



# Commonwealth of Kentucky

## PURCHASE ORDER

**IMPORTANT**

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

<b>Doc Description:</b> Preventive Health Services FY 17	
<b>Doc ID No:</b> PO2 748 160000728 1	<b>Procurement Folder:</b> 4291618
<b>Procurement Type:</b> MOA/PSC Exception	<b>Record Date:</b>
<b>Issued By:</b> BRENDA ABRAMS	<b>Cited Authority:</b> KRS45A.690(1)(D)(3)
<b>Telephone:</b>	

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CHS DEPT FOR PUBLIC HEALTH  
 PREVENTIVE HEALTH MEDCAID  
 275 E MAIN ST HS1W-A  
 FRANKFORT KY 40621  
 US

**Effective From:** 07/01/2016 **Effective To:** 06/30/2017

Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	FY 17 Preventive Health Services		0.00		0.00000	375,000.00	375,000.00

**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

Contract Term: July 1, 2016 - June 30, 2017

CFDA# 93.778

Second Party Contact:

Ron Horseman  
 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) Ron.Horseman@ky.gov

DMS Monitor:  
 David Locker  
 (E) David.Locker@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>	375,000.00
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**ORIGINAL CONTRACT – SIGNATURE PAGE**

**Approvals**

This contract is subject to the terms and conditions stated herein. By affixing signatures below, the parties verify that they are authorized to enter into this contract and that they accept and consent to be bound by the terms and conditions stated herein. In addition, the parties agree that (i) electronic approvals may serve as electronic signatures, and (ii) this contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single contract.

**Bernard "Deck" Decker**  
 Executive Director  
 Office of Administrative and Technology Services

**1st Party:**

  
 \_\_\_\_\_  
 Signature

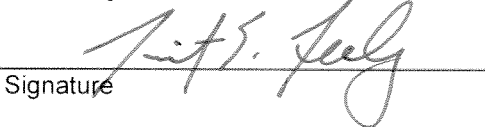
\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Printed Name

*9.14.16*

\_\_\_\_\_  
 Date

**2nd Party:**

  
 \_\_\_\_\_  
 Signature

**Judge Timothy Feeley**  
**Deputy Secretary, CHFS**

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Printed Name

*9.14.16*

\_\_\_\_\_  
 Date

**Other Party:**

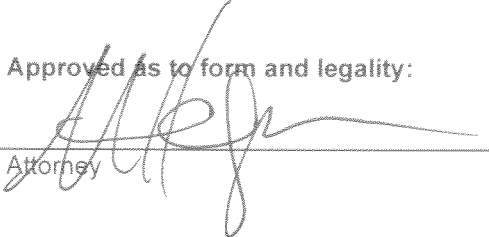
\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Printed Name

\_\_\_\_\_  
 Date

**Approved as to form and legality:**

  
 \_\_\_\_\_  
 Attorney

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**Title Page**  
**For**  
**Intra-Agency Agreement**  
**Between**

**Cabinet for Health and Family Services**  
**Department for Medicaid Services**  
**Division of Policy and Operations**

**And**  
**Department for Public Health**

**POINT OF CONTACT**  
**Brenda Abrams, Contract Specialist**  
**Department for Medicaid Services**  
**275 East Main Street, 6W-C**  
**Frankfort, KY 40621**  
**Telephone: 502 / 564-8196 ext. 2072**  
**Fax: 502 / 564-6917**  
**E-mail: [BrendaK.Abrams@ky.gov](mailto:BrendaK.Abrams@ky.gov)**

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## **Section 1—Purpose and Background**

### **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.

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, hereafter referred to as the “Department”, is issuing this Contract. The Department 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 on the Title Page of this agreement is the point of contact for communications concerning contract issues.

### **1.03—Terminology**

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

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

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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—Finance Terms and Conditions of the Contract / Terms and Conditions under which the Contractor shall perform this Contract.

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

Section 5—Federal Requirements

## **Section 2—Scope of Work**

### **2.00—Services Required**

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.



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## 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.
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

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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.

3. Ad-hoc reports – Prepare and transmit to the Cabinet for Health and Family Services, Department for Medicaid Services, Division of Policy & Operations, Benefit Policy Branch, the Commissioner, and/or Commissioner’s Staff, such reports as required and in the time requested.

**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.

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.

DMS State Share CAP: \$110,775.00

**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. DPH shall have internal monitoring procedures and processes in place to ensure compliance.
2. DPH shall cooperate with DMS and/or its agents in the monitoring, tracking and/or auditing activity

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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—Subcontractor(s)**

No subcontractors have currently been authorized.

## **2.07—Subrecipient**

Funding from this agreement distributed through subsequent agreements with other entities shall not be issued as a “subrecipient” agreement or a subaward of federal financial assistance.

## **2.08—Business Associate Agreement**

Agree to the Business Associate Agreement (BAA), listed at the end of this contract, 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:

<https://www.gpo.gov/fdsys/pkg/FR-2009-08-24/pdf/E9-20169.pdf>

## **2.09—Performance and Evaluation**

DMS may complete a Performance Evaluation (PE) twice a year to document contract performance. Estimated dates of completion are February 28 and August 30 of each FY. PE documents will be entered into the Commonwealth’s electronic financial system (eMARS). Performance documented by PE may be considered when making future awards. To obtain a copy of the PE documents completed for this contract, contact the contract specialists listed on the Title Page.

## **2.10—Information Technology Requirements**

Electronic Health Record Technology Incentive Program - The Vendor shall comply with all applicable provisions of 42 CFR 495.

## **2.11—Protection of Personal Information Security and Breach Investigation Procedures and Practices Act**

Vendors that receive Personal Information as defined by and in accordance with Kentucky’s Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the “Act”), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

“Personal Information” is defined in accordance with KRS 61.931(6) as “an individual’s first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

- a) An account, credit card number, or debit card number that, in combination with any required

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security code, access code or password, would permit access to an account;

- b) A Social Security number;
- c) A taxpayer identification number that incorporates a Social Security number;
- d) A driver's license number, state identification card number or other individual identification number issued by an agency;
- e) A passport number or other identification number issued by the United States government; or
- f) Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g."

As provided in KRS 61.931(5), a "non-affiliated third party" means "any person or entity that has a contract or agreement with the Commonwealth and receives (accesses, collects or maintains) personal information from the Commonwealth pursuant to the contract or agreement."

The vendor hereby agrees to cooperate with the Commonwealth in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

The vendor shall notify as soon as possible, but not to exceed seventy-two (72) hours, the contracting agency, the Commissioner of the Kentucky State Police, the Auditor of Public Accounts, and the Commonwealth Office of Technology of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2)(b)2 applies and the vendor abides by the requirements set forth in that exception. If the agency is a unit of government listed in KRS 61.931(1)(b), the vendor shall notify the Commissioner of the Department of Local Government in the same manner as above. If the agency is a public school district listed in KRS 61.931(1)(d), the vendor shall notify the Commissioner of the Department of Education in the same manner as above. If the agency is an educational entity listed under KRS 61.931(1)(e), the vendor shall notify the Council on Postsecondary Education in the same manner as above. Notification shall be in writing on a form developed by the Commonwealth Office of Technology.

The vendor hereby agrees that the Commonwealth may withhold payment(s) owed to the vendor for any violation of the Identity Theft Prevention Reporting Requirements.

The vendor hereby agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.

Upon conclusion of an investigation of a security breach of Personal Information as required by KRS 61.933, the vendor hereby agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.

In accordance with KRS 61.932(2)(a) the vendor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth Office of Technology:

<http://technology.ky.gov/ciso/Pages/InformationSecurityPolicies.StandardsandProcedures.aspx>

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

### **3.00—Beginning of Work**

All Memorandum of Agreements are not effective until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the agreement and until the agreement has been submitted to the government contract review committee. However, in accordance with KRS 45A.700, memoranda of agreement in aggregate amounts of \$50,000 or less are exempt from review by the committee and need only be filed with the committee within 30 days of their effective date for

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informational purposes.

KRS 45A.695(7) provides that payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the Secretary.

### **3.01—Cancellation**

Either party may cancel the agreement at any time for cause or may cancel without cause on 30 days' written notice.

### **3.02—Funding Out Provision**

The state agency may terminate this agreement if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the agreement. The state agency shall provide the Contractor thirty (30) calendar days written notice of termination of the agreement due to lack of available funding.

### **3.03—Reduction in Contract Worker Hours**

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the agreement will be reduced by the amount specified in that document.

### **3.04—Access to Records**

The state agency 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(8) and (10), 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 agreement for the purpose of financial audit or program review. 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. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the agreement and shall be exempt from disclosure as provided in KRS 61.878(1)(c).

### **3.05—Violation of tax and employment laws**

KRS 45A.485 requires the Contractor and all subcontractors performing work under the agreement to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the Contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to the state sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

To comply with the provisions of KRS 45A.485, the Contractor and all subcontractors performing work under the agreement shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

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KRS 45A.485 also provides that, for the duration of any contract, the Contractor and all subcontractors performing work under the agreement shall be in continuous compliance with the provisions of those statutes, which apply to their operations, and that their failure to reveal a final determination as described above, or failure to comply with the above statutes for the duration of the agreement shall be grounds for the Commonwealth's cancellation of the agreement and their disqualification from eligibility for future state contracts for a period of two (2) years.

**3.06—Discrimination Prohibited (Because of Race, Religion, Color, National Origin, Sex, Sexual Orientation, Gender Identity, Age, or Disability)**

This section applies only to agreements disbursing federal funds, in whole or part, when the terms for receiving those funds mandate its inclusion. Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. During the performance of this agreement, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity or age. The Contractor 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 Contractor agrees to provide, upon request, needed reasonable accommodations. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, 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 compensations; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

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

3. The Contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Contractor 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.

4. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

5. The Contractor will 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.

6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this agreement or with any of the said rules, regulations or orders, this agreement may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in

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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.

7. The Contractor will 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 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 subcontractor or vendor. The Contractor 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; provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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:

- a. 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;
- b. Have a method of identifying LEP individuals; and
- c. 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).

## **Section 4—CHFS Standard Terms and Conditions for Personal Service Contracts**

CHFS and the Contractor 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.

### **4.00—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 named on the Title Page 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:

- A. This written agreement and any subsequent written amendments to this agreement; and
- B. Any clarifications concerning the Contractor's proposal.

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

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#### **4.01—Term of Contract and Renewal Options**

The term of the Contract is to be for the period of July 1, 2016 through June 30, 2017.

This agreement is not effective until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the contract and until the contract has been filed with the Legislative Research Commission, Government Contract Review Committee.

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

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

Pursuant to 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 by the Department named on the Title Page of the Cabinet for Health and Family Services prior to the effective date of such modification or change. Memoranda 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 make modification of the Contract necessary, it shall promptly report such matters to the Sole Point of Contact on the Title Page for consideration and decision.

#### **4.03—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 communications of a contractual or legal nature are to be in writing and sent to the Agency Contact Person, to be listed in the Extended Description of Commodity Line 1 of the resulting contract, with a copy to the Sole Point of Contact listed on the title page immediately preceding the Table of Contents.

Notices made by the Department to the Contractor shall be sent to the Contractor Representative listed in the Extended Description of Commodity Line 1 of the resulting contract.

#### **4.04—The Contract**

The **Department** has concluded that either state personnel are not available to perform said function, or it would not be feasible to utilize state personnel to perform said function; and the **Contractor** is available and qualified to perform such function; and for the abovementioned reasons, the state agency desires to avail itself of the services of the Contractor.

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

This agreement is not effective and binding until the Office of Policy and Budget and the Secretary of the Finance and Administration Cabinet or his/her authorized designee have approved the contract and until the contract has been submitted to the Legislative Research Commission, Government Contract Review



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Committee (“LRC”).

Payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the Secretary.

#### **4.06—Payment**

The contractor shall maintain supporting documents to substantiate invoices and shall furnish same if required by state government.

**Pursuant to KRS 45A.695, no payment shall be made on any personal service contract unless the individual, firm, partnership, or corporation awarded the personal service contract submits its invoice for payment on a form established by the committee.**

\*Invoice form is available on the Legislative Research Commission, Government Contract Review Committee website: <http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>

#### **4.07—Expenses**

##### **Travel expenses, if authorized:**

The contractor shall be paid for no travel expenses unless and except as specifically authorized by the specifications of the contract.

The Contractor shall be paid for no travel expenses unless and except as specifically authorized under the specifications of this Contract. Travel reimbursement for activities under the terms and conditions of this Contract shall be in accordance with the Legislative Research Commission Government Contract Review Committee Travel Policy #98-1 and 200 KAR 2:006. It is the intent of the Cabinet that the Contractor’s employees and the subcontractor’s employees are reimbursed for travel expenses at rates not to exceed the travel reimbursement rates authorized for state employees. No travel time or travel expenses shall be included in the hourly rates of the Contractor’s employees, or any subcontractor’s employees to the Contractor, under this Contract.

##### **Other expenses, if authorized herein:**

The Contractor shall be reimbursed for no other expenses of any kind, unless and except as specifically authorized within the specifications of the contract.

If the reimbursement of such expenses is authorized, the reimbursement shall be only on an out-of-pocket basis. Request for payment of same shall be processed upon receipt from the Contractor of valid, itemized statements submitted periodically for payment at the time any fees are due. The Contractor shall maintain supporting documents that substantiate every claim for expenses and shall furnish same if requested by state government.

- A. Invoicing for fee: The Contractor’s fee shall be original invoice(s) and shall be documented by the Contractor. The invoice(s) must detail the work performed and the time frame in which it was performed. The invoice must conform to the method described in the specifications of the contract.
- B. Invoicing for travel expenses: The contractor must follow instructions described in the specifications of the contract. Either original or certified copies of receipts must be submitted for

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airline tickets, motel bills, restaurant charges, rental car charges, and any other miscellaneous expenses.

- C. Invoicing for miscellaneous expenses: The Contractor must follow instructions prescribed in the specifications of the contract. Allowable expenses shall be documented and submitted on an original invoice or certified copy.

#### **4.08—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 shall prevail.

#### **4.09—Contract Conformance**

If the Sole Point of Contact listed on the Title Page determines that deliverables due under the Contract are not in conformance with the terms and conditions of the Contract, the Sole Point of Contact listed on the Title Page 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.

#### **4.10—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.

#### **4.11—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.

#### **4.12—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.

#### **4.13—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.

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#### **4.14—Service Delivery Requirements**

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

- A. All applicable federal and state statutes and regulations as they are currently in effect;
- B. 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
- C. 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 Contractor and CHFS and submitted to a federal agency.

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

The Contractor 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 Contractor and determined as soon as feasible before the end of the scope of work as set forth under the Contract.

The Contractor shall not request a budget revision within the last sixty (60) days of the contract period.

#### **4.16—Travel and Travel Hourly Rate**

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

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

The Contractor shall conform to the cost principles as set forth in 200 KAR 5:317; 2 CFR, Part 200 and federal agency implementing regulations including 2 CFR, Parts 300 (45 CFR, Part 75), 400, 800, 900, 1500, 2800, 2900 and 3400, as applicable; and 48 CFR, Part 31, as applicable, unless excluded by State or Federal laws or regulations. In addition to other provisions required by the Federal funding agency, all contracts issued under a Federal grant must comply with 2 CFR, Part 200, Appendix II.

#### **4.18—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

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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.

#### **4.19—Indirect Costs**

Except as otherwise authorized by this contract, no indirect costs shall be reimbursed.

#### **4.20—Equipment and Furniture**

The Contractor 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.

#### **4.21—Equipment and Property**

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

If equipment and property purchases are specifically allowed by the Scope of Work the following shall apply:

##### A. Property of CHFS

Equipment and property purchased by CHFS for the purposes of fulfilling the requirements of this Contract, and which may include, but not be limited to, furniture, computer software, computer hardware, office equipment, and supplies are considered the property of CHFS with any single item purchase of \$500.00 or greater, as well as single item purchases of \$5000.00 or greater (capital expenditures), requiring prior approval by the Cabinet. Any Capital Expenditures of \$5,000 or greater with Federal Dollars must also have the Federal Agency Prior Approval before the Federal government will allow the costs in accordance with 2 CFR, Part 200. All computer and information technology equipment purchases, regardless of cost, require prior approval from the Finance and Administration Cabinet's Commonwealth Office of Technology and must comply with state technology standards. All required prior approvals shall be obtained by e-mailing the Contract Specialist referenced on the Title Page of this contract. This equipment and property will remain as such, unless otherwise set forth in this Contract or other controlling documents incorporated herein by reference.

##### B. Property Control Ledger/Logs

The Contractor shall maintain a property control ledger/log that lists all property and/or furniture provided (whether leased or purchased) by CHFS with funds from this contract. As items are procured, a copy of the information that follows must be provided immediately to the CHFS Agency Property Officer such that a bar-coded Asset Tag can be assigned for all items with a cost of \$500 or more. The Contractor shall immediately affix the tag provided to the corresponding property.

1. CHFS Property Tag Number;
2. Equipment serial number;
3. Full Description of the item including make, model, color, etc;
4. Unit invoice to include all cost (i.e. upgrades to the item such as additional computer memory purchased);

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5. Date of purchase and/or lease;
6. Location where the equipment and furniture are located, include full address and state building number when applicable; and
7. Name of individual responsible for the equipment.

Once tagged and upon receipt of the following information for all items purchased, the Cabinet's first party will secure insurance coverage for the item. If the Contractor fails to report the required information, loss of the item will be at their expense.

If there is a change to the information above during the course of this contract, a CHFS 117 is required to be submitted to the CHFS Agency Property Officer.

C. Requirement of Inventory

1. Inventory Tracking

The Contractor shall conduct a complete, physical inventory of all equipment and/or furniture provided by CHFS and/or purchased with funds from this contract and provides such to the CHFS Agency Property Officer by February 1<sup>st</sup> of each year unless otherwise stated herein. Said findings shall be submitted to the contract specialist identified on the title page as well as acknowledgement that the item was located or missing, and where applicable the steps taken to locate the item and/or report such to the police. If an item is/has been transferred to another location or there is a custodian change, a CHFS-117 form is to be immediately completed and routed to the Cabinet's Agency Property Officer, but no later than February 1<sup>st</sup>, or as otherwise stated, with the corresponding inventory.

2. Loss/Destruction

The Contractor shall immediately notify the Department immediately if an item purchased by CHFS is damaged, missing, or stolen. In compliance with KRS 45.313, the Contractor shall forward in writing to CHFS the item description and corresponding property tag number with a written explanation of how the item was damaged, missing, and a police report if the item was stolen. The Department will immediately notify the Agency Property Officer and the DFM, such that the proper steps can be taken to document/claim this loss to support replacement of the item if possible.

3. Surplus

All state owned property and supplies no longer needed, may be declared surplus and disposed of upon prior approval from the Cabinet. The CHFS, Office of Administration and Technology Services staff are responsible for sanitizing all computer equipment prior to disposal. Upon identification of items to be surplus or returned, the Contractor shall complete a B-217 and mail it to the CHFS Agency Property Officer with a copy to the Department within thirty (30) calendar days when any of the following occurs:

- a. The equipment or furniture is no longer needed by the Contractor and is available for surplus;
- b. The contract is terminated; or
- c. The contract period ends and will not be renewed.

Upon receipt of the B-217, the Agency's property officer shall review the fixed asset information and advise if the disposal method requested is approved. If the item(s) were purchased by federal funds, any funds received from the sale of the equipment having an

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acquisition cost of \$5,000 or more, must be credited against the appropriate federal grant.

As soon as possible, but no later than five (5) business days of terminating this contract for any reason, the Contractor shall deliver to CHFS a complete and current inventory, including the information referenced in Section 9.48, of any and all of the Cabinet's equipment and furniture in its possession, custody, or control. Within thirty (30) business days of the contract expiration/termination date, the Contractor shall return or make available any equipment and/or furniture.

If needed, both the CHFS 117 and 217 forms can be obtained by contacting Sole Point of Contact listed on the Title Page.

#### **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. All Federal and State Regulations and Statutes related to confidentiality shall be 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:

- A. Information which the Commonwealth has released in writing from being maintained in confidence;
- B. 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
- C. Information, which, after disclosure, becomes part of the public domain as defined above, through no act of the Contractor; or
- D. 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 Contractor 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 Contractor 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 Contractor agrees as follows:

- A. The Contractor 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.
- B. 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 Contractor, must provide written

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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 confidentiality agreements which may govern the terms and conditions in this Contract.

- C. 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.
- D. The Contractor 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 Contractor 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 Contractor is determined to be a business associate under HIPAA Privacy Rule, the Contractor 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 Contractor.

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

## **Section 5—Federal Requirements**

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If federal funds are utilized, the Contractor is responsible for complying with all provisions of 2 CFR Part 200, Appendix II.

The following terms shall apply to this contract regardless of whether the funding source is federal, state or other.

## **5.00—Certain Provisions Contained Within 2 CFR Part 200 Appendix II**

### **5.00.01—Remedies for Breach**

It is agreed by the Parties that in the event of breach of contract by the Contractor, 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 Contractor to CHFS for noncompliance as provided for in this Contract.

### **5.00.02—Provisions for Termination**

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

This Contract may be terminated:

- A. If the Contractor is in default of its contractual obligations, after the Commonwealth has provided the Contractor written notice of the identified deficiencies and a specified time to cure;
- B. For convenience of the Commonwealth by providing the Contractor thirty (30) calendar days written notice of termination;
- C. Immediately for cause; or
- D. Upon less than thirty (30) calendar days' notice to the Contractor, 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.

### **5.00.03—Clean Air Act and Federal Water Pollution Control Act**

Contractor and sub-contractors shall agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, [42 U.S.C. 7401](#) *et seq.*, and the Federal Water Pollution Control Act, as amended [33 U.S.C. 1251](#) *et seq.* Violations shall be reported to the HHS and the appropriate Regional Office of the Environmental Protection Agency.

### **5.00.04—Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion, Lower Tier Covered Transactions**

The Contractor shall be compliant with 2 CFR 180 at the time of award and throughout the



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contract period.

#### **5.00.05—Certification of Lobbying Activities**

Contractor shall disclose any lobbying activities in accordance with Section 1352, Title 31, U. S. Code. The Contractor certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any 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, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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## **BUSINESS ASSOCIATE AGREEMENT (STATE GOVERNMENT)**

This Business Associate Agreement (Agreement) is entered into as of July 1, 2016 (Effective Date) by and between Department for Medicaid Services (“Covered Entity” hereinafter), whose principal place of business is located at 275 East Main Street 6W-A, Frankfort, KY 40621 and the Department for Community Based Services, (“Business Associate” hereinafter), whose principal place of business is located at 275 East Main Street, Frankfort, KY 40621, in conformance with the Health Insurance Portability and Accountability Act of 1996, and its implementing regulations (“HIPAA RULES” hereinafter).

### **RECITALS**

**Whereas**, the Covered Entity has engaged the services of the Business Associate for or on behalf of the Covered Entity in Memorandum of Agreement # 160000728;

**Whereas**, the Covered Entity must disclose individually identifiable health information to the Business Associate in the performance of services, referenced in the Service Contract above, for or on behalf of the Covered Entity;

**Whereas**, such information is Protected Health Information (PHI) as defined by the Privacy, Security, and Breach Notification and Enforcement Rules promulgated under HIPAA;

**Whereas**, the Parties agree to establish safeguards for the protection of such information;

**Whereas**, the Covered Entity and Business Associate desire to enter into this Agreement to address certain requirements under the HIPAA Rules as required by the implementing regulations;

**Now Therefore**, the parties hereby agree as follows:

### **SECTION I – DEFINITIONS**

Relevant terms used in this Agreement shall have the same meaning as those terms found in the HIPAA rules found at 45 CFR §164.402; 45 CFR § 164.501; §164.304; and §160.103. The following terms, as defined in the HIPAA implementing regulations and used herein, shall mean:

- 1.1 “Breach” is defined as any unauthorized acquisition, access, use or disclosure of PHI which compromises the security or privacy of the PHI, unless the Covered Entity or Business Associate, as applicable, demonstrates that there is a low probability that the PHI has been compromised based upon a risk assessment as required under 45 CFR § 164.402. The definition of Breach excludes the following uses and disclosures:
  - a. Unintentional acquisition, access or use of protected health information by a workforce member or person acting under the authority of a Covered Entity or Business Associate, if performed in good faith and within the scope of authority, and does not result in further unauthorized disclosures;
  - b. Inadvertent one time disclosure between Covered Entity or Business Associate work force member to another work force member at the same covered entity or Business Associate

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who is authorized to access PHI and information received or disclosed is not further used or disclosed in a manner not permitted under Subpart E found at 45 CFR § 164.500, et seq.;

- c. The Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain the information.
- 1.2 “Business Associate” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §160.103, and includes a person or entity who creates, receives, maintains, or transmits PHI for a function or activity of the covered entity as set out under the regulation, and includes any subcontractor of the business associate who creates, receives, maintains, or transmits PHI on behalf of the business associate under 45 CFR § 160.103 (3) (iii).
- 1.3 “Covered Entity” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §160.103.
- 1.4 “Data Aggregation” shall have the meaning given to such term under the HIPAA Rules, including but not limited to, 45 CFR §164.501.
- 1.5 “Designated Record Set” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §164.501.
- 1.6 “Effective Date” shall be the Effective Date of this amended and restated Agreement.
- 1.7 “Electronic Protected Health Information” or “Electronic PHI” shall have the meaning given to such term at 45 CFR §160.103, limited to information of the Covered Entity that the Business Associate creates, receives, maintains or transmits in electronic media on behalf of the Covered Entity under the terms and conditions of this Agreement.
- 1.8 “Health Care Operations” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §164.501.
- 1.9 “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules codified at 45 CFR Part 160 and Part 164.
- 1.10 “Individual” shall have the meaning given to such term in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- 1.11 “Individually Identifiable Health Information” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §160.103.
- 1.12 “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an Individual; the provision of health care to an Individual; or the past, present or future payment for the provision of health care to an Individual; and (ii) that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual, and shall have the meaning given to such term in 45 CFR §160.103, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered

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Entity.

- 1.13 “Required by Law” shall have the meaning given to such phrase in 45 CFR §164.103.
- 1.14 “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- 1.15 “Security Incident” shall have the meaning given to such phrase in 45 CFR §164.304.
- 1.16 “Unsecured Protected Health Information” shall mean protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary. (45 CFR §164.402), except that Unsecured Protected Health Information shall be limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.

## SECTION II – OBLIGATIONS AND ACTIVITIES OF THE BUSINESS ASSOCIATE

The Business Associate agrees to the following:

- 2.1 Not to use or further disclose PHI other than as permitted or required by this Agreement and to fulfill its responsibilities under the contract setting out the scope of work for the Business Associate, or as required by law, or for the proper management and administration of the business associate under the requirements set out in Section III below;
- 2.2 To use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Agreement;
- 2.3 To mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this Agreement or the HIPAA Privacy and Security Rules;
- 2.4 To report to the Covered Entity any use or disclosure involving PHI not provided for by this Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR § 164.410, and any Security Incident of which it becomes aware. The business associate shall immediately report to the covered entity any breach of unsecured PHI, except as provided by 45 CFR § 164.412 based upon a request from law enforcement to delay the notice in that such would impede a criminal investigation or cause damage to national security. The Business Associate shall provide to the covered entity the following information: (1) a brief description of what happened; including the date of the breach and date of discovery of the breach, if known; (2) identification of each individual whose unsecured PHI has been affected by the breach; (3) description of the type of unsecured PHI involving the breach; (4) any steps the individuals should take to protect themselves from harm from the breach; and (5) steps the Business Associate is taking to investigate the breach, to mitigate harm and protect against other breaches. The Business Associate, in consultation with the covered entity, shall be responsible for breach notifications to individuals affected by the unauthorized use or disclosure no later than sixty (60) days following its discovery or by exercise of reasonable due diligence would have been known to the Business Associate, as required by 45 CFR § 164.404. The Business Associate shall be solely responsible for any and all costs

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associated with the notification requirements to the individuals as provided herein. The Business Associate shall be responsible for any penalties, assessments or fees assessed by the Office for Civil Rights/Department of Health & Human Services due to any breach caused by the Business Associate or based upon the failure of the Business Associate to comply with the HIPAA Privacy and Security Rules. The covered entity, in consultation with the Business Associate, shall make all needed notices to the media and the Secretary of HHS. The Business Associate shall report immediately to the covered entity any security incident of which it becomes aware as required by 45 CFR § 164.314 (a) (2) (i) (C). The Business Associate shall report to the covered entity the operative facts surrounding the security incident, what steps are to be taken to address the security incident, and other information which may be requested by the covered entity relative to the security incident.

- 2.5 In accordance with 45 CFR §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees in writing to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such PHI;
- 2.6 To provide access to PHI in a Designated Record Set, at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to the Covered Entity, or as directed by the Covered Entity, to the Individual or the Individual's designee as necessary to meet the Covered Entity's obligations under 45 CFR §164.524; provided, however, that this Section 2.6 is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
- 2.7 To make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of the Covered Entity or an Individual, and in the time and manner designated by the Covered Entity; provided, however, that this Section 2.7 is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
- 2.8 To make internal practices, books and records, including policies and procedures on PHI, relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of, the Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary's determining the Covered Entity's and the Business Associate's compliance with the HIPAA Rules;
- 2.9 To document non-routine disclosures of PHI and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528, where applicable;
- 2.10 To provide to the Covered Entity or an Individual, in a time and manner designated by the Covered Entity, information collected in accordance with Section 2.9 of this Agreement, to permit the Covered Entity to respond to a request by an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
- 2.11 That if it creates, receives, maintains, or transmits any electronic PHI (other than

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enrollment/disenrollment information and Summary Health Information, which are not subject to these restrictions) on behalf of the covered entity, it will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information, and it will ensure that any agents (including subcontractors) to whom it provides such electronic PHI agrees to implement reasonable and appropriate security measures to protect the information. ;

- 2.12 Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent the use or disclosure of protected health other than is permitted for under this Agreement or required by law;
- 2.13 To retain records related to the PHI hereunder for a period of six (6) years unless the Agreement is terminated prior thereto. In the event of termination of this Agreement, the provisions of Section V of this Agreement shall govern record retention, return or destruction;
- 2.14 Implement administrative safeguards in accordance with 45 CFR §164.308, physical safeguards in accordance with 45 CFR §164.310, technical safeguards in accordance with 45 CFR §164.312, and policies and procedures in accordance with 45 CFR §164.316;
- 2.15 Shall appropriately safeguard any and all PHI provided by the covered entity to the Business Associate under the service contract or agreement as required under HIPAA Rules and this Agreement herein, as set out in 45 CFR § 164.502 (e) (1) and (2).
- 2.16 Not to make any fundraising communication on behalf of Covered Entity or to Covered Entity's participants and beneficiaries;
- 2.17 Not to receive any remuneration, either directly or indirectly, in exchange for PHI, except as may be permitted by 45 CFR §164.502(a)(5) and §164.508(a)(4);
- 2.18 Not to make any marketing communication on behalf of Covered Entity or to Covered Entity's participants and beneficiaries, except as may be permitted by 45 CFR §164.501; and
- 2.19 To the extent Business Associate is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

**SECTION III – THE PARTIES AGREE TO THE FOLLOWING PERMITTED USES AND DISCLOSURES BY THE BUSINESS ASSOCIATE**

- 3.1 Business Associate agrees to make uses and disclosures and requests for PHI consistent with the Covered Entity's minimum necessary policies and procedures.
- 3.2 Except as otherwise limited in this Agreement, the Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, the Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by the Covered Entity; and
- 3.3 Except as otherwise limited in this Agreement, the Business Associate may:

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- a. Use for management and administration. Use PHI for the proper management and administration by the Business Associate or to carry out the legal responsibilities of the Business Associate; and,
- b. Disclose for management and administration. Disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required by Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

#### SECTION IV – NOTICE OF PRIVACY PRACTICES

- 4.1 The Covered Entity shall (a) provide the Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR §164.520, as well as any changes to such notice; (b) provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate’s permitted or required uses and disclosures; (c) notify the Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restrictions may affect the Business Associate’s use or disclosure of PHI; and (d) refrain from requesting the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by the Covered Entity, except as provided herein.

#### SECTION V – BREACH NOTIFICATION REQUIREMENTS

- 5.1 With respect to any Breach by the Business Associate as provided in 2.4 above, the Business Associate shall notify each individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Covered Entity to have been, accessed, acquired, used, or disclosed as a result of such Breach, except when law enforcement requires a delay pursuant to 45 CFR §164.412:
- a. Without unreasonable delay and in no case later than 60 days after discovery of a Breach or from the time it should have reasonable been discovered.
  - b. By notice in plain language including and to the extent possible:
    - 1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
    - 2) A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

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- 3) Any steps individuals should take to protect themselves from potential harm resulting from the Breach;
  - 4) A brief description of what the Covered Entity involved is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches; and,
  - 5) Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- c. Use a method of notification that meets the requirements of 45 CFR §164.404(d).
  - d. The Business Associate shall provide for substitute notice, as required by HIPAA Rules, by providing a toll-free phone number that remains active for at least 90 days where an individual can learn whether the individual's unsecured PHI may be included in the breach and a posting as required by 45 CFR § 164.404 (d) (2). The costs of the substituted notice and notifications set out in this Section shall be the responsibility of the Business Associate.

## SECTION VI – TERM AND TERMINATION

- 6.1 Term. The term of this Agreement shall be effective as of the date set forth above in the first paragraph and shall terminate when all of the PHI provided by the Covered Entity to the Business Associate, or created or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- 6.2 Termination for Cause. Upon the Covered Entity becoming aware of a material breach of this Agreement by the Business Associate, the Covered Entity shall provide an opportunity for the Business Associate to cure the breach or end the violation. The Covered Entity shall terminate this Agreement and the Services Agreement if the Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity, or terminate this Agreement immediately if a cure is not possible.

If the Business Associate fails to cure a breach for which cure is reasonably possible, the Covered Entity may take action to cure the breach, including but not limited to obtaining an injunction that will prevent further improper use or disclosure of PHI. Should such action be taken, the Business Associate agrees to indemnify the Covered Entity for any costs, including court costs and attorneys' fees, associated with curing the breach.

Upon the Business Associate becoming aware of a material breach of this Agreement by the Covered Entity, the Business Associate shall provide an opportunity for the Covered Entity to cure the breach or end the violation. The Business Associate shall terminate this Agreement if the Covered Entity does not cure the breach or end the violation within the time specified by the Business Associate, or terminate this Agreement immediately if the Covered Entity has breached a material term of this Agreement if cure is not possible.



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### 6.3 Effect of Termination.

- a. Return or Destruction of PHI. Except as provided in Section 6.3(b), upon termination of this Business Agreement, for any reason, the Business Associate shall return, or if agreed to by the Covered Entity, destroy all PHI received from the Covered Entity, or created or received by the Business Associate on behalf of the Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Business Associate. The Business Associate shall retain no copies of PHI.
- b. Return or Destruction of PHI Infeasible. In the event that the Business Associate determines that returning or destroying PHI is infeasible, the Business Associate shall provide to the Covered Entity notification of the conditions that make return or destruction not feasible. Upon mutual agreement of the parties that return or destruction of the PHI is infeasible, the Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such PHI. In addition, the Business Associate shall continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 to prevent use or disclosure of the PHI, for as long as the Business Associate retains the PHI.

## SECTION VII – GENERAL PROVISIONS

- 7.1 Regulatory references. A reference in this Agreement to the HIPAA Rules or a section in the HIPAA Rules means that Rule or Section as in effect or as amended from time to time.
- 7.2 Compliance with law. In connection with its performance under this Agreement, Business Associate shall comply with all applicable laws, including but not limited to laws protecting the privacy personal information about individuals.
- 7.3 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Parties to comply with the HIPAA Rules and any other applicable law. This Agreement may not be modified, nor shall any provision herein be waived or amended, except in a writing duly signed by the authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.
- 7.4 Confidentiality Obligations. In the course of performing under this Agreement, each Party may receive, be exposed to or acquire “Confidential Information,” including but not limited to, all information, data, reports, summaries, tables and studies, whether written or oral, fixed in hard copy or contained in a computer data base or computer readable form, as well as any information identified as “Confidential Information” of the other Party. For purposes of this Agreement “Confidential Information” shall not apply to PHI, the privacy and security of which is the subject of this Agreement and addressed throughout the terms herein. Except as record under the Kentucky Open Records Act, the parties including their employees, agents and representatives shall: (a) not disclose to any third party “Confidential Information” of the other party except as permitted under this Agreement; (b) only permit use of “Confidential Information” of employees, agents or representatives having a need to know in connection with performance under this

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Agreement, and (c) advise each of its employees, agents and representatives of their obligations to keep such "Confidential Information" confidential. This provision shall not apply to "Confidential Information": (i) after it becomes publicly available through no fault of either party; (ii) which is later publicly released, in writing, by the party which owned the material; (iii) which is lawfully obtained by the third parties without restriction; or (iv) which can be shown to be previously known or developed by either party independently of the other party.

- 7.5 No Third Party Beneficiary. The parties do not express or imply by any terms in this Agreement to confer any rights, remedies or entitlements upon any third person not a party to this Agreement herein. The parties agree that there are no third-party beneficiaries intended to be benefited by this Agreement.
- 7.6 Survival. The respective rights and obligations of Business Associate under Section II and Section 6.3(b) of this Agreement shall survive the termination of this Agreement.
- 7.7 Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Rules.
- 7.8 Notices. Notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or (other than for delivery fees) via facsimile to the facsimile telephone numbers listed below:

To Business Associate at:

Stephanie Appel  
 Department for Public Health  
 275 East Main Street, HS1WC  
 Frankfort, KY 40621  
 AND

To Covered Entity at:

Charles Douglas  
 Department for Medicaid Services  
 Division of Policy and Operations  
 275 East Main Street, 6W-C  
 Frankfort, Kentucky 40621-0001  
 Email: [Charles.Douglass@ky.gov](mailto:Charles.Douglass@ky.gov)

With copy to:

Brenda Abrams  
 Contract Specialist  
 Department for Medicaid Services  
 Cabinet for Health and Family Services  
 275 E. Main St., 6W-C  
 Frankfort, Kentucky 40621-0001  
 Email: [BrendaK.Abrams@ky.gov](mailto:BrendaK.Abrams@ky.gov)

Each party named above may change update its address and that of its representative for notice by giving notice thereof in the manner hereinabove provided.

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7.9 Counterparts: Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

7.10 Disputes. If any controversy, dispute or claim arises between the Parties with respect to his Agreement, the parties shall make good faith efforts to resolve such matters informally. Any dispute which cannot be mutually settled may be brought in the Franklin Circuit Court or Federal District Court of Kentucky.

7.11 Mutual Representations and Warranties. Each party represents and warrants to the other party that is duly organized and validly existing, and in good standing under the laws of the jurisdiction under which it is organized or licensed, it has the full power to enter into this Agreement and to perform the obligations hereunder, and that the performance of it of its obligations under this Agreement have been duly authorized by all necessary corporate or other actions and will not violate any provisions of any license, corporate charter or bylaws.