



# Commonwealth of Kentucky

## PURCHASE ORDER

**IMPORTANT**

Show Doc ID number on all packages, invoices and correspondence.

<b>Doc Description:</b> Preventive Health Services FY 15 - 16	
<b>Doc ID No:</b> PO2 748 1400006375 1	<b>Procurement Folder:</b> 3542944
<b>Procurement Type:</b> MOA/PSC Exception	
<b>Administered By:</b> Lee Guice	<b>Cited Authority:</b> KRS45A.690(1)(D)(3)
<b>Telephone:</b> 502-564-6890 EXT 3107	<b>Issued By:</b> BRENDA ABRAMS

<b>C O N T R A C T O R</b>	CHS DEPT FOR PUBLIC HEALTH  PREVENTIVE HEALTH MEDCAID 275 E MAIN ST HS1W-A FRANKFORT KY 40621 US
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**Effective From:** 2014-07-01      **Effective To:** 2016-06-30

Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	FY 15 Preventive Health Services		0.00		0.00000	750,000.00	750,000.00

**Extended Description**

To provide for preventive and remedial health care services for Medicaid recipients to include: early and periodic screening/pediatric services; diagnosis and treatment/pediatric services; family planning services; prenatal services; genetic testing for diagnostic purposes; immunizations; and chronic and communicable disease-related services.

Funding Source: Medicaid Benefit Match Rate

CFDA# 93.778

Second Party Contact:

Stephanie Appel  
 Department for Public Health  
 275 East Main Street  
 1st Floor Health Services Building  
 HS1W-C  
 Frankfort, KY 40621  
 (P) 502-564-6633 Ext 4110  
 (E) Stephanie.Appel@ky.gov

<b>B I L L  T O</b>	502105 CHFS DMS ADMIN AND FINANCIAL MGT 275 EAST MAIN, 6W-C  FRANKFORT KY 40621 US	<b>S H I P  T O</b>
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Effective From: 2014-07-01                      Effective To: 2016-06-30

Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
2	FY16 Preventive Health Services		0.00		0.00000	750,000.00	750,000.00

**Extended Description**

To provide for preventive and remedial health care services for Medicaid recipients to include: early and periodic screening/pediatric services; diagnosis and treatment/pediatric services; family planning services; prenatal services; genetic testing for diagnostic purposes; immunizations; and chronic and communicable disease-related services.

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 275 East Main Street  
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 Frankfort, KY 40621  
 (P) 502-564-6633 Ext 4110  
 (E) Stephanie.Appel@ky.gov

<b>B I L  T O</b>	502105 CHFS DMS ADMIN AND FINANCIAL MGT 275 EAST MAIN, 6W-C  FRANKFORT                      KY 40621 US	<b>S H I P  T O</b>	
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<b>Total Order Amount:</b>	1,500,000.00
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**Approvals:**

This Contract is subject to the terms and conditions as stated. By affixing their signatures below, the parties agree that electronic approvals may serve as electronic signatures. In addition, the parties verify that they are authorized to bind this agreement between parties and that they accept the terms of this agreement.

**1st Party - DMS:**

\_\_\_\_\_  
Signature                      Title

\_\_\_\_\_  
Printed name                      Date

**2nd Party - DPH:**

\_\_\_\_\_  
Signature                      Title

\_\_\_\_\_  
Printed name                      Date

**Include registration of a Data Universal Numbering System (DUNS) identifier number if the amount of Federal funds awarded to the Second Party is \$25,000 or more. (See Section 3.13)**

**Approved as to form and legality:**

\_\_\_\_\_  
Attorney

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Between  
**Cabinet for Health and Family Services**  
**Department for Medicaid Services**  
On Behalf of  
**Division of Policy and Operations**  
And  
**Department for Public Health**

**Brenda Abrams**  
**Contract Specialist**  
Administrative and Contract Services Branch  
Department for Medicaid Services  
275 East Main Street, 6W-C  
Frankfort, KY 40621  
Telephone: 502-564-8196 ext. 2072  
E-mail: [BrendaK.Abrams@ky.gov](mailto:BrendaK.Abrams@ky.gov)

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**Section 1—Administrative Overview**

***1.00—Purpose and Background***

The Cabinet for Health and Family Services (CHFS) intends to avail itself of the services of Department for Public Health (DPH). The Department for Medicaid Services (DMS) has been designated the single state agency - as defined by 42 USC 1396 (a) (5) - responsible for administration of the Medical Assistance Program as prescribed by Title XIX of the Social Security Act, and 907 KAR 1:360 provides for an interagency agreement between DPH and DMS for the provision of preventive and remedial health care services.

Effective July 1, 1988, the DMS expanded its service coverage to include reimbursement to DPH for preventive and other necessary remedial health care services for Medicaid recipients, provided by DPH or through their agreements with local health departments.

DPH is the Title V Grantee for Maternal and Child Health which provides preventive and other necessary remedial health care services throughout the local health departments.

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DPH shall provide for preventive and remedial health care services for Medicaid recipients to include: early and periodic screening/pediatric services; diagnosis and treatment/pediatric services; family planning services; prenatal services; genetic testing for diagnostic purposes; immunizations; and chronic and communicable disease-related services.

### ***1.01—Issuing Office***

The Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Medicaid Services, is issuing this Contract on behalf of the Division of Policy & Operations. The Department for Medicaid Services is the only office authorized to change, modify, amend, alter, or clarify the specifications, terms and conditions of this Contract.

### ***1.02—Communications***

The Contract Specialist named below is the point of contact for communications concerning contract issues.

Brenda Abrams  
Contract Specialist  
Administrative and Contract Services Branch  
Department for Medicaid Services  
275 East Main Street, 6W-C  
Frankfort, KY 40621  
(P) 502-564-8196 ext. 2072  
(F) 502-564-6917  
(E) [BrendaK.Abrams@ky.gov](mailto:BrendaK.Abrams@ky.gov)

### ***1.03—Terminology***

For the purpose of this Contract, the following terms may be used interchangeably;

Proposer, Offeror, Contractor, Provider, Second Party, or Vendor

Contract Specialist, Buyer, Purchaser, or Contract Officer

Proposal, or Offer

Commonwealth of Kentucky, Commonwealth, State of Kentucky, or State

Fiscal Year will be defined as the Commonwealth fiscal year: July 1 through June 30

Biennium will be defined as the Commonwealth biennium: July 1 of each even numbered year through June 30 of the next even numbered year.

### ***1.04—Organization***

This contract is organized in the following manner:

Section 1—Administrative Overview / General information regarding the objectives of the Contract.

Section 2—Scope of Work / Description of tasks to be performed, contractor responsibilities, deliverables, performance criteria, technology standards, and system requirements.

Section 3—Terms and Conditions of the Contract / Terms and Conditions under which the Contractor shall

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perform this Contract.

Section 4—CHFS Standard Terms and Conditions of Memorandum of Agreements

## **Section 2—Scope of Work**

### **2.00—Required Services**

The DPH shall provide preventive and other necessary remedial health care services to eligible Medicaid recipients. These shall include the following types of services:

- 1.--Early and periodic screening, diagnosis, and treatment (EPSDT);
- 2.--Pediatric services;
- 3.--Prenatal and related services;
- 4.--Communicable disease services;
- 5.--Chronic disease services;
- 6.--Genetic testing for diagnostic purposes;
- 7.--Immunizations; and
- 8.--Family planning services.

Services provided within these categories shall be those which are included in the Title XIX State Plan.

### **2.01—Deliverables**

DPH is responsible for the following activities:

1. Provide required services OR subcontract with the local health departments to provide preventive and remedial health care services to eligible Medicaid recipients.
2. Assure that preventive and remedial health care services are provided by qualified health care professionals and paraprofessionals practicing within the scope and requirements of state statutes.
3. Provide Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program services and Family Planning Program services as identifiable components within the Preventive Services Program.
4. Designate staff responsible for representing their departments at annual meetings, or more frequently as necessary, for the purpose of reviewing and evaluating the policies that affect the cooperative work of the parties and the need for changes in the agreement. DPH will provide DMS a listing of all contracted providers per site.
5. Comply with the policy and procedures as required in 907 KAR 1:360.
6. Comply with the provisions of 42 CFR 431.615; 42 CFR 440.40 (b); 42 CFR 440.130; 42 CFR 440.250 (c); 42 CFR 441 Subpart B; 42 CFR 441 Subpart F; and 42 CFR 441.20.



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7. Arrange for and assure that referrals will be made between various programs for which the recipient may benefit and be eligible, e.g., Women Infants and Children (WIC) and EPSDT, through the use of integrated services method or direct referral where individual situations and range of services and capabilities of the provider prohibit such integration.
8. Arrange for and maintain relations with hospitals, medical specialists, other providers of health care, and other state agencies for the provision of health services to be provided to or arranged for recipients receiving preventive services through contractual arrangements, agreements, service directories, etc., as necessary.
9. Include preventive services training and assistance as part of its responsibility for the supervision of all the local health departments entering into agreements for provision of preventive services.
  - a. Preventive services will be a part of the general conference held each year at multiple locations for local departments. Other meetings and conferences will be held as needed for the various program elements and administrative areas of the local departments.
  - b. Daily communication with each local health department will be maintained by mailing, telephone contacts and a statewide on-line computer network. The Department for Public Health communicates directly with the local responsible party for all aspects of the Preventive Health Services Program.
10. Provide a response to open records requests from DMS within five (5) working days from the date of written notice. If DPH will be unable to respond within the deadline, a written request for extension shall be submitted to DMS within three (3) working days from the date of written notice. DPH shall comply with Kentucky Open Records Act, KRS 61.870 – 61.884.

### ***2.02—Reporting Requirements***

1. DPH shall provide to DMS a preventive and remedial services utilization report by the 10th working day following completion of the contract quarter. This report shall provide an unduplicated recipient count for each local health department in each of the following categories: managed care, fee for service, private pay. This report will contain the information for the reporting month and quarter as well as historical or YTD information.
2. DPH shall provide to DMS a paid claims report by the 10th working day following completion of the contract quarter. This report shall provide an unduplicated claim count and paid amount sum for each local health department in each of the following categories: managed care, fee for service, private pay. This report will contain the information for the reporting month and quarter as well as historical or YTD information.

### ***2.03—Payment and Invoicing Requirements***

Payment of all related fee-for-service Medicaid recipient claims will be made through the fiscal agent in accordance with individual provider agreements. DMS will send DPH a report quarterly detailing the state-share portion owed.

Each Managed Care Organization shall pay all related claims for MCO Medicaid recipients in accordance with their MCO Master Agreements.

Matching funds will be provided to DMS by DPH quarterly, within 10 calendar days following receipt of the state share portion report submitted by DMS, based on the applicable Federal Medical Assistance Percentage (FMAP) at the time of the federal funds draw.

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Any and all services provided pursuant to this agreement, any and all billing or invoicing for such services, and any and all monitoring of such services shall be in compliance with all applicable state and federal statutes, regulations, policies, and procedures governing the Medicaid Program, including but not limited to the State Plan approved by the federal Centers for Medicare and Medicaid Services. Any and all payments made by DMS pursuant to this agreement shall only be made if they are in compliance with all applicable state and federal statutes, regulations, policies, and procedures governing the Medicaid Program, including but not limited to the State Plan approved by the federal Centers for Medicare and Medicaid Services.

### **2.04—CHFS/Agency Responsibilities**

DMS shall:

1. Provide invoice forms and instructions to complete the contract requirements.
2. Assure that all policy decisions, changes, interpretations, and reinterpretations affecting this contract are distributed promptly to DPH.

### **2.05—Monitoring Requirements – Federal and State**

1. DMS will conduct contract monitoring and evaluate performance pursuant to the contract requirements. Findings will be reported to DPH on a yearly basis due no later than June 30 of each year.
2. DPH shall have internal monitoring procedures and processes in place to ensure compliance.
3. DPH shall cooperate with DMS and/or its agents in the monitoring, tracking and/or auditing activity which may require DPH to report progress and problems, provide documents, allow random inspections of its facilities, participate in scheduled meetings and monitoring, respond to requests for corrective action plans, and provide management reports as requested by DMS.

### **2.06—Performance and Evaluation**

DMS may complete a Performance Evaluation (PE), as part of the contract monitoring process, twice a year to document contract performance. Estimated dates of completion for PE will be January and July of each Fiscal Year (FY). To obtain a copy of the PE documents completed for this contract, contact the contract specialist listed in section 1.02 of this contract.

### **2.07—Business Associate Agreement**

Upon notification of intent to award, sign and agree to the attached Business Associate Agreement (BAA), *Form 5 – Business Associate Agreement*, that is in accordance with HIPAA and outlines the requirements imposed by the HITECH (Health Information Technology for Economic and Clinical Health) Act, as enacted by the American Recovery and Reinvestment Act. The HITECH Act Rule in its entirety may be located at the following website:

<http://edocket.access.gpo.gov/2009/pdf/E9-20169.pdf>

## **Section 3—Terms and Conditions of the Contract**

### **3.00—Beginning of Work**

The Contract is not effective and binding until approved by the Office of Policy and Budget and the Secretary of the Finance and Administration Cabinet and filed with the Legislative Research

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Commission's Government Contract Review Committee. The Contractor shall not commence any billable work until a valid Contract has been fully executed. The Contract shall represent the entire agreement between the parties. Prior negotiations, representations, or agreements, either written or oral, between the parties hereto relating to the subject matter hereof shall be of no effect upon this Contract.

### **3.01—Contract Components and Order of Precedence**

The Commonwealth's acceptance of the Contractor's offer indicated by the issuance of a Contract Award by the Department for Medicaid Services and approved by the Office of Policy and Budget, the Finance and Administration Cabinet and filed with the Government Contract Review Committee shall create a valid Contract between the Parties consisting of the following:

1. Any written Agreement between the Parties;
2. The Finance and Administration Cabinet Manual of Policies and Procedures contained in 200 KAR 5:021 and the Office of Material and Procurement Services' General Conditions And Instructions For Solicitations And Contracts contained in FAP110-10-00.

In the event of any conflict between or among the provisions contained in the Contract, the order of precedence shall be as enumerated above.

### **3.02—Term of Contract**

The contract shall be effective July 1, 2014 and expire June 30, 2016.

The Terms and Conditions of this Contract may be extended or amended according to the provisions of KRS Chapter 45A.

### **3.03—Changes and Modifications to the Contract**

Pursuant to KRS 45A.210(1) and 200 KAR 5:311, no modification or change of any provision in the Contract shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the Contractor and the Commonwealth, and incorporated as a written amendment to the Department for Medicaid Services of the Cabinet for Health and Family Services prior to the effective date of such modification or change pursuant to KRS 45A.210(1) and 200 KAR 5:311. Memorandum of Understanding, written clarification, and/or correspondence shall not be construed as amendments to the Contract.

**If the Contractor finds at any time that existing conditions made modification of the Contract necessary, it shall promptly report such matters to the Contract Specialist for consideration, and Cabinet management approval.**

### **3.04—Changes in Scope**

The Commonwealth may, at any time by written order, make changes within the general scope of the Contract. No changes in scope are to be conducted except at the approval of the Commonwealth through the process described in **Section 3.03—Changes and Modifications to the Contract.**

### **3.05—Cancellation**

The Cabinet shall have the right to terminate and cancel this agreement at any time upon thirty (30) days written notice served on the contractor by registered or certified mail outlining the reasons for the cancellation. The Second Party has the same such right to terminate said agreement, upon thirty (30) days written notice served on the Cabinet by registered mail or certified mail outlining the reasons for the

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cancellation.

### **3.06—Contract Conformance**

If the Contract Specialist determines that deliverables due under the Contract are not in conformance with the terms and conditions of the Contract and the mutually agreed-upon project plan, the Contract Specialist may request the Contractor to deliver assurances in the form of additional Contractor resources and to demonstrate that other major schedules will not be affected. The Commonwealth shall determine the quantity and quality of such additional resources and failure to comply may constitute default by the Contractor.

### **3.07—Notices**

Unless otherwise instructed, all notices, consents, and other communications required and/or permitted by the Contract shall be in writing.

After the Award of Contract, all programmatic communications are to be made to the Agency Contact Person listed below with a copy to the Contract Specialist as defined in Section 1.02.

Charles Douglas  
 Department for Medicaid Services  
 Cabinet for Health and Family Services  
 275 E. Main St. 6W-C, Frankfort, KY 40621  
 Email: [Charels.Douglass@ky.gov](mailto:Charels.Douglass@ky.gov)

With copy to:

Brenda Abrams  
 Contract Specialist  
 Administrative & Contract Services Branch  
 Department for Medicaid Services  
 Cabinet for Health and Family Services  
 275 E. Main St., 4W-C  
 Frankfort, Kentucky 40621-0001  
 Email: [BrendaK.Abrams@ky.gov](mailto:BrendaK.Abrams@ky.gov)

After the Award of Contract, all communications of a contractual or legal nature are to be made to the Contract Specialist.

After the Award of Contract, all communications to the contractor are to be made to the following individual.

Department for Public Health  
 Stephanie Appel  
 1st Floor Health Services Building, HS1W-C  
 275 East Main Street, HS1WC  
 Frankfort, KY 40621  
 Phone: 502-564-6663 Ext 4110  
 Email: [Stephanie.Appel@ky.gov](mailto:Stephanie.Appel@ky.gov)

### **3.08—Payment**

The fees and expenses relative to the performance of the services outlined in the Contact shall not exceed the amount as approved in the Contract. The services are to be performed during the term of the

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Contract as specified in Section 3.02. The Contract is not effective and binding until approved by the Secretary of the Finance and Administration Cabinet and the Legislative Research Commission's Government Contract Review Committee.

See Section 2.03 for details.

Payments are predicated upon successful completion and acceptance of the described work, services, supplies, or commodities, and delivery of the required documentation. Payments on Memorandum of Agreements shall not be authorized for services rendered if the Legislative Research Commission's Government Contract Review Committee has disapproved the contract, unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet.

### **3.09—Expenses**

The contractor shall only be reimbursed for those expenses that are expressly detailed in the Contract.

Invoicing for fee: The contractor's fee shall be documented on an original invoice(s) detailing the work performed and the time frame in which it was performed.

Invoicing for travel expenses: If travel expenses are allowed under the contract; they will be submitted pursuant to Section 4.22 Travel and Hourly Rate.

Invoicing for miscellaneous expenses: Allowable expenses shall be documented on an original invoice or certified copy.

### **3.10—No Required Use of Contract**

This contract does not guarantee any minimum use of services. The Cabinet reserves the right to leave all, or any portion, of the contract unused and/or to establish other contracts for additional and/or related services.

### **3.11—Federal Funding Accountability and Transparency Act Compliance**

For agreements that include Federal funds, the Second Party shall comply with the Federal Funding Accountability and Transparency Act (FFATA or Transparency Act - P.L.109-282, as amended by section 6202(a) of P.L. 110-252), including registration of a Data Universal Numbering System (DUNS) identifier number if the amount of Federal funds awarded to the Second Party is \$25,000 or more. Details on how to register and acquire a DUNS number are available at <http://fedgov.dnb.com/webform>, and are free for all entities required to register for grant awards under these provisions. The Second Party must disclose to CHFS the names of the top five executives and total compensation to each, if:

1. More than 80% of the Second Party's annual gross revenues originate from the federal government (directly or indirectly through the state), and those revenues are greater than \$25,000,000 annually, and
2. Compensation information is not already available to the public (such as, through reporting to the SEC).

## **Section 4—CHFS Standard Terms and Conditions for Memorandum of Agreements**

### **4.00—The Contract**

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CHFS and the Second Party agree to the terms and conditions as set forth in this Contract and as set forth in all Attachments incorporated herein by reference. This Contract and the Attachments incorporated herein by reference comprise a full and complete expression of the rights and obligations of the Parties as to the subject matter hereof and they shall supersede any and all other agreements, written or oral, heretofore made by the Parties.

#### **4.01—Attachment(s)**

The Attachment(s) as referenced in this Contract is/are incorporated into this Contract and is/are binding on all Parties. If an Attachment(s) is/are in conflict with this Contract and its contract clause(s), this Contract and its contract clauses shall prevail.

#### **4.02—Effective Date of Contract and Earliest Date of Payment**

The Second Party agrees to perform the services and functions specified during the term of this Contract. It is understood that this Contract is not effective and binding until approved by the Office of Policy and Budget and the Secretary of the Finance and Administration Cabinet and filed with the Government Contract Review Committee in accordance with KRS Chapter 45A.690-.725. CHFS shall provide timely notice to the Second Party of disapproval of this Contract or any amendment thereto under KRS Chapter 45A.690-.725.

#### **4.03—Extension Periods and Amendments to Contract**

The terms and conditions of this Contract may be extended or amended according to the provisions of KRS Chapter 45A.690-.725, and are subject to the approval of the Office of Policy and Budget and the Secretary of the Finance and Administration Cabinet and filed with the Government Contract Review Committee. The Second Party may request an amendment by submitting a written request to the Cabinet for Health and Family Services, Department for Medicaid Services, 275 East Main Street, 6W-C, Frankfort, KY 40621. Amendments are not in effect until written approval is received from CHFS. The Second Party shall not request an amendment for the last sixty (60) days of the Contract period.

#### **4.04—Funding**

This Contract is expressly conditioned on the availability of state and federal appropriated funds. CHFS shall fund the delivery of services and supports, and activities under the terms and conditions of this Contract to the extent that the funding allocations specified are made available to CHFS. The Second Party shall have no right of action against CHFS in the event that CHFS is unable to perform its obligations under this Contract as a result of the suspension, termination, withdrawal, or failure of funding to CHFS or lack of sufficient funding to CHFS for any activities or functions contained within the scope of this Contract.

Other provisions of this Contract notwithstanding, the Second Party agrees that if funds are not appropriated or are not otherwise made available to CHFS for the purpose of making payments hereunder, then CHFS shall be authorized to make payment to the extent possible and/or terminate this Contract in accordance with Section 4.19 Provisions for Termination without obligation for the payment of any cancellation or termination charges and without any other obligation or liability hereunder.

#### **4.05—Notice**

Unless otherwise provided, all notices, consents, and other communications required and/or permitted by this Contract shall be in writing as specified in **Section 3.07** and shall be deemed given to a Party when:

Delivered to the appropriate address by hand, United States Postal Service, or by a nationally recognized

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overnight courier service (costs prepaid);

Sent by facsimile with confirmation of transmission by the transmitting equipment; or

Received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses and facsimile numbers and marked to the attention of the person by title designated below (or to such other address, facsimile number, or person) as a Party may designate by notice to the other Party:

If personally delivered, such notice shall be effective upon delivery and if mailed as provided for above, such notice shall be deemed effective three (3) calendar days after it is placed in the mail.

#### ***4.06—Headings***

The section headings in this Contract are for reference and convenience only and shall not have any effect on the construction or legal effect of this Contract.

#### ***4.07—Severability***

It is understood and agreed by the Parties that if any part, term, or provision of this Contract is held by the courts to be illegal or in conflict with any law of the Commonwealth of Kentucky or of the United States of America, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular part, term, or provision held to be invalid, if the remainder of the Contract is capable of performance.

#### ***4.08—Sovereign Immunity***

The Parties expressly agree that no provision of this Contract is in any way intended to constitute a waiver by CHFS or the Commonwealth of Kentucky of any immunities from suit or from liability that CHFS or the Commonwealth of Kentucky may have by operation of law.

#### ***4.09—Service Delivery Requirements***

All services provided by the Second Party under the terms and conditions of this Contract shall be delivered in accordance with:

All applicable federal and state statutes and regulations as they are currently in effect;

All commitments and assurances as set forth in all CHFS grant awards with respect to goals, strategies, funding, and outcomes made by the Commonwealth as required by and contained in grant applications to federal agencies, foundations, and other agencies providing grant funding and in the resulting award notices from those agencies; and

All final federally-funded grant award terms and conditions, including federal reporting and expenditure requirements, for any federally-funded proposed project developed jointly by the Second Party and CHFS and submitted to a federal agency.

#### ***4.10—Roles and Responsibilities for Proposed and Existing Staff***

The roles and responsibilities and the written qualifying criteria for all personnel to be employed under the scope of work for all projects funded under this Contract, including any proposed employees under subcontract to the Second Party, shall be in compliance with state and federal laws governing the distribution of funds and the performance of activities as set forth in the project(s) in this Contract. The

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Second Party shall maintain and make available, upon written request, documentation of all personnel policies and procedures that govern the recruitment, hiring and performance evaluation for all personnel funded under this Contract. All employees hired by the Second Party or its subcontractors and funded under the terms and conditions of this Contract, shall have position descriptions which set out the required qualifications, skills and knowledge required to complete the scope of work as set out under this Contract.

#### **4.11—Total Amount of Funds and Budget Revisions**

The Second Party shall not be reimbursed for any expenses other than those expressly prescribed in this Contract and other Attachments incorporated herein by reference. CHFS shall have the right to recoup the amount of any overpayment, regardless of the reason for the overpayment. Any reconciliation or settlement of fund balances contained in the Summary Line Item Section of this Contract shall be negotiated between CHFS and the Second Party and determined as soon as feasible before the end of the scope of work as set forth under the Contract.

#### **4.12—Travel and Travel Hourly Rate**

The Second Party shall follow all State and Cabinet Policies in regards to all travel regulations.

#### **4.13—Cost Principles, Requirements and Limitations**

The Second Party shall conform to the cost principles as set forth in 200 KAR 5:317; 45 C.F.R Parts 74, 92, 96; 48 C.F.R. Part 31 and Contract Cost Principles and Procedures, Office of Management and Budget Circular A-122, *Cost Principles for Non-Profit Organizations* (as revised), Circular A- 21, *Cost Principles for Educational Institutions* (as revised) and/or OMB Circular A-110, *Uniform Administrative Requirements for Grants and Contracts with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations* unless excluded by Federal laws or regulations, as applicable.

#### **4.14—Access to Records, Books, and Documents**

The contractor, certifies that it is in compliance with the provisions of KRS 45A.695. "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The contractor, as defined in KRS 45A.030(9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.

#### **4.15—Equipment and Furniture**

The Second Party shall not purchase equipment or furniture with contract funds unless and except as specifically authorized under the scope of work and specifications of this Contract.

#### **4.16—Property of CHFS**

The Second Party shall follow all State, Federal and Cabinet Policies in regards to all purchases authorized under this contract.



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#### ***4.17—Property Control Ledger/Logs***

The Second Party shall follow all State, Federal and Cabinet Policies in regards to property control/ledger/logs authorized under this contract.

#### ***4.18—Requirement of Inventory***

The Second Party shall follow all State, Federal and Cabinet Policies in regards to inventory requirements authorized under this contract.

#### ***4.19—Provisions for Termination***

The Contract shall be subject to the termination provisions set forth in 200 KAR 5:312.

This Contract may be terminated:

If the Second Party is in default of its contractual obligations, after the Commonwealth has provided the Second Party written notice of the identified deficiencies and a specified time to cure;

For convenience of the Commonwealth by providing the Second Party thirty (30) calendar days written notice of termination;

Immediately for cause; or

Upon less than thirty (30) calendar days notice to the Second Party, upon written determination of the Secretary of the Finance and Administration Cabinet, or his designee, for convenience of the Commonwealth.

All termination notices shall be sent certified mail, return receipt requested and in accordance with 200 KAR 5:312.

#### ***4.20—Remedies for Breach***

It is agreed by the Parties that in the event of breach of contract by the Second Party, CHFS may pursue any remedy available to it pursuant to this Contract, or to the provisions of KRS Chapter 45A, or any remedy that is available to it by law. The remedies available to CHFS may be invoked without regard to the existence of any other available remedy, and may include the enforcement of any holdback provision or payment of any specified liquidated damages by the Second Party to CHFS for noncompliance.

#### ***4.21—Discrimination Prohibited (Because of Race, Religion, Color, National Origin, Sex, Age, or Disability)***

During the performance of this contract, the Second Party shall:

Not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex or age. The Second Party further agrees to comply with the provisions of the Americans with Disabilities ACT (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The Second Party agrees to provide needed reasonable accommodations upon request. The Second Party shall take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment without regard to their race, religion, color, national origin, sex, age or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of

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compensation; and selection for training, including apprenticeship. The Second Party agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

In all solicitations or advertisements for employees placed by or on behalf of the Second Party, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, age or disability.

Send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the Second Party's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Second Party will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

Comply with all provisions of Executive Order No. 11246 of September 24, 1965, Equal Employment Opportunity as amended by E.O. 11375, "Amending Executive Order 12246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

Comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and all implementing regulations and executive orders. No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in relation to activities carried out under this contract on the basis of race, color, age, religion, sex, disability or national origin.

If a recipient of Federal Financial assistance, shall comply with Executive Order 13166, Federal Register Volume 65. No.50121, including but not limited to, language providing services to improve access to its programs and activities for persons, who, as a result of their national origin, are limited in their English proficiency ("LEP"). The language services shall:

Be consistent with the general guidance document (LEP Guidance) issued by the Department of Justice which sets forth the compliance standards recipients of Federal financial assistance must follow to ensure that LEP persons have meaningful access to the program's services and activities;

Have a method of identifying LEP individuals; and

Provide language assistance measures (e.g. oral interpretation and written translation services; training of staff; providing notice to LEP persons; monitoring compliance and updating the plan.)

In the event of the Second Party's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the Second Party may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.

The Second Party shall include the provisions of paragraphs (1) through (7) of Section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of

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the Secretary of Labor, issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each sub-contractor or vendor. The Second Party shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event a Second Party becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the Second Party may request the United States to enter into such litigation to protect the interests of the United States.

#### **4.22—Confidential Information**

The Contractor shall comply with the provisions of the Privacy Act of 1974 and instruct its employees to use the same degree of care as it uses with its own data to keep confidential information concerning client data, the business of the Commonwealth, its financial affairs, its relations with its citizens and its employees, as well as any other information which may be specifically classified as confidential by the Commonwealth in writing to the Contractor. The Contractor will comply with all Federal and State Regulations and Statutes related to confidentiality that are applicable to the Contractor. The Contractor shall have an appropriate agreement with its employees to that effect, provided however, that the foregoing will not apply to:

Information which the Commonwealth has released in writing from being maintained in confidence;

Information which at the time of disclosure is in the public domain by having been printed and published and available to the public in libraries or other public places where such data is usually collected; or

Information, which, after disclosure, becomes part of the public domain as defined above, through no act of the Contractor or information required to be disclosed by law.

The Contractor shall have an appropriate agreement with its Subcontractors extending these confidentiality requirements to all Subcontractors' employees.

#### **4.23—Confidentiality, Confidentiality Agreements and Limitations on Information and Data Use**

The Second Party agrees that it and any employee or agent acting on its behalf in providing services under this Contract will abide by the state and federal rules and regulations governing access to and use of information and data provided by CHFS or collected by the Second Party and will use such information or data only for those purposes expressly delineated, defined and authorized in this Contract. In the performance of services under this Contract, the Second Party agrees as follows:

The Second Party shall cause all personnel who may have access to confidential information provided by CHFS to enter into CHFS approved confidentiality agreements and shall maintain such confidentiality agreements on file. CHFS reserves the right to direct the removal from contract administration, or the termination of access to CHFS provided information, for any individual covered by this Contract who has not signed a confidentiality agreement.

Any subcontractor, their agent, and any of their employees who enter into any type of agreement to fulfill the requirements of this contractual agreement with the Second Party, must provide written assurances that they and any of their agents will abide by the terms of confidentiality as set forth in this Contract, as well as any federal or state confidentially agreements which may govern the terms and conditions in this Contract.

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Any dissemination of information about projects funded and the scope of work described in the terms and conditions of this Contract, must be fully documented and reviewed by the Cabinet's project manager before any representation, electronic or otherwise, of projects, their funding sources, use of data, or data analyses may be posted to a web page or otherwise published.

The Second Party shall permit unrestricted access on demand to personnel of the Cabinet, the Office of the Attorney General, the Office of the Auditor of Public Accounts, and any representative of a government funding agency authorized to review records for audit or investigation purposes to its current policies and procedures for ensuring compliance with these confidentiality requirements, the confidentiality agreements with its personnel, and subcontractor confidentiality assurances.

#### **4.24—HIPAA Confidentiality Compliance**

The Second Party agrees to abide by the "HIPAA Privacy Rule," 45 CFR Parts 160 and 164, established under the Health Insurance Portability and Accountability Act, Public Law 104-191 (42 USC 1320d) to protect the security, confidentiality, and integrity of health information. In the event, the Second Party is determined to be a business associate under HIPAA Privacy Rule, the Second Party agrees to execute a separate Business Associate Agreement, and use and disclose Protected Health Information only in accordance with HIPAA Privacy Rule.

#### **4.25—Governing Law and Regulations**

All questions as to the execution, validity, interpretation and performance of this Contract shall be governed by the laws of the Commonwealth. Furthermore, the parties hereto agree that any legal action which is brought on the basis of this Contract shall be filed in the Franklin County Circuit Court of the Commonwealth of Kentucky.

#### **4.26—No Grant of Employment or Agency**

Nothing in this Contract shall be construed, in any way, as granting to any individual providing services under the Contract any of the claims, privileges, or rights established or recognized under KRS Chapter 18A or KAR Title 101.

At no point shall any individual providing services under this Contract be considered an employee of CHFS, for any purpose, including but not limited to unemployment, taxes, withholding, health insurance, liability, retirement, workers' compensation, vacation, sick or other leave, the Family Medical Leave Act, accrued benefits, evaluations, or any other purpose. At all times, any such individual shall be considered and deemed to be an employee of the Second Party.

In no event shall any employee of the Second Party be deemed to be a third-party beneficiary of this Contract or an agent or an employee of the Commonwealth.