantor's instructions on how to respond to the request.

26. UNANTICIPATED AMENDMENTS

If additional work is required within the scope of this Grant due to a legitimate unforeseen circumstance, Grantor shall provide Grantee a written description of the additional work and request Grantee to submit a proposal for accomplishing the scope of work. Grantee will not commence additional work until all parties agree in writing.

27. ATTORNEY FEES

If a lawsuit is filed by Grantor to obtain performance due under this Grant, and Grantor is the prevailing party, Grantee shall pay Grantor's reasonable attorney fees and costs in connection with the lawsuit except when prohibited by North Dakota Century Code § 28-26-04.

28. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

Grantor does not agree to binding arbitration, mediation, or any other form of mandatory alternative dispute resolution. The parties may enforce their rights and remedies in judicial proceedings. Grantor does not waive any right to a jury trial.

29. NONDISCRIMINATION – COMPLIANCE WITH LAWS

Grantee shall comply with all applicable federal and state laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights. (See N.D.C.C. Title 34 – Labor and Employment, specifically N.D.C.C. ch. 34-06.1 Equal Pay for Men and Women.)

Grantee shall timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation, and workers' compensation premiums. Grantee also shall have and keep current at all times during the term of this Grant all licenses and permits required by law.

Grantee is prohibited from boycotting Israel for the duration of this Grant. (See N.D.C.C § 54-44.4-15.) Grantee represents that it does not and will not engage in a boycotting Israel during the term of this Grant. If State receives evidence that Grantee boycotts Israel, State shall determine whether the company boycotts Israel. The foregoing does not apply to contracts with a total value of less than \$100,000 or if Grantee has fewer than ten full-time employees.

Grantee's failure to comply with this section may be deemed a material breach by Grantee entitling State to terminate in accordance with the Termination for Cause section of this Grant.

30. DIRECT AND INDIRECT RATES

The terms of this Grant provide for an indirect rate. This rate is limited to the rate negotiated for the time frame the direct expenditures were incurred, which is __%. Grantee may claim such direct and indirect costs provided they are consistent with the 2 CFR Part 200 Informational Guide.

OR

30. DIRECT AND INDIRECT RATES

The terms of this Grant do not provide for an indirect rate. Grantee may claim direct costs provided they are consistent with the 2 CFR Part 200 Informational Guide.

{GRANTEE}

By _____ DATE

Its _____

{ID number or social security number}
Grantee's Federal Taxpayer Identification Number

STATE OF NORTH DAKOTA

NORTH DAKOTA DEPARTMENT OF HEALTH AND
HUMAN SERVICES

By _____ DATE
DONNA AUKLAND
CHIEF FINANCIAL OFFICER

By _____ DATE
KYLE J. NELSON
CONTRACT OFFICER
Approved for form and content

GRANTEE ASSURANCES

- A. In connection with furnishing supplies or performing work under this Grant, persons who contract with or receive funds to provide services to Grantor are obligated and agree to comply with all local, state, and federal laws, regulations, and executive orders related to the performance of this Grant, including the following: Fair Labor Standards Act, the North Dakota Human Rights Act, Equal Pay Act of 1963, Titles VI and VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, the Drug Abuse Prevention, Treatment, and Rehabilitation Act of 1970, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Drug-free Workplace Act of 1988, the Americans with Disabilities Act of 1990, Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act of 1992, the Pro-Children Act of 1994, Title IX of the Education Amendments of 1972, and Section 1557 of the Affordable Care Act.
- B. Unless otherwise authorized by federal law, the charges to be made by Grantee do not include costs financed by federal monies other than those generated by this Grant.
- C. By signing this Grant, Grantee certifies that neither Grantee, Subcontractor, nor their principals are presently debarred, declared ineligible, or voluntarily excluded from participation in transactions with state or federal government by any department or agency of the state or federal government.
- D. Grantee must be an approved vendor with the Office of Management and Budget within the state of North Dakota as required by N.D.C.C. § 54-44.4-09.
- E. Grantee assures that:
 - 1) No Federal funds from this Grant will be paid by or on behalf of Grantee, 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 the awarding of any Federal contract; the making of any Federal grant, the making of any Federal loan, the entering of any cooperative agreement; or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - 2) If any grant funds other than Federal funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Grantee agrees to complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - 3) Grantee shall require that the language of the Grantee Assurances in this Attachment be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall comply with these Grantee Assurances.