



Commonwealth of Kentucky CONTRACT

DOC ID NUMBER:
 PON2 746 1800001671 **Version:** 1 **Record Date:** 06/25/18

Document Description: Kentucky Health Analysis "My rewards" (UPENN) (C1324)
Cited Authority: FAP111-44-00
 Memorandum of Agreement
Reason for Modification:

Issuer Contact:
Name: Alison Simpson
Phone: 502-564-7736
E-mail: Alison.Simpson@ky.gov

| | |
|-------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| Vendor Name: UNIVERSITY OF PENNSYLVANIA TRUSTEES 3451 WALNUT ST 140 FRANKLIN BLDG PHILADELPHIA PA 19104-6270 | Vendor No. KY0017621 Vendor Contact Name: SUSANNE MCCANN Phone: 215-573-3451 Email: MCCANNSU@UPENN.EDU |
|-------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|

Effective From: 2018-07-01 **Effective To:** 2020-06-30

| Line Item | Delivery Date | Quantity | Unit | Description | Unit Price | Contract Amount | Total Price |
|-----------|---------------|----------|------|----------------------------------------------|------------|-----------------|--------------|
| 1 | | 0.00000 | | KY Health Analysis "My Rewards" UPENN - FY19 | \$0.000000 | \$879,614.00 | \$879,614.00 |

Extended Description:
 Provide the Cabinet for Health and Family Services (CHFS), Department for Medicaid Services (DMS) assistance in the development of policies, studies, or pilots to increase healthy behaviors and health outcomes across all Kentucky Medicaid populations. Including but limited to implementation, guidance, tracking, and identification of appropriate populations for study, data collection and analysis conducted by the University of Pennsylvania.

Term of Contract July 1, 2018 - June 30, 2020

Funding: 50% Federal /50% State

Vendor Contact:
 Stuart Watson
 Trustees of the University of Pennsylvania
 3451 Walnut Street
 P221 Franklin Building
 Philadelphia, PA 19104-6205
 Phone (215) 573-6707
 E: wswatson@upenn.edu

DMS Contract:
 Jill Hunter
 E: Jill.Hunter@ky.gov

Effective From: 2018-07-01

Effective To: 2020-06-30

| Line Item | Delivery Date | Quantity | Unit | Description | Unit Price | Contract Amount | Total Price |
|-----------|---------------|----------|------|----------------------------------------------|------------|-----------------|--------------|
| 2 | | 0.00000 | | KY Health Analysis "My Rewards" UPENN - FY20 | \$0.000000 | \$879,614.00 | \$879,614.00 |

Extended Description:

| Shipping Information: | Billing Information: |
|-----------------------|--------------------------------------------------------------------------------------------|
| | CHFS DMS Division of Fiscal Management 275 E Main Street 6W-C Frankfort KY 40621 |

| | |
|-------------------------------|-----------------------|
| TOTAL CONTRACT AMOUNT: | \$1,759,228.00 |
|-------------------------------|-----------------------|

| | | |
|------------|-------------------------------------------------------|--------|
| | Document Description | Page 2 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

Title Page

For

Kentucky Health Analysis "My Rewards"

University Memorandum of Agreement

Issued by

The Cabinet for Health and Family Services

Office of Administrative and Technology Services

Division of Procurement and Grant Oversight

On Behalf Of

The Department for Medicaid Services

Office of the Commissioner

Hereafter referred to as "Department"

SOLE POINT OF CONTACT

Alison Simpson

Contract Specialist

275 East Main Street, 4E-C

Frankfort, KY 40621

Telephone: (502) 564-7736 ext. 3501

E-mail: alison.simpson@ky.gov

| | | |
|------------|-------------------------------------------------------|--------|
| | Document Description | Page 3 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

University Memorandum of Agreement Terms and Conditions

Revised May 4, 2018

This Memorandum of Agreement (MOA) is entered into, by and between the Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Medicaid Services (“the Commonwealth”) and the University of Pennsylvania (“the Contractor”) to establish an agreement for Kentucky Health Analysis for the “My Rewards” account. The initial MOA is effective from July 1, 2018 through June 30, 2020.

Section 1—ADMINISTRATIVE OVERVIEW

1.00—Purpose and Background

The Department of Medicaid Services (DMS) is contracting with the University of Pennsylvania Center for Health Incentives and Behavioral Economics (CHIBE) to provide input, recommendations and analyze data in regards to the Kentucky HEALTH “My rewards” account.

Assist CHFS, DMS and appropriate stakeholders and partners (i.e., MCOs, providers, community partners etc.) in the development of policies, studies, or pilots to increase healthy behaviors and health outcomes across all Kentucky Medicaid populations, utilizing the services available through the local Health Departments, as appropriate. This would include implementation guidance, tracking, and identification of appropriate populations for study, data collection and analysis.

Assist CHFS, DMS with overall Section 1115 Kentucky HEALTH waiver evaluation and analysis.

Assist CHFS, DMS, and appropriate stakeholders and partners in identifying “best practices” (e.g., education & training programs, local collaboration efforts, provider processes) that have the potential to effect and sustain behavior changes that improve health outcomes, utilizing the services available through the local Health Departments, as appropriate.

1.01—Issuing Office

The Commonwealth of Kentucky, Cabinet for Health and Family Services, Division of Procurement and Grant Oversight, is issuing this Contract on behalf of the Department for Medicaid Services, Office of the Commissioner. The Cabinet’s designee 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 identified on the Title Page 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:

- Vendor: Contractor, Offeror, Second Party, Proposer
- Contract Specialist: Buyer, Purchaser, Contract Officer
- Commonwealth of Kentucky: Commonwealth, State

| | | |
|------------|-------------------------------------------------------|--------|
| | Document Description | Page 4 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

- 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

Section 2—Scope of Work

Section 3—CHFS Standard Terms and Conditions of Memorandum of Agreements

Section 4—Federal Requirements

Finance Terms and Conditions of the Contract

Exhibit A – BAA

SECTION 2—SCOPE OF WORK

2.00—Services Required

A. Within the Kentucky HEALTH program, CHIBE will assist and advise on developing policies and incentives for the Kentucky HEALTH “My Rewards” account, including, but not limited to the following:

1. Provide input into the development of activities, curriculum, and delivery medium of wellness activities designed to encourage healthy behaviors and improve health outcomes.
2. Review and provide input into materials being used to communicate about the My Rewards program to the Medicaid beneficiaries
3. Make recommendations on the “dollar value” assigned for specific activities.
4. Make recommendations for ways to pilot “loss aversion” to assess feasibility/effectiveness of potential inclusion in “My Rewards.”
5. Design metrics for tracking effectiveness of incentives and programs.
6. Analyze data to evaluate effectiveness of incentives and programs.
7. Make recommendations for policy changes to increase effectiveness of policies and incentives.

B. Assist with design of evaluation plan and assist with overall evaluation and analysis of Section 1115 Kentucky HEALTH Waiver. This would include formation of desired outcomes, appropriate metrics and indicators to track, and recommending appropriate data collection methods and techniques.

C. Assist with design of evaluation plan and assist with overall evaluation and analysis of Section 1115 Kentucky HEALTH Waiver. Scope of Works (SOWs)

2.01—Deliverables

The contractor shall:

- A. Perform work under this contract, which is outlined in Section 2.00 as specified in written SOW outlined in this Section. All communication shall include the Contracting Specialist (listed on the title page), the DMS Commissioner, the Kentucky HEALTH Program Manager, and the Governor’s Office.
- B. Acknowledge receipt of each SOW by returning to the Contract Specialist a signed copy of agreed SOW within 10 calendar days after receipt. The Contractor shall submit to the contract-level Contracting Specialist Representative, the DMS Commissioner, the Kentucky HEALTH Program Manager, and the Governor’s Office one (1) copy of a SOW to each.
- C. SOWs shall not allow for any change to the terms or conditions of the contract, and format of SOWs

| | | |
|------------|-------------------------------------------------------|--------|
| | Document Description | Page 5 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

shall require approval from DMS Commissioner and Governor's Office.

- D. Where any language in the SOW may suggest a change to the terms or conditions, the Contractor shall immediately notify the Contracting Specialist. Any change to the terms of conditions shall require a contract modification.
- E. The following information shall be included in SOWs, but not limited to the following:
 - 1. SOW outlining the activities within Section 2.00.
 - 2. Date of completion. (Must be within the Terms outlined in Section 3.02.)
 - 3. Price-Total cost of the SOW
 - 4. Payment Schedule-Outline of required payments within the proposed SOW
- F. Submit SOWs ready for approval to the Contract Specialist. The approved SOW are sent to all parties once fully executed. Work shall not begin until SOW is fully executed.

2.02—Progress Reports Requirements

Second Party shall provide reports based on completed SOWs based on the SOW outlined in Section 2.00 within two weeks of completion. The progress report should include, but not limited to, the following:

- A. Completed activities.
- B. Outline of objectives met.
 - 1. Any recommended policies and/or procedures based on completion of SOW.

Progress reports shall be submitted to the Contracting Specialist, the DMS Commissioner, the Kentucky HEALTH Program Manager, and the Governor's Office.

2.03— Pricing and Payment Requirements

Payments will be based on receipt of appropriate, accurate, and acceptable invoice. The fees and expenses relative to the performance of the services outlined in the contract shall not exceed the amount as approved in the contract.

The amount listed on this contract is an estimated amount and payments shall be paid based on actual completion and in accordance of approved SOWs.

Invoices for payment shall be submitted to the DMS.Invoice@ky.gov. Invoices must be submitted no later than **thirty** (30) days after completion of the service. Invoices shall be submitted in accordance with Section 3.01.03 – Payment. The invoice must include at a minimum:

- 1. Vendor's Name and Address

| | | |
|------------|-------------------------------------------------------|--------|
| | Document Description | Page 6 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

2. PON2 number that invoice(s) are using for funding.
3. Clearly list dates of service (from and to). Examples: January 1, 2019 – January 30, 2019.
4. Date of Invoice (date invoice is prepared) July's invoice should be prepared no later than August 30.
5. Total amount due for the current billing cycle.
6. Cumulative Total for all invoices to date.

Invoices that do not contain the requirements above will be rejected and sent back to the Contractor for re-invoicing.

Reimbursement will be provided by means of a PRC and in accordance with the Commonwealth's electronic financial system (eMARS), the Finance Cabinet's Standardized Grant Accounting Policies.

Payment shall be conditioned upon receipt of appropriate, accurate, and acceptable invoices submitted in a timely manner.

Any and all services, monitoring of such services, and billing and invoicing for 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. No payment shall be made for non-compliant services or invoices.

2.04—CHFS/Agency Responsibilities

CHFS may:

- A. Be responsible for approving all policy decisions, changes, interpretations and re-interpretation affecting all decisions made in regards to this contract.
- B. Approve all SOWs submitted by the second party in a timely manner. Discuss all changes required in the SOWs with the contractor prior to approving.

2.05—Publication

Consistent with the principles of academic freedom for research, Institution shall be free to individually publish, present or otherwise disclose Research Results or other information and material resulting from the Research Services for any purpose. UPENN shall furnish the Commonwealth of Kentucky with a copy of any proposed publication, presentation or report at least thirty (30) days in advance of the submission of said proposed publication in order for Commonwealth of Kentucky to review and comment on said proposed publication. This clause would be effective during the period of the ongoing contract plus 1 year.

2.08—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.

SECTION 3—CHFS GENERAL TERMS AND CONDITIONS

3.00—Award of Contract and Contract Terms and Conditions

3.00.01—Beginning of Work

| | | |
|------------|-------------------------------------------------------|--------|
| | Document Description | Page 7 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

All Memorandum of Agreements are not effective and binding until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the agreement and until the agreement has been filed to the Legislative Research Commission, Government Contract Review Committee ("LRC"). 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 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.

3.00.02—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 Division of Procurement and Grant Oversight, 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. This written agreement, all attachments thereto, and any subsequent written amendments to this Agreement; and
2. 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.

3.00.03—Term of Contract

The term of the Contract is to be for the period July 1, 2018 – June 30, 2020.

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.

3.00.04—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 prior to the effective date of such modification or change. Modification shall be subject to prior approval from the Secretary of the Finance and Administration Cabinet, or his/her authorized designee, and the LRC Government Contract Review Committee. 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 Contract Specialist identified on the Title Page for consideration and decision.

| | | |
|------------|-------------------------------------------------------|--------|
| | Document Description | Page 8 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

3.00.05—Notice

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 Contract Specialist identified 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.

3.01—Memorandum of Agreement Standard Terms and Conditions

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;

3.01.01—Renewals

Not applicable to Memorandum of Agreements.

3.01.02—LRC Policies

Pursuant to KRS 45A.725, LRC has established policies which govern rates payable for certain professional services. These are located on the LRC webpage and would impact any contract established under KRS 45A.690 - 45A.725, where applicable.

A link to the LRC webpage is as follows:

See: <http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>

3.01.03—Payment

The Contractor shall maintain supporting documents to substantiate invoices and shall furnish same if required by state government. The invoice must conform to the method described in Section 2.03—Payment and Invoicing Requirements of this Contract.

3.01.04—Expenses

Travel expenses, if authorized:

The Contractor shall be paid for no travel expenses unless and except as specifically authorized by the specifications of this Contract or authorized in advance and in writing by the Commonwealth. Either original or certified copies of receipts must be submitted for airline tickets, hotel bills, restaurant charges, rental car charges, and any other miscellaneous expenses.

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 this Contract or authorized in advance and in writing by the Commonwealth.

| | | |
|------------|-------------------------------------------------------|--------|
| | Document Description | Page 9 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

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 the Commonwealth.

3.01.05—Conflict-of-Interest Laws and Principles

The Contractor certifies that it is legally entitled to enter into this Contract with the Commonwealth of Kentucky, and by holding and performing this Contract, the Contractor will not be violating either any conflict of interest statute (KRS 45A.330-45A.340, 45A.990, 164.390), nor KRS 11A.040 of the executive branch code of ethics, relating to the employment of former public servants.

3.01.06—Social Security

The parties are cognizant that the state is not liable for social security contributions, pursuant to 42 U.S. Code, Section 418, relative to the compensation of the Contractor for this Contract.

3.02—General Provisions

3.02.01—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.

3.02.02—Assignment

This Contract shall be binding upon and inure to the benefit of the respective legal successors of the Parties. However, neither this Contract nor any rights or obligations hereunder may be assigned, in whole or in part, without the prior written consent of CHFS, Division of Procurement and Grant Oversight, and the Division of Accounting Services.

3.02.03—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.

The Commonwealth of Kentucky may undertake or award other contracts for additional or related work, services, supplies, or commodities, and the Contractor shall fully cooperate with such other Contractors and Commonwealth employees. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other Contractor or by Commonwealth employees.

3.02.04—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.

| | | |
|------------|-------------------------------------------------------|---------|
| | Document Description | Page 10 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

3.02.05—Indemnification

The Contractor shall be responsible for any and all expenses, costs (including reasonable attorneys' fees), causes of action, liability, loss and/or damages suffered or incurred by it or any of them, that results from or arises, during the performance of the Contract Section 2 – Scope of Work, out of (a) this Contract; (b) any and all acts of the Contractor and or its Subcontractor(s); (c) the policies and procedures of the Contractor, specifically including all Contractor employment practices employed by the Contractor during the term of this or any prior Agreement with CHFS; (d) any dishonest, fraudulent, criminal, or negligent or unauthorized acts or errors or omissions which are committed by the Contractor or any of the Contractor's employees or agents or Subcontractors; (e) the publication translation, reproduction, delivery, performance, use or disposition of any data produced by CHFS in an unauthorized manner, provided that such action was not taken by the Contractor or as a result of the express written request of CHFS; or (f) the Contractor's failure to comply with any applicable state or federal laws or regulations.

Provided; however, in the event the Contractor is a state agency or subcontracts for services with a state agency subject to the jurisdiction of the Board of Claims pursuant to KRS 44.070 through KRS 44.160, the state agency's tort liability shall be limited to an award from the Board of Claims up to the jurisdictional amount.

3.02.06—Sovereign Immunity

The Parties expressly agree that no provision of this Contract constitutes 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.

3.02.07—Force Majeure

Neither Party shall be liable for public utility performance (e.g., Postal service, telephone, or water company) or for the consequence of public utility non-performance. Events or conditions beyond the reasonable control of the Parties, such as natural disasters, fires, floods, elements, transportation crashes, or utility failures shall not be construed as non-performance, nor shall reductions be applied as a result of such events, provided that CHFS shall have the right to obtain the necessary services elsewhere in the event of such non-performance by the Contractor and the Parties shall negotiate in good faith any appropriate offset to the compensation payable under this Contract. The Contractor shall cooperate and shall require that any Subcontractor cooperate with CHFS in such event. The existence of such causes of delay or failure will extend the period of performance in the exercise of reasonable diligence until after the causes of delay or failure have been removed. Each Party must inform the other in writing with proof of receipt within five (5) business days of the existence of a force majeure event or otherwise waive this right as a defense.

3.02.08—Maintenance of Insurance

During the term of this Contract, the Contractor shall maintain and shall require any Subcontractor to maintain their directors and officers liability insurance, Workers' Compensation insurance, employer liability insurance, and such other liability insurance as reasonably necessary in the Contractor's business judgment to provide adequate coverage against losses and liabilities attributable to the respective acts or omissions of the Contractor and the Subcontractor(s) in the performance of this Contract. The Contractor shall provide or cause to be provided and shall require any Subcontractor to provide or cause to be provided evidence of such coverage upon request.

| | | |
|------------|-------------------------------------------------------|---------|
| | Document Description | Page 11 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

To the extent that the Contractor and any Subcontractor are not self-insured, each shall, in any event, name CHFS as an additional insured on any policy of coverage, with the exception of the Workers' Compensation and any reinsurance. The Contractor and any Subcontractor shall notify CHFS of the evidence of insurance coverage within five (5) business days of coverage. Notice shall be sent in writing to the Department.

CHFS shall not be responsible for any premiums or assessments on the policy or policies held by the Contractor or any Subcontractor under this Contract. CHFS may, at its sole option, pay one or more premiums, if it decides that to do so would be in the best interest of the Cabinet. Should CHFS exercise this option, it shall be fully reimbursed by the Contractor, either by the Contractor directly or by an offset against future payments.

The Certificate of Insurance for any policy other than self-insurance or any reinsurance must require that the insurer shall not cancel the coverage without thirty (30) days prior written notice to CHFS.

The Contractor shall notify CHFS within five (5) business days of any cancellation or interruption of the Contractor or Subcontractor's insurance coverage. CHFS shall require in any subcontracts that the Subcontractor provide such notice within five (5) business days to the Contractor and CHFS. The Contractor shall assure and require that any Subcontractor assure that insurance is in effect at all times during the life of this Contract. If their respective insurance coverage expires at any time during the term of this Contract, the Contractor and any Subcontractor shall provide at least thirty (30) calendar days prior to the expiration date, to the extent possible, a new Certificate of Insurance evidencing coverage as provided herein for not less than the remainder of the term of this Contract.

3.02.09—Licensure, Certification, and Registration

The Contractor shall:

1. Ensure that all appropriate licenses, registrations, and/or certifications necessary are maintained at all times to the extent such are required for performance under this Contract;
2. Ensure that it has readily accessible copies of licenses, registration, and/or certifications necessary; and
3. Produce copies of any required license, registration, and/or certification at the request of CHFS or the Cabinet's designee.

3.02.10—Permits, Licenses, Taxes, and Laws

The Contractor shall procure all necessary permits and licenses and abide by all applicable laws, regulations, and ordinances of all federal, state, and local governments in which work under this Contract is performed.

The Contractor shall pay any sales, use, personal property and income taxes arising out of this Contract and the transaction contemplated hereby. Any other taxes levied upon this Contract, the transaction, or the equipment or services delivered pursuant hereto shall be borne by the Contractor.

3.02.11—Legal Proceedings

| | | |
|------------|-------------------------------------------------------|---------|
| | Document Description | Page 12 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

Except as specifically disclosed in writing to CHFS by the Contractor, prior to the date of this Contract, the Contractor certifies there are no suits, investigations, or other proceedings pending or threatened against the Contractor or any Subcontractor that would have a material effect on the Contractor's ability to perform under this Contract, or on Subcontractors ability to perform under their respective subcontracts, if applicable. Further, the Contractor shall use its best efforts to notify CHFS within one (1) business day, and in writing within three (3) business days, of all suits, investigations, or other proceedings involving the Contractor related to this Contract. The Contractor shall send written notice to the Department.

3.02.12—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 a full-time or part-time 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.

3.02.13—Discrimination Prohibited in Service Provision (Because of Race, Religion, Color, National Origin, Sex, Disability, Age, Political Beliefs or Reprisal or Retaliation for prior Civil Rights Activity or other Federal, State, or Local Protected Class)

Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. During the performance of this Contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against anyone applying for or receiving assistance or services based on race, religion, color, national origin, sex, disability, age, political beliefs or reprisal or retaliation for prior civil rights activity or any other protected class identified in federal, state or local laws. The Contractor agrees to comply with the provisions of the Kentucky Civil Rights Act, the Americans with Disabilities Act of 1990 as Amended (ADA), Section 1557 of the Patient Protection and Affordable Care Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, as applicable, and all other applicable federal, state and local regulations relating to prohibiting discrimination.
2. The Contractor will take action to ensure that service applicants and recipients are given services in the same manner, based on eligibility, and are not based on membership in a protected class: denied aid, care, services, or other benefits provided under this Contract; subjected to segregation or different treatment in any matter related to receipt of assistance; restricted in any way in the enjoyment of any advantages or privileges enjoyed by others receiving similar services; given different treatment in determining eligibility; or meeting other requirements or conditions that must be met to receive benefits.
3. The Contractor agrees to post in conspicuous places, available to program or service

| | | |
|------------|-------------------------------------------------------|---------|
| | Document Description | Page 13 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

applicants or recipients, notices setting forth the provisions of this non-discrimination clause.

4. In all program or service solicitations or advertisements placed by or on behalf of the Contractor, the Contractor will state that they will not discriminate against anyone applying for or receiving assistance or services based on race, religion, color, national origin, sex, disability, age, political beliefs, or reprisal or retaliation for prior civil rights activity, or any other protected class identified in federal, state, or local laws.
5. In the event of the Contractor'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 such other sanctions that may be imposed and remedies invoked as provided in or as otherwise provided by law.
6. In compliance with the prohibition against Disability discrimination and in compliance with the implementing guidance for the Americans with Disabilities Act issued by the Department of Justice, the Contractor agrees to provide, free of charge, appropriate accommodations for applicants or recipients with disabilities, including auxiliary aids and services for persons with disabilities who require alternative means of communication.
7. In compliance with the prohibition against National Origin discrimination and, by extension discrimination based on Limited English proficiency (LEP), the Contractor agrees to provide meaningful language assistance measures free of charge to program or service applicants or recipients with Limited English Proficiency. The language services shall:
 - A. Be consistent with the general guidance document 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; note to LEP persons of availability of language access assistance; monitoring compliance, etc.).

3.03—Contract Performance

3.03.01—Service Delivery Requirements

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

1. All applicable federal and state statutes and regulations as they are currently in effect;
2. 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
3. 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.

| | | |
|------------|-------------------------------------------------------|---------|
| | Document Description | Page 14 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

3.03.02—Total Amount of Funds and Budget Revisions

In addition to Section 3.01.04—Expenses, 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.

3.03.03—Subcontractors

Unless provided in the scope of work and pre-approved at the Cabinet level, the Contractor shall make no subcontract with any other party for furnishing any of the work or services herein. This provision shall not require the approval of contracts of employment between the Contractor and personnel assigned for services thereunder. The Contractor shall be solely responsible for performance of the entire Contract whether or not Subcontractors are used.

Before engaging a Subcontractor not identified in the Contractor's response or replacing a Subcontractor identified in the Contractor's response, the Contractor will notify the agency and provide the agency with information regarding the proposed Subcontractor, including but not limited to, the proposed Subcontractor's relevant qualifications, experience, and key personnel. The agency reserves the right to approve or disapprove any Subcontractor proposed by the prime Contractor; such approval shall not be unreasonably withheld.

All references to the Contractor shall be construed to encompass both the Contractor and any Subcontractors of the Contractor.

3.03.03.01—Responsibility for Subcontractor Contract Requirements

The Contractor shall have a Contract with any Subcontractor that the Contractor contracts with to meet the statement of work, method of payment, and deliverables of this Contract that specifies the responsibilities of the parties and the cost. In addition, the Contractor's Contract with the Subcontractor shall specify that all requirements of this Contract are applicable and binding on the Subcontractor. Any plan to subcontract any of the provisions of this Contract must be set forth in the Contractor's proposal for the delivery of products or services and included in the body of the contract in the Subcontractor's section. The Subcontractor must make available to the Contractor and to CHFS, if requested, copies of personnel records and documentation of employees' compliance with the terms and conditions of this Contract.

No obligation or right of the Contractor under this Contract shall be subcontracted to another, without prior written approval, of CHFS after CHFS has had the opportunity to review all contract documents setting forth the terms and conditions for the subcontract. The Contractor, upon the Cabinet's request, shall submit the subcontract for approval to the Contract Specialist identified on the Title Page.

3.03.03.02—Subcontractor Monitoring Requirements

The Contractor shall monitor Subcontractors for programmatic and fiscal compliance with the terms and conditions of this Contract and those specific provisions set out under the Contractor's contract with the Subcontractor. The Contractor agrees to utilize restraints or

| | | |
|------------|-------------------------------------------------------|---------|
| | Document Description | Page 15 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

requirements imposed by such factors as generally accepted sound business practices, arm's length bargaining, Federal and State laws regulations, and terms and conditions of the federal grant award in contracting with Subcontractors.

The Contractor further understands and agrees, and shall ensure that any Subcontractor understands and agrees, that CHFS and any of its duly authorized agents or representatives shall have access to any books, documents, papers, records, or any other materials that are pertinent to this Contract or Subcontract, for the purposes of making monitoring, auditing, examination, excerpts, and transcriptions.

3.03.04—Indirect Cost

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

3.03.05—Financial Record Retention

The Contractor agrees to maintain all records pertaining to this Contract for a period of not less than three (3) years after all matters pertaining to this Contract (e.g., audit, settlement of audit exceptions, disputes, etc.) are resolved in accordance with applicable federal and/or state laws, regulations, and policies (except as may otherwise be specified in this Contract).

3.03.06—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:

3.03.06.01—Property of CHFS

Equipment and property purchased by CHFS for the purposes of fulfilling the requirements of this Contract, and that 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 \$5,000.00 or greater (capital expenditures), requiring prior approval by the Cabinet. Any capital expenditures of \$5,000.00 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 identified 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.

3.03.06.02—Property Control Ledger/Logs

The Contractor shall maintain a property control ledger/log that lists all equipment and/or property 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 and/or Federally Funded labels can be assigned for all items with a cost of \$500.00 or

| | | |
|------------|-------------------------------------------------------|---------|
| | Document Description | Page 16 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

greater. The Contractor shall immediately affix the asset tag, property label or Federal label provided to the corresponding equipment or property. The property control ledger/log shall include the following information:

1. CHFS Asset 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);
5. Date of purchase and/or lease;
6. All information pertaining to the manufacturer's warranty, if applicable;
7. Location where the equipment and/or furniture is located, and include full address and state building number when applicable; and
8. Name of individual responsible for the equipment.

Once tagged and upon receipt of the following information for all items purchased, the 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 PPATS-117 form is required to be submitted to the CHFS Agency Property Officer.

3.03.06.03—Requirement of Inventory

1. Inventory Tracking

The Contractor shall conduct a complete physical inventory of all equipment and/or property provided by CHFS and/or purchased with funds from this Contract, and provides such to the CHFS Agency Property Officer by February 1st 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 PPATS-117 form is to be immediately completed and routed to the CHFS Agency Property Officer, but no later than February 1st, or as otherwise stated, with the corresponding inventory.

2. Loss/Destruction

The Contractor shall immediately notify the Department if an item provided by CHFS and/or purchased with funds from this Contract 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 or missing, and a police report if the item was stolen. The Department will immediately notify the Agency Property Officer, such that the proper steps can be taken to document/claim this loss to support replacement of the item if possible.

| | | |
|------------|-------------------------------------------------------|---------|
| | Document Description | Page 17 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

3. Excess or Surplus

All state-owned equipment, property and supplies no longer needed may be declared excess or surplus property and transferred or disposed of upon prior approval from the Cabinet. The CHFS, Office of Administration and Technology Services staff are responsible for sanitizing all CHFS owned computer equipment prior to disposal. Upon identification of items to be surplus or returned to the CHFS Distribution Center, the Contractor shall complete a PPATS–B217-2 form or a PPATS–117 form 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 or transfer to the CHFS Distribution Center;
- B. The contract is terminated; or
- C. The contract period ends and will not be renewed.

Upon receipt of the PPATS–B217-2 form or a PPATS–117 form the CHFS Agency property officer shall review the fixed asset information and advise if the disposal method or transfer of equipment requested is approved. If the item(s) were purchased by federal funds, any funds received from the sale of the equipment having an acquisition cost of \$5,000.00 or greater, 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 of any and all of the Cabinet's equipment and property in its possession, custody, or control. Within thirty (30) business days of the contract expiration/termination date, the Contractor shall return or make available all equipment and/or property.

When needed, both the PPATS–117 and PPATS–B217-2 forms can be obtained by contacting the CHFS Agency Property Officer.

3.03.07—Confidential Information

The Contractor shall comply with 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. the provisions of the Privacy Act of 1974, 5 U.S.C. § 552a. The Contractor shall 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 that may be specifically classified as confidential by the Commonwealth in writing to the Contractor. The Contractor agrees to ensure that all confidential information and data shall remain confidential. The Contractor shall have an appropriate agreement with its employees to that effect.

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.

| | | |
|------------|-------------------------------------------------------|---------|
| | Document Description | Page 18 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

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.

The foregoing will not apply to:

1. Information that the Commonwealth has released in writing from being maintained in confidence;
2. Information that 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
3. Information that, after disclosure, becomes part of the public domain as defined above, through no act of the Contractor; or
4. 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.

3.03.08—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).

3.03.09—Response/Compliance with Audit Findings

The Contractor shall take action to ensure its or a Subcontractor's compliance with or correction of any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle relating to the services and deliverables or any other deficiency contained in any audit, review, or inspection conducted under this section. This action will include the Contractor's delivery to CHFS, for CHFS' approval, a Corrective Action Plan that addresses deficiencies identified in any audit(s), review(s), or inspection(s) within thirty (30) calendar days of the close of the audit(s), review(s), or inspection(s).

The Contractor shall bear the expense of compliance with any finding of noncompliance under this section that is:

1. Required by a Kentucky or Federal law, regulation, rule, or other audit requirement relating to the Contractor's business;
2. Performed by the Contractor as part of this Contract; or
3. Necessary due to the Contractor's noncompliance with any law, regulation, rule, or audit requirement imposed on the Contractor; or
4. Deficiencies may also result in the assessment of penalties as described in Section 3.03.11 —Performance-Based Penalties below.

| | | |
|------------|-------------------------------------------------------|---------|
| | Document Description | Page 19 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

3.03.10—Research Project Approval and Institutional Review Board Requirements

Any proposed research project undertaken under the terms and conditions of this Contract shall follow the procedures and protocols established under 920 KAR 1:060 that provide for a Cabinet review of research projects supported or funded in whole or in part through CHFS. If the proposed research project involves human subjects, it shall comply with federal regulations 45 CFR 46 and the requirements of the Cabinet’s Institutional Review Board for the Protection of Human Subjects, which CHFS is required to establish and maintain to protect the rights and welfare of human subjects of research conducted or sponsored by CHFS. The project manager assigned by CHFS will provide all documentation and protocols for review and approval by the CHFS Institutional Board. No research may begin until such time as the Board reviews and approves the project.

3.03.11—Performance-Based Penalties

Upon a determination of failure to perform services outlined in Section 2—Scope of Work, the Cabinet may issue penalties up to five percent (5%) of the total amount of contract for each instance of non-performance.

If the Cabinet elects not to exercise any of the penalty clauses herein in a particular instance, this decision shall not be construed as a waiver of the Department’s right to pursue the future assessment of any performance standard requirement and associated penalties. In addition, a Corrective Action Plan may be issued as outlined in item 1.B. below.

The Department will work with the Contractor to resolve performance issues at all times.

1. Requirement of Corrective Action:

A. Letter of Concern

Should the Department determine that the Contractor or any Subcontractor is in violation of any requirement of this Contract, the Department shall notify the Contractor of the deficiency through a “Letter of Concern.” The Contractor shall contact the Department’s representative designated by the Department within two (2) business days of receipt of the Letter of Concern and shall indicate how such concern is unfounded or how it will be addressed. If the Contractor fails to timely contact the designated representative regarding a Letter of Concern, the Department shall proceed to the additional enforcement contained in this Contract.

B. Corrective Action Plan

Should the Cabinet determine that the Contractor or any Subcontractor is not in substantial compliance with any material provision of this Contract, the Cabinet shall issue a written deficiency notice and require a corrective action plan be filed by the Contractor within ten (10) business days following the date of the notice.

A corrective action plan shall delineate the time and manner in which each deficiency is to be corrected. The plan shall be subject to approval by Finance or the Department, which may accept the plan as submitted, may accept the plan with specified modifications, or may reject the plan within ten (10) business days of receipt. Cabinet may reduce the time allowed for corrective action depending upon the nature of the deficiency.

| | | |
|------------|-------------------------------------------------------|---------|
| | Document Description | Page 20 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

C. Failure to Respond to Letter of Concern or Corrective Action Plan Notice

Failure of the Contractor to respond to a Letter of Concern within two (2) business days of receipt of the Letter of Concern may result up to a \$500.00 per day penalty for each day until the response is received. Failure of the Contractor to submit a Corrective Action Plan within ten (10) business days following the date of the written deficiency notice may result up to \$1,000.00 per day penalty for each day until the Corrective Action Plan is received.

D. Request for Extension

Upon request, CHFS may extend the time allowed for both a response to the Letter of Concern and a Corrective Action Plan depending upon the nature of the deficiency. The Contractor shall request an extension of time in writing from the representative designated in the Letter of Concern or the written deficiency notice. The written request shall contain a justification and proposed extension period. If an extension is granted, the penalty per day for both a late Letter of Concern or a late Corrective Action Plan would begin after the expiration of the extension period.

2. Failure to Correct any identified deficiency may result in action pursuant to 3.000.00—Cancellation of the contract.
3. Upon timely resolution of all performance based issues outlined in the Correction Action Plan, the Contractor shall receive reimbursement of a percentage of the amount withheld based on the following tier schedule:
 - A. Resolution within 30 days: at least 75% will be reimbursed to Contractor.
 - B. Resolution within 60 days: at least 50% will be reimbursed to Contractor.
 - C. Resolution within 90 days: at least 25% will be reimbursed to Contractor.
 - D. Resolution after 90 days: total penalty withholdings are forfeited.

3.03.12—Performance and Evaluation

CHFS may complete a Performance Evaluation (PE) once a year to document contract performance. 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 Specialist identified on the Title Page.

3.03.13—Business Continuity, Disaster Recovery, and Information Security Requirements

The Contractor shall maintain and implement a Business Continuity Plan, Disaster Recovery Plan, and Information Security Plan, which shall detail the steps the Contractor will take in the event of an outage or failure of either the Contractor's or CHFS' data or communication or technical support system. Such plans shall enable the Contractor to continue to meet all requirements of CHFS. The Contractor shall provide a copy of its plans upon request. All costs associated with activating and sustaining execution all plans shall be borne solely by the Contractor.

| | | |
|------------|-------------------------------------------------------|---------|
| | Document Description | Page 21 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

3.03.14—Protection of Personal Information Security and Breach Investigation Procedures and Practices Act

Contractors 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, KRS 61.932, KRS 61.933, and KRS 61.934, (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.

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

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

The Contractor 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 Contractor 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 Contractor 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:

See:

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

3.04—Breach and Contract Termination

3.04.01—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.

| | | |
|------------|-------------------------------------------------------|---------|
| | Document Description | Page 22 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

3.04.02—Disputes

The parties agree to take reasonable steps to resolve any disputes arising under this Contract. Any disputes arising under this Contract which cannot be readily disposed of by agreement between the parties, shall be decided by First Party or his/her duly authorized representative. Such decision shall be produced in writing and sent via first-class mail to the Contractor at the address specified on the Title Page of this document. The decision of First Party or his representative shall be final and conclusive unless, within ten (10) working days following the date of notice to the Contractor of such decision, the Contractor mails or otherwise furnishes a written appeal to the Secretary of the Finance and Administration Cabinet.

The Contractor shall be afforded an opportunity to offer evidence in support of its appeal to First Party. Any appeal to the Secretary of the Finance and Administration Cabinet shall be in accordance with KRS Chapter 45A.235 et seq. and regulations promulgated thereunder. The Contractor shall proceed diligently with the performance of this Contract in accordance with the decision rendered by First Party until the Secretary of the Finance and Administration Cabinet renders a final decision.

The Contractor acknowledges that, pursuant to KRS Chapter 45A.235 et seq., the Secretary of the Finance and Administration Cabinet is the final arbiter of any and all disputes concerning the Contract or the Department, subject to the right of the Contractor to appeal any such determination to the Circuit Court of Franklin County, Kentucky.

3.04.03—Transition/Turnover

In the event CHFS requires a transition after a non-renewal or termination by either party, CHFS shall notify the Contractor at the same time CHFS serves notice of the non-renewal or termination, as the case may be.

Upon receipt of notice of termination of the Contract from CHFS, the Contractor shall provide any turnover assistance reasonably necessary to enable CHFS or its designee to effectively close out the Contract and move the work to another Contractor or to perform the work by itself.

The Contractor shall:

1. Provide detailed transition documents at no additional cost to CHFS.
2. Be responsible for the orderly transition of work and the accuracy of data in coordination with the new contractor. CHFS shall ensure the cooperation of the new contractor to facilitate a smooth transition.
3. Within ten (10) calendar days after written notification by CHFS of the initiation of transition, provide a detailed Transition Document. Upon receipt of the detailed Transition Document by CHFS, CHFS shall review the document and within fourteen (14) calendar days provide written instructions to the Contractor as to the packaging, documentation, delivery location, and delivery date of all records, as needed to provide orderly transition. If CHFS determines upon review that the Transition Document is missing necessary information, CHFS shall provide the Contractor written instructions as to the information that is still needed, and the Contractor shall amend the Transition Document to include the necessary information.
4. Deliver a full and complete accounting and report as of the date of termination about the status of services. This report shall be provided to CHFS within twenty-one (21) days of

| | | |
|------------|-------------------------------------------------------|---------|
| | Document Description | Page 23 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

the effective date of termination.

5. Transfer all documents and records of every kind, including electronic, microfilm, paper, or otherwise, in their possession that pertain to this Contract, including but not limited to, all those listed in the contract, within twenty-one (21) days of the effective date of termination. All documents shall be in a CHFS-approved format.
6. Provide reasonable and appropriate assistance to CHFS and its designee(s) regarding the contents of such documents and records, and shall provide reasonable and appropriate reference materials, including data models and file documentation. This assistance shall be provided to CHFS within twenty (20) days of the effective date of termination.
7. Pay any and all additional costs incurred by CHFS that are the result of the Contractor's failure to provide the requested records, documents, data or materials within the time frames agreed to in the Transition Document.

3.05—Miscellaneous Provisions

3.05.01—Advertising Award Prohibition

The Contractor shall not refer to the Award of Contract in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the Commonwealth of Kentucky.

3.05.02—Bankruptcy

In the event the Contractor becomes the subject debtor in a case pending under the Federal Bankruptcy Code, the Commonwealth's right to terminate this Contract may be subject to the rights of a trustee in bankruptcy to assume or assign this Contract. The trustee shall not have the right to assume or assign this Contract unless the trustee:

1. Promptly cures all defaults under this Contract;
2. Promptly compensates the Commonwealth for the monetary damages incurred as a result of such default; and
3. Provides adequate assurance of future performance, as determined by the Commonwealth.

3.05.03—Code of Ethics

The Contractor and all professional personnel who may provide services under this Contract or any subcontract with the Contractor shall be familiar with and abide by any and all code of ethics or conduct as designated by CHFS that have been established by a national or regional association and are generally recognized as being applicable. Failure of the Contractor to abide by the applicable code of ethics shall result in the immediate termination of the contract.

3.05.04—Notices and Pamphlets

All notices, employment, advertisements, information pamphlets, research reports, and similar public notices prepared and released by the Contractor, pursuant to this Contract, shall include a statement identifying the appropriate source of funds, for the project or service, including but not limited to, identifying whether the funding is in whole or in part from federal, CHFS, or other state funds.

| | | |
|------------|-------------------------------------------------------|---------|
| | Document Description | Page 24 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

3.05.05—Scientific Misconduct

The Contractor shall set out a procedure for the inquiry, investigation, appeal, and disposition of complaints alleging misconduct in activities involving any and all research projects funded, in whole or in part, with federal funds included in this Contract, and as authorized under the Public Health Services research grants. Such policies and procedures shall be in accordance with the provisions of 42 CFR Part 50 and 900 KAR 1:080, as amended, and shall be made available, upon request, to CHFS. The Contractor shall immediately report to CHFS any activity reported to the Contractor under these terms and conditions. Notice shall be sent in writing to the Department.

3.05.06—Intellectual Property

The Contractor agrees that any formulae, methodology, or other reports and compilations of data provided by the Department to the Contractor for the purposes of meeting the terms and conditions of this Contract shall be the exclusive property of CHFS, unless the specific ownership of any proposed or developed formulae, methodology, or other reports and compilations of data is otherwise identified in any Attachment(s). The Contractor further agrees that any formulae, methodology, other reports and compilations of data prepared or produced by the Contractor during the course of work pursuant to this Contract shall be made available to CHFS for the Cabinet's use upon request and without charge. Any use of these materials other than for the purposes of meeting the terms and conditions of this Contract must be reviewed and approved in advance by CHFS.

If any of these materials are included in any publication, training materials, or presentations, or for any other type of release of this material other than for the purposes of meeting the terms and conditions of this Contract, appropriate credit for the funding source must be given. This provision shall be included in any subcontract, including contracting for staff, issued by the Contractor under this Contract.

Any proposed project under the scope of work for any of the Projects set forth under the Summary Line Item Section in this Contract shall include specific documentation and justification for titles of ownership as:

1. Patents;
2. Trademarks as proposed or registered with the U.S. Patent and Trademark Office; or
3. Copyrights proposed or certified with the Library of Congress, U.S. Copyright Office.

3.05.07—Certification Regarding Drug-Free Workplace

The Contractor hereby certifies that it will, or will continue to, provide a drug-free workplace in accordance with 2 CFR Part 182. The Contractor shall at a minimum:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited from the Contractor's workplace and specifying actions that will be taken against employees for violation of such prohibition;
2. Establish an ongoing drug-free awareness program to inform employees about:
 - A. The dangers of drug abuse in the workplace;

| | | |
|------------|-------------------------------------------------------|---------|
| | Document Description | Page 25 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

- B. The Contractor's policy of maintaining a drug-free workplace;
- C. Available drug counseling, rehabilitation, and employee assistance programs;
and
- D. The penalties that may be imposed upon employees for drug abuse violation.

3.05.08—Business Associate Agreement

The Contractor shall comply with and execute the attached Business Associate Agreement (BAA) 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 of 2009.

For the purposes of the Business Associate Agreement the following entities are defined:

Covered Entity:

Department for Medicaid Services
275 East Main Street
Frankfort, KY 40621

Business Associate:

Trustees of the University of Pennsylvania DBA
University of Pennsylvania
3451 Walnut Street
P221 Franklin Building
Philadelphia, PA 19104

3.05.09—Record Checks

A current and satisfactory criminal record check that is satisfactory with no convictions or outstanding charges which would constitute a disqualifying offense under 900 KAR 1:009. A criminal record check shall be completed through the Kentucky State Police Information Center or the Administrative Office of the Courts. If an individual providing services under the contract has resided or worked in a state other than Kentucky a satisfactory records check shall be required of those states as well.

SECTION 4—FEDERAL REQUIREMENTS

If federal funds are utilized, the Contractor is responsible for complying with all provisions of 2 CFR Part 200, Appendix II, regarding Contract provisions for non-federal entity Contracts under federal award.

The following terms shall apply:

4.00—Certain Provisions Contained Within 2 CFR, Part 200, Appendix II

4.00.01—Clean Air Act and Federal Water Pollution Control Act

The Contractor and Subcontractors 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.

| | | |
|------------|-------------------------------------------------------|---------|
| | Document Description | Page 26 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

4.00.02—Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion, Lower Tier Covered Transactions

In accordance with Federal Acquisition Regulation 52.209-5, the Contractor shall certify, by signing the Solicitation, that to the best of its knowledge and belief, the Contractor and/or its Principals is (are) not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency.

For the purposes of this certification, "Principals," means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of subsidiary, division, or business segment, and similar positions).

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

4.00.03—Certification of Lobbying Activities

The 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 \$10,000.00 and not more than \$100,000.00 for each such failure.

| | | |
|------------|-------------------------------------------------------|---------|
| | Document Description | Page 27 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

Memorandum of Agreement Standard Terms and Conditions

1.00 Cancellation clause:

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

2.00 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.

3.00 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.

4.00 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).

5.00 Effective Date:

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

| | | |
|------------|-------------------------------------------------------|---------|
| | Document Description | Page 28 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

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 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.

6.00 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 corporate and utility tax, sales and use 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.

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.

[Check box section below need only be included for Contractors that are quasi-governmental entities or 501(c)3 non-profit entities.]

Contractor must check one:

| | | |
|------------|-------------------------------------------------------|---------|
| | Document Description | Page 29 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

_____ The Contractor has not violated any of the provisions of the above statutes within the previous five (5) year period.

_____ The Contractor has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). Attached is a list of such determination(s) , which includes the KRS violated, the date of the final determination, and the state agency which issued the final determination.

7.00 Discrimination:

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:

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.

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.

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

| | | |
|------------|-------------------------------------------------------|---------|
| | Document Description | Page 30 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

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.

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.

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.

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 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 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.

| | | |
|------------|-------------------------------------------------------|---------|
| | Document Description | Page 31 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

BUSINESS ASSOCIATE AGREEMENT (STATE GOVERNMENT)

This Business Associate Agreement (Agreement) is entered into as of July 1, 2018 (Effective Date) by and between the Department for Medicaid Services (“Covered Entity” hereinafter), whose principal place of business is located at 275 East Main Street, 6W-C, Frankfort, KY 40621 and the Trustees of the University of Pennsylvania (“Business Associate” hereinafter), whose principal place of business is located at 3451 Walnut Street, P21 Franklin Building, Philadelphia, PA 19104-6205, 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 # PON2 746 1800001671;

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 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.;

| | | |
|------------|-------------------------------------------------------|---------|
| | Document Description | Page 32 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

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 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 The parties acknowledge and agree that this section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents." "Unsuccessful Security Incidents" will include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts,

| | | |
|------------|-------------------------------------------------------|---------|
| | Document Description | Page 33 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

denials of service, and any combination of the above, so long as no such incident results in unauthorized access, use, or disclosure of PHI.

- 1.17 “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. Upon notification to the covered entity to the extent then known, but no later than 60 days 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 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

| | | |
|------------|-------------------------------------------------------|---------|
| | Document Description | Page 34 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

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 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

| | | |
|------------|-------------------------------------------------------|---------|
| | Document Description | Page 35 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

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:
 - 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

| | | |
|------------|-------------------------------------------------------|---------|
| | Document Description | Page 36 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

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. To the extent possible, 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);
 - 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

| | | |
|------------|-------------------------------------------------------|---------|
| | Document Description | Page 37 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

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 as permitted by KRS 44.073.

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.

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

| | | |
|------------|-------------------------------------------------------|---------|
| | Document Description | Page 38 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

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 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:

Stuart Watson
Trustees of the University of Pennsylvania DBA
University of Pennsylvania
3451 Walnut Street
P221 Franklin Building
Philadelphia, PA 19104-6205

AND

To Covered Entity at:

Jill Hunter, Deputy Commissioner
Department for Medicaid Services
275 East Main Street, 6W-A
Frankfort, KY 40621
(502) 564-4321, Ext. 2020

With a copy to:

Alison Simpson, Contract Specialist
Office of Administrative and Technology Services
Procurement and Grant Oversight
PSC/MOA Branch

| | | |
|------------|-------------------------------------------------------|---------|
| | Document Description | Page 39 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

275 East Main Street, 4E-C
Frankfort, KY 40621
(502) 564-7736, Ext. 3501

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.

- 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.** Each party represents 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.

| | | |
|------------|-------------------------------------------------------|---------|
| | Document Description | Page 40 |
| 1800001671 | Kentucky Health Analysis "My rewards" (UPENN) (C1324) | of 41 |

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.

CHFS Cabinet Approval:

Signature

Title

Printed Name

Date

Contractor Approval:

Signature

Title

Printed Name

Date

CHFS Department Commissioner Review:

Signature

Title

Printed Name

Date

Approved as to form and legality:

Attorney