**Terms for Vendor Agreements: Checklist[[1]](#footnote-1)**

**Preliminary Considerations:**

1. Has the PCA-HCCN conducted an appropriate procurement process, in a manner to provide, to the maximum extent practicable, open and free competition? If not, has the PCA-HCCN provided sufficient justification for utilizing sole source contracting procedure?

For a sample policy regarding the procurement of goods and services, see [Procurement: Sample policy and procedure](https://www.healthcentercompliance.com/subscriber/pca-toolkit/volume-2/835).

1. Is the agreement written in clear and unambiguous language?

**Provisions Related to the Scope of Services and Payment:**

1. Will the vendor enter into a signed, written agreement for the services provided?
2. Does the agreement provide a detailed description of all of the goods and/or services to be provided?
3. Does the agreement specify that the aggregate goods, services, space and/or equipment contracted for do not exceed that which is reasonable and necessary to accomplish a commercially reasonable and legitimate business purpose?
4. Does the contract specify that the services performed under the agreement do not involve the counseling or promotion of a business arrangement or other activity that violates any federal or state law?
5. Does the agreement specify any special conditions under which the goods and/or services are provided?
6. Does the agreement specify term schedules for performance?
7. Does the agreement provide terms and mechanisms for billing and payment?
8. Does the agreement specify in advance the compensation for these services, including a ceiling on how much the PCA-HCCN will pay for services (and no cost-plus-percentage of costs payment terms)?
9. Is the compensation commercially reasonable, consistent with fair market value and not varying based on the volume or value of business generated (directly or indirectly) between the parties, if such business will be paid for by Medicare or Medicaid?[[2]](#footnote-2)
10. If the services are provided on a periodic, sporadic or part-time basis, does the agreement set forth a schedule according to which services will be provided and specify a compensation method that corresponds to the periodic, sporadic or part-time services?
11. Does the agreement contain a provision stating that neither party is under obligation to refer business to the other party as a result of this agreement?

**Provisions Related to Monitoring and Oversight of Contracted Services:**

1. Does the agreement contain affirmative safeguards that preserve the authority of the PCA-HCCN’s Board of Directors to establish all policies and procedures relating to the operation of the PCA-HCCN?
2. Does the agreement obligate the vendor to provide services in accordance with:
3. Relevant state and federal laws, regulations, and policies?(See Clauses relating to compliance with rules of government-wide application under Appendix II of 45 CFR 75: Sample language) As applicable, generally accepted principles and practices?
4. As applicable, requirements of the PCA-HCCN’s federal grant and special terms and conditions?
5. The policies and procedures established by the PCA-HCCN’s Board of Directors?
6. Does the agreement give the PCA-HCCN’s Executive Director general oversight authority over the performance of services by contracted personnel?
7. Does the agreement give the PCA-HCCN’s Executive Director authority over:
8. Approval of contracted personnel?
9. The determination of work schedules of, and the scope of services provided by, contracted personnel?
10. The interpretation of the PCA-HCCN’s policies and procedures and their applicability to contracted personnel?
11. Does the agreement give the PCA-HCCN’s Executive Director ultimate authority to evaluate the performance of the contracted personnel and, if necessary, to request removal and replacement of such personnel if the PCA-HCCN is dissatisfied with performance?

1. Does the agreement give the PCA-HCCN’s Executive Director authority to suspend immediately performance, and request removal and replacement, of contracted personnel if:
2. The Executive Director in good faith determines that funds are being misappropriated?
3. The Executive Director in good faith determines that the actions of the contracted personnel violate the PCA-HCCN’s written standards and procedures?
4. Contracted personnel fail to maintain required licensure or authorization to provide services, as applicable?
5. If the agreement is with an organization for the services of the organization’s personnel, does the agreement restrict the other party’s ability to make substitutions or delegate the work to another individual?
6. Does the agreement require the vendor to furnish to the PCA-HCCN programmatic and/or financial reports pertaining to the services provided under the agreement, as deemed necessary by the PCA-HCCN for monitoring and oversight?
7. Does the agreement require the vendor to retain and provide access to such records and reports, in accordance with the provisions of 45 C.F.R Part 75? (See [Clauses relating to compliance with rules of government-wide application under Appendix II of 45 CFR Part 75: Sample language](https://www.healthcentercompliance.com/subscriber/pca-toolkit/volume-2/834))

**Other Provisions:**

1. Does the agreement contain a confidentiality provision that prohibits disclosure by contracted personnel of any confidential and proprietary information directly or indirectly related to the PCA-HCCN and its operations, unless the PCA-HCCN gives prior written authorization or the disclosure is required by law (consistent with all applicable state and federal laws and regulations, as well as PCA-HCCN policies, regarding the confidentiality and privacy of information)?
2. Does the agreement identify the term of the agreement and, if so, is the term a minimum of one year?
3. Does the agreement permit renewal only upon mutual written consent of the parties, after re-negotiation of key terms, as applicable?
4. Does the agreement give the PCA-HCCN the opportunity to terminate in the event that the vendor materially breaches any of the agreement’s terms and conditions?
5. Does the agreement give the PCA-HCCN the opportunity to terminate upon the occurrence of other events, such as:
6. Vendor’s loss of licensure or certification to do business?
7. Vendor’s loss of insurance?
8. Does the agreement include provisions under which the parties can terminate the agreement:
9. Without cause?
10. For convenience?
11. If payment is made, in whole or in part, with federal grant funds, does the agreement permit termination of the agreement in the event that that DHHS terminates, suspends or materially reduces the PCA-HCCN’s grant award?
12. Does the agreement contain a “governing law” provision that identifies the applicable federal and state laws governing the PCA-HCCN?
13. Does the agreement identify the independent contractor relationship of the parties?
14. Does the agreement appropriately allocate the parties’ obligations with respect to insurance and/or indemnification?
15. Does the agreement prohibit the following actions without the prior written consent of the parties:
16. Amendment?
17. Assignment?
18. Does the agreement specify that it constitutes the entire agreement between the parties?
19. Does the agreement contain a provision that identifies the federal laws with which the other party must comply, such as applicable civil rights laws prohibiting discrimination?

For additional information on federal contracting provisions see [Federal procurement procedures: Introductory guidance](http://www.healthcentercompliance.com/subscriber/pca-toolkit/volume-2/836).

1. The Authors of these materials include attorneys at the law firm of Feldesman Tucker Leifer Fidell LLP. The advice and recommendations consist of general guidance based on federal law and regulations and do not necessarily apply to all PCAs-HCCNs under all facts and circumstances. Further, these materials do not replace, and are not a substitute for, legal advice from qualified legal counsel. [↑](#footnote-ref-1)
2. This checklist element has been included because the federal Anti-Kickback Statute may impact PCA-HCCN-vendor contracts in circumstances under which a vendor proposes to provide discounted services/goods (or provide free services/goods) in exchange for the PCA-HCCN referring business to it, which, in turn, will be paid for by Medicare or Medicaid (i.e., referring its members to the vendor for services/goods). [↑](#footnote-ref-2)