



# Commonwealth of Kentucky

## CONTRACT MODIFICATION

**IMPORTANT**

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

<b>Doc Description:</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	
<b>Doc ID No:</b> PON2 746 1700001840 2	<b>Procurement Folder:</b> 4510926
<b>Procurement Type:</b> Memorandum of Agreement	<b>Record Date:</b> 10/17/2017
<b>Issued By:</b> Lindsay Jackson	<b>Cited Authority:</b> FAP111-44-00
<b>Telephone:</b> 502-564-8196	

**Reason For Modification:** Original Contract: \$1,173,657.00  
 Amount of Increase: \$234,079.00  
 New Contract Amount: \$1,407,736.00

This modification is essential to add federal funds to continue support services related to the implementation of the 1115 Waiver program. See modification history for more information.

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CABINET FOR WORKFORCE DEVELOPM  
 300 Building  
 300 Sower Blvd.  
 FRANKFORT KY 40601  
 US

**Effective From:** 02/01/2017

**Effective To:** 06/30/2018

Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	FY17 - Kentucky HEALTH Support - Edu/Workforce		0.00		0.00000	345,193.00	345,193.00

**Extended Description**

Leadership and administrative support services for special programs and staff to accomplish tasks and goals related to the implementation of the Kentucky HEALTH Waiver program.

Term of Contract - 02/01//2017 - 06/30/2018

Funding:50% Federal/50% Agency

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

Vendor Contact:

David Morris  
 Director of Administrative Services  
 Education and Workforce Development Cabinet  
 300 Sower Blvd, 4th Floor  
 Frankfort, KY 40601

Contract Monitor:

Jill Hunter  
 Deputy Commissioner  
 CHFS Department for Medicaid Services  
 Frankfort, KY 40621

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

Effective From: 02/01/2017

Effective To: 06/30/2018

Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
2	FY18 - Kentucky HEALTH Support - Edu/Workforce		0.00		0.00000	1,062,543.00	1,062,543.00

**Extended Description**

Leadership and administrative support services for special programs and staff to accomplish tasks and goals related to the implementation of the Kentucky HEALTH Waiver program.

Term of Contract - 02/01//2017 - 6/30/2018

Funding:50% Federal/50% Agency

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

Vendor Contact:

David Morris  
 Director of Administrative Services  
 Education and Workforce Development Cabinet  
 300 Sower Blvd, 4th Floor  
 Frankfort, KY 40601

Contract Monitor:

Jill Hunter  
 Deputy Commissioner  
 CHFS Department for Medicaid Services  
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<b>B I L L  T O</b>	502105	<b>S H I P  T O</b>
	CHFS DMS ADMIN AND FINANCIAL MGT	
	275 EAST MAIN, 6W-C	
	FRANKFORT KY 40621 US	

<b>Total Order Amount:</b>	1,407,736.00
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1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 3</b> of 40
------------	--------------------------------	--	------------------------

**CONTRACT SIGNATURE PAGE MODIFICATION #1**

**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:**

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

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

**Department Commissioner:**

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

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

**Other Party:**

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

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

**Approved as to form and legality:**

Attorney

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 4</b> of 40
------------	--------------------------------	--	------------------------

Modification1 – September 12, 2017

Original Contract: \$1,173,657.00  
Amount of Increase: \$ 234,079.00  
New Contract Amount: \$1,407,736.00

This modification is essential to add federal funds to FY18 to continue to support services related to the implementation of the 1115 Waiver program.

In addition, this modification is essential to revise staff in Section 2.01 - Pricing and Payment Requirements:

Executive Advisor (50%)

Commissioner (30%)

Chief Information Officer (50%)

Administrative Coordinator (50%)

Administrative Support Staff (50%)

Executive Director (100%)

Staff Assistant (90%)

Special Assistant (90%)

Administrative Coordinator (10%)

Systems Architect (50%)

Systems Architect (50%)

Senior Developer (30%)

In Section 2.01 – Pricing and Payment Requirements, this modification also changes the position title eligible for travel from Executive Advisor to Executive Director.

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 5</b> <b>of 40</b>
------------	--------------------------------	---	-------------------------------

**Title Page**

**For**

**Memorandum of Agreement**

**Between a State Agency & Other Governmental Body or Political Subdivision**

**Cabinet for Health and Family Services**

**Department for Medicaid Services**

**And**

**Education and Workforce Cabinet**

**POINT OF CONTACT**

**Lindsay Jackson, CPPO, CPPB**  
**PSC/MOA Branch Manager**  
**Office of Administrative and Technology Services**  
**Division of Procurement and Grant Oversight**  
**275 East Main Street, 4E-C**  
**Frankfort, KY 40621**  
**Telephone: 502 / 564-7736 ext. 2095**  
**E-mail: [Lindsay.Jackson@ky.gov](mailto:Lindsay.Jackson@ky.gov)**

**TABLE OF CONTENTS**

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 6</b> of 40
------------	--------------------------------	--	------------------------

[Section 1#Purpose and Background](#)

[1.00#Purpose and Background](#)

[1.01#Issuing Office](#)

[1.02#Communications](#)

[1.03#Terminology](#)

[1.04#Organization](#)

[Section 2#Scope of Work](#)

[2.00#Services Required](#)

[2.01#Pricing and Payment Requirements](#)

[2.02-CHFS/Agency Responsibilities](#)

[2.03#Subcontractors](#)

[2.04#Protection of Personal Information Security and Breach Investigation Procedures and Practices Act](#)

[2.05#Business Associate Agreement](#)

[2.06#Information Technology Requirements](#)

[Section 3#Finance Terms and Conditions of the Contract](#)

[3.00#Beginning of Work](#)

[3.01#Cancellation](#)

[3.02#Funding Out Provision](#)

[3.03#Reduction in Contract Worker Hours](#)

[3.04#Access to Records](#)

[3.05#Violation of tax and employment laws](#)

[3.06#Discrimination Prohibited \(Because of Race, Religion, Color, National Origin, Sex, Sexual Orientation, Gender Identity, Age, or Disability\)](#)

[Section 4#CHFS Standard Terms and Conditions](#)

[4.00#Contract Components and Order of Precedence](#)

[4.01#Term of Contract and Renewal Options](#)

[4.02#Changes and Modifications to the Contract](#)

[4.03#Notices](#)

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 7</b> of 40
------------	--------------------------------	--	------------------------

[4.04#The Contract](#)

[4.05#Effective Date of Contract and Earliest Date of Payment](#)

[4.06#Contract Renewals](#)

[4.07#LRC Policies](#)

[4.08#Choice of Law and Forum](#)

[4.09#Authorized to do Business in Kentucky](#)

[4.10#Payment](#)

[4.11#Expenses](#)

[4.12#Purchasing and specifications](#)

[4.13#Conflict-of-interest laws and principles](#)

[4.14#Campaign Finance](#)

[4.15#Protest](#)

[4.16#Social Security](#)

[4.17#Registration with the Secretary of State by a Foreign Entity](#)

[4.18#Attachment\(s\)](#)

[4.19#Contract Conformance](#)

[4.20#Advertising Award](#)

[4.21#No Required Use of Contract](#)

[4.22#Minority Recruitment, Hiring and Reporting Requirements](#)

[4.23#Assignment](#)

[4.24#Bankruptcy](#)

[4.25#Contractor Cooperation in Related Efforts](#)

[4.26#Headings](#)

[4.27#Severability](#)

[4.28#Indemnification](#)

[4.29#Sovereign Immunity](#)

[4.30#Force Majeure](#)

[4.31#Code of Ethics](#)

[4.32#Notices and Pamphlets](#)

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 8</b> of 40
------------	--------------------------------	--	------------------------

[4.33#Service Delivery Requirements](#)

[4.34#Total Amount of Funds and Budget Revisions](#)

[4.35#Subcontractors](#)

[4.36#Indirect Cost](#)

[4.37#Financial Record Retention](#)

[4.38#Response/Compliance with Audit Findings](#)

[4.39#Equipment and Property](#)

[4.40#Maintenance of Insurance](#)

[4.41#Research Project Approval and Institutional Review Board Requirements](#)

[4.42#Scientific Misconduct](#)

[4.43#Intellectual Property](#)

[4.44#Turnover Assistance](#)

[4.45#Licensure, Certification, and Registration](#)

[4.46#Permits, Licenses, Taxes and Laws](#)

[4.47#Legal Proceedings](#)

[4.48#Certification Regarding Drug Free Workplace](#)

[4.49#Confidential Information](#)

[4.50#Confidentiality, Confidentiality Agreements and Limitations on Information and Data Use](#)

[4.51#HIPAA Confidentiality Compliance](#)

[4.52#No Grant of Employment or Agency](#)

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

[Section 5#Federal Requirements](#)

[5.00#Certain Provisions Contained Within 2 CFR Part 200 Appendix II](#)

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

### **1.00—Purpose and Background**

This contract is designed as a payment mechanism to provide reimbursement for leadership and



1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 9 of 40</b>
------------	--------------------------------	--	-------------------------

administrative support services for special programs and staff to accomplish tasks and goals related to the implementation of the 1115 Waiver program.

### **1.01—Issuing Office**

The Commonwealth of Kentucky, Cabinet for Health and Family Services, Division of Procurement and Grant Oversight, is issuing this Contract on behalf of the Department for Medicaid Services. The Cabinet's designee is the only office authorized to change, modify, amend, alter, or clarify the specifications, terms and conditions of this Contract.

### **1.02—Communications**

The Contract Specialist 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:

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

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

Section 3— Finance Terms and Conditions of the Contract

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

Section 5—Federal Requirements

## **Section 2—Scope of Work**

### **2.00—Services Required**

The Cabinet of Education and Workforce Development shall:

Support the implementation of Kentucky HEALTH in coordinating state, community partner, and vendor activities from a conceptual, operational, administrative, and technical standpoint. This includes, but is not limited to:

- A. Coordination of and participation in conceptual strategic planning meetings and high-level requirements sessions,

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 10</b> of 40
------------	--------------------------------	--	-------------------------

- B. Development of high-level requirements, and
- C. Assisting with coordinating design and detailed requirements for cross-cabinet needs in support of the 1115 Medicaid Waiver Project.
- D. Facilitating ongoing conversations between state stakeholders, vendors, and community partners to provide transparency on the following:
  - 1. Policy design,
  - 2. System development,
  - 3. Testing/pilot activities, and
  - 4. Overall progress.

This will include presentation of information to external partners with whom the Cabinet does business.

- E. Coordinate necessary additions and revisions to operational manuals, notice language, stakeholder and public communication plans, contracts, and administrative rule as a result of implementation of Kentucky HEALTH.

## **2.01—Pricing and Payment Requirements**

The following positions will be eligible for reimbursement up to the following percentages of their salaries:

[NOT EFFECTIVE AS OF 10/1/2017]

Chief of Staff (50%)

Commissioner (30%)

Chief Information Officer (50%)

Administrative Coordinator (50%)

Administrative Support Staff (50%)

Executive Advisor (100%)

[EFFECTIVE AS OF 10/1/2017]

The following positions will be eligible for reimbursement up to the following percentages of their salaries:

Executive Advisor (50%)

Commissioner (30%)

Chief Information Officer (50%)

Administrative Coordinator (50%)

Administrative Support Staff (50%)

Executive Director (100%)

Staff Assistant (90%)

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 11</b> <b>of 40</b>
------------	--------------------------------	--	--------------------------------

Special Assistant (90%)

Administrative Coordinator (10%)

Systems Architect (50%)

Systems Architect (50%)

Senior Developer (30%)

[NOT EFFECTIVE AS OF 10/1/2017] Travel and other approved costs associated with the Executive Advisor may be reimbursed up to the amount included in the approved budget.

[EFFECTIVE AS OF 10/1/2017]

Travel and other approved costs associated with the Executive Director may be reimbursed up to the amount included in the approved budget.

All costs shall be shown on a separate line item on the billing invoice corresponding with the approved budget and in accordance with Section 4.11 of this contract.

Invoices for payment shall be submitted to the [DMS.Invoice@ky.gov](mailto:DMS.Invoice@ky.gov). Invoices must be submitted no later than **thirty** (30) days after completion of the service. The invoice must include at a minimum:

1. Vendor's Name and Address
2. PON2 number that invoice(s) are using for funding.
3. Clearly list dates of service (from and to). Examples: January 1, 2017 – January 30, 2017.
4. Date of Invoice (date invoice is prepared) July's invoice should be prepared no later than August 30.
5. Total amount due for the current billing cycle.
6. Cumulative Total for all invoices to date.

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

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

## **2.02-CHFS/Agency Responsibilities**

DMS is responsible for:

- A. Monitoring activities and evaluate performance pursuant to the contract requirements.
- B. Assuring that all policy decisions, changes, interpretations, and reinterpretations affecting this contract are distributed promptly to KDE.
- C. Any changes or implementation shall require prior approval from the Kentucky HEALTH project leader
- D. Federal Reporting.

## **2.03—Subcontractors**

Subcontractors may be allowed with prior written approval.

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 12</b> of 40
------------	--------------------------------	--	-------------------------

## 2.04—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.

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

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 13</b> <b>of 40</b>
------------	--------------------------------	--	--------------------------------

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>

### **2.05—Business Associate Agreement**

Sign and agree to the attached Business Associate Agreement (BAA) that is in accordance with HIPPA and outlines the requirements imposed by the Health Information Technology for Economic and Clinical Health (HITECH) 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>

### **2.06—Information Technology Requirements**

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

## **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 contract 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

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 14</b> of 40
------------	--------------------------------	--	-------------------------

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.

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

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

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

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 15</b> of 40
------------	--------------------------------	--	-------------------------

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**

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

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 16</b> of 40
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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 February 1, 2017 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—Notices**

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

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

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

**4.04—The Contract**

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

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

This agreement is not effective and binding until the 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



1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 17</b> of 40
------------	--------------------------------	--	-------------------------

services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the Secretary.

#### **4.06—Contract Renewals**

Upon expiration of the initial term, contract renewal shall be subject to prior approval from the Division of Procurement and Grant Oversight, the Secretary of the Finance and Administration Cabinet or his authorized designee and the LRC Government Contract Review Committee in accordance with KRS 45A.695 and KRS 45A.705, and contingent upon available funding.

#### **4.07—LRC Policies**

Pursuant to KRS 45A.725, LRC has established policies which govern rates payable for certain professional services. These are located on the LRC webpage (<http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>) and would impact any contract established under KRS 45A.690 et seq., where applicable.

#### **4.08—Choice of Law and Forum**

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

#### **4.09—Authorized to do Business in Kentucky**

The Contractor affirms that it is properly authorized under the laws of the Commonwealth of Kentucky to conduct business in this state and will remain in good standing to do business in the Commonwealth of Kentucky for the duration of any contract awarded.

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.

#### **4.10—Payment**

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

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

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

#### **4.11—Expenses**

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

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

The Contractor shall be paid for no travel expenses unless and except as specifically authorized under the specifications of this Contract. Travel reimbursement for activities under the terms and conditions of this Contract shall be in accordance with the Legislative Research Commission Government Contract Review Committee Travel Policy #98-1 and 200 KAR 2:006. It is the intent of the Cabinet that the

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 18</b> of 40
------------	--------------------------------	--	-------------------------

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.

**4.12—Purchasing and specifications**

The Contractor certifies that he will not attempt in any manner to influence any specifications to be restrictive in any way or respect nor will he attempt in any way to influence any purchasing of services, commodities or equipment by the Commonwealth of Kentucky. For the purpose of this paragraph and the following paragraph that pertains to conflict-of interest laws and principles, "he" is construed to mean "they" if more than one person is involved and if a firm, partnership, corporation, or other organization is involved, then "he" is construed to mean any person with an interest therein.

**4.13—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.

**4.14—Campaign Finance**

The Contractor certifies that neither he/she nor any member of his/her immediate family having an interest of 10% or more in any business entity involved in the performance of this contract, has contributed more than the amount specified in KRS 121.056(2), to the campaign of the gubernatorial candidate elected at the election last preceding the date of this contract. The contractor further swears under the penalty of perjury, as provided by KRS 523.020, that neither he/she nor the company which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth, and that the award of a contract to him/her or the company which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 19</b> of 40
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#### 4.15—Protest

Pursuant to KRS 45A.285, The Secretary of the Finance and Administration Cabinet, or his designee, shall have authority to determine protests and other controversies of actual or prospective Contractors in connection with the solicitation or selection for award of a Master Agreement or Contract.

Any actual or prospective Contractor, who is aggrieved in connection with the solicitation or selection for award of a Master Agreement or Contract, may file protest with the Secretary of the Finance and Administration Cabinet. A protest or notice of other controversy must be filed promptly and in any event within two (2) calendar weeks after such aggrieved person knows or should have known of the facts giving rise thereto. All protests or notices of other controversies must be in writing and shall be addressed to:

**William M. Landrum III, Secretary**  
Commonwealth of Kentucky  
Finance and Administration Cabinet  
Room 383, New Capitol Annex  
702 Capitol Avenue  
Frankfort, KY 40601

The Secretary of Finance and Administration Cabinet shall promptly issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.

The decision by the Secretary of the Finance and Administration Cabinet shall be final and conclusive.

#### 4.16—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 for this contract.

#### 4.17—Registration with the Secretary of State by a Foreign Entity

Pursuant to KRS 45A.480(1)(b), an agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity required by [KRS 14A.9-010](#) to obtain a certificate of authority to transact business in the Commonwealth (“certificate”) from the Secretary of State under [KRS 14A.9-030](#) unless the person produces the certificate within fourteen (14) days of the bid or proposal opening. Therefore, foreign entities should submit a copy of their certificate with their solicitation response. If the foreign entity is not required to obtain a certificate as provided in [KRS 14A.9-010](#), the foreign entity should identify the applicable exception in its solicitation response. Foreign entity is defined within [KRS 14A.1-070](#).

For all foreign entities required to obtain a certificate of authority to transact business in the Commonwealth, if a copy of the certificate is not received by the contracting agency within the time frame identified above, the foreign entity’s solicitation response shall be deemed non-responsive or the awarded contract shall be cancelled.

Businesses can register with the Secretary of State at <https://secure.kentucky.gov/sos/ftbr/welcome.aspx>

#### 4.18—Attachment(s)

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

#### 4.19—Contract Conformance

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 20</b> <b>of 40</b>
------------	--------------------------------	---	--------------------------------

If the first party determines that deliverables due under the Contract are not in conformance with the terms and conditions of the Contract, the 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.

#### **4.20—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.

#### **4.21—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.

#### **4.22—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.

#### **4.23—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.

#### **4.24—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.

#### **4.25—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 fully cooperate with such other contractors and Commonwealth employees. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Commonwealth employees.

#### **4.26—Headings**

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

#### **4.27—Severability**

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 21</b> <b>of 40</b>
------------	--------------------------------	--	--------------------------------

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.

**4.28—Indemnification**

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) this Contract; (b) any and all acts of the Contractor and or its Subcontractor(s); (c) the policies and procedures of the Contractor, specifically including all Contractor employment practices employed by the Contractor during the term of this or any prior Agreement with CHFS; (d) any dishonest, fraudulent, criminal, or negligent or unauthorized acts or errors or omissions which are committed by the Contractor or any of the Contractor's employees or agents or Subcontractors; (e) the publication translation, reproduction, delivery, performance, use or disposition of any data produced by CHFS in an unauthorized manner, provided that such action was not taken by Contractor or as a result of the express written request of CHFS; or (f) Contractor failure to comply with any applicable state or federal laws or regulations.

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

**4.29—Sovereign Immunity**

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

**4.30—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 Sub Contractor 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.

**4.31—Code of Ethics**

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

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 22</b> <b>of 40</b>
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#### 4.32—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.

#### 4.33—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.

#### 4.34—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.

#### 4.35—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 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,

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 23</b> <b>of 40</b>
------------	--------------------------------	--	--------------------------------

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 Contractor'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.

**4.36—Indirect Cost**

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

**4.37—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).

**4.38—Response/Compliance with Audit Findings**

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

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

- A. Required by a Kentucky or Federal law, regulation, rule or other audit requirement relating to Contractor's business;
- B. Performed by Contractor as part of this Contract; or
- C. Necessary due to Contractor's noncompliance with any law, regulation, rule, or audit requirement imposed on Contractor.

**4.39—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

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 24</b> <b>of 40</b>
------------	--------------------------------	--	--------------------------------

apply:

A. Property of CHFS

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

B. Property Control Ledger/Logs

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

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



1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 25</b> of 40
------------	--------------------------------	--	-------------------------

acknowledgement that the item was located or missing, and where applicable the steps taken to locate the item and/or report such to the police. If an item is/has been transferred to another location or there is a custodian change, a CHFS-117 form is to be immediately completed and routed to the Cabinet's Agency Property Officer, but no later than February 1<sup>st</sup>, or as otherwise stated, with the corresponding inventory.

## 2. Loss/Destruction

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

## 3. Surplus

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

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

Upon receipt of the B-217, the Agency's property officer shall review the fixed asset information and advise if the disposal method requested is approved. If the item(s) were purchased by federal funds, any funds received from the sale of the equipment having an 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 4.47, 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.

### **4.40—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.

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 26</b> of 40
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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.

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.

**4.41—Research Project Approval and Institutional Review Board Requirements**

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

**4.42—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 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.

**4.43—Intellectual Property**

The Contractor agrees that any formulae, methodology, other reports and compilations of data provided by the Department to the Contractor for the purposes of meeting the terms and conditions of this Contract shall be the exclusive property of the Cabinet, unless the specific ownership of any proposed or developed formulae, methodology or data compilation analyses is otherwise identified in any Attachment(s). The Contractor further agrees that any formulae, methodology, other reports and compilations of data prepared or produced by the Contractor during the course of work pursuant to this

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 27</b> <b>of 40</b>
------------	--------------------------------	--	--------------------------------

Contract shall be made available to CHFS for the Cabinet's use upon request and without charge. Any use of these materials other than for the purposes of meeting the terms and conditions of this Contract must be reviewed and approved in advance by CHFS.

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

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

- A. Patents;
- B. Trademarks as proposed or registered with the U. S. Patent and Trademark Office; or
- C. Copyrights proposed or certified with the Library of Congress, U.S. Copyright Office.

**4.44—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.

**4.45—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.

**4.46—Permits, Licenses, Taxes and Laws**

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

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

**4.47—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 the

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 28</b> of 40
------------	--------------------------------	--	-------------------------

Contractor related to this Contract. The Contractor shall send written notice to the Department.

#### **4.48—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.

#### **4.49—Confidential Information**

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

- A. Information which the Commonwealth has released in writing from being maintained in confidence;
- B. Information which at the time of disclosure is in the public domain by having been printed and published and available to the public in libraries or other public places where such data is usually collected; or
- C. Information, which, after disclosure, becomes part of the public domain as defined above, through no act of the Contractor; or
- D. Information required to be disclosed by law.

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

The Contractor is a nonaffiliated third party as defined by KRS 61.931, and as such agrees to protect personal information in accordance with KRS 61.932 and KRS 61.933.

#### **4.50—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

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 29</b> <b>of 40</b>
------------	--------------------------------	--	--------------------------------

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

**4.51—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.

**4.52—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.

**4.53—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

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 30</b> of 40
------------	--------------------------------	--	-------------------------

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 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

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 31</b> <b>of 40</b>
------------	--------------------------------	--	--------------------------------

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).

## **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 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.

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 32</b> of 40
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#### **5.00.05—Certification of Lobbying Activities**

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

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



1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 33</b> of 40
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## **BUSINESS ASSOCIATE AGREEMENT (state government)**

This Business Associate Agreement (Agreement) is entered into as of February 2, 2017 by and between Department for Medicaid Services (“Covered Entity” hereinafter), whose principal place of business is located at 275 East Main Street 6W-A, Frankfort, KY 40621 and the Cabinet for Education and Workforce Training (“Business Associate” hereinafter), whose principal place of business is located at Frankfort, KY, in conformance with the Health Insurance Portability and Accountability Act of 1996, and its implementing regulations (“HIPAA RULES” hereinafter).

### **RECITALS**

**Whereas**, the Covered Entity has engaged the services of the Business Associate for or on behalf of the Covered Entity in Memorandum of Agreement # PON2 746 1700001840;

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

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

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

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

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

### **SECTION I – DEFINITIONS**

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

1.1 “Breach” is defined as any unauthorized acquisition, access, use or disclosure of PHI which compromises the security or privacy of the PHI, unless the Covered Entity or Business Associate, as applicable, demonstrates that there is a low probability that the PHI has been compromised based upon a risk assessment as required under 45 CFR § 164.402. The definition of Breach excludes the following uses and disclosures:

- a. Unintentional acquisition, access or use of protected health information by a workforce member or person acting under the authority of a Covered Entity or Business Associate, if performed in good faith and within the scope of authority, and does not result in further unauthorized disclosures;
- b. Inadvertent one time disclosure between Covered Entity or Business Associate work force member to another work force member at the same Covered Entity or Business Associate who is authorized to access PHI and information received or disclosed is not further used or disclosed in a manner not permitted under Subpart E found at 45 CFR § 164.500, et seq.;
- c. The Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain the information.

1.2 “Business Associate” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §160.103, and includes a person or entity who creates, receives, maintains, or transmits PHI for a function or activity of the covered entity as set out under the regulation, and includes any subcontractor of the business associate who creates, receives, maintains, or transmits PHI on behalf of the business associate under 45 CFR § 160.103 (3) (iii).

1.3 “Covered Entity” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §160.103.

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 34</b> of 40
------------	--------------------------------	--	-------------------------

1.4 "Designated Record Set" shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §164.501.

1.5 "Effective Date" shall be the Effective Date of this amended and restated Agreement.

1.6 "Electronic Protected Health Information" or "Electronic PHI" shall have the meaning given to such term at 45 CFR §160.103, limited to information of the Covered Entity that the Business Associate creates, receives, maintains or transmits in electronic media on behalf of the Covered Entity under the terms and conditions of this Agreement.

1.7 "Health Care Operations" shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §164.501. (The term "Health Care Operations" is not used in this agreement, but the term is included in the definition list because it appears in the regulations referenced by this agreement.)

1.8 "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules codified at 45 CFR Part 160 and Part 164.

1.9 "Individual" shall have the meaning given to such term in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

1.10 "Individually Identifiable Health Information" shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §160.103.

1.11 A "Material Attempt" means attempted unauthorized access that results in Business Associate conducting a material and full-scale investigation.

1.12 "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an Individual; the provision of health care to an Individual; or the past, present or future payment for the provision of health care to an Individual; and (ii) that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual, and shall have the meaning given to such term in 45 CFR §160.103, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.

1.13 "Required by Law" shall have the meaning given to such phrase in 45 CFR §164.103.

1.14 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.

1.15 "Security Incident" shall have the meaning given to such phrase in 45 CFR §164.304.

1.16 "Unsecured Protected Health Information" (Unsecured PHI) shall mean protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary. (45 CFR §164.402), except that Unsecured Protected Health Information shall be limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.

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

The Business Associate agrees to the following:

2.1 Not to use or further disclose PHI other than as permitted or required by this Agreement and to fulfill its responsibilities under the contract setting out the scope of work for the Business Associate, or as Required by Law, or for the proper management and administration of the Business Associate under the requirements set out in Section III below;

2.2 To use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI, to not use or disclosure of PHI other than as provided for by this Agreement;

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 35</b> of 40
------------	--------------------------------	--	-------------------------

2.3 To mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this Agreement or the HIPAA Privacy and Security Rules;

2.4 To report to the Covered Entity any use or disclosure involving PHI not provided for by this Agreement of which it becomes aware, including Breaches of Unsecured Protected Health Information as required at 45 CFR § 164.410, and any Security Incident of which it becomes aware. The parties acknowledge that this section does not require Business Associate to report attempted unauthorized access that results in Business Associate investigating solely for the purpose of reviewing and or noting the attempt, but rather, requires notification only when such attempted unauthorized access results in Business Associate conducting a material and full-scale investigation ("Material Attempt"). The Business Associate shall immediately report to the Covered Entity any Breach of Unsecured PHI, except as provided by 45 CFR § 164.412 based upon a request from law enforcement to delay the notice in that such would impede a criminal investigation or cause damage to national security. The Business Associate shall provide to the Covered Entity the following information: (1) a brief description of what happened; including the date of the Breach and date of discovery of the Breach, if known; (2) identification of each Individual whose

Unsecured PHI has been affected by the Breach; (3) description of the type of Unsecured PHI involved in the Breach; (4) any steps the Individuals should take to protect themselves from harm from the Breach; and (5) steps the Business Associate is taking to investigate the Breach, to mitigate harm and protect against other Breaches. The Business Associate shall report immediately to the Covered Entity any Security Incident of which it becomes aware as required by 45 CFR § 164.314 (a) (2) (i) (C). The Business Associate shall report to the Covered Entity the operative facts surrounding the Security Incident, what steps are to be taken to address the Security Incident, and other information that may be requested by the Covered Entity relative to the Security Incident.

The Business Associate, in consultation with the Covered Entity, shall be responsible for Breach notifications to Individuals affected by the unauthorized use or disclosure no later than sixty (60) days following its discovery or by exercise of reasonable due diligence would have been known to the Business Associate, as required by 45 CFR § 164.404. The Business Associate shall be solely responsible for any and all costs associated with the notification requirements to the Individuals as provided herein. The Business Associate shall be responsible for any penalties, assessments or fees assessed by the Office for Civil Rights/Department of Health & Human Services due to any Breach caused by the Business Associate or based upon the failure of the Business Associate to comply with the HIPAA Privacy and Security Rules. The Covered Entity, in consultation with the Business Associate, shall make all needed notices to the media and the Secretary of HHS.

2.5 In accordance with 45 CFR §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees in writing to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such PHI;

2.6 To provide access to PHI in a Designated Record Set, at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to the Covered Entity, or as directed by the Covered Entity, to the Individual or the Individual's designee as necessary to meet the Covered Entity's obligations under 45 CFR §164.524; provided, however, that this Section 2.6 is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;

2.7 To make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of the Covered Entity or an Individual, and in the time and manner designated by the Covered Entity; provided, however, that this Section 2.7 is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;

2.8 To make internal practices, books and records, including policies and procedures on PHI, relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of, the Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 36</b> of 40
------------	--------------------------------	--	-------------------------

the Secretary, for purposes of the Secretary's determining the Covered Entity's and the Business Associate's compliance with the HIPAA Rules;

2.9 To document non-routine disclosures of PHI and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528, where applicable;

2.10 To provide to the Covered Entity or an Individual, in a time and manner designated by the Covered Entity, information collected in accordance with Section 2.9 of this Agreement, to permit the Covered Entity to respond to a request by an accounting of disclosures of PHI in accordance with 45 CFR §164.528;

2.11 That if it creates, receives, maintains, or transmits any Electronic PHI (other than enrollment/disenrollment information and Summary Health Information, which are not subject to these restrictions) on behalf of the Covered Entity, it will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information, and it will ensure that any agents (including subcontractors) to whom it provides such Electronic PHI agrees to implement reasonable and appropriate security measures to protect the information. ;

2.12 Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic Protected Health Information, to prevent the use or disclosure of protected health information other than is permitted for under this Agreement or Required by Law;

2.13 To retain records related to the PHI hereunder for a period of six (6) years unless the Agreement is terminated prior thereto. In the event of termination of this Agreement, the provisions of Section V of this Agreement shall govern record retention, return or destruction;

2.14 Implement administrative safeguards in accordance with 45 CFR §164.308, physical safeguards in accordance with 45 CFR §164.310, technical safeguards in accordance with 45 CFR §164.312, and policies and procedures in accordance with 45 CFR §164.316;

2.15 Shall appropriately safeguard any and all PHI provided by the Covered Entity to the Business Associate under the service contract or agreement as required under the HIPAA Rules and this Agreement herein, as set out in 45 CFR § 164.502 (e) (1) and (2).

2.16 Not to make any fundraising communication on behalf of Covered Entity or to Covered Entity's participants and beneficiaries;

2.17 Not to receive any remuneration, either directly or indirectly, in exchange for PHI, except as may be permitted by 45 CFR §164.502(a)(5) and §164.508(a)(4);

2.18 Not to make any marketing communication on behalf of Covered Entity or to Covered Entity's participants and beneficiaries, except as may be permitted by 45 CFR §164.501; and

2.19 To the extent Business Associate is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

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

3.1 Business Associate agrees to make uses and disclosures and requests for PHI consistent with the Covered Entity's minimum necessary policies and procedures.

3.2 Except as otherwise limited in this Agreement, the Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, the Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by the Covered Entity; and

3.3 Except as otherwise limited in this Agreement, the Business Associate may:

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 37</b> of 40
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- a. Use for management and administration. Use PHI for the proper management and administration by the Business Associate or to carry out the legal responsibilities of the Business Associate; and,
- b. Disclose for management and administration. Disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required by Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.

#### SECTION IV – NOTICE OF PRIVACY PRACTICES

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

#### SECTION V – BREACH NOTIFICATION REQUIREMENTS

5.1 With respect to any Breach by the Business Associate as provided in 2.4 above, the Business Associate, in consultation with the Covered Entity, shall notify each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Covered Entity to have been, accessed, acquired, used, or disclosed as a result of such Breach, except when law enforcement requires a delay pursuant to 45 CFR §164.412:

- a. Without unreasonable delay and in no case later than 60 days after discovery of a Breach or from the time it should have reasonable been discovered.
- b. By notice in plain language including and to the extent possible:
  - 1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
  - 2) A description of the types of Unsecured Protected Health Information that were accessed, acquired, used or disclosed in the Breach (such as full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information that were involved);
  - 3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
  - 4) A brief description of what the Covered Entity involved is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any further Breaches; and,
  - 5) Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- c. Use a method of notification that meets the requirements of 45 CFR §164.404(d).
- d. If required by 45 CFR §164.404 (2)(i or ii) The Business Associate shall provide for substitute notice, as required by the HIPAA Rules, by providing a toll-free phone number that remains active for at least 90 days where an individual can learn whether the Individual’s Unsecured PHI may be included in the Breach and a posting as required by 45 CFR §

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 38</b> of 40
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164.404 (d) (2). The costs of the substituted notice and notifications set out in this Section shall be the responsibility of the Business Associate.

## SECTION VI – TERM AND TERMINATION

6.1 Term. This Agreement shall be effective as of the Effective Date and shall terminate when all of the PHI provided by the Covered Entity to the Business Associate, or created or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

6.2 Termination for Cause. Upon the Covered Entity becoming aware of a material breach of this Agreement by the Business Associate, the Covered Entity shall provide an opportunity for the Business Associate to cure the breach or end the violation. The Covered Entity shall terminate this Agreement and the Memorandum of Agreement PON2 746 1700001840 if the Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity, or terminate this Agreement immediately if a cure is not possible.

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

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

6.3 Effect of Termination.

a. Return or Destruction of PHI. Except as provided in Section 6.3(b), upon termination of this Business Agreement, for any reason, the Business Associate shall return, or if agreed to by the Covered Entity, destroy all PHI received from the Covered Entity, or created or received by the Business Associate on behalf of the Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Business Associate. The Business Associate shall retain no copies of PHI.

b. Return or Destruction of PHI Infeasible. In the event that the Business Associate determines that returning or destroying PHI is infeasible, the Business Associate shall provide to the Covered Entity notification of the conditions that make return or destruction not feasible. Upon mutual agreement of the parties that return or destruction of the PHI is infeasible, the Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such PHI. In addition, the Business Associate shall continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 to prevent use or disclosure of the PHI, for as long as the Business Associate retains the PHI.

## SECTION VII – GENERAL PROVISIONS

7.1 Regulatory references. A reference in this Agreement to the HIPAA Rules or a section in the HIPAA Rules means that Rule or Section as in effect or as amended from time to time.

7.2 Compliance with law. In connection with its performance under this Agreement, Business Associate shall comply with all applicable laws, including but not limited to laws protecting the privacy of personal information about Individuals.

7.3 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Parties to comply with the HIPAA Rules and any other applicable law. This Agreement may not be modified, nor shall any provision herein

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 39</b> of 40
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be waived or amended, except in a writing duly signed by the authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

7.4 Confidentiality Obligations. In the course of performing under this Agreement, each Party may receive, be exposed to or acquire "Confidential Information," including but not limited to, all information, data, reports, summaries, tables and studies, whether written or oral, fixed in hard copy or contained in a computer data base or computer readable form, as well as any information identified as "Confidential Information" of the other Party. For purposes of this Agreement, "Confidential Information" shall not apply to PHI, the privacy and security of which is the subject of this Agreement and addressed throughout the terms herein. Except as a record that requires disclosure under the Kentucky Open Records Act, the parties including their employees, agents and representatives shall: (a) not disclose to any third party "Confidential Information" of the other party except as permitted under this Agreement; (b) only permit use of "Confidential Information" of employees, agents or representatives having a need to know in connection with performance under this Agreement, and (c) advise each of its employees, agents and representatives of their obligations to keep such "Confidential Information" confidential. This provision shall not apply to "Confidential Information": (i) after it becomes publicly available through no fault of either party; (ii) which is later publicly released, in writing, by the party which owned the material; (iii) which is lawfully obtained by the third parties without restriction; or (iv) which can be shown to be previously known or developed by either party independently of the other party.

7.5 No Third Party Beneficiary. The parties do not express or imply by any terms in this Agreement to confer any rights, remedies or entitlements upon any third person not a party to this Agreement herein. The parties agree that there are no third-party beneficiaries intended to be benefited by this Agreement.

7.6 Survival. The respective rights and obligations of Business Associate under Section II and Section 6.3(b) of this Agreement shall survive the termination of this Agreement.

7.7 Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Rules.

7.8 Notices. Notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or (other than for delivery fees) via facsimile to the facsimile telephone numbers listed below:

To Business Associate at:

David Morris  
Education and Workforce Development Cabinet  
300 Sower Blvd,  
4<sup>th</sup> Floor  
Frankfort, KY 40601  
(502)564-2618  
[DavidW.Morris@ky.gov](mailto:DavidW.Morris@ky.gov)

AND

To Covered Entity at:

Jill Hunter, Deputy Commissioner  
Department for Medicaid Services  
Cabinet for Health and Family Services  
275 East Main  
Frankfort, KY 40621  
Email: [Jill.Hunter@ky.gov](mailto:Jill.Hunter@ky.gov)

With copy to:

Brenda Abrams, Contract Specialist

1700001840	<b>Document Phase</b> Final	<b>Document Description</b> Kentucky HEALTH Support Services - Edu/Workforce (C191)	<b>Page 40</b> of 40
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**Office of Administrative and Technology Services**

Procurement and Grant Oversight  
PSC/MOA Branch  
275 E. Main St. 6E-C  
Frankfort, Kentucky 40621-0001  
502-564-7736  
Email: [BrendaK.Abrams@ky.gov](mailto:BrendaK.Abrams@ky.gov)

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

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

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

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