



# Commonwealth of Kentucky

## CONTRACT MODIFICATION

**IMPORTANT**

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

<b>Doc Description:</b> Research, Data Analytics, & Measurement of Program Outcomes	
<b>Doc ID No:</b> PON2 746 160000805 3	<b>Procurement Folder:</b> 4247055
<b>Procurement Type:</b> Memorandum of Agreement	<b>Record Date:</b> 06/28/2017
<b>Issued By:</b> BRENDA ABRAMS	<b>Cited Authority:</b> FAP111-44-00
<b>Telephone:</b> 502-564-8196	

**Reason For Modification:** Original Contract: \$766,475.00  
 Amount of Increase: \$1,854,586.00  
 New Contract Amount: \$2,621,061.00

This modification is essential to add funding to allow services to continue in FY 18 and to extending the contract through June 30, 2018. See modification history for details.

(C78-1)

<b>C O N T R A C T O R</b>	University of Kentucky Research Foundation University of Kentucky 109 Kinkead Hall 172 Funkhouser Drive Lexington KY 405060057 US
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**Effective From: 07/01/2016**
**Effective To: 06/30/2018**

Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	Analytic Support FY 17		0.00		0.00000	650,274.00	650,274.00

**Extended Description**

Perform research and independent analysis as required in Section 2 in order to meet the "Triple Aim" objective; 1) Better healthcare for individual Medicaid/KCHIP beneficiaries, 2) Improved healthcare for the population (Medicaid/KCHIP), 3) Financial accountability and value-based decision making for healthcare resources.

Contract Term: July 1, 2016 - June 30, 2018

Funding: Multiple

CFDA # 93.767

2nd Party Contact:

Jeffery Talbert, PhD

Director, Institute for Pharmaceutical Outcomes and Policy

185 College of Pharmacy

University of Kentucky

789 South Limestone Street

Lexington, KY 40536-0596

859-323-7141

jeff.talbert@uky.edu

DMS Monitor for Analytic Support:

Cindy Arflack, Email: Cindy.Arflack@ky.gov

<b>B</b>	502105	<b>S</b>	
<b>I</b>	CHFS DMS ADMIN AND FINANCIAL MGT	<b>H</b>	
<b>L</b>	275 EAST MAIN, 6W-C	<b>I</b>	
<b>T</b>		<b>P</b>	
<b>O</b>	FRANKFORT KY 40621	<b>T</b>	
	US	<b>O</b>	

Effective From: 07/01/2016

Effective To: 06/30/2018

Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
2	Colon Cancer Grant 1502 FY 17		0.00		0.00000	30,000.00	30,000.00

**Extended Description**

Funding to support data needs including information related to costs of colon cancer the state through the 1502 Colon Cancer Grant for the Medicaid population and screening.

Contract Term: July 1, 2016 - June 30, 2018

Funding: 100% Federal

CFDA # 93.800

2nd Party Contact:

Jeffery Talbert, PhD  
 Director, Institute for Pharmaceutical Outcomes and Policy  
 185 College of Pharmacy  
 University of Kentucky  
 789 South Limestone Street  
 Lexington, KY 40536-0596  
 859-323-7141  
 jeff.talbert@uky.edu

Contract Monitor for Colon Cancer: Stephanie Bates, Email: Stephanie.Bates@ky.gov

<b>B</b>	502105	<b>S</b>	
<b>I</b>	CHFS DMS ADMIN AND FINANCIAL MGT	<b>H</b>	
<b>L</b>	275 EAST MAIN, 6W-C	<b>I</b>	
<b>T</b>		<b>P</b>	
<b>O</b>	FRANKFORT KY 40621	<b>T</b>	
	US	<b>O</b>	

Effective From: 07/01/2016

Effective To: 06/30/2018

Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
3	MIHI FY 17		0.00		0.00000	86,201.00	86,201.00

**Extended Description**

To support a data analytic team member dedicated to perform the requirements of the Centers for Medicare and Medicaid Services (CMS) grant to improve adult and child health through analysis of data for Maternal and Infant Health Initiative (MIHI).

Contract Term: July 1, 2016 - June 30, 2018

Funding: 100% Federal

CFDA # 93.644

2nd Party Contact:

Jeffery Talbert, PhD  
 Director, Institute for Pharmaceutical Outcomes and Policy  
 185 College of Pharmacy  
 University of Kentucky  
 789 South Limestone Street  
 Lexington, KY 40536-0596  
 859-323-7141  
 jeff.talbert@uky.edu

DMS Monitor for MIHI:

Carrie Cotton, Email: Carrie.Cotton@ky.gov

<b>B</b>	502105	<b>S</b>
<b>I</b>	CHFS DMS ADMIN AND FINANCIAL MGT	<b>H</b>
<b>L</b>	275 EAST MAIN, 6W-C	<b>I</b>
<b>T</b>	FRANKFORT KY 40621	<b>P</b>
<b>O</b>	US	<b>T</b>
<b>O</b>		<b>O</b>

Effective From: 07/01/2016

Effective To: 06/30/2018

Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
4	Analytic Support FY 18		0.00		0.00000	1,768,385.00	1,768,385.00

**Extended Description**

Perform research and independent analysis, as required in Section 2, to support the Cabinet's 1115 waiver expected to be issued by CMS. The waiver seeks to address the health care needs and employment opportunities of 'able bodied adults' enrolled in Medicaid. The expanded analytic team will characterize the impacted population, including their age, gender, household status, education, work status, income, recent medical claims, residential location, and associated managed care organization.

Contract Term: July 1, 2016 - June 30, 2018

Funding: Multiple

CFDA # 93.767

2nd Party Contact:

Jeffery Talbert, PhD  
 Director, Institute for Pharmaceutical Outcomes and Policy  
 185 College of Pharmacy  
 University of Kentucky  
 789 South Limestone Street  
 Lexington, KY 40536-0596  
 859-323-7141  
 jeff.talbert@uky.edu

DMS Monitor for Analytic Support:

Cindy Arflack, Email: Cindy.Arflack@ky.gov

<b>B</b>	502105	<b>S</b>
<b>I</b>	CHFS DMS ADMIN AND FINANCIAL MGT	<b>H</b>
<b>L</b>	275 EAST MAIN, 6W-C	<b>I</b>
<b>T</b>	FRANKFORT KY 40621	<b>P</b>
<b>O</b>	US	<b>T</b>
<b>O</b>		<b>O</b>

Effective From: 07/01/2016

Effective To: 06/30/2018

Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
5	MIHI FY 18		0.00		0.00000	86,201.00	86,201.00

**Extended Description**

To support a data analytic team member dedicated to perform research and other requirements of the Centers for Medicare and Medicaid Services (CMS) grant to improve adult and child health through analysis of data for Maternal and Infant Health Initiative (MIHI).

Contract Term: July 1, 2016 - June 30, 2018

Funding: 100% Federal

CFDA # 93.644

2nd Party Contact:

Jeffery Talbert, PhD

Director, Institute for Pharmaceutical Outcomes and Policy

185 College of Pharmacy

University of Kentucky

789 South Limestone Street

Lexington, KY 40536-0596

859-323-7141

jeff.talbert@uky.edu

DMS Monitor for MIHI:

Carrie Cotton, Email: Carrie.Cotton@ky.gov

<b>B I L L T O</b>	502105 CHFS DMS ADMIN AND FINANCIAL MGT 275 EAST MAIN, 6W-C  FRANKFORT KY 40621 US	<b>S H I P T O</b>
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<b>Total Order Amount:</b>	2,621,061.00
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**CONTRACT SIGNATURE PAGE – MODIFICATION # 2**

**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.

**1st Party:**

_____ Signature	_____ Title
_____ Printed Name	_____ Date

**2nd Party- UKRE:**

_____ Signature	_____ Title
_____ Printed Name	_____ Date

**Other Party – Department for Public Health:**

_____ Signature	_____ Title
_____ Printed Name	_____ Date

**Approved as to form and legality:**

\_\_\_\_\_  
Attorney

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**MODIFICATION HISTORY**  
**PON2 746 1600000805**

Modification 2 – May 3, 2017

Original Contract: \$766,475.00  
Amount of Increase: \$1,854,586.00  
New Contract Amount: \$2,621,061.00

This modification is essential to add funding to allow services to continue and to extend the contract through June 30, 2018.

This modification includes the following:

FY 18 Commodity Line 4, Accounting Line 1 – Added in its entirety

FY 18 Commodity Line 5, Accounting Line 1 – Added in its entirety.

Title of Contract changed in eMARS – **FROM:** Analytic Support FY 17/18 (C78-1)  
**TO:** Research, Data Analytics, and Measurement of Program Outcomes FY 17/18 (C78-1)

This modification also updates the following:

**Section 1.00–Purpose and Background – Revised in its entirety.**

**Section 1.01 – Issuing Office – Changed:**

**FROM:** Office of Policy and Budget  
**TO:** Division of Procurement and Grant Oversight

**Section 2.00–Services Required, C. – updated to include: “including custom dashboards;”.**

**Section 2.00–Services Required, P. – Not applicable to contract as of July 1, 2017.**

**Section 2.00-Services Required, O. – removed the word “practices”**

**Section 2.00-Services Required, O., iv. – added “Design” at the beginning of sentence.**

**Section 2.00–Services Required, R. – Added in its entirety.**

**Section 2.01 – Deliverables, C. – Revised in its entirety.**

**Section 2.01 – Deliverables, L. – Not applicable to contract as of July 1, 2017.**

**Section 2.02 - Reporting Requirements, E. - Not applicable to contract as of July 1, 2017.**

**Section 2.04 - Pricing and Payment Requirements, B. - Not applicable to contract as of July 1, 2017**

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**Section 2.04 - Pricing and Payment Requirements, D., E., F. – Added in their entirety.**

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**Section 4.01—Term of Contract and Renewal Options – FROM: July 1, 2016 – June 30, 2017  
TO: July 1, 2016 – June 30, 2018.**

**Section 4.53 – Performance Based Penalties; Section 4.54 Performance and Evaluation – Added in their entirety.**

**Modification 1 – March 31, 2017**

Original Contract: \$608,475.00  
Amount of Increase: \$158,000.00  
New Contract Amount: \$766,475.00

This modification adds federal funding to provide analytical support on projects that are outside of Children’s Health Insurance Program (CHIP) funding. The additional funds will enable the Department for Medicaid Services (DMS) to facilitate data to make key decisions regarding the quality standards in the expansion population that does not include children. Funding will further allow the ability to provide data requests related to the 1115 Waiver project. The scope of work will remain the same no additional requirements are being added to the scope of work.

This modification also includes the following changes:

Commodity Line 1, Accounting Line 2 – FY 17 Non-CHIP data – Added in its entirety.

Commodity Line 1, Accounting Line 3 – 1115 Waiver – Added in its entirety.

Contract contact information has been updated as follows:

**FROM:**

Brenda Abrams, Contract Specialist  
Department for Medicaid Services  
275 East Main Street, 6W-C  
Frankfort, KY 40621  
Telephone: 502 / 564-8196 ext. 2072  
Fax: 502 / 564-6917

**TO:**

Brenda Abrams Contract Specialist  
Office of Administrative and Technology Services  
Procurement and Grant Oversight  
PSC/MOA Branch  
275 East Main Street, 4E-C  
Frankfort, KY 40621  
Telephone: 502 / 564-7736 ext. 2072  
Fax: 502 / 564-5531  
E-mail: [BrendaK.Abrams@ky.gov](mailto:BrendaK.Abrams@ky.gov)

**Section 4.00 – Contract Components; 4.06 – Effective Date of Contract; 4.17 – Assignment Changed:**

**FROM:** Office of Policy and Budget  
**TO:** Division of Procurement and Grant Oversight

**Section 4.52 - Discrimination Prohibited – added in its entirety.**

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**Title Page**

**For**

**University Memorandum of Agreement**

**Cabinet for Health and Family Services**

**Department for Medicaid Services**

**Division of Program Quality and Outcomes**

**POINT OF CONTACT**

**Brenda Abrams, Contract Specialist  
Office of Administrative and Technology Services  
Procurement and Grant Oversight  
PSC/MOA Branch  
275 East Main Street, 4E-C  
Frankfort, KY 40621  
Telephone: 502 / 564-7736 ext. 2072  
Fax: 502 / 564-5531  
E-mail: [BrendaK.Abrams@ky.gov](mailto:BrendaK.Abrams@ky.gov)**



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## Section 1—Purpose and Background

### 1.00—Purpose and Background

**(NOT APPLICABLE TO THE CONTRACT AS OF JULY 1, 2017)** This contract is designed to support research evaluation for improving the effectiveness, economy, and the quality of services delivered to Medicaid and Kentucky Children’s Health Insurance Program (KCHIP) beneficiaries. It also provides for an expansion of the analytic team to establish baseline member characteristics and develop a research evaluation tool for Kentucky Medicaid’s forthcoming 1115 waiver.

**(EFFECTIVE TO THE CONTRACT AS OF JULY 1, 2017)** This contract is designed to evaluate and improve the effectiveness, economy, and the quality of services delivered to Medicaid and Kentucky Children’s Health Insurance Program (KCHIP) beneficiaries. The contract also provides support for research to expand the analytic team to establish baseline member characteristics and design, develop and generate a research evaluation tool for Kentucky Medicaid’s forthcoming 1115 waiver.

The research objectives which are identified as the focus for the scope of work are those articulated in the “Triple Aim”: 1) Better healthcare for individual Medicaid/KCHIP beneficiaries, 2) Improved healthcare for the population (Medicaid/KCHIP), 3) Financial accountability and value-based decision making for healthcare resources.

The Cabinet for Health and Family Services has determined that the functions enumerated in this Memorandum of Agreement and all other governing documents incorporated herein by reference, are necessary for the lawful performance of its duties in accordance with the statutory and regulatory requirements of the Commonwealth of Kentucky, and as specifically set forth in those Federal laws and regulations governing State administration of programs and funding.

The University of Kentucky Research Foundation, as Second Party, agrees that they are willing, available and qualified to perform the scope of work as detailed in this Agreement, and as specifically set forth and referenced in any Attachments.

**(NOT APPLICABLE TO CONTRACT AS OF JULY 1, 2017)** The Kentucky Department for Medicaid Services (DMS) works closely with the Kentucky Department for Public Health to support data needs including information related to costs of colon cancer in the state (through the 1502 Colon Cancer Grant)

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for the Medicaid population and screening through billing codes and payment. DMS utilizes the University Of Kentucky College Of Pharmacy to provide in-depth data analysis for these requests. It is expected that extensive data mining for colorectal cancer screening data, costs and Return On Investment (ROI) over the five year grant period will be through this method. With the expansion of Medicaid in Kentucky and multiple managed care organizations this information will be extremely important to the program for planning and evaluation.

The Kentucky Department for Medicaid Services (DMS) also is the recipient of a project grant entitled Improving Maternal and Infant Health Outcomes in Medicaid and CHIP. The recently awarded Maternal and Infant Health Initiative (MIHI) grant allows funding for one additional member of the data analytics team and will continue to support the current scope of work as well as additional research including data mining and analytics, program analyses, implementation support, independent data verification and validation, gap analysis and benchmarking, provide written reports and presentations as they relate to the developmental measure over the three year grant period.

**(APPLICABLE TO CONTRACT AS OF JULY 1, 2017)** The Kentucky Department of Medicaid Services (DMS) is embarking on a major demonstration, using an 1115 waiver issued by CMS, to address the health care needs of ‘able bodied adults’ enrolled in Medicaid. There is an urgent need to research and characterize the impacted population, including their age, gender, household status, education, work status, income, recent medical claims, residential location, and associated managed care organization. After the program is launched in calendar year 2018, there will be an ongoing need to monitor system usage, and adapt the program as DMS learns what is successful and what is not. The Cabinet does not currently have the data analytics capacity to establish the baseline or to monitor the program. The University of Kentucky has the access to data research scientists, including architects, analysts, database specialists, statisticians, and visualization experts. These can be deployed on-site at DMS in FY18.

### **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 Division of Program Quality and Outcomes. The Cabinet’s designee is authorized to change, modify, amend, alter, or clarify the specifications, terms and conditions of this Contract.

### **1.02—Communications**

The Contract Specialist named on the Title Page is the point of contact for communications concerning contract issues.

### **1.03—Terminology**

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

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

Contract Specialist, Buyer, Purchaser, or Contract Officer

Proposal, or Offer

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

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

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

### **1.04—Organization**

This contract is organized in the following manner:

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

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

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

Section 4—CHFS Standard Terms and Conditions

Section 5—Federal Requirements

## **Section 2—Scope of Work**

### **2.00—Services Required**

UK shall provide:

- A. Technical, analytic, and informational support to CHFS/DMS directors;
- B. Support for identification, migration, and integration for multiple disparate data sets;
- C. Data mining and analytics, including custom dashboards;
- D. Program Analysis and Implementation support including:
  - i. Business Cases Analysis
  - ii. Cost/Benefit Analysis and Cost Effectiveness Analyses
  - iii. Special Statistical Analysis
  - iv. Utilization Pattern Analysis
  - v. Complex Impact Analysis
- E. Independent data verification and validation where applicable;
- F. Support and recommendation for Information Technology Governance Process Development and Management;
- G. Gap Analysis and Benchmarking;
- H. Healthcare systems studies;
- I. Feasibility Studies;
- J. Clinical Protocol and Quality Assurance Decision Support;
- K. Bio-surveillance and Disease Management Support;
- L. Provide written report and presentations as applicable;
- M. Other issues as they relate to Medicaid/KCHIP clinical and quality programs;
- N. Staff that has a thorough understanding of the epidemiological and statistical measurement of health

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status indicators in defined populations, including the scope of data collection, the interpretation of data, and an understanding of the factors that may affect the data;

- O. Utilize standard research methodology (where applicable) in conducting this scope of work, including but not limited to:
  - i. Develop a work plan for the duration of the project
  - ii. Conduct all necessary background research
  - iii. Review population/sample selection criteria (if indicated)
  - iv. Design and devise data collection methods and tools
  - v. Perform any relevant data verification and validation
- P. **(NOT APPLICABLE TO THE CONTRACT AS OF 7/1/2017)** Provide data as requested through the 1502 Colon Cancer grant relating to costs of colon cancer in the state for the Medicaid population and ;
- Q. Provide technical, analytic, and informational support to the Program Manager on the Maternal and Infant Health Initiatives (MIHI) Grant.
- R. **(APPLICABLE TO CONTRACT AS OF JULY 1, 2017)** Attend training and conferences deemed necessary by the Department to remain current on applicable data and technology skills needed to successfully perform required contract duties.

## 2.01 - Deliverables

UK shall complete the following projects:

- A. Provide personnel resource for development and support of DMS “global” Quality program (both Fee for Fee Service (FFS) & Managed Care Organizations (MCO));
- B. Provide capacity and capability for warehousing and integrating multiple disparate data-bases for programmatic analysis and support (Initial project will be focused on Emergency Room (ER) “super- u tilizer” initiative; others will include psychotropic medications, and medical home, etc.);
- C. **(NOT APPLICABLE TO THE CONTRACT AS OF JULY 1, 2017)** Data integration will include working actively with other CHFS departments and outside providers to acquire disparate data sets, including but not limited to: Kentucky Health Information Exchange (KHIE), Department for Behavioral Health, Developmental and Intellectual Disabilities (BHDID), Department for Community Based Services (DCBS), Department of Public Health (DPH), Office of Inspector General (OIG), Kentucky Office of Health Benefit Exchange (KHBE), Vital Statistics, Registry, etc.;
- C. **(APPLICABLE TO THE CONTRACT AS OF JULY 1, 2017)** Data integration to support the Kentucky Health Data Trust, including detailed support of the 1115 waiver project. This involves working with CHFS departments and outside providers to acquire disparate data sets, such as: Kentucky Health Information Exchange (KHIE), Department for Behavioral Health, Developmental and Intellectual Disabilities (BHDID), Department for Community Based Services (DCBS), Department of Public Health (DPH), Office of Inspector General (OIG), Kentucky Office of Health Benefit Exchange (KHBE), Vital Statistics Registry, Kentucky Cabinet for Education and Workforce, ;
- D. Outline DMS quality program objectives and implementation strategy with timeline;
- E. Perform Medicaid/KCHIP analysis regarding current and historical healthcare cost, utilization, and quality of care with recommendations regarding programmatic activities;

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- F. Analysis of Complex Care and high needs populations in Medicaid/KCHIP;
- G. Provide on-site personnel for participation with DMS quality and data analytics team;
- H. Complete benchmarking analysis of healthcare cost, utilization, and analysis of DMS trends compared to national and regional benchmarks;
- I. Comparative effectiveness analysis and reporting process;
- J. Other issues as they relate to Medicaid/KCHIP;
- K. Complete work on requested projects as needed to support the medical and quality program;
- L. **(NOT APPLICABLE TO CONTRACT AS OF JULY 1, 2017)** Provide data relating to the 1502 Colon Cancer grant as requested by DPH and DMS;
- M. Compile data collection, completing written reports, submission of reports to CMS for the MIHI grant; and
- N. Build a mechanism for tracking MIHI grant program participation and the effects that the MIHI grant has on utilization and outcomes.

## 2.02 - Reporting Requirements

UK shall complete and submit the following to DMS for the Cost, Utilization, and Quality metrics project:

- A. Compile collected data;
- B. Complete written report of results;
- C. Provide the Department with electronic files of collected data;
- D. Present analysis results to Department management;
- E. **(NOT APPLICABLE TO CONTRACT AS OF JULY 1, 2017)** Provide the Department with data and reports as requested through the 1502 Colon Cancer grant and;
- F. Provide requested data, reports and analysis as required to fulfill the requirements of the MIHI grant as awarded.

## 2.03—Outcomes

UK shall focus on the following outcomes when performing the required services:

- A. Improvement in individual healthcare services
- B. Improvement in Medicaid/KCHIP population health
- C. Cost effectiveness

## 2.04 - Pricing and Payment Requirements

UK shall submit a monthly invoice in accordance with Section 3.08.

- A. The monthly invoice for payment of Analytical Support shall be submitted on separate invoice to



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the Division of Administration and Financial Management, Department for Medicaid Services, 275 East Main Street, Frankfort, KY 40621 or electronically to [DMS.Invoice@ky.gov](mailto:DMS.Invoice@ky.gov). Payment will be made as a PRC document in the Commonwealth's electronic financial system (eMARS), and in accordance with Section 4.08, and the attached approved budget.

- B. **(NOT APPLICABLE TO CONTRACT AS OF JULY 1, 2017)** The monthly invoice for payment of the Colon Cancer Grant shall be submitted on separate invoice including ONLY Colon Cancer Grant services to the Division of Administration and Financial Management, Department for Medicaid Services, 275 East Main Street, Frankfort, KY 40621 or electronically to [DMS.Invoice@ky.gov](mailto:DMS.Invoice@ky.gov). Payment will be made as a PRC document in the Commonwealth's electronic financial system (eMARS), and in accordance with Section 4.08.
- C. The monthly invoice for payment of the Maternal and Infant Health Issues (MIHI) Grant shall be submitted on separate invoice including ONLY MIHI services for billing purposes to the Division of Administration and Financial Management, Department for Medicaid Services, 275 East Main Street, Frankfort, KY 40621 or electronically to [DMS.Invoice@ky.gov](mailto:DMS.Invoice@ky.gov). Payment will be made as a PRC document in the Commonwealth's electronic financial system (eMARS), and in accordance with Section 4.08.
- D. **(APPLICABLE TO CONTRACT AS OF JULY 1, 2017)** The monthly invoice for payment of 1115 waiver data analytics Grant shall be submitted on separate invoice including ONLY 1115 services for billing purposes to the Division of Administration and Financial Management, Department for Medicaid Services, 275 East Main Street, Frankfort, KY 40621 or electronically to [DMS.Invoice@ky.gov](mailto:DMS.Invoice@ky.gov). Payment will be made as a PRC document in the Commonwealth's electronic financial system (eMARS), and in accordance with Section 4.08.
- E. **(APPLICABLE TO CONTRACT AS OF JULY 1, 2017)** Travel and training costs may be reimbursed up to the amount included in the approved budget. Prior approval from DMS is required. Travel and training costs shall be billed on the invoice corresponding with the approved budget sections.
- F. **(APPLICABLE TO CONTRACT AS OF JULY 1, 2017)** Computer, equipment and software costs may be reimbursed up to the amount included in the approved budget and shall be billed on the invoice corresponding with the approved budget sections.

Each invoice should include at a minimum:

1. Vendor's Name and Address
2. PON2 number used for funding of the invoice(s).
3. Clearly list dates of service (from and to). Example:  
Monthly Invoice: Dates of Service From: July 1, 2016 To: July 31, 2016.
4. Date of Invoice (date invoice is prepared).
5. Total amount due for the current billing cycle.
6. Cumulative Total for all invoices to date.

Invoices not listing the requirements above could be rejected and sent back to the vendor for re-invoicing.

If the contract funding is reduced, the scope of work associated with this contract may also be reduced to commensurate with the reduction in funding. This reduction of the scope will be agreeable

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to both parties and shall not be considered a breach of contract.

## 2.05 - CHFS/Agency Responsibilities

In relation to the agreement, the Cabinet agrees to perform the following functions through the Department for Medicaid Services:

- A. Monitoring and technical assistance will be provided to the second party.
- B. Receive the second party's billing and process invoices for payment contingent upon Department approval.
- C. Provide office space for UK personnel in the Frankfort DMS office area providing these services.
- D. Provide computer equipment that is CHFS property and specialized training (in house suite of tools; Bi-Query, graphical user interface (GUI); etc).
- E. Coordinate with project staff on review and revision of the survey instruments.
- F. Coordinate with project staff on design of studies.
- G. Provide project staff with Medicaid data files as needed for completion of projects.
- H. Provide consultation and support for project staff during development, execution and interpretation of projects.

## 2.06 – DMS Data Share Restrictions

UK shall use DMS data obtained through this contract solely to complete the required services herein. At no time should DMS data be utilized for any other purposes unless expressly authorized prior to use.

## 2.07 – Business Associate Agreement

Sign and agree to 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. The HITECH Act Rule in its entirety may be located at the following website:

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

## 2.08 – Technology Requirement

UK staff utilizing DMS technology shall agree to and sign the attached Onsite Contractor IT Policy within 10 business days following award of contract.

## 2.09—Performance and Evaluation

DMS may complete a Performance Evaluation (PE) twice a year to document contract performance. Estimated dates of completion are February 28 and August 30 of each FY. PE documents will be entered into the Commonwealth's electronic financial system (eMARS). Performance documented by PE

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may be considered when making future awards. To obtain a copy of the PE documents completed for this contract, contact the contract specialists listed in Section 1.02 of this contract.

## 2.10—Subcontractors

No subcontractors are currently authorized.

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

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

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

- a) An account, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
- b) A Social Security number;
- c) A taxpayer identification number that incorporates a Social Security number;
- d) A driver’s license number, state identification card number or other individual identification number issued by an agency;
- e) A passport number or other identification number issued by the United States government; or
- f) Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g.”

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

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

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

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

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

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

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

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

## **2.12—Related Documents and Materials Incorporated by Reference**

### **Budget**

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

### **3.00—Beginning of Work**

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

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

### **3.01—Cancellation**

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

### **3.02—Funding Out Provision**

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

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

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

### **3.04—Access to Records**

The state agency certifies that it is in compliance with the provisions of KRS 45A.695, "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The

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

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

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

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

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:

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.**

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

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

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity or age. The Contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The Contractor agrees to provide, upon request,

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needed reasonable accommodations. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability. Such action shall include, but not be limited to the following; employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

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

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

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

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

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

## **Section 4—CHFS Standard Terms and Conditions**

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

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

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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:

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

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

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

The term of the Contract is to be for the period of July 1, 2016 through June 30, 2018.

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

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

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

Pursuant to 200 KAR 5:311, no modification or change of any provision in the Contract shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the Contractor and the Commonwealth, and incorporated as a written amendment by the Department, named on the Title Page, of the Cabinet for Health and Family Services prior to the effective date of such modification or change. Memoranda of Understanding, written clarification, and/or correspondence shall not be construed as amendments to the Contract.

If the Contractor finds at any time that existing conditions make modification of the Contract necessary, it shall promptly report such matters to the Sole Point of Contact on the Title Page for consideration and decision.

**4.03—Changes in Scope**

The Commonwealth may, at any time by written order, make changes within the general scope of the Contract. No changes in scope are to be conducted except at the approval of the Commonwealth through the process described in Section 4.02—Changes and Modifications to the Contract.

**4.04—Notices**

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

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

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

**4.05—The Contract**

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

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

This agreement is not effective and binding until the Division of Procurement and Grant Oversight and the Secretary of the Finance and Administration Cabinet or his/her authorized designee have approved the contract and until the contract has been submitted to the Legislative Research Commission, Government Contract Review Committee (“LRC”).

Payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the Secretary. CHFS shall provide timely notice to the Contractor of disapproval of this Contract or any amendment thereto under KRS 45A.690-.725.

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

The terms and conditions of this Contract may be extended or amended according to the provisions of KRS Chapter 45A.690-.725, and are subject to the approval of the Division of Procurement and Grant Oversight and the Secretary of the Finance and Administration Cabinet. The Contractor may request an amendment by submitting a written request to the Cabinet for Health and Family Services, the Department and Address listed on the Title Page. Amendments are not in effect until written approval is received from CHFS. The Contractor shall not request an amendment for the last sixty (60) days of the Contract period.

#### **4.08 Payment**

The Commonwealth will make payment within thirty (30) working days of receipt of the Contractor’s invoice or of acceptance of goods and/or services in accordance with KRS 45.453, KRS 45.454, and KRS 44.010. Invoices for payment shall be submitted to the Department Contact Person or Department Contract Specialist listed on the Title Page or his/her representative.

Payments are predicated upon successful completion and acceptance of the described work, services, supplies, or commodities, and delivery of the required documentation. Payments on University Agreements shall not be authorized for services rendered if the Finance and Administration Cabinet has disapproved the contract.

Any and all claims for payment under this contract shall be presented to the Department no later than 270 calendar days after the expiration of the contract. Any claims submitted after that time shall be barred and shall not be paid.

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

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

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

#### **4.09 Expenses**



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**Travel expenses, if authorized:**

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

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

**Other expenses, if authorized herein:**

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

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

- A. Invoicing for fee: The Contractor's fee shall be original invoice(s) and shall be documented by the Contractor. The invoice(s) must detail the work performed and the time frame in which it was performed. The invoice must conform to the method described in the specifications of the contract.
- B. Invoicing for travel expenses: The contractor must follow instructions described in the specifications of the contract. Either original or certified copies of receipts must be submitted for airline tickets, motel bills, restaurant charges, rental car charges, and any other miscellaneous expenses.
- C. Invoicing for miscellaneous expenses: The Contractor must follow instructions prescribed in the specifications of the contract. Allowable expenses shall be documented and submitted on an original invoice or certified copy.

**4.10 Conflict-of-interest laws and principles**

The Contractor certifies that he is legally entitled to enter into this contract with the Commonwealth of Kentucky, and by holding and performing this contract will not be violating either any conflict of interest statute (KRS 45A.330-45A.340, 45A.990, 164.390), or KRS 11A.040 of the executive branch code of ethics, relating to the employment of former public servants.

**4.11 Social Security**

The Contractor and all other parties so contracted for services under the scope of service of this contract are cognizant that the CHFS is not liable for social security contributions pursuant to 42 U.S. Code, section 418, relative to the compensation of the Contractor during the effective dates of this Contract.

**4.12—Attachment(s)**

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

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Contract shall prevail.

#### **4.13—Contract Conformance**

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

#### **4.14—Advertising Award**

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.

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

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

#### **4.16—Minority Recruitment, Hiring and Reporting Requirements**

The Contractor shall maintain and provide documentation, as needed, of its minority recruiting and hiring policies and procedures, and make available, upon request, a report of these activities.

#### **4.17—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.

#### **4.18—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:

- A. promptly cures all defaults under this Contract;
- B. promptly compensates the Commonwealth for the monetary damages incurred as a result of such default, and
- C. provides adequate assurance of future performance, as determined by the Commonwealth.

#### **4.19—Contractor Cooperation in Related Efforts**

The Commonwealth of Kentucky may undertake or award other contracts for additional or related work, services, supplies, or commodities, and the Contractor shall reasonably 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.

#### **4.20—Headings**

The section headings in this Contract are for reference and convenience only and shall not have any

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effect on the construction or legal effect of this Contract.

#### **4.21—Severability**

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

#### **4.22—Indemnification**

To the extent permitted by Kentucky law, the Contractor shall indemnify and hold harmless CHFS and its agents, representatives, officers, directors, employees, insurers, successors, and assigns from and against any and all expenses, costs (including attorneys' fees), causes of action, liability, loss and/or damages suffered or incurred by it or any of them, that results from or arises out of (a) any willful misconduct or any negligent or unauthorized acts or errors or omissions which are committed by Contractor or its employees, agents or subcontractors in the performance of this Contract; (b) the policies and procedures of the Contractor, specifically including all employment practices utilized by the Contractor during the term of this agreement with CHFS; (c) the improper or unauthorized publication, translation, reproduction, delivery, performance, use or disposition by the Contractor of any data produced by CHFS, provided that such action was not taken by the Contractor as a result of the express written request of CHFS; or (d) the Contractor's failure to comply with any applicable state or federal laws or regulations.

The parties hereby acknowledge that the Contractor is a state agency, subject to the jurisdiction of the Board of Claims pursuant to KRS 44.070 through KRS 44.160, and that the Contractor's tort liability is limited to an award from the Board of Claims, in accordance with Kentucky law.

#### **4.23—Sovereign Immunity**

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

#### **4.24—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.

#### **4.25—Obligation of Good Faith**

Each party shall be obligated to act in good faith in the performance and enforcement of its obligations herein, and shall deal fairly, honestly and reasonably with the other party, having due regard for all relevant facts and circumstances.

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#### **4.26—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 all codes of ethics or conduct applicable to the scope of work and services being provided through this contract. The codes of ethics include those which 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 may result in the immediate termination of the contract.

#### **4.27—Influence on Purchasing and Other Business Transactions**

The Contractor shall not attempt, in any manner, to influence any business transactions to be unlawful in any way or respect, nor attempt in any way to influence specifications for or purchasing of services, commodities, or equipment by the Commonwealth of Kentucky.

#### **4.28—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.

#### **4.29—Service Delivery Requirements**

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

- A. All applicable federal and state statutes and regulations as they are currently in effect;
- B. All commitments and assurances as set forth in all CHFS grant awards with respect to goals, strategies, funding, and outcomes made by the Commonwealth as required by and contained in grant applications to federal agencies, foundations, and other agencies providing grant funding and in the resulting award notices from those agencies; and
- C. All final federally-funded grant award terms and conditions, including federal reporting and expenditure requirements, for any federally-funded proposed project developed jointly by the Contractor and CHFS and submitted to a federal agency.

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

The roles and responsibilities and the written qualifying criteria for all personnel to be employed under the scope of work for all projects funded under this Contract, including any proposed employees under subcontract to the Contractor, shall be in compliance with state and federal laws governing the distribution of funds and the performance of activities as set forth in the project(s) in this Contract. The Contractor shall maintain and make available, upon written request, documentation of all personnel policies and procedures that govern the recruitment, hiring and performance evaluation for all personnel funded under this Contract. All employees hired by the Contractor or its subcontractors and funded under the terms and conditions of this Contract, shall have position descriptions which set out the required qualifications, skills and knowledge required to complete the scope of work as set out under this Contract.

#### **4.31—Terms and Conditions of Contract Payments**

The Contractor shall not begin work on this contract until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the contract.

CHFS shall make payment to the Contractor only after the Secretary of the Finance and Administration Cabinet or his designee approves the contract except as otherwise exempt. Once approved, CHFS shall

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make payment to the Contractor within thirty (30) business days of receipt of accurate, acceptable and timely invoices, as specified in the Contract, submitted by the Contractor under the terms and conditions of the Contract. Payment is contingent upon Contractor's continued satisfactory performance throughout the duration of contract, as determined by CHFS. The invoice shall contain at a minimum the following information:

Description of the service performed;

Itemized statement of costs for a cost reimbursement contract;

Dates and hours, if applicable, of the services provided; and

Other information as required in this Contract.

Payment on contracts shall not be authorized for services rendered after the Finance Cabinet's disapproval, CHFS shall reimburse the Contractor for services rendered only. If, for any reason, the Contractor is unable to render services, CHFS shall not be liable for payment to the Contractor for the time period in which the Contractor does not provide the services for which CHFS contracted.

CHFS shall reimburse the Contractor for benefits accrued during the contract period only in accordance with the approved budget and shall not be liable for benefits accrued prior to the beginning of or after the end of the contract period. All invoices for benefits, including sick, compensation, and annual leave time must be submitted prior to the contract expiration date to be considered appropriate, acceptable, and timely.

Payment is subject to the availability and allocation of local agency or governmental funds, or state or federal funds necessary to finance the performance of the services described in this Contract. CHFS retains the right to withhold payment if the Contractor does not comply with CHFS programmatic and fiscal reporting and monitoring requirements.

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

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

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

#### **4.33—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.

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

##### **A. 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

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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: Cabinet for Health and Family Services, Name of Department, Department Address listed on the Title Page.

**B. 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 Second Party's contract with the subcontractor. The Contractor agrees to utilize restraints or 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 which are pertinent to this contract or Subcontract, for the purposes of making monitoring, auditing, examination, excerpts, and transcriptions.

**4.34—Indirect Cost**

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

**4.35—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) are resolved in accordance with applicable federal and/or state laws, regulations, and policies (except as may otherwise be specified in this contract).

**4.36—Equipment and Property**

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

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

**A. Property of CHFS**

Equipment and property purchased by CHFS for the purposes of fulfilling the requirements of this Contract, and which may include, but not be limited to, furniture, computer software, computer hardware, office equipment, and supplies are considered the property of CHFS with any single item purchase of \$500.00 or greater, as well as single item purchases of \$5000.00 or greater (capital expenditures), requiring prior approval by the Cabinet. Any Capital Expenditures of \$5,000 or greater with Federal Dollars must also have the Federal Agency Prior Approval before the Federal government will allow the costs in accordance with 2 CFR, Part 200. All computer and information technology equipment purchases, regardless of cost, require prior approval from the Finance and Administration Cabinet's Commonwealth Office of Technology and must comply

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with state technology standards. All required prior approvals shall be obtained by e-mailing the Contract Specialist referenced on the Title Page of this contract. This equipment and property will remain as such, unless otherwise set forth in this Contract or other controlling documents incorporated herein by reference.

**B. Property Control Ledger/Logs**

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

1. CHFS Property Tag Number;
2. Equipment serial number;
3. Full Description of the item including make, model, color, etc;
4. Unit invoice to include all cost (i.e. upgrades to the item such as additional computer memory purchased);
5. Date of purchase and/or lease;
6. Location where the equipment and furniture are located, include full address and state building number when applicable; and
7. Name of individual responsible for the equipment.

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

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

**C. Requirement of Inventory**

**1. Inventory Tracking**

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

**2. Loss/Destruction**

The Contractor shall immediately notify the Department immediately if an item purchased by CHFS is damaged, missing, or stolen. In compliance with KRS 45.313, the Contractor shall forward in writing to CHFS the item description and corresponding property tag number with a written explanation of how the item was damaged, missing, and a police report if the item was stolen. The Department will immediately notify the Agency Property Officer and the DFM,

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such that the proper steps can be taken to document/claim this loss to support replacement of the item if possible.

### 3. Surplus

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

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

Upon receipt of the B-217, the Agency's property officer shall review the fixed asset information and advise if the disposal method requested is approved. If the item(s) were purchased by federal funds, any funds received from the sale of the equipment having an acquisition cost of \$5,000 or more, must be credited against the appropriate federal grant.

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

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

#### **4.37—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.

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 Contractor directly or by an offset against future payments.



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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.

Contractor shall notify CHFS within five (5) business days of any cancellation or interruption of Contractor or Subcontractor's insurance coverage. CHFS shall require in any subcontracts that the Subcontractor provide such notice within five (5) business days the Contractor and CHFS. 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.

#### **4.38—Research Project Approval and Institutional Review Board Requirements**

Any proposed research project undertaken pursuant to the terms and conditions of this agreement that involves human subjects shall be submitted to the Cabinet for Health and Family Services Institution Review Board (CHFS IRB) prior to involving any human subjects or their records, in accordance with 920.KAR 1:060.

#### **4.39—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 50.101 to 50.104 (and 900 KAR 1:080, as applicable) as amended, and shall be made available, upon request, to the Cabinet for Health and Family Services. 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.

#### **4.40—Intellectual Property**

- A. The Contractor agrees that any formulae, methodology, other reports and compilations of data provided by CHFS ("CHFS IP") to the Contractor for the purposes of meeting the terms and conditions of this Contract shall be the exclusive property of the Cabinet, unless the specific ownership of any proposed or developed formulae, methodology or data compilation analyses is otherwise identified in any Attachment(s). CHFS certifies that it has the authority and hereby grants the Contractor the rights/license necessary for the Contractor to use CHFS IP for the purposes of Contractor performing or fulfilling its obligations under this Agreement. Any use of formulae, methodology, other reports, data or compilation of data provided by CHFS to the Contractor for purposes other than fulfilling the obligations within this contract is prohibited without the prior written consent of CHFS.
- B. The Contractor agrees that any resulting analysis, reports, compilations of data or other delivered work product prepared or produced by the Contractor during the course of work pursuant to this Contract and any other Deliverables as specified in section 2.01 Deliverables of this agreement (collectively "Contractor Deliverables") shall belong to CHFS and shall not be published or otherwise used by the Contractor for purposes other than fulfilling the requirements of this contract without the prior written consent of CHFS.
- C. The Contractor agrees that any formulae, methodology, techniques or other intellectual property of Contractor that was in existence prior to execution of this agreement or was used, developed or modified in the preparation or production of Contractor Deliverables ("Contractor Background IP") that CHFS needs to be able to use, substantiate the validity of or otherwise make Contractor Deliverables available to third parties will be licensed with a non-exclusive royalty free license and

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made available to CHFS for the Cabinet’s use upon request and without charge. Notwithstanding the preceding it is understood that Contractor Background IP does not include intellectual property of third parties that Contractor does not have the rights to license to CHFS (e.g. database software or other software utilities not owned or developed by Contractor). Contractor agrees to notify CHFS if CHFS’s use of any Contractor Deliverables or Contractor Background IP is known to require use of any such third party intellectual property.

- D. The Contractor further agrees that if any of the CHFS IP is planned to be 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 (“Publication”), appropriate credit for the funding source must be given. Contractor agrees to share the planned Publication with CHFS a minimum of thirty (30) days prior to the planned Publication CHFS acknowledges that Contractor is a nonprofit educational institution, whose employees routinely publish the results of their work in various scholarly venues. CHFS commits to work with Contractor to allow publications to the extent practicable.

This provision shall be included in any subcontract, including contracting for staff, issued by the Contractor under this Contract.

**4.41—Turnover Assistance**

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 vendor or to perform the work by itself. If the turnover assistance required by CHFS necessitates additional costs to be incurred by the Contractor not covered by the agreement, CHFS will reimburse such costs as allowable by funding.

**4.42—Licensure, Certification, and Registration**

The Contractor shall:

- A. Ensure that each employee under contract or in its employ obtains and maintains all appropriate licenses, registrations, and/or certifications (at all times) necessary to the extent such are required for performance under this Contract;
- B. Ensure that it has readily accessible copies of licenses, registration and/or certifications necessary for each employee under contract or in its employ; and
- C. Produce copies of any employee’s license, registration and/or certification at the request of CHFS or the Cabinet’s designee.

**4.43—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 maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this Contract. Such registration is obtained from the Secretary of State, who will also provide the certification thereof. Additional local registration or license may be required.

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.

**4.44—Disputes**

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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.

#### **4.45—Legal Proceedings**

Except as specifically disclosed in writing to CHFS by the Contractor, prior to the date of this Contract, Contractor certifies there are no suits, investigations, or other proceedings pending or threatened against Contractor or any subcontractor which would have a material effect on 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 Contractor related to this Contract. The Contractor shall send written notice to the Department.

#### **4.46—Certification Regarding Drug Free Workplace**

The Contractor hereby certifies that it will, or will continue to, provide a drug free workplace in accordance with 45 CFR Part 182. The Contractor shall at a minimum:

- A. 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;
- B. Establish an ongoing drug free awareness program to inform employees about:
  - 1. The dangers of drug abuse in the workplace;
  - 2. The Contractor's policy of maintaining a drug free workplace;
  - 3. Available drug counseling, rehabilitation and employee assistance programs; and
  - 4. The penalties that may be imposed upon employees for drug abuse violation.

#### **4.47—Confidential Information**

The University shall comply with the provisions of the Federal Privacy Act of 1974 related to federal funding and instruct its employees to use the same degree of care as it uses with its own data to keep confidential information concerning client data, the business of the Commonwealth, its financial affairs, its relations with its citizens and its employees, as well as any other information which may be specifically classified as confidential by the Commonwealth in writing to the University. The University will comply with all Federal and State Regulations and Statutes related to confidentiality that are applicable to the

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University. The University shall have an appropriate agreement with its employees to that effect, provided however, that the foregoing will not apply to:

- A. Information which the Commonwealth has released in writing from being maintained in confidence;
- B. Information which at the time of disclosure is in the public domain by having been printed and published and available to the public in libraries or other public places where such data is usually collected;
- C. Information, which, after disclosure, becomes part of the public domain as defined above, through no act of the Contractor
- D. Information required to be disclosed by law;
- E. Information which the recipient lawfully had in his possession at the time of disclosure, as established by written documentation in existence at the time of disclosures, and that was not acquired directly or indirectly from the University or with knowledge of confidentiality restrictions;
- F. Information independently developed by recipient without use of or reference to the University's confidential information; or
- G. Documents which are generally recognized as subject to disclosure under the Kentucky Open Records Act.

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

**4.48—Confidentiality, Confidentiality Agreements and Limitations on Information and Data Use**

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

- A. The Contractor shall cause all personnel who may have access to confidential information provided by CHFS to enter into CHFS approved confidentiality agreements and shall maintain such confidentiality agreements on file. CHFS reserves the right to direct the removal from contract administration, or the termination of access to CHFS provided information, for any individual covered by this Contract who has not signed a confidentiality agreement.
- B. Any subcontractor, their agent, and any of their employees who enter into any type of agreement to fulfill the requirements of this contractual agreement with the Contractor, must provide written assurances that they and any of their agents will abide by the terms of confidentiality as set forth in this Contract, as well as any federal or state confidentiality agreements which may govern the terms and conditions in this Contract.
- C. Any dissemination of information about projects funded and the scope of work described in the terms and conditions of this Contract, must be fully documented and reviewed by the Cabinet's project manager before any representation, electronic or otherwise, of projects, their funding sources, use of data, or data analyses may be posted to a web page or otherwise published.
- D. The Contractor shall permit unrestricted access on demand to personnel of the Cabinet, the Office of the Attorney General, the Office of the Auditor of Public Accounts, and any representative of a government funding agency authorized to review records for audit or investigation purposes to its current policies and procedures for ensuring compliance with these confidentiality requirements,

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the confidentiality agreements with its personnel, and subcontractor confidentiality assurances.

#### **4.49—HIPAA Confidentiality Compliance**

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

#### **4.50—Governing Law**

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

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

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

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

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

#### **4.52—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 as Amended (ADAA), 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 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

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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 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 for 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).

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#### 4.53—Performance Based Penalties

Upon a determination of failure to perform services outlined in Section 2, the Cabinet may issue penalties up to 5% of the total amount of contract for 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 below (section 4.53, item 1, paragraph B).

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 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.

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 \$1000.00 per day penalty for each day until the Corrective Action Plan is received.

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#### 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 Section 5.00.02 (Provisions for Termination) of the contract.
  
3. Upon timely resolution of all performance based issues outlined in the Correction Action Plan, the vendor 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 Second Party
  
  - B. Resolution within 60 days: at least 50% will be reimbursed to Second Party
  
  - C. Resolution within 90 days: at least 25% will be reimbursed to Second Party
  
  - D. Resolution after 90 days: total penalty withholdings are forfeited

#### **4.54—Performance and Evaluation**

CHFS may complete a Performance Evaluation (PE) once a year to document contract performance. Estimated dates of completion are January 31 of each FY. PE documents will be entered into the Commonwealth’s electronic financial system (eMARS). Performance documented by PE may be considered when making future awards. To obtain a copy of the PE documents completed for this contract, contact the Contract Specialist listed on the Title Page.

#### **Section 5—Federal Requirements**

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

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



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or other.

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

### **5.00.01—Remedies for Breach**

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

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

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

This Contract may be terminated:

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

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

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

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

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

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

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

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the

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extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

T&C rev. 04.18.2016