



Commonwealth of Kentucky

CONTRACT

IMPORTANT

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

Doc Description: UPENN - Kentucky HEALTH Analysis "My rewards" (C542-0)	
Doc ID No: PON2 746 180000237 1	Procurement Folder: 4585403
Procurement Type: Memorandum of Agreement	Record Date: 08/07/2017
Issued By: BRENDA ABRAMS	Cited Authority: FAP111-44-00
Telephone: 502-564-8196	

C O N T R A C T O R	TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA UNIVERSITY OF PENNSYLVANIA 3451 WALNUT STREET P221 FRANKLIN BLDG PHILADELPHIA PA 19104-6205 US
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Effective From: 07/01/2017 **Effective To:** 06/30/2018

Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	UPENN - FY 18		0.00		0.00000	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, 2017 - June 30, 2018

Funding: 90% Federal / 10% State - General Administrative

Vendor Contact:

Stuart Watson
 Trustees of the University of Pennsylvania
 3451 Walnut Street
 P221 Franklin Building
 Philadelphia, PA 19104-6205
 Phone (215) 898-9708
 E: pennaros@lists.upenn.edu

DMS Contract:

Jill Hunter
 E: Jill.Hunter@ky.gov

B I L L T O	502105 CHFS DMS ADMIN AND FINANCIAL MGT 275 EAST MAIN, 6W-C FRANKFORT KY 40621 US	S H I P T O
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Total Order Amount: 879,614.00

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ORIGINAL CONTRACT – SIGNATURE PAGE

Approvals

This agreement is subject to the terms and conditions stated herein. By affixing signatures below, the parties verify that they are authorized to enter into this agreement 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 agreement 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 agreement.

1st Party:

_____	_____	_____
Signature	Title	
_____	_____	_____
Printed Name	Date	

2nd Party:

_____	_____	_____
Signature	Title	
_____	_____	_____
Printed Name	Date	

DMS Commissioner:

_____	_____	_____
Signature	Title	
_____	_____	_____
Printed Name	Date	

Approved as to form and legality:

Attorney

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Title Page

For

University Memorandum of Agreement

Cabinet for Health and Family Services

**Department for Medicaid Services
Commissioner's Office**

POINT OF CONTACT

**Brenda Abrams, Contract Specialist
Office of Administrative and Technology Services
Division of Procurement and Grant Oversight
PSC/MOA Branch
275 East Main Street
4 E-C
Frankfort, KY 40601
Telephone: 502 / 564-7736 ext. 2072
Fax: 502 / 564-5531
E-mail: BrendaK.Abrams@ky.gov**

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Memorandum of Agreement Terms and Conditions
Revised May 2016

This Memorandum of Agreement (MOA) is entered into, by and between the Commonwealth of Kentucky, Cabinet for Health and Family Services (CHFS), (“the Commonwealth”) and the Trustees of the University of Pennsylvania (“the Contractor”) to establish an agreement on behalf of the Department for Medicaid Services (DMS), Office of the Commissioner, 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. The initial MOA is effective from July 1, 2017 through June 30, 2018.

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.

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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.

2.00 Scope of Services:

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 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.

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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 Requirement:

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. The invoice must include at a minimum:

1. Vendor's Name and Address
2. PON2 number that invoice(s) are using for funding.

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3. Clearly list dates of service (from and to). Examples: January 1, 2017 – January 30, 2017.
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 not listing the requirements above will be rejected and sent back to the vendor 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.

2.04 CHFS/Agency Responsibilities

CHFS will:

1. Be responsible for approving all policy decisions, changes, interpretations and re-interpretation affecting all decisions made in regards to this contract.
2. 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.

3.00 Term Renewal

This contract shall be for an initial term commencing on July 1, 2017 and expiring on June 30, 2018, and will be renewed based on the Commonwealth's contract schedule. This project has an estimated contract period of five (5) years.

3.01 Cancellation clause:

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

3.02 Funding Out Provision:

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

3.03 Reduction in Contract Worker Hours:

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

3.04 Access to Records:

The state agency certifies that it is in compliance with the provisions of KRS 45A.695, "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The Contractor, as defined in KRS 45A.030(8) and (10), agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this agreement for the purpose of financial audit or program review. The Contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the agreement and shall be exempt from disclosure as provided in KRS 61.878(1)(c).

3.05 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 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.

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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.

3.06 Violation of tax and employment laws:

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

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

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.

Contractor must check one:

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.

3.07 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

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

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity or age. The Contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The Contractor agrees to provide, upon request, needed reasonable accommodations. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability. Such action shall include, but not be limited to the following; employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

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

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

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

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

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

7. The Contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

3.08 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 listed on the Title Page.

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BUSINESS ASSOCIATE AGREEMENT (STATE GOVERNMENT)

This Business Associate Agreement (Agreement) is entered into as of July 1, 2017 (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 1800000237;

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.;

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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,

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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

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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

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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

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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

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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

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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:

Karen Chrisman, Senior Policy Advisor
Department for Medicaid Services
275 East Main Street, 6W-A
Frankfort, KY 40621
(502) 564-4321, Ext. 2801

With a copy to:

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

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275 East Main Street, 4EW-C
Frankfort, KY 40621
(502) 564-7736, Ext. 2240

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.