

CFDA #93.888

Specially Selected Health Projects

Subaward Agreement #FAR0014768-9

This SUBAWARD AGREEMENT (“Agreement”) is entered into by and between **North Dakota State University**, a non-profit, tax-exempt educational institution located in Fargo, North Dakota, (“NDSU”) and _____ **Hospital**, a nonprofit corporation whose address and principal place of business is _____ ND (“_____HOSPITAL”).

WHEREAS, NDSU is the recipient of a Grant, Award No. 1 D1BIT10965-01-00 from the Department of Health and Human Services (DHHS) Health Resources and Services Administration (HRSA), for a project entitled “Congressionally-Mandated Health Information Technology Grants” (the “Project”), attached as Attachment A and incorporated herein. This Grant supports the North Dakota Telepharmacy Project (NDTP), whose goals are to restore, retain, and establish pharmacy services within rural North Dakota communities, improve the access and quality of pharmaceutical care delivery to patients in rural North Dakota, improve recruitment and retention of pharmacists serving rural North Dakota communities, and develop new pharmacy practitioner interest and ability in serving rural North Dakota communities.

WHEREAS, in order to accomplish the goals of the NDTP, a central order entry (COE) site will be initiated in Fargo, ND, which is intended to deliver pharmacy services via telepharmacy technology to any rural hospital in the state of North Dakota that chooses to contract for these services.

WHEREAS, _____ is a rural hospital and has agreed to participate in the Project, and through such participation will contract to receive telepharmacy technology services from the COE site in Fargo.

WHEREAS, _____ has entered into a Central Pharmacy Services Agreement with Catholic Health Initiatives to have access to high quality pharmacy services, supplied by Catholic Health Initiatives. The Central Pharmacy Services Agreement is attached as Attachment E, for informational purposes only.

NOW, THEREFORE, NDSU and _____ (the “Parties”) agree as follows:

1. Scope of Work and DHHS HRSA terms.

1.1 _____ will perform the objectives identified in Attachment B to this Agreement and incorporated herein by this reference. _____ shall commence performance on the Project on or immediately after the start of the Term and shall use reasonable efforts, care, and diligence to perform in accordance with the terms and conditions of this Agreement. Any change in the Scope of Work will require the prior written approval of NDSU.

1.2 The effort being performed by _____ under this Agreement is part of the Grant received by NDSU from the DHHS HRSA. Consequently, the terms and conditions specified by the DHHS HRSA Grant are hereby incorporated as a part of this Agreement and take precedence in the case of any inconsistencies with this Agreement. The terms of the DHHS HRSA Grant can be found in Parts I-III of the HHS Grants Policy Statement, available at <ftp://ftp.hrsa.gov/grants/hhsgrantspolicystatement.pdf>. In addition, the applicable administrative requirements found at 45 CFR part 74 apply. (The CFR can be found at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=%2Findex.tpl>.)

1.3 As NDSU is the project lead on the Grant, any communications from _____ to DHHS HRSA concerning the Project activities of _____ must be routed through NDSU, unless NDSU provides permission to _____ to communicate directly with DHHS HRSA on a case-by-case basis. Should _____ receive an inquiry directly from DHHS HRSA regarding _____'s activities under the Project, _____ shall use good faith efforts to inform NDSU as soon as reasonably possible and cooperate with NDSU to coordinate the appropriate response.

1.4 To the extent _____ utilizes the Bioterrorism Wide Area Network (BTWAN) for purposes under this Agreement, _____ agrees to permit appropriate representatives of NDSU to participate at the _____ access site, as needed.

2. Project Term.

2.1 The Project will be conducted during a period from **November 1, 2009** through and including **August 31, 2010** and will be subject to further extensions only if the Grant period is extended by DHHS HRSA and only with the Parties' mutual written agreement. Any dates set forth in the attachments are hereby modified, if necessary, to be consistent with this paragraph 2.1. No costs shall be incurred under this Agreement prior to the effective date nor subsequent to the termination date without NDSU written approval.

2.2 In the event _____ anticipates that the funding available under paragraph 3.1 below will not be expended by the Project Term end date, _____ must submit to the NDSU Program Manager a request for a no-cost extension to complete goals and objectives. Such request should be submitted at least ninety (90) days prior to the expiration of the Project Term.

2.3 Whenever _____ knows or reasonably should know that any actual or potential condition due to circumstances beyond its control is delaying or threatens to delay the timely performance of the work, _____ shall immediately give NDSU written notice to that effect. This notice shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation. _____ shall also immediately notify NDSU of developments that have a significant impact on any Agreement-supported activities.

3. Allowable Costs, Payments, Financial Reporting and Program Income.

3.1 Amount. Under this Agreement and subject to the payment terms of Section 2.2, _____ may incur costs up to _____ (\$) during the Project Term. This amount will be expended by _____ in a manner substantially consistent with the budget attached to this Agreement as Attachment C. The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.", incorporated by reference. (For further information, see 45 CFR 74.27).

3.2 Payment Terms. _____ is required to meet the standards and requirements for financial management systems set forth or referenced in 45 CFR 74.21. NDSU will reimburse _____ for allowable costs after receipts of a billing in accordance with the format in Attachment D. The final statement of costs must be submitted within forty-five (45) days after the Term ends. NDSU will have the right, for a period of three years following completion or early termination of the Project, to review _____'s financial records relating to the Project. Invoices shall be submitted to:

Manager
Grant and Contract Accounting
NDSU, NDSU Dept. 3130
P.O. Box 6050
Fargo, ND 58108

3.3 Rebudgeting. In the event _____ needs to significantly rebudget the categories identified in Attachment C, _____ is required to obtain prior written approval from NDSU. Significant rebudgeting occurs when cumulative transfers among direct cost budget categories for the current budget period exceed 25 percent of the total approved budget for that budget period.

3.4 Financial Reporting. _____ must submit an annual financial report specific to the expenditures related to this project no later than sixty (60) days after each 12-month period. Before submitting the annual financial report, _____ shall ensure that the information on the report submitted is accurate, complete, and consistent with _____'s accounting system. All financial reports must be signed by an authorized organizational representative for _____. Failure to submit financial reports may result in suspension or termination of this Agreement, or other enforcement actions including withholding of payments.

3.5 Record Retention. _____ must retain financial and programmatic records, supporting documents, statistical records, and all other records that are required by the terms of this Agreement, or may reasonably be considered pertinent to the Project, for a period of three (3) years from the date the final FSR is submitted, unless such records are the subject of any dispute.

4. Property Management & Equipment.

4.1 _____ may use its own property management policies and procedures for property purchased, constructed, or fabricated as a direct cost using funds from this Agreement, provided _____'s policies and procedures observe the requirements in 45 CFR 74.31 through 74.37.

4.2 _____'s management system for equipment must meet the requirements of 45 CFR 74.34(f).

4.3 Title to equipment and supplies acquired by _____ using funds from this Agreement shall vest in _____ upon acquisition, subject to the property management requirements of 45 CFR 74.31, 74.34, 74.35, and 74.37. _____ must not use equipment acquired with these funds to provide services for a fee to compete unfairly with private companies that provide equivalent services. Any equipment identified in Attachment C is approved for purchase upon complete execution of this Agreement. The HHS Appropriations Act requires that to the greatest extent practicable, all equipment and products purchased with funds made available under this Agreement should be American-made. When equipment is no longer needed for the Project, _____ shall use the equipment in connection with its other federally-sponsored activities, if any, in accordance with 45 CFR 74.34.

4.4 Property acquired or used under this Project is subject to the requirements for internal control specified in 45 CFR 74.21.

4.5 Notwithstanding Article 4.2 above, a DHHS Operating Division, such as HRSA, has the right to require transfer of title to equipment with an acquisition cost of \$5,000 or more to the Federal government or to an eligible third party named by the Operating Division under the conditions specified in 45 CFR 74.34(h). Such right must be exercised within 120 days of the completion or termination of NDSU's Grant, or within 120 days of receipt of an inventory from NDSU, as provided in 45 CFR 74.34(h)(2), whichever is later.

4.6 _____ must make positive efforts to use small businesses, minority-owned firms, and women-owned businesses as sources of goods and services whenever possible. _____ shall also, in accordance with 45 CFR 74.16 give preference in their procurement programs to the purchase of recycled products.

5. Progress Reporting Requirements. _____ is required to submit information to NDSU, to the College of Pharmacy, Nursing, and Allied Sciences on an annual and/or periodic basis for two major purposes: (1) assessment and (2) project reports for the Office for the Advancement of Telehealth (OAT)/Office of Health Information Technology (OHIT). _____ will submit information in a timely manner in order to facilitate the meeting of OAT/OHIT deadlines. The information required shall include, but not be limited to, that listed below.

Assessment: Upon NDSU's request, _____ will provide the following information for the telepharmacy sites: hours of service; total set-up costs for implementing

the telepharmacy site; prescription volume, including new and refill prescriptions; frequency and type of prescription errors; financial statements and accounts receivable information, including cash vs. third party receipts; completed patient, pharmacist, and technician surveys concerning satisfaction, workload, employee staffing levels, and practice; and other assessments as needed.

Project Reports: Upon NDSU's request, _____ will provide the following information: date of issuance of North Dakota Board of Pharmacy Subclass K license and DEA registration; verification of compliance with HIPAA regulations, including having Business Associate Agreements in place for all associates having potential access to patient specific information; budget status; technology acquired, including equipment, software, and IP numbers; date the telepharmacy site was up and operational; number of technicians and/or pharmacists employed; and average number of doses per month.

All reports will be in writing and sent to the NDSU Project Manager identified below.

6. Project Managers.

6.1 NDSU Project Manager. All communications to NDSU regarding reports, budget, and intellectual property related to the Project should be directed to Dr. Charles Peterson, or such other individual as NDSU may designate in writing, who will serve as the NDSU Project Manager under this Agreement. Dr. Peterson will also manage NDSU's technical participation in the Project, as well as manage access to NDSU's facilities by _____ Personnel (if applicable).

6.2 _____ Project Manager. _____ will serve as the _____ Project Manager under this Agreement and will direct and supervise all aspects of the Project for _____ Personnel. If _____ becomes unable or unwilling to continue as Project Manager, and no mutually agreeable replacement is named, NDSU may terminate this Agreement effective immediately and no further payments will be due hereunder.

7. Independent Contractor. _____ is an Independent Contractor, not a partner or joint venturer, and shall not act as an agent or employee of NDSU. Nor shall _____ have any authority, either express or implied, to enter any agreement, incur any obligations on NDSU's behalf, or commit NDSU in any manner whatsoever without NDSU's express prior written consent.

8. Intellectual Property.

8.1 Inventions. _____ may retain the entire right, title and interest throughout the world to any invention (as defined in 45 CFR, Section 74.36) it solely conceives, develops, or implements in the performance of work under this Agreement, subject to the provisions of the Department of Commerce's regulation 37 CFR Part 401 and 35 U.S.C. 203. The Federal government, however, shall have a nonexclusive, nontransferable, irrevocable, paid-up license to obtain and use the invention throughout the world for or on behalf of the United States. In the case of joint inventions, the Parties agree that inventorship shall be determined in accordance with U.S. Patent law, and they agree to negotiate in good faith the protection and

disposition of such joint inventions. _____'s responsibilities for invention reporting are specified in 37 CFR part 401, and inventions may be reported electronically under 37 CFR 401.16.

8.2 Rights in Data. The rights in data resulting from the Parties efforts under this Project, as well as any publications, data, or other copyrightable works developed by the Parties under this Agreement may be copyrighted without HRSA prior approval. HRSA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so. _____ must, if requested, participate in the Office for the Advancement of Telehealth (OAT) data collection and evaluation of telemedicine activities. _____ must, if requested, complete a HRSA Telehealth Inventory. This inventory collects data about the Telehealth capabilities of _____.

8.3 Access to Research Data. _____ must release research data first produced under this Agreement that are cited publicly and officially by a Federal agency in support of an action that has the force and effect of law (i.e. regulations and administrative orders), as required by 45 CFR 74.36.

8.4 Sharing Research Tools. DHHS believes that sharing of data and other research tools produced or developed by investigators under DHHA grants is essential for expedited translation of research results into knowledge, products, and procedures to improve human health. Third-party data or research tools produced or utilized by _____, if any, must be made available to NDSU and, as appropriate, the HRSA upon request, to allow for sharing.

9. Confidential Information.

9.1 Close cooperation between the Parties in the conduct of the Project may require the disclosure by one party ("Disclosing Party") to the other party ("Receiving Party") of certain proprietary information ("Confidential Information"). Confidential Information means any and all inventions, discoveries, trade secrets, knowledge, know-how, practices, process or other information, machines, components, chemical formula(s), sample(s), or other tangible items, disclosed or submitted by Disclosing Party to the Receiving Party and clearly marked or identified as confidential. Information and/or data Receiving Party derives from Disclosing Party's sample(s) shall also be the Confidential Information of Disclosing Party. In order to be protected, Confidential Information disclosed orally or in other non-tangible forms, must be (a) identified orally as confidential at the time of disclosure, and (b) summarized in writing and identified as confidential, and (c) such writing must be delivered to the Receiving Party by the Disclosing Party within thirty (30) days of the disclosure that the Disclosing Party deems confidential.

9.2 The obligations of the Receiving Party to any such information will not apply, however, to information that:

- A. is, or later becomes, generally available to the public by use, publication or the like through no fault of the Receiving Party; or
- B. is rightfully known to or in the possession of the Receiving Party at the time of disclosure without restriction on its disclosure, as shown by competent written evidence; or
- C. is obtained from a third person who insofar as is known rightfully received the information and is not prohibited from transmitting the information by a contractual, legal, or fiduciary obligation; or
- D. through no act or omission of the Receiving Party, is or hereafter becomes part of the public domain; or
- E. the Receiving Party can prove by written record was developed independently and not based, in whole or in any part, on Confidential Information furnished by the Disclosing Party.

9.3 Specific Confidential Information disclosed shall not be deemed to be available to the public or in any other party's prior possession merely because it is embraced by more general information available to the public or in the other Party's possession.

9.4 Until such Confidential Information falls within an exception under Article 4.2, the Receiving Party will maintain in confidence and shall not disclose any and all Confidential Information received in connection with this Agreement for a period of five (5) years after disclosure to Receiving Party by the Disclosing Party. The Receiving Party shall not use any Confidential Information of the Disclosing Party except as required to perform the Research. Each Party shall use at least the same standard of care as it uses to protect its own Confidential Information, but in no event less than a reasonable standard of care, to ensure that each Party's Personnel do not disclose or make any unauthorized use of such Confidential Information. Any Personnel of the Receiving Party must be notified of the restrictions on the use of the Disclosing Party's Confidential Information and must agree in writing (e.g., as a condition to employment or otherwise) to be bound to terms at least as restrictive as under this Agreement. Notwithstanding anything to the contrary expressed or implied elsewhere in this Agreement, Disclosing Party's Confidential Information shall not be shared with nonemployees of Receiving Party without the prior written consent of the Disclosing Party.

9.5 Judicial or Government Administrative Process. In the event the Receiving Party is required by judicial or governmental administrative process to disclose any Confidential Information of the Disclosing Party, the Receiving Party shall promptly notify the Disclosing Party so that the Disclosing Party may seek appropriate means to protect the confidentiality of its Confidential Information. Notwithstanding the absence of such means, if, in the opinion of the Receiving Party's counsel the Receiving Party is compelled to disclose such Confidential Information, the Receiving Party may disclose only the Confidential Information that is required without liability hereunder.

10. Default or Termination.

10.1 If _____ fails in whole or in part to substantially perform its obligations, NDSU shall, in addition to whatever legal remedy it may have in law or in equity, have the right to request _____ cure said default if such default is capable of cure or terminate this Agreement if such default is not capable of cure. If the default is capable of cure, NDSU shall provide written notice to _____ outlining the default and requesting _____ performance to cure said default. _____ shall have ten (10) days from the date of the notice to cure the default. If default is not wholly cured, NDSU shall have the right to proceed with termination. If the default is not capable of cure or if the default is not wholly cured after the opportunity provided _____ above, then NDSU shall give _____ a written thirty (30) day notice of termination. Upon receipt of a termination notice, _____ shall take all immediate action to minimize all expenditures and obligations financed by this Agreement and shall cancel unliquidated obligations as soon as possible. _____ will be compensated for all actual and allowable expenses and all uncancellable obligations properly incurred prior to that date of termination. _____ shall promptly deliver to NDSU all data, reports, summaries and such other information and material as may have been prepared for and/or accumulated by _____ in the performance of this Agreement, whether completed or in process.

10.2 This Agreement will be effective for the Project Term identified in Article 2.1, upon approval and execution by the Parties, and shall continue in effect for the full duration of the Project Term unless sooner terminated in accordance with the provision of this Article. Either Party may terminate this Agreement without cause upon thirty (30) days prior written notice to the other.

10.3. This Agreement may be terminated for convenience at any time by either Party, in whole or in part, if both Parties agree that the continuation of the Agreement would not produce beneficial results. Both Parties shall agree on termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

10.4 If at any time _____ is adjudged bankrupt, becomes insolvent, enters into or makes a composition with or assignment to its creditors, this Agreement may be terminated accordingly. _____ shall give prompt written notice of such action to NDSU, and NDSU shall solely decide whether to terminate this Agreement. In the event of termination, NDSU shall give _____ a written notice of termination.

10.5 Upon receipt of any suspension notice, _____ shall take immediate action to minimize all expenditures and obligations financed by this Agreement and shall cancel such unliquidated obligations as soon as possible, with the exception of those expenditures required to cure the conditions leading to the suspension, and to provide evidence of substantial compliance with the material terms and conditions of the Agreement.

10.6 Upon receipt of any termination notice, _____ shall take immediate action to minimize all expenditures and obligations financed by this Agreement and shall cancel such unliquidated obligations as soon as possible. _____ shall promptly deliver to

NDSU all data, reports, summaries and such other information and material as may have been prepared for and/or accumulated by _____ in the performance of this Agreement, whether completed or in process.

10.7 Termination of this Agreement by either Party for any reason shall not affect the rights and obligations of the parties accrued prior to the date of termination of this Agreement. No termination of this Agreement, however effectuated, shall release the parties hereto from their rights and obligations under this Agreement.

11. Audit Requirements.

11.1 This Agreement is subject to the provisions of the Single Audit Act Amendments of 1996, as implemented by OMB Circular A-133 "Audits of States, Local Governments and Non-Profit Organizations", as implemented by 45 CFR 74.26.

11.2 _____, as a recipient subject to the provisions of OMB Circulars A-133, shall provide to NDSU, with their first request for reimbursement, a copy of _____'s most recent audit report. _____ agrees to provide copies of subsequent audit reports or invoices if requested by NDSU. In the event the Audit identifies any discrepancies with _____'s financial management of this Agreement, _____ shall immediately notify NDSU and provide a detailed corrective action plan to address the Audit concerns. _____ shall notify NDSU when the corrective action(s) have been completed.

11.3 Financial reports, supporting documents and other records pertinent to this agreement shall be retained by _____ for a period of three (3) years from the date of final payment; except that records that relate to audits, appeals, litigation or the settlement of claims arising out of performance of this agreement shall be retained until such audits, appeals, litigation or claims have been disposed of.

11.4 _____ shall permit independent auditors (as defined in the OMB Circulars) to have access to the records and financial statements as necessary to comply with the appropriate OMB Circulars and this Article. _____ shall also permit NDSU, HRSA, the DHHS Inspector General, the U.S. Comptroller General, or any of their duly authorized representatives, access to any books, documents, papers and records of _____ which are directly pertinent to this Project for the purpose of making audits, examinations, excerpts and transcriptions.

11.5 If any inspection and/or audit results in audit disallowances for costs for which _____ has already been reimbursed by NDSU, then _____ shall be required to refund to NDSU the amount of the disallowance(s).

12. Certifications & Public Policy Requirements.

12.1 Acceptance of this Agreement constitutes certification that _____ is not proposed for disbarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency. (For further information, see 2 CFR part 376.)

12.2 Acceptance of this Agreement constitutes certification that _____ is not delinquent on any Federal debt.

12.3 Acceptance of this Agreement constitutes certification that to the best of _____'s knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of _____, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, and officer of employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, _____ will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. Should NDSU approve further subcontracts, _____ will require that the language of this certification be included in the award documents of all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients will certify and disclose accordingly. (For further information, see 31 U.S. Code 1352.)

12.4 _____, as a sub-recipient of federal funds, is subject to the strictures of the Medicare and Medicaid anti-kickback statute [42 U.S.C. 1320a-7b(b)]. By acceptance of this Agreement, _____ certifies that it is cognizant of the risk of administrative and criminal liability under this statute, specifically under 42 U.S.C. 1320 7b(b), Illegal remunerations.

12.5 _____, as a sub-recipient of federal funds, must take steps to ensure that people with limited English proficiency can meaningfully access health and social services. A program of language assistance should provide for effective communication between the service provider and the person with limited English proficiency to facilitate participation in, and meaningful access to, services. By acceptance of this Agreement, _____ certifies that is has read, understands and is in compliance with the obligations on the OCR website at <http://www.hhs.gov/ocr/lep/revisedlep.html>.

12.6 This Agreement is subject to the requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104). By acceptance of this Agreement, _____ certifies that it has read, understands and is in compliance with the terms of this Act (full text of term available at <http://www.hrsa.gov/grants/trafficking.htm>.)

12.7 _____ agrees to notify NDSU immediately if there is any change of status in 12.1., 12.2., or 12. 3. above, or if _____ identifies any concerns with the provisions in 12.4, 12.5 or 12.6.

12.8 _____'s participation in this Project must be achieved in compliance with numerous public policies, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub.L. 104-191 as amended). HIPAA limits the use of individual identifiable health information that is held or transmitted in any form or media, whether electronic, paper, or oral. Acceptance of this Agreement constitutes certification that _____ will comply with HIPAA and all applicable public policies, which can be found in Part II of the HHS Grants Policy Statement, Exhibit 3, pages II-3 through and including II-6.

13. Communications, Publications, etc.

13.1 It is the policy of DHHS HRSA to make available to the public the results and accomplishments of the activities that it funds. Therefore, it is incumbent upon NDSU and _____ to make results and accomplishments of their activities available to the public. Prior approval is not required for publishing the results of an activity under a grant. However, _____ must place an acknowledgement of HRSA grant support and a disclaimer, as appropriate, on any publication, briefing paper, report, or other document that is written, published, or otherwise produced (e.g., website, electronic work products) with such support and, if feasible, on any document (electronic or paper) reporting the results of or describing a grant-supported activity. The acknowledgement shall read:

“This publication (report, briefing paper, document, website, etc.) was made possible by grant number D1BIT10965 from the Office of Health Information Technology, Health Resources and Services Administration, DHHS.”

or

“The project described was supported by grant number D1BIT10965 from the Office of Health Information Technology, Health Resources and Services Administration, DHHS.”

13.2 _____ must also include, on any publication, a disclaimer stating the following: “Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the DHHS, HRSA, or NDSU.”

13.3 Four (4) copies of documents or reports (electronic or paper), resulting from work performed by _____ under this Agreement must be submitted to NDSU, no matter what the media by which they are disseminated (e.g., publications in journals, reports, CD-Rom,

web). In addition, copies of presentations to major organizations should acknowledge HRSA support and be submitted to the NDSU Project Manager. NDSU will ensure that the appropriate copies are forwarded to the Office of Health Information Technology (OHIT) project officer.

13.4 Four (4) reprints of publications or work products resulting from work performed by _____ under this Agreement must be submitted to the NDSU Project Manager. NDSU will ensure that the appropriate copies are forwarded to the Office of Health Information Technology (OHIT) project officer.

13.5 The HHS Appropriations Act requires that when issuing statements, press releases and other documents describing projects or programs funded in whole or in part with Federal money, _____ shall clearly state the percentage of the total costs of the program or project which will be financed with Federal money, the dollar amount of Federal funds for the project or program, and percentage and a dollar amount of the total costs of the project or program that will be financed by nongovernmental sources. If _____ plans to issue a press release concerning the outcome of the activities supported by this Agreement, _____ must notify and coordinate with NDSU.

13.6 _____ agrees to furnish copies of any proposed publication or presentation to NDSU at least thirty (30) days in advance of the submission of such proposed publication or presentation to a journal, editor, or other third party. NDSU shall have thirty (30) days, after receipt of said copies, to object to such proposed presentation or proposed publication because there is potentially patentable subject matter or Confidential Information (as defined in Article 9) of NDSU that NDSU desires to protect from public disclosure. In the event that NDSU makes such objection, said _____ Personnel shall remove such Confidential Information of NDSU from the publication or presentation, or, if the objection involves potentially patentable subject matter, said _____ Personnel shall refrain from making such publication or presentation for a maximum of sixty (60) days from date of receipt of such objection. NDSU shall not possess a right to delay publication if the publication or presentation contains only findings and conclusions of basic science or results that would not affect the ability of NDSU and/or _____ to obtain a Patent (U.S. or foreign) and/or disclose and/or compromise NDSU's Confidential Information.

13.7 If _____ publishes material developed in whole or in part with DHHS funds, the material may be distributed free of charge. If _____ charges for the material, the sales proceeds are considered Program Income and must be separately accounted for. If _____ is going to charge for the material, _____ must first contact NDSU for approval and further instructions on handling and reporting program income.

13.8 The information and data that _____ collects, reports or releases to NDSU for purposes of the Project data collection, may be used by NDSU for fulfilling the Grant requirements, including marketing and research purposes and publishing or presenting the information in various formats to various constituents.

14. Export Controls. It is understood that the Parties are subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes, and other commodities, and that obligations hereunder are contingent on compliance with applicable U.S. export laws and regulations (including the Arms Export Control Act, as amended, and the Export Administration Act of 1979). The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States government and/or written assurances by the Parties that they will not re-export data or commodities to certain foreign countries without prior approval of the cognizant government agency. While the Parties agree to cooperate in securing any license that the cognizant agency deems necessary in connection with this Agreement, the Parties cannot guarantee that such license will be granted.

15. Notices. Any notices required to be given or which are given under this Agreement must be in writing delivered by first-class mail or facsimile addressed to the Parties as follows:

For _____:

For technical/program matters:

_____ Program Manager:
_____ Pharmacy Manager
_____ Hospital
Address _____, ND

Telephone: _____
Facsimile: _____
Email: _____

For contractual matters:
_____, CEO

_____ Hospital
_____, ND

Telephone: _____
Email: _____

For NDSU:

For technical/program matters:

NDSU Program Manager:
Charles Peterson, Pharm. D.
Dean; Pharmacy, Nursing &
Allied Sciences
North Dakota State University
NDSU Dept. 2650
Dean's Office
P.O. Box 6050
Fargo, ND 58108-6050

Telephone: 701-231-7609
Facsimile: 701-231-7606
Email: charles.peterson@ndsu.edu

For contractual matters:
Associate Vice President for Sponsored
Programs Administration
North Dakota State University
NDSU Dept. 4000
P.O. Box 6050
Fargo, ND 58108-6050

Telephone: _____
Facsimile No. _____
Email: _____

16. Use of Names. Neither Party will use the name, logo, trademark or trade name of the other Party in any form of advertising, publicity, or news release or in any way imply endorsement of the first Party without the express prior written permission of an authorized representative of the second Party.

17. Delegation and Assignment. Each Party is empowered to authorize and perform their obligations and duties hereunder. This Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. In accordance with NDSU policy, all intellectual property rights of NDSU Personnel are assigned to and managed by the North Dakota State University Research Foundation.

18. Liability Insurance & Indemnity

18.1 During the term of the Agreement, _____ agrees to maintain, at its sole cost and expense, the following insurance coverage: Workmen’s Compensation (as required in accordance with North Dakota law) and commercial general liability and automobile liability with minimum limits of liability of \$1,000,000 per person and \$3,000,000 per occurrence, through an appropriate entity authorized to do business in North Dakota. NDSU shall not be responsible for any liability to _____ Personnel or agents of _____ due to their involvement in or as it may pertain to this Project. _____ shall also provide the equivalent insurance coverage for real property and equipment acquired with funds under this Agreement as is provided to other property owned by _____.

18.2 _____ 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 _____ 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. _____ also agrees to defend, indemnify and hold the State harmless for all costs, expenses and attorneys’ fees incurred if the State prevails in an action against _____ in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

18.3 NDSU’s tort liability is governed by the North Dakota Tort Claims Act, N.D.C.C. ch. 32-12.2. Nothing herein shall preclude NDSU from asserting against any party any defenses to liability it may have under North Dakota laws nor is anything herein intended to extend NDSU’s liability beyond that provided by N.D.C.C. ch. 32-12.2. NDSU’s liability is limited to that covered by the North Dakota Risk Management Fund (ND state self-insurance fund).

19. Miscellaneous Provisions.

19.1 All notices, demands, payments and other communications required to be given or made hereunder shall be in writing and shall be duly given if delivered by hand or if mailed by certified or registered mail, first class postage prepaid, and shall be effectively received upon the date of such delivery or two (2) days after such mailing, to the respective parties hereto at the addresses set forth below their signatures below, or to such other address as NDSU or _____ shall provide to each other in writing.

19.2 This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of North Dakota, without regard to any otherwise applicable principles of conflicts of law.

19.3 This Agreement will be binding on the successors and permitted assigns of the parties hereto. This Agreement may be executed in multiple original copies, each of which shall be deemed an original and all of which taken together shall be one and the same Agreement.

19.4 This Agreement cannot be changed or modified and no breach hereof shall be deemed waived or released except in a writing executed by the party sought to be charged herewith.

19.5 Whenever the context shall require, the singular shall include the plural, the plural shall include the singular and words of any gender shall be deemed to include words of any other gender.

19.6 The captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provisions hereof.

19.7 In the event one or more of the provisions of this Agreement are declared invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

19.8 _____ shall maintain written standards of conduct governing the performance of its employees engaged in this Agreement, in accordance with 45 CFR 74.42.

19.9 Any disputes between the Parties shall first be attempted to be resolved by negotiation between the authorized organizational signators, second by using alternative dispute resolution techniques, and if neither of these methods is successful, then in accordance with the laws of the State of North Dakota.

20. Entire Agreement. Unless otherwise specified herein, this Agreement (including all attachments hereto) embodies the entire understanding of the Parties with respect to the Project, and any prior or contemporaneous representations, either oral or written, are hereby superseded. No amendments or changes to this Agreement will be effective unless made in writing and signed by authorized representative of the Parties.

In witness whereof, the Parties have executed this Agreement by their duly authorized representatives.

**NORTH DAKOTA STATE
UNIVERSITY**

_____ **HOSPITAL**

By _____
Associate Vice President
Sponsored Programs Admin.

By _____

Date _____

Date _____

AGREED TO AND ACCEPTED:

I have read, understand, and agree to perform my obligations under the provisions of this Agreement.

Charles Peterson
NDSU Project Manager

Attachments

Attachment A	DHHS HRSA Grant No. D1BIT10965
Attachment B	_____ Scope of Work
Attachment C	_____ Budget
Attachment D	Invoice format sample
Attachment E	Central Pharmacy Services Agreement

Attachment A

**** Provide electronic copy**

Attachment B

Scope of Work

Through use of audio, video, and computer links with the COE site _____
Hospital will obtain and deliver pharmacy services to patients, staff, and physicians, as needed.
_____ *Hospital* will meet all requirements set forth in their NDSU Subaward
Agreement for financial reporting (Section 3) and progress reporting (Section 5) and will expend
funds as detailed in the revised budget for Grant # D1B-IT-10965.

Attachment C

Budget

REMOTE SPOKE SITES

YEAR ONE (September 1, 2008 – August 31, 2009)

Remote Site #1 - Hospital, CEO) (Year One)
Upgrade Existing Rural Hospital Telepharmacy Spoke Site – Telepharmacy Cart & Technology

\$0	Audio/Video Telepharmacy Equipment Upgrade of current equipment
\$0	Mobile Hospital Cart with Battery and Mounting Brackets
\$0	Personal Computer for Mobile Cart
\$0	Monitors for Mobile Cart (2)
\$0	Wireless Networking Hardware (to interface to existing infrastructure)
\$0	XGA Resolution Document Imaging Camera and Interface
\$0	Installation
\$0	Connectivity (512K point to point circuit charge)
\$0	Travel Expenses
\$0	Cross Training Nurses as Pharmacy Technicians
\$0	Total Upgrade Existing Rural Hospital Telepharmacy Spoke Site Expenses

Attachment D

BILLING FORMAT

Date_____

Subaward No. FAR0014768-9

Current Billing Period_____

Final Billing_____yes_____no

<u>Major Cost Elements</u>	<u>Amount for Current Billing Period</u>	<u>Cumulative Amount from Inception</u>
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Certification:

I certify, to the best of my knowledge and belief that the billed costs of disbursement are in accordance with the terms and conditions of the subaward and that payment is due and has not previously been requested.

Date:_____ Signature_____

Title_____

Company Name_____

Approved for Payment:

Attachment E
Central Pharmacy Services Agreement

