



Commonwealth of Kentucky

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CONTRACT MODIFICATION

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

Doc Description: FY17 Title III Grants LFUCG-Fayette	
Doc ID No: PON2 725 1600003936 2	Procurement Folder: 4279941
Procurement Type: Memorandum of Agreement	Record Date:
Issued By: MICHELLE BUFFIN	Cited Authority: FAP111-44-00
Telephone:	

Reason For Modification: Original Amount - \$109,153.00
Amount of Increase - \$3186.00
Contract Total - \$112,339.00

This modification is essential to update the language in the Scope of Work in an effort to clarify deliverables, reporting requirements, and to add section 4.53 – LEP Requirements due to Federal requirements, add Title III-D services, and increase the budget amount for Title III-D. See modification history for details.

C O N T R A C T O R	LFUCG-Social Service
	200 East Main
	Suite 328
	Lexington KY 40507
	US

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

Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
12	LFUCG-Title III B Supportive Services -CFDA # 93.0		0.00		0.00000	109,153.00	109,153.00

Extended Description

LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT : DBA LEXINGTON SENIOR CITIZENS CENTER

A program to provide information and assistance, outreach, transportation, legal services, extended respite, homemaker services, senior center services, assessment/case management, and home repair services to the elderly based on budgets and available services for Kentuckians, which follow under the AOA programs.

85% Federal Funds 15% State & Local Funds

Service Term 7/1/2016 - 6/30/2017

B I L L T O	495231	S H I P T O	495231
	CHFS DAIL DIV OF FM AND SUPPORT		CHFS DAIL DIV OF FM AND SUPPORT
	275 EAST MAIN 3E-E		275 EAST MAIN 3E-E
	FRANKFORT KY 40621		FRANKFORT KY 40621
	US		US

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

Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
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13	Title III D Preventive Health - CFDA # 93.043	0.00	0.00000	3,186.00	3,186.00
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Extended Description

LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT : DBA LEXINGTON SENIOR CITIZENS CENTER

A program to provide education and assistance in the training and care of elderly Kentuckians on health related topics, which follow under the AOA programs.

Service Term 7/1/2016 - 6/30/2017

B I L L T O	495231 CHFS DAIL DIV OF FM AND SUPPORT 275 EAST MAIN 3E-E FRANKFORT KY 40621 US	S H I P T O	495231 CHFS DAIL DIV OF FM AND SUPPORT 275 EAST MAIN 3E-E FRANKFORT KY 40621 US
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Total Order Amount:	112,339.00
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Approvals

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

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

Signature *[Signature]* Title _____
 Printed Name _____ Date 11-10-16

2nd Party:
 Signature *[Signature]* Title Mayor
 Printed Name Jim Gray Date November 2, 2016

Other Party:
 Signature *[Signature]* Title Commissioner
 Printed Name Dorrah Anderson Date 10/28/16

Approved as to form and legality:
[Signature]
 Attorney

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PON2-725-1600003936, Modification 1, 10/3/2016

Original Amount - \$109,153.00

Amount of Increase - \$3186.00

Contract Total - \$112,339.00

This modification is essential to update the language in the Scope of Work in an effort to clarify deliverables, reporting requirements, and to add section 4.53 – LEP Requirements due to Federal requirements, add Title III-D services, and increase the budget amount for Title III-D.

Section 1.04 Definitions/Acronyms, item 20 has been added in its entirety.

Section 1.04 Definitions/Acronyms, item 45 has been added in its entirety.

Numbering has been updated to place definitions in alphabetical order.

Section 2.00 IV has been added in its entirety.

Section 2.01 Deliverables, item 1 and II have been added in their entirety.

Section 2.02 Reporting Requirements, item C, 1 through 3 has been added in its entirety.

Section 4.53 LEP Requirements has been added in its entirety due to federal and Cabinet Requirements.

This modification also includes:

Commodity Line 1 - Title III B Supportive Services increased \$22,000.00

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Title Page

For

Memorandum of Agreement

Between a State Agency & Other Governmental Body or Political Subdivision

**Cabinet for Health and Family Services
Department for Aging & Independent Living**

Operation and Program Support

POINT OF CONTACT

**Michelle Buffin, Contract Specialist
Department for Aging & Independent Living
275 East Main Street, 3E-E
Frankfort, KY 40601
Telephone: 502 / 564-6930 ext. 3501
Fax: 502 / 564-4595
E-mail: Michelle.buffin@ky.gov**

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Section 1—Purpose and Background

1.00—Purpose and Background

The Kentucky Department for Aging and Independent Living (DAIL) has determined there is a necessity to enter into an agreement for the administration of the Title III Grant, from the United States Administration for Community Living (ACL), Administration on Aging (AOA), pursuant to the Older Americans Act of 1965 (OAA), as amended, KRS 205.204, for Lexington Fayette Urban County Government d/b/a Lexington Senior Citizens Center. Supportive Services is the program under Title III that is being performed under this contract.

1.01—Issuing Office

The Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Aging and Independent Living (DAIL), is issuing this Contract on behalf of the Aging and Physical Disability Services Branch. The Department for Aging and Independent Living (DAIL) 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—Definitions/Acronyms

1.-"ACL" means Administration for Community Living.

2.-"Adult Day" means any adult care facility which provides part-time care, day or night, but less than twenty-four (24) hours, to at least four (4) adults not related to the operator of the adult care facility by blood, marriage, or adoption in accordance with KRS 205.010(15).

3.-"Advocacy" means action taken on behalf of an older person to secure his or her rights or benefits. Advocacy includes receiving, investigating, and working to resolve disputes or complaints; assistance with housing issues; and how to write letters and talk to people about their issues. This does not include services provided by an attorney or person(s) under the supervision of an attorney.

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4.-"Aging and Disability Resource Center" or "ADRC" means a program which provides access to long-term care options by using a wide range of community resources.

5.-"AoA" means the Federal Administration on Aging.

6.-"Assessment" means the collection and evaluation of information about a person's situation and functioning to determine the applicant or recipient service level and development of a plan of care utilizing a holistic, person centered approach by a qualified independent care coordinator (ICC) in accordance with 910 KAR 1:170 Section 1(3).

7.-"Assisted Transportation" means a one way trip to accompany an eligible person who requires assistance for safety or protection to or from his or her physician, dentist, or other necessary service pursuant to 910 KAR 1:170 Section 1(4).

8.-"Back up documentation" includes but is not limited to documents that include evidence of a financial transaction, such as debit/credit memos, invoices, receipts, orders, vouchers, account reports/ledgers, cancelled checks which shall be submitted with all invoices.

9.-"Bonus" means additional compensation either monetary or otherwise provided to an employee at any given time above their established base rate of pay and is not reflected in the base rate of pay on an ongoing basis.

10.-"Case Management" means a process, coordinated by a case manager, for the linking of a client to appropriate, comprehensive, and timely home or community based services as identified in the plan of care by planning, referring, monitoring, advocating and following the timeline of the assessment agency to obtain service level and development of the plan of care pursuant to 910 KAR 1:170 Section 1(5)

11.-"Case Manager" means the individual employee responsible for case management including coordinating services and supports from all agencies involved in providing services required by the plan of care, ensuring that all service providers have a working knowledge of the plan of care and ensuring that services are delivered as required pursuant to 910 KAR 1:170 Section 1(7).

12.-"Cash and Counseling" means a range of services provided or paid for through allowance, vouchers, or cash which are provided to the client so that the client can obtain the supportive services which are needed.

13.-"Certification" means the official notification by the Kentucky Long-Term Care Ombudsman that the local Long-Term Care Ombudsman individual staff are qualified and acceptable to function in that capacity as defined in 910 KAR 1:210 Section 1 (4).

14.-"CHFS" or "Cabinet" means the Cabinet for Health and Family Services per KRS 205.204.

15.-"Counseling" means advisory services conducted by a certified or licensed professional or someone who has had approved training but not board certified to advise and enable the older person and their family to resolve problems or to relieve temporary stresses encountered by their family.

16.-"DAIL" means the Department for Aging and Independent Living which shall serve as the state unit as designated by the Administration on Aging Services under the Older Americans Act and shall have responsibility for administration of the federal community support services, in-home services, meals, family and caregiver support services, elder rights and legal assistance, senior community services employment program, the state health insurance assistance program, state home and community based services including home care, Alzheimer's respite services and the personal care attendant program,

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certifications of adult day care and assisted living facilities, the state Council on Alzheimer's Disease and other related disorders, the Institute on Aging, and guardianship services. The department shall also administer the Long-Term Care Ombudsman Program and the Medicaid Home and Community Based Waivers Consumer Directed Option (CDO) Program. The department shall serve as the information and assistance center for aging and disability services and administer multiple federal grants and other state initiatives. The department shall be headed by a commissioner appointed by the secretary with the approval of the Governor in accordance with KRS 12.050 pursuant to KRS 194A.030 (13).

17.-"Department" means the Department for Aging and Independent Living.

18.-"Disaster" means floods, tornadoes, earthquakes, droughts, extreme heat/cold, fires, chemical spill, power outages in excess of 10 hours, ice storm, severe thunderstorms, wind, or hail storms, contaminated water, pandemic flu, nuclear war, radioactive waste leaks, snow storm, public health emergency, terrorist attacks, accidents, or explosions which result in a halt or temporary discontinuation of services.

19.-"Education" means providing formal or informal opportunities for older individuals to acquire knowledge, experience, or skills.

20.-"Evidence-based" means criteria required to implement Title III-D funded activities as specified by the ACL and approved by DAIL.

21.-"Friendly Visiting" means physically interacting with a client to offer comfort or assistance.

22.-"Home Health Aide" means the performance of simple procedures, including but not limited to personal care, ambulation, exercises, household services essential to health care at home, assistance with medications that are ordinarily self-administered, reporting changes in the patient's condition and needs, and completing appropriate records in accordance with KRS 205.455(9).

23.--"Information and Assistance" means a service for individuals that provides current information about services available within the community as defined in 910 KAR 1:170 Section 1(13).

24.--"In-home Services" means (a) Homemaker and home health aides; (b) visiting and telephone reassurance; (c) chore maintenance; (d) in-home respite care for families, including adult day care as a respite service for families; and (e) minor modification of homes (also known as home repair in accordance with KRS 205.455(11)) that is necessary to facilitate the ability of older individuals to remain at home, and that is not available under other programs, except that not more than \$150 per client may be expended under this part for such modification pursuant to 45 CFR 1321.3.

25.-"Justification" means a written reason, fact, circumstance, or explanation that justifies or defends a change.

26.-"NAPIS" means National Aging Program Information System.

27.-"Older Americans Act" or "OAA" means the Older Americans Act of 1965 as amended.

28.-"Outreach" means interventions with individuals initiated by an agency or organization for the purpose of identifying potential clients or their caregivers and encouraging their use of existing services and benefits as defined by 910 KAR 1:170 Section 1(19).

29.-"Personal Care" means providing assistance for persons with the inability to perform one or more activities of daily living.

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30.-"Public Information" means the provision of information, assistance or outreach to a group of individuals including contact with several current or potential client/caregivers.

31.-"Recreation" means the provision of activities which foster the health or social well-being of individuals through social interaction.

32.-"Respite" means care provided to an older person by a caregiver for a designated time period due to the absence or need for relief of those normally providing care.

33.-"SAMS" means Social Assistance Management System, a Harmony product, currently used as the state data system.

34.-"Second Party" means the Estill County Fiscal Court d/b/a Estill County Senior Citizens Center.

35.-"Senior Center Services" means the provision of activities that foster the health or social well-being of individuals through social interactions and leisure as defined in 910 KAR 1:170 Section 1(23).

36.-"Service Level" means the minimum contact required through face-to-face visits and telephone calls by the case manager or social service assistant as defined in 910 KAR 1:170 Section 1(24).

37.-"Supplemental Services" means services provided on a limited basis through Title III E to complement the care provided by grandparents or caregivers. Examples of supplemental services include, but are not limited to, home modifications, assistive technologies, emergency response systems, and incontinence supplies pursuant to the OAA, Part E, Section 373(b)(5).

38.-"Supportive Service Provider" means an entity that provides supportive services funded by OAA under the approved area plan as defined in 910 KAR 1:170 Section 1.

39.-"SOP" means Standard Operating Procedure.

40.-"Telephone Reassurance" means providing a wellness check by phone with the agreement of the individual in accordance with 910 KAR 1:170 (27).

41.-"Third party in-kind contributions" means the value of non-cash contributions (i.e., property or services) that benefit a federally assisted project or program and are contributed by non-Federal third parties, without charge, to a non-Federal entity under a Federal award in accordance with 2 CFR 200.96.

42.-"Title III" means programs under Title III of the Older Americans Act of 1965 as amended.

43.-"Title III Administration" means administration of the programs for elderly Kentuckians under Title III of the Older Americans Act of 1965 as amended.

44.-"Title III-B Supportive Services" means a service to provide community support to people age 60 years and older pursuant to the Older Americans Act of 1965 as amended .

45.-"Title III-D Disease Prevention and Health Promotion" means a service providing disease prevention and health promotion to people 60 and older pursuant to the Older Americans Act of 1965, as amended.

46.-"Transportation" means transporting an individual from one location to another.

47.-"Waiting List" means a formal list of persons determined eligible, and not yet receiving services.

1.05—Organization

This contract is organized in the following manner:

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

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

Section 3— 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 Second Party shall administer all the programs and provide for all the services as detailed below. The Second Party shall perform the following:

I.—General Requirements:

A.—Comply with any and all requirements mandated by a particular funding source. The Second Party shall ensure that all services provided under this Contract are provided in accordance with any applicable state or federal statutes or regulations; any commitments and assurances set forth in 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 any federally-funded grant award terms and conditions, including federal reporting and expenditure requirements, for any federally-funded proposed project developed jointly by The Second Party and CHFS and submitted to a federal agency.

B.—Develop Standard Operating Procedure (SOP) on general administration and shall perform all the functions described in the approved area plan, budgets, and service delivery objectives.

C.—Maintain a Cost Allocation Plan, on file with the Kentucky Department for Local Development, to be utilized in determining costs to be reimbursed under this Contract. A copy of the submitted Cost Allocation Plan shall be submitted to DAIL by the thirty-first (31st) day of March each year. Failure to meet the “Federal Financial Participation” or “State Financial Participation” requirements for allowable costs will result in the requirement to refund such ineligible costs to DAIL. Upon confirmation of final closure of audit, or final expenditure report, any funds remaining from the allocation shall be refunded to DAIL. All cost allocations shall be sent to Jetta Collett via email jetta.collett@ky.gov.

D.—Ensure public awareness activities supported with federal funds and allocated to the Second Party through this contract contains the following statement: “This information is made possible by state and/or federal funding provided by the Department for Aging and Independent Living.” Public awareness activities include printed materials such as posters, brochures, or flyers, community/public events such as health fairs, school activities, and media events via television, radio, internet, e-mail or newspaper.

E.—Ensure that all services made available under this Contract are provided and maintained on a continuing basis throughout the fiscal year, subject to the availability of funds provided by DAIL. The second party shall keep a policy and procedure on file that addresses how interruption of service shall be managed.

F.—Ensure that client eligibility has been determined, according to program regulations, prior to the provision of services and that required client information including eligibility, is entered into the appropriate program database.

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G.--Clients meeting program eligibility requirements shall only be removed or denied services if said client meets the requirements of 910 KAR 1:220 (7)(4)(b).

H.--Ensure compliance with 910 KAR 1:140 and KRS Chapter 13B – Hearing Procedures Relating to Aging Contractor Selection Actions.

I.--Ensure client records are transferred appropriately, when necessary. Upon termination of this contract, copies of all appropriate records of all active clients and/or participant data shall be provided to the new service provider in accordance with policy.

J.--Ensure the retention of client-specific clinical records, in a secured location, for five (5) years after the last date of service and ensure their subsequent destruction by shredding or burning.

K.--Provide information, upon request of DAIL, concerning all activities performed pursuant to this Contract, including but not limited to, periodic data reporting and data system input concerning program activities or any data that is required by applicable state or federal law.

L.--Maintain written personnel policies and procedures, including salary, conditions of employment, and job descriptions relative to all personnel, including those who provide services other than on a full-time basis and/or secured by processes other than direct employment.

M.--Adhere to the approved budget, as set forth in the fiscal summary and Area Plan, except that the Second Party may request, at the end of the quarter, an amendment to adjust the service delivery objectives and/or the budget. The Second Party shall request written approval for any variation which will exceed ten percent (10%) in any cost categories (Personnel, travel, equipment, etc.) of any program component budget total (Administration, etc.) DAIL at its option will either: (1) Prepare a Contract amendment if the change is substantial or (2) give a written letter of approval if the change is minor. No budget revision shall be requested by the Second Party after April 1. At the close of the fiscal year, expenditures in any cost categories (Personnel, Travel, etc.) shall not exceed the amount budgeted by ten percent (10%) or more of any program component budget total (Administration, Social Services, etc.). Budgetary shifts between federal fund programs shall follow the ACL guidance.

The Second Party shall submit a correct budget for all programs to DAIL by 4:30 p.m., Eastern Standard Time August 1st of the current year. For any allocations that are provided to the Second Party after July 1 of the current year, specific timelines for return on budget shall be provided in the budget instruction letter.

Any Second Party that fails to meet any individual component of these requirements shall have all reimbursement request(s) held regardless of funding source, program, and amount until such time as the budget report complies with all requirements set forth above.

N.--The Second Party shall maintain all SOPs related to service delivery within this contract on their agency website.

O.--Ensure volunteers working with the programs are trained and those working as required staff meet all qualifications and maintain volunteer records including training, total number of volunteers, and the training hours provided.

P.--Provide or arrange for appropriate insurance coverage to protect volunteers from personal liabilities.

Q.--Report all incidences or suspected incidences of abuse, neglect, and exploitation to the appropriate agencies, within 24 hours of learning of such incidences.

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R.--Assist with voter registration per KRS 116.048(1)(d) and as described per SOP on voter registration

S.--Budget Narratives will be required for all budgets submitted to DAIL on a form provided by DAIL. These forms shall be submitted to each Provider's DAIL Financial Liaison for approval by Financial and Program staff. This includes initial budgets and any budgetary shifts requiring contract modification.

T.--Back up documentation will be required for any and all expenditures and revenue claimed on all invoices including but not limited to detailed payroll reports, subcontractor invoices, financial system generated reports, and any additional requested documentation. All third party in-kind contributions shall include, but may not be limited to, documentation of size and value of space donated; total volunteers time spent, and total value of time; including hours and duties performed. Third party in-kind documentation shall be submitted with monthly invoices.

U.--Administrative costs across all awards from DAIL to each Second Party will follow the Administrative Costs as detailed in the Health & Human Services Policy Statements and SOPs and will be further limited as follows:

1.--All Out-of-State travel is, including travel for a person to attend board meetings of which they are a member of, is limited to one person and one training, meeting, or conference across all awards received from DAIL, additional travel opportunities must be submitted and approved by DAIL staff at least 30 days prior to travel.

2.--Each Second Party shall abide by State regulations located at 200 KAR 2:006 including but not limited to mileage rate, per diem rates, and subsistence for all travel. Reimbursement by DAIL shall not be made for any amount that exceeds these limitations.

V.--Each Second Party shall follow all functions of the approved disaster plan in accordance with DAIL SOP. Each disaster plan shall include:

1.--A plan to maintain communications between DAIL and Second Party staff during the time of a disaster unless telecommunication devices are rendered inoperable.

2.--A plan to contact all homebound clients in the designated disaster area within 48 hours of the initial disaster to ensure health, safety, and welfare. Biweekly contact will occur thereafter until the provider resumes services for the client. Documentation of each contact shall be entered into SAMS.

W.--Per 2 CFR Part 200.203 Internal Controls, the Second Party shall provide for the establishment of effective internal controls that are in compliance with guidance in "Standards for Internal Controls in the Federal Government" also known as the "Green Book".

X.--The Second Party shall provide educational materials regarding changes to the service delivery of programs within five (5) business days to each participant when indicated to do so by DAIL.

Y.--Notify DAIL within one (1) business day when the Second Party office is closed during normal business hours and the reason for closure.

Z.--Ensure any DAIL written communication sent to the Second Party that impacts the Second Party's contracted sub providers is sent in original format to the sub provider within two (2) business days of receipt by the Second Party.

AA.--DAIL shall recoup any funds it determines are unallowable, excessive, and unreasonable including administrative and program dollars. All costs must follow the guidelines set forth below:

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1.--Must be necessary, reasonable and allocable to the program:

a.--Administrative funds may be utilized for an annual salary increment as allowable for eligible employees as part of a total compensation package, provided such payments are reasonable and are made according to a formal policy of the employee that is consistently applied regardless of the source of funds. The employee's base salary or wages shall thereby be increased by the amount of such increment.

b.--The Kentucky Constitution Section 3 prohibits bonuses. DAIL shall not reimburse for bonuses regardless of board approval. This prohibition extends to funds utilized as match for DAIL programs, regardless of fund source.

2.--Must comply with the limitations of the agreement as well as other applicable federal and state laws and regulations;

3.--Must be allocated to the program on a basis consistent with policies that apply to all activities of the association;

4.--Must be accounted for consistently with generally accepted accounting principles;

5.--Must not have been used as direct cost or cost share for any other federal award;

6.--Must be adequately documented;

7.--Must be ordinary and necessary to the operation of the organization or the performance of the federal award;

8.--Must meet the prudent person test which means it does not exceed an amount that could be incurred by a prudent person under similar circumstances at the time the decision was made.

II.--The Second Party shall administer and provide the detailed services for **Title III Administration**. The Second Party shall provide administration functions for programs that aide elderly Kentuckians including but not limited to the following:

A.--Provide program participants an opportunity to voluntarily contribute to the cost of services by:

1.--Using the contributions to increase the number of meals served and facilitate access to such meals.

2.--Ensure that eligible persons are not denied services due to their inability to contribute.

3.--Protect the privacy of each older person with respect to contributions.

B.--Assist participants in taking advantage of benefits under the program.

C.--Employ adequate qualified staff based on the number of programs and types of services provided for participants.

D.--Permit DAIL staff and federal representatives to monitor and inspect the operation, including subcontractor files and operations.

E.--Attend meetings as scheduled by DAIL. When a Second Party is unable to send staff to represent the Second Party at a meeting, the Second Party shall notify DAIL one (1) business day before the

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meeting of the Second Party staff absence.

F.--Provide services to one hundred percent (100%) of the Second Party's service region.

G.--Develop and implement a DAIL approved policy and procedure for prioritizing and purging the Second Party's waiting list for Title III services quarterly.

H.--Develop a list of community resources for individuals placed on the waiting list and provide community resources to each person on the waiting list based upon the individual's need.

I.--Documentation for third party in-kind contributions for match shall be provided with monthly invoices. This information shall include but may not be limited to documentation of size and value of space donated, total volunteer time spent and total value of time, including hours and duties performed. All third party in-kind contributions for match shall be allocated for Title III-B services only.

J.--All budget modification requests submitted to DAIL shall contain justifications for the budget modification.

K.--Provide participants with written information to contact adult protective services to report adult abuse, neglect, or exploitation on the first visit and every six (6) months thereafter.

L.--Provide the participant's caregivers with written instructions to alleviate caregiver stress upon first visit and every six (6) months thereafter.

M.--Provide participants with written information on how to avoid financial exploitation upon first visit and every six (6) months thereafter.

III.--ACL Program Title III-B Supportive Services, in accordance with OAA and 910 KAR 1:170, the Second Party shall provide a program that provides information and assistance, outreach, transportation, legal assistance, ombudsman, in-home services, senior center services, assessment, telephone reassurance, adult day, assessment, case management, chore, personal care, escort, advocacy, cash and counseling, counseling, education, employment services, friendly visiting, health promotion, home health aide, home repair services, public information, and recreation for the elderly. The Second Party shall:

A.--III-B providers shall allow DAIL staff to visit providers at any time during the fiscal year, announced or unannounced, and follow-up with technical assistance. As a result of these visits, DAIL staff may request or issue a Corrective Action Plan to be met by the Second Party within a specified timeframe.

B.--Provide opportunities for social engagement at senior centers or on field trips.

IV.--ACL Program Title III-D Disease Prevention and Health Promotion is a program to provide, as outlined in section 361 of the OAA, disease prevention and health promotion programs and activities which have been demonstrated through rigorous evaluation to be evidence-based and effective. Contract entity shall:

A.--Provide only evidence-based health promotion disease prevention programs that meet the following criteria in accordance with the ACL:

1.--Demonstrated through evaluation to be effective for improving the health, wellbeing, or reducing disease, disability, or injury among older adults;

2.--Proven effective with older adult population, using Experimental or Quasi-Experimental

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Design;

3.--Research results published in a peer-review journal;

4.--Fully translated in one or more community site(s); and

5.--Includes developed dissemination products that are available to the public; or

6.--The program is considered to be an evidence-based program by any operating division of the U.S. Department of Health and Human Services (HHS) and appropriate for older adults. Examples of approved interventions may be found at:

i.--www.aoa.acl.gov/AoAPrograms/HPW/index.aspx,

ii.--www.samhsa.gov,

iii.--<http://www.cdc.gov/arthritis/interventions/physical-activity.html>.

V.--Match Requirements and Program Income

A.--Local Match – For any local match, the Second Party shall meet the match requirements through allowable costs and/or third party in-kind contributions, state funds or local cash, pursuant to the Budget/Fiscal Summary form included as the budget attachment, along with substantial documentation to include but not limited to volunteer forms, provider invoices, and floor plan with square footage. The application of funds shall be in accordance with requirements for local match of the specific funding source, as referenced in 2 CFR 200.29, 2 CFR 200.306.

B.--Administration on Aging (AOA) - As stated in the Older Americans Act of 1965, as amended, Title III funds may be used:

1.--Administration - 75% federal - 25% state and/or local

2.--Supportive services, senior centers and nutrition services- 85% federal – 15% state and/or local.

3.--Title III-B Ombudsman and Title III-D Disease Prevention and Health Promotion – 100% federal

4.--Title III-E National Family Caregiver Support Program – 75% federal – 25% state and/or local.

C.--The federal share of a project cost is earned only when the cost is accrued and the nonfederal share of the cost has been contributed. Receipt of federal funds (through reimbursement) does not constitute earning of these funds. Failure of the Second Party to provide the required local match will result in proportionate reduction of the federal allotment.

D.--Any interest income earned by the Second Party on any portion of the funds reimbursed under this agreement shall be used to expand services in the programs in which the interest is earned. It is also expressly understood that if interest income, earned from a specific fund dollars, is not expended for the same services in the same fiscal year in which it is earned, the funds shall be returned to the DAILE. Procedures to minimize the time elapsing between the transfer of funds and this disbursement by the Second Party shall be maintained.

E.--Match shall be verified by a certified statement of the service provider and submitted to the

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Second Party when applicable. DAIL retains the right to request a review of these documents.

F.--Match may include state funds, local cash, third party in-kind contributions, unreimbursed expenditures, corporate funds or assets in accordance with requirements of the specific funding source.

G.--Any program income shall be used to purchase additional services within the program they were collected, within the same year as collected.

H.--Any program income collected by a provider may be retained or submitted to the AAAIL, at the AAAIL's discretion. If retained by the provider, a report of program income, by program, must be submitted to the AAAIL, with financial reports, for the AAAIL approval.

I.--Collect, account for, provide source documentation, and expend program income in accordance with 2 CFR 200.80, 2 CFR 200.307, and as further defined by AOA Policy. Program income must be used for current costs – i.e., costs incurred during the same budget period and in the same program, in which the income is earned.

J.—Third party in-kind contributions shall be defined as stated in 45 CFR Part 92.24 and its application shall be subject to applicable portions of this regulation, Office of Management and Budget (OMB) Federal Register Volume 78, No. 248 Subsection 200.96, and contractual provisions.

2.01—Deliverables

I.--For Title III-B Supportive Services

A.--Provider staff shall submit IIIB budgets based on final June SAMS report entries for each senior center in the Second Party region. A justification will be required for any budget variation for FY17.

B.--Provider staff will provide all Senior Center staff training regarding ADRC, or as issues are identified. Back-up documentation for monitoring and training logs shall be submitted to DAIL with the October, January, April, and June invoices.

C.--All back-up staff for IIIB services shall follow the training and education requirements of the FY17 contract, submit to a background check, and follow 910 KAR 1:170. The DAIL Training and Education log shall be submitted for verification of this requirement with the October, January, April, and June invoices.

D.--Ensure the minimum units served shall not be less than 95% of the units served in fiscal year 2015 according to the final FY2015 SAMS report.

II.--For the Title III-D Disease Prevention and Health Promotion:

A.--Participate in monthly Disease Prevention & Health Promotion conference calls with DAIL.

B.--Implement evidence-based strategies throughout the fiscal year.

C.--Attend one evidence-based lay leader training in person or one (1) online training, provided by DAIL.

D.--Implement a minimum of one (1) evidence-based program monthly per county.

2.02—Reporting Requirements

The Second Party shall:

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A.--Ensure all reported data is accurately reflected and documented in SAMS no later than the 10th of the following month of service. The SAMS report information shall match the information submitted on the backup report for each program. SAMS' information shall include:

1.--Complete client record, including assessment, client information, journal entries, service units and other information as needed ;

B.--Conduct client satisfaction survey including all budgeted services and submit compiled data to DAIL by March 31st.

C.--The National Aging Program Information Systems (NAPIS) State Program Reports are completed by the states to comply with AoA reporting requirements for submission of annual performance reports. Three principal types of data are included in the NAPIS design: (1) performance data on programs and services funded by the Older Americans Act (OAA); (2) demographic/descriptive data on the elderly population obtained from the U.S. Census Bureau and other sources; and (3) descriptive data on the infrastructure of home- and community-based services in place to assist older persons, based on AoA studies and related reviews.

The state's annual NAPIS report is a roll up compilation of each individual Second Party's NAPIS Report. In order to successfully comply with the AOA requirement for continued funding, each Second Party may be requested .NAPIS reports must meet DAIL's requirements in the following manner;

1.--Include complete justifications, as requested, on the provided and required DAIL form for any changes plus (+) or minus (-) 10% for each service and cost category of units and expenditures from FY16.

2.--Shall not contain missing data over three percent (3%) in any category.

3.--Correction to the NAPIS report must be complete and approved by DAIL on or before close of business November 16th of the current year.

A provider that fails to meet any individual component of these reporting requirements including audit invoices shall have all reimbursement request(s) held regardless of funding source, program, and amount until such time as the NAPIS report complies with all requirements set forth above.

D. Provide planning and progress reports for the Title III-D program on October, 1, January 1, April 1, and June 30, to the Health Promotion Program Coordinator. Failure to submit these reports shall result in nonpayment of funds.

2.03--Pricing and Payment Requirements

I.--Payments by DAIL to the Second Party shall be conditioned upon receipt of appropriate, accurate, and actual invoices along with backup documentation including source documentation, submitted between the tenth (10th) and nineteenth (19th) day of each month following the month of service to the Department by the Second Party, as well as the Second Party's continued satisfactory performance, as determined by DAIL, and shall be subject to the availability and allocation of local agency or governmental funds, or state or federal funds necessary to finance the performance of the services described in this Contract. If invoices are not received by the 19th, no approval or payment will take place until the following month's submission of invoices. In this event individual monthly invoices are required and will not be accepted in a combined amount on a single invoice. If notification of incorrect invoices is received, the Second Party shall have two (2) business days to respond. If invoices are not correct in totality (financial and programmatic) within fifteen (15) business days, payments will not be made until the following month with the submission of that month's invoice. This policy excludes the procedures for the month of June. June

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invoices shall be due to DAIL in compliance with the Commonwealth's fiscal year close out procedure. June invoices shall be submitted 4 business days prior to the last day to post transactions to FY '17 in the Commonwealth's accounting system per the FY '17 Closing Schedule. A closing memo will be issued to Second Party upon notification to First Party by the Commonwealth. All services billed must be documented, as required, in the Social Assistance Management System (SAMS), or other systems required by specific programs. Required data on invoices or invoice backup forms must match that data recorded in SAMS.

II.--Payment by the Department to the Second Party shall be made only after the Secretary of the Finance and Administration Cabinet or his designee has approved the Contract.

III.--Reimbursement of actual allowable expenditures shall be made in accordance with the approved budget.

IV.--Pursuant to KRS 205.211, the CHFS Cabinet Secretary has the authority to correct any underpayment or overpayment of public assistance benefits.

V.--All funds received from DAIL shall be expended solely for the use of implementing DAIL programs as budgeted and approved by DAIL. Any DAIL funds utilized for non-DAIL programs are subject to recoupment.

2.04-CHFS/Agency Responsibilities

The Department for Aging and Independent Living may:

- A.--Provide technical assistance for successful completion of the tasks outlined in this Contract.
- B.--Provide invoice forms and instructions to complete the Contract requirements.
- C.--Ensure that all policy decisions, changes, interpretations, and reinterpretations affecting this Contract are distributed promptly to the Second Party.
- D.--Maintain administrative regulations and procedures to assist in the implementation of Older Americans Act programs and other appropriate programs that DAIL deems necessary and furnish such regulations and procedures in writing to the Second Party.

2.05--Related Documents and Materials Incorporated by Reference

Older Americans Act & the Aging Network

eCFR — Code of Federal Regulations

910 KAR 1:220. General administration, programs for older individuals and persons with disabilities[the elderly].

910 KAR 1:170. Older Americans Act supportive services for the elderly.

910 KAR 1:190. Nutrition program for older persons.

200 KAR 2:006. Employees' reimbursement for travel.

<http://www.chfs.ky.gov/dail/DAILSOP.htm>

2.06--Information Technology Requirements

I.--The Second Party shall comply with the Financial Management System Requirements, which includes establishing and/or maintaining a financial management system that:

- A.--Provide accurate, current, and complete disclosure of the financial results of the functions and services performed under this Contract, in accordance with reporting requirements set forth in the

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guidelines for allowable costs found in the applicable documents: Office of Management and Budget (OMB) Federal Register Title 20, Chapter V, Part 641; and the federal agency's common rule.

B.--Provides complete records that identify the source and application of funds for activities, functions, and services performed pursuant to this Contract. These records shall contain information pertaining to federal and/or state funds received, obligations, unobligated balances (if applicable), assets, liabilities, expenditures, and income.

C.--Maintains effective control over and accountability for all funds, property, and other assets. The SECOND PARTY shall safeguard all such assets and shall assure that they are used solely for authorized purposes in the provision of functions/services under this Contract. An inventory must be maintained and a complete physical inventory of all equipment and/or furniture purchased under programs outlined in this contract must be conducted annually.

D.--Comply with procedures for determining reasonableness and allowability of costs in accordance with the guidelines for allowable costs found in the applicable documents Office of Management and Budget (OMB) Federal Register Title 20, Chapter V, Part 641

E.--Maintains accounting records that are supported by source documentation.

F.--Ensures that no other funds or assets of the Agency shall be co-mingled with the funds provided for the programs to be administered under this Contract to any other program account, and that these funds shall not be utilized for any purposes except those specifically identified herein.

G.--Monitors and responds to any fiscal and/or program exceptions established by evaluation, monitoring and/or auditing of this Contract, and resolve promptly any monitoring, fiscal and program audit exceptions by making direct payment or reduction of future reimbursement, or by other methods approved by the Department.

H.--Uses 2 CFR 2900 as the basis for determining any "allowable cost," except as otherwise specified in this Contract.

2.07--Audit Requirements

I.--The objectives of an audit are to provide users of the issuer's financial statements with an opinion by an independent auditor whether the financial statements, including applicable supplemental information, are presented fairly in all material respects in accordance with the applicable reporting framework. The purpose of an independent auditor's opinion is to enhance the degree of confidence that intended users may place on the financial statements. The objectives of a desk review of an audit report or quality control review of an audit is to determine whether the report or the audit is acceptable under the reporting or audit requirements of applicable standards, to identify quality deficiencies that may warrant revisions to the audit report or follow-up audit work to the audit, and identify issues that may require a Party's attention. The Second Party shall submit a complete, correct audit and final invoice in the prescribed format to DAIL by 4:30 pm. Eastern Standard Time, December 31st of the current year.

II.--Second Party shall have a financial audit for period ending June 30, conducted in accordance with:

A.--Under Federal Register Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Section C: Subpart F Audit Requirements:

1.--Section 200.501 (a): for non-federal entities that expend \$750,000 or more in a year in Federal awards, shall have a single audit; or

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2.--Section 200.501(d): when Federal awards of less than \$750,000 are expended, then the entity is exempt from a single audit.

B.--*Government Audit Standards, 2011 Revision*, as issued by the Comptroller General of the United States, and

C.--Auditing standards generally accepted in the United States of America.

III.--The audit report shall contain a supplemental schedule, **Department for Aging and Independent Living Schedule**, which summarizes Aging funds received by the Second Party. The schedule shall present by program the revenues, expenditures, and excess (deficit) of revenues over expenditures. The totals of these programs are to be presented in a separate column. Matching funds, which include Local Cash, In-Kind, and Program Income, must also be separated out. A Final, Audited, Invoice must also be turned in with the audit report.

IV.--An integral disclosure note to this schedule shall describe details of deferred revenue. The auditor must issue an opinion on this supplemental schedule.

V.--Include notes that describe accounting policies used in preparing the schedule shall be included, and note if the non-federal entity elected to use the 10% de minimus cost rate as covered in Section 200.414 of Federal Register Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Section C: Subpart F Audit Requirements:

VI.--Furthermore, if the Second Party passes-through or pays federal or state funds to vendors, contractors, or subcontractors who are not subject to audit requirement of this Contract, the Second Party shall, as a minimum, provide the final expenditures reports of those entities, and;

VII.--If the Second Party has been required to make revisions to its fourth quarterly report as a result of the audit, the revised quarterly report shall be marked as "Audited".

VIII.--The auditor or audit firm shall be a member of the American Institute of Certified Public Accountants (AICPA) and be licensed by and registered with the Kentucky Board of Accountancy, which includes being enrolled in a peer review program. The audit firm's professional members shall maintain their professional proficiency through continuing education and training. Auditors assigned to the engagement shall maintain at a minimum the Continuing Professional Education (CPE) requirements of the current edition and official interpretations of *Government Auditing Standards* (a/k/a Yellow Book).

IX.--Second Party shall ensure that the auditor, if in agreement with recommendations of the reviewer, make timely revisions to the audit report or perform additional follow-up audit work in order to correct quality deficiencies, or if not in agreement, to respond in writing why the review recommendation is not valid or not warranted.

X.--Second Party shall not pass-on costs or charge as an expense to DAIL or any program funded by DAIL for the costs incurred by the independent auditor for time spent correcting deficiencies in audit reports.

XI.--Second Party shall be required to submit the following documents, by dates certain as follows:

A.--A copy of the executed engagement letter with the auditor's latest peer review attached, and any contract for audit services, between the independent auditor and the Second Party, by August 1st.

B.--An electronic copy of the final audit report, at a date immediately after acceptance by the Board of the Second Party, and in any event no later than February 28th.

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C.--Any communications with Those Charged with Governance from the independent auditor to the Second Party, immediately upon receipt, and in particular if there are issues or finding of:

1.--Abuse, fraud, illegal acts, or noncompliance with provisions of laws, regulations, contracts, or grant agreements, which could have a direct and material effect on determination of financial statement amounts.

2.--Significant deficiencies or material weaknesses in internal control over financial reporting or major programs, or material questioned costs.

XII.--Copy DAIL with any Second Party Corrective Action Plan as a result of financial statement findings or federal awards findings and questioned costs sent by the Second Party as a response to the independent auditor or to a federal agency.

XII.--Any correspondence from a federal agency with audit oversight to the Second Party that concerns financial or compliance issues of an audit, immediately upon receipt.

XIV.--Requests for extensions of deadlines concerning audits shall be submitted to DAIL.

XV.--For questions concerning audit requirements please contact Jetta Collett, DAIL, Cabinet for Health and Family Services, 275 East Main Street, 3E-E, Frankfort, KY, 40621; phone 502-564-6930 ext. 3614; Fax 502-564-4595; and email address Jetta.Collett@ky.gov.

XVI.--Any Second Party that fails to meet any individual component of these requirements shall have all reimbursement request(s) held regardless of funding source, program, and amount until such time as the audit report complies with all requirements set forth above.

2.08--Protection of Personal Information Security and Breach Investigation Procedures and Practices Act.

I.--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.

II.--"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."

III.--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."

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

V.--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.

VI.--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.

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

VIII.--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.

IX.--In accordance with KRS 61.932(2)(a) the vendor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth Office of Technology:
<http://technology.ky.gov/ciso/Pages/InformationSecurityPolicies,StandardsandProcedures.aspx>

XIX.--All personal information sent electronically shall be sent utilizing encryption software.

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

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

3.05—Violation of tax and employment laws

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

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

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

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

Contractor must check one:

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

The Contractor has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). Attached is a list

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of such determination(s) , which includes the KRS violated, the date of the final determination, and the state agency which issued the final determination.

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

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

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

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

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

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

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

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

7. The Contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24,

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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 Office of Policy and Budget, the Finance and Administration Cabinet and filed with the Government Contract Review Committee shall create a valid Contract between the Parties consisting of the following:

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

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

4.01—Term of Contract and Renewal Options

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

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

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

4.02—Changes and Modifications to the Contract

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

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

4.03—Notices

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

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

4.05—Effective Date of Contract and Earliest Date of Payment

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

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

4.06—Contract Renewals

Upon expiration of the initial term, contract renewal shall be subject to prior approval from the Office of Policy and Budget, 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.

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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 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,

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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.

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

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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

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, Office of Policy and Budget 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

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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

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

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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.

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

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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, 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

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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 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;

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

2. Loss/Destruction

The Contractor shall immediately notify the Department 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;

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- b. The contract is terminated; or
- c. The contract period ends and will not be renewed.

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

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

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

4.40—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.

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

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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 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:

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- 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 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

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with its employees to that effect, provided however, that the foregoing will not apply to:

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

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

4.50—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 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.

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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—LEP Requirements

If a recipient of Federal Financial assistance, shall comply with Executive Order 13166, Federal Register Volume 65. No. 50121, including but not limited to, language providing services to improve access to its programs and activities for persons, who, as a result of their national origin, are limited in their English proficiency ("LEP"). The language services shall:

- a. Be consistent with the general guidance document (LEP Guidance) issued by the Department of Justice which sets forth the compliance standards recipients of Federal financial assistance must follow to ensure that LEP persons have meaningful access to the program's services and activities;
- b. Have a method of identifying LEP Individuals; and
- c. Provide language assistance measures (e.g. oral interpretation and written translation services; training of staff; providing notice to LEP persons; monitoring compliance and updating the plan.)

Section 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:

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

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

5.00.03—Clean Air Act and Federal Water Pollution Control Act

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

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

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

5.00.05—Certification of Lobbying Activities

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.

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5.01—Subrecipient Provisions

This contract has been identified as a sub-recipient agreement. Therefore the Contractor (sub-recipient) and all lower tier sub-recipients shall comply with the provisions of 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), and the federal funding agency implementing regulations, in their entirety.

Federal agency implementing regulations for the Uniform Guidance are located as follows:

- 2 CFR Part 300, Department of Health and Human Services
- 2 CFR Part 400, Department of Agriculture
- 2 CFR Part 800, Department of Veterans Affairs
- 2 CFR Part 900, Department of Energy
- 2 CFR Part 1500, Environmental Protection Agency
- 2 CFR Part 2200, Corporation for National and Community Service
- 2 CFR Part 2400, Department of Housing and Urban Development
- 2 CFR Part 2800, Department of Justice
- 2 CFR Part 2900, Department of Labor
- 2 CFR Part 3400, Department of Education

Unless otherwise indicated by this agreement, this sub-award does not include Research and Development.

The Contractor (sub-recipient) and all lower tier sub-recipients shall adhere to all the requirements of the federally approved grant application, Notice(s) of Grant Award and Terms and Conditions. The Contractor shall be fully liable for federal refund of any deficiencies identified in audit, state or federal review.

5.01.01—Federal Funding Accountability and Transparency Act Compliance

The Contractor shall comply with the Federal Funding Accountability and Transparency Act (FFATA or Transparency Act - P.L.109-282, as amended by section 6202(a) of P.L. 110-252), in accordance with 2 CFR, Part 170, including registration of a Data Universal Numbering System (DUNS) identifier number if the amount of Federal funding awarded to the Contractor is \$25,000 or more. Details on how to register and acquire a DUNS number are available at <http://fedgov.dnb.com/webform>, and are free for all entities required to register for grant awards under these provisions. The Contractor must disclose to CHFS the names of the top five executives and total compensation to each, if:

- A. More than 80% of the Contractor's annual gross revenues originate from federal funds (received directly or indirectly), and those revenues are greater than \$25,000,000 annually; and,
- B. Compensation information is not already available to the public (such as, through reporting under the Securities Exchange Act of 1934. See 2 CFR, Part 170 for additional details regarding executive compensation requirements).

5.01.02—Audit Requirements

The Contractor (sub-recipient) shall have an audit conducted in accordance with 2 CFR, Part 200, Uniform Guidance, Subpart F – Audit Requirements. The audit report's accompanying financial statements shall be issued in accordance with Generally Accepted Accounting Principles (GAAP) and

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reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited.

The audit shall cover each fiscal year period of the contract duration, and a copy of the Contractor's audit report(s), federal schedule of expenditures, supplemental information by cost center and/or program and audit findings with corrective action plan shall be submitted to the agency contact identified in Section 4.01, within nine (9) months after the fiscal year end.

Should the audit report refer to a separate management letter of findings, the Contractor shall include a copy of the management letter with the audit report and comments and/or a corrective action plan. All material findings shall be reported in the audit section of audit findings and shall include the management's response and/or corrective action as required by 2 CFR, Part 200, Subpart F.

The audit report shall include a schedule of expenditures of federal awards and all federal award identification information as stipulated by 2 CFR, Part 200, Subpart F requirements.

The audit report shall include supplemental information of all federal grant and/or award expenditures by cost centers and/or programs identifying all administrative and indirect cost for each state fiscal year. The Contractor shall include in the supplemental information a list of their sub-recipients of federal monies received through this agreement and provide their sub-recipient name, DUNS, Catalog of Federal Domestic Assistance (CFDA) number and description, sub-recipient's expenditures and related contract number in addition to all other information as required in 2 CFR, Part 200.

A copy of the engagement letter shall be submitted to the agency contact identified in the Contract Commodity Line 1 Extended Description no later than three (3) months prior to the Contractor's fiscal year end, unless CHFS grants an extension in writing. If the Auditor of Public Accounts (APA) is to perform the audit, the name of the APA auditor and the anticipated start date shall be submitted to the agency contact identified in the Contract Commodity Line 1 Extended Description no later than three (3) months prior to fiscal year end, unless that office or its designee grants an extension in writing.

5.01.03—Response/Compliance with Audit Findings

The Contractor shall take action to ensure its or a sub-recipient's or sub-contractor'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 agreement. This action will include the Contractor's delivery to CHFS, for CHFS approval, a Corrective Action Plan that addresses deficiencies identified in any audit(s), review(s), or inspections(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 that is:

Required by a Kentucky or federal law, regulation, rule or other audit requirement relating to the Contractor's business;

Performed by the Contractor as part of this agreement; or,

Necessary due to the Contractor's noncompliance with any law, regulation, rule or audit requirement imposed on the Contractor.

5.01.04—Reporting Requirements:

A. Single Audit Report: When applicable, the Contractor shall ensure audit reports are made available through the Federal Audit Clearinghouse, in accordance with 2 CFR 200.512(b), and shall provide notice of audit completion and availability within ten (10) calendar days of

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submission to the Federal Audit Clearinghouse, to the Contract Specialist identified on the Title Page of the Contract. If not required to submit audit reports through the Federal Audit Clearinghouse, the Contractor shall submit three (3) written copies of the audit report or an electronic copy to the Contract Specialist identified on the Title Page of the Contract no later than six (6) months following the end of the fiscal year audited, unless an extension is approved in writing by CHFS.

- B. All reports and documentation: Electronic submission of required documents may be acceptable at the discretion of the Agency Contract identified in the Contract Commodity Line 1 Extended Description identified in Section 4.01.

5.01.05—Indirect Cost:

The Contractor (sub-recipient) shall be reimbursed for indirect costs only where the Contractor incurs indirect costs in addition to costs that are reimbursed as direct program costs. Indirect cost rates shall be recognized in the following order:

- A. The Contractor's federally approved negotiated rate, if one exists, shall be recognized for the purposes of charging indirect cost to the federal programs administered through this sub-recipient agreement, except where limited by federal statute. The Contractor shall submit the federally approved indirect cost rate document to the Contract Specialist identified on the Title Page of the Contract. A federally approved negotiated rate may exist in cases where the Contractor conducts business directly with the federal government other than as related to this agreement. CHFS may issue an acceptance letter in addition to this agreement to acknowledge the appropriate federally approved rate.
- B. If no federally approved negotiated rate exists, the Contractor may request to utilize an indirect cost rate or cost allocation plan developed in accordance with 2 CFR, Part 200, Subpart E, by submitting a request and detailed indirect cost plan description to the Contract Specialist identified on the Title Page of the Contract. Plan or rate approval must be evidenced by formal written acknowledgement by the First Party as acceptable for purposes of billing, to be applied to federal programs except where limited by federal statute. If this option is approved, CHFS will issue a separate letter of acceptance which shall be valid for the term of this agreement.

If options A or B above are not utilized, the Contractor may elect to utilize the de minimis rate (10% of Modified Total Direct Costs) as outlined in 2 CFR, §200.414(f), for purposes of requesting reimbursement for indirect costs as a sub-recipient, to be applied to federal programs except where limited by federal statute.

5.01.06—Cost Share or Matching:

If indicated elsewhere in this agreement, the Contractor (Sub-recipient) shall provide the required match as outlined in the federally approved grant application. The Contractor shall be fully liable for federal refund of any match deficiencies identified in audit. The cost sharing or matching contributions shall meet all of the following criteria:

Are verifiable from the Contractor's records;

Are not included as match contributions for any other federal award;

Are necessary and reasonable for accomplishment of project or program objectives;

Are allowable under 2 CFR Part 200, subpart E – Cost Principles;

Are not paid by the federal government under another federal award, except where the federal statute authorizing a program specifically provides that federal funds made available for such program can be

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applied to matching or cost sharing requirements of other federal programs and written authorization has been received from the other federal program; and,

Conform to other provisions of 2 CFR, Part 200, and the federal funding agency implementing regulation for 2 CFR, Part 200, as applicable.

5.01.07—Additional information required under 2 CFR §200.331(a)(1):

2 CFR §200.331(a)(1), Federal Award Identification, stipulates the data elements to be identified for each sub-award. Due to differences in timing of the state fiscal year based contract document compared with differing federal grant award dates, some of the information required under this provision may not be available at the time of contract issuance. Information available shall be provided to the Contractor upon initial issuance of this agreement and CHFS shall provide the specified federal grant information as it becomes available. The Contractor may request an updated listing of information from the Contract Specialist identified on the Title Page of the Contract at any time during the contract period.

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BUSINESS ASSOCIATE AGREEMENT (OUTSIDE STATE GOVERNMENT)

This Business Associate Agreement (Agreement) is entered into as of July 1, 2016(Effective Date) by and between Department for Aging & Independent Living (“Covered Entity” hereinafter), whose principal place of business is located at 275 East Main Street 3E-E, Frankfort, KY 40601 and the Lexington Fayette Urban County Government d/b/a Lexington Senior Citizens Center, (“Business Associate” hereinafter), whose principal place of business is located 250 East Main Suite 328, Lexington, KY, 40507 , 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 Service Contract # PON2 725 1600003936;

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

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

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

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

Now Therefore, the parties hereby agree as follows:

SECTION I – DEFINITIONS

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

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

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

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

SECTION II – OBLIGATIONS AND ACTIVITIES OF THE BUSINESS ASSOCIATE

The Business Associate agrees to the following:

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

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

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

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(including subcontractors) to whom it provides such electronic PHI agrees to implement reasonable and appropriate security measures to protect the information. ;

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

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

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

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

SECTION IV – NOTICE OF PRIVACY PRACTICES

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

SECTION V – BREACH NOTIFICATION REQUIREMENTS

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

--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.

--By notice in plain language including and to the extent possible:

-A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;

-A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

-Any steps individuals should take to protect themselves from potential harm resulting from the Breach;

-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,

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-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.

--Use a method of notification that meets the requirements of 45 CFR §164.404(d).

--The Business Associate shall provide for substitute notice, as required by HIPAA Rules, by providing a toll-free phone number that remains active for at least 90 days where an individual can learn whether the individual's unsecured PHI may be included in the breach and a posting as required by 45 CFR § 164.404 (d) (2). The costs of the substituted notice and notifications set out in this Section shall be the responsibility of the Business Associate.

SECTION VI – TERM AND TERMINATION

6.1-- **Term.** The term of this Agreement shall be effective as of the date set forth above in the first paragraph and shall terminate when all of the PHI provided by the Covered Entity to the Business Associate, or created or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

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

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

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

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.

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

SECTION VII – GENERAL PROVISIONS

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

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this Agreement.

- 7.6-- **Indemnification by Business Associate** . Business Associate agrees to indemnify, defend and hold harmless the Covered Entity and its employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as "Indemnified Party," against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with Business Associate's actions arising out of this Agreement. Accordingly, on demand, Business Associate shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results for Business Associate's breach hereunder. The obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement for any reason.
- 7.7-- **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.
- 7.8-- **Interpretation** . Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Rules.
- 7.9-- **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:

AND

To Covered Entity at:

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.

- 7.10-- **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.
- 7.11-- **Disputes**. If any controversy, dispute or claim arises between the Parties with respect to his Agreement, the parties shall make good faith efforts to resolve such matters informally. Any dispute which cannot be mutually settled may be brought in the Franklin Circuit Court or Federal District Court of Kentucky.
- 7.12-- **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

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actions and will not violate any provisions of any license, corporate charter or bylaws.