

LEXINGTON-FAYETTE COUNTY HEALTH DEPARTMENT  
CONTRACT TO RECEIVE SERVICES

THIS AGREEMENT, made and entered into this **1ST DAY OF JULY 2016** by and between the Lexington-Fayette County Health Department, 650 Newtown Pike, Lexington, Kentucky 40508 (hereinafter referred to as "Health Department") and

**Family Care Center  
(Health Access Nurturing Development Services)  
Lexington-Fayette Urban County Government  
200 East Main Street  
Lexington, KY 40507**

(hereinafter referred to as "Contractor").

NOW THEREFORE, in consideration of the mutual agreements set forth herein, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Contractor agrees to the conditions for the Health Access Nurturing Development Services (HANDS) as prescribed by the for Public Health and as described below:
  - a. Attendance at one initial over-view training by the Administrator/Director.
  - b. Provision of the HANDS recommended level of supervision to program staff ratio and adequate time allotted for team meetings.
  - c. Staff assigned to the program will meet program parents of diverse backgrounds in a non-judgmental, supportive, strength-based approach.
  - d. Timely completion of staff training as specified by program policies and procedures.
  - e. The reporting of program data in a timely manner.
  - f. That program quality is achieved through the twelve critical elements as described by the Family Institute's Training materials.
  - g. Staff at Coordinator level or above will participate in diverse local early child development collaborative(s) utilizing confidentiality agreements, interagency agreements to refer families for services and participation with collaborative such as Preschool Interagency Councils, Vision 2000 Committees, community Collaboration for Children, Local early Childhood Collaborative, and related state initiatives.
  - h. Adequate staff time allowed for technical assistance provided by state and state designated staff and follow-up

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- and corrective action as recommended.
- i. State HANDS program funds will be paid to HANDS service providers based upon the number of families served and outcomes achieved. The total number of families projected to be served in Fayette County next year is 522 families.
2. The contractor agrees to provide adequate management to control HANDS services as follows:
    - a. Report expenses and revenues monthly no later than the first 5 working days of the following month via electronic means to the Department of Public Health.
    - b. Report progress of interventions monthly no later than the 1<sup>st</sup> of the following month via electronic means to the Department of Public Health.
    - c. Adhere to the Department for Public Health Hands Program Standards and be bound by the same terms and conditions of the Department for Public Health.
    - d. Make available all contractor financial reports of all reimbursed funds under this contract for review by the Health Department and/or the Department for Public Health when requested to do so.
    - e. Comply with the annual audit requirements contained in OMB Circular A-133. A copy of the audit shall be delivered to the Health Department by September 15.
  3. Health Department agrees to perform the services as hereinafter described to the Contractor:
    - a. Provide the terms and conditions of the Department for Public health approved statewide plans (HANDS).
  4. The Health Department, acting as the sole contractor with the department for Public Health, agrees to remit to Family Care Center, all monies received for services provided by Family Care Center, per the Remittance Advice from Department of Public Health. Remittance will be payable within (30) thirty days after receipt by the Health Department. An annual administrative fee of \$1500.00 will be deducted from the monthly payment to contractor in the amount of \$125.00 per month.
  5. The Health Department's Medicaid/non Medicaid payment shall not exceed a total of \$485,742.00. **The Contractor's billing for Medicaid clients in HANDS shall not exceed a total of \$376,288.00 and non-Medicaid shall not exceed \$56,254.00. Funds provided for multigravida families shall not exceed \$53,200.00.**
  6. Health Department reserves the right to request that Contractor substantiate the sum demanded for remuneration before the Health

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Department is required to render payment. Payment is not due from the Health Department until the contracted services have been provided to the Department's satisfaction. "No taxes will be withheld from payments to contractors".

7. All invoices may be approved by the Commissioner of Health or assigned designee. Responsibility to ensure that contract invoices are properly reviewed and approved shall rest with each department designee. Approval is based upon verification that the goods or services rendered and invoiced for, were appropriately received in an acceptable manner and the invoice reflects the agreed upon price per contract. In approving invoices these individuals are attesting that, to the best of their knowledge, the invoices they are approving are accurate, valid and appropriately coded with the correct cost center and expense account.
8. The period within the current fiscal year in which the subject services are to be performed is from **JULY 1, 2016 TO JUNE 30, 2017**.
9. Either Party may for any reason, at its option, terminate this agreement at any time provided the Contractor receives thirty (30) day notice in writing.
10. The parties to this contract intend that the relation between them created by this contract is that of independent contractors. No agent, employee, or servant of Contractor shall be deemed to be the employee, agent or servant of the Health Department. Contractor will be solely and entirely responsible for his acts and the acts of his agents, employees, servants and subcontractors during the performance of the contract.
11. Health Department shall exercise no control, direct, indirect or otherwise, over the decisions or operations of Contractor, including but not limited to the Contractor's use of any funds contemplated or granted herein, and shall have no liability for any loss or damages resulting therefrom. Contractor shall indemnify and hold harmless Health Department against all liabilities, losses, damages, claims and actions based upon or arising out of damage or injury (including death) to persons, entities or property caused by or sustained in connection with the performance of this contract or by conditions created hereby, or upon any violation of any statute, ordinance, code or regulation in connection herewith. Contractor shall pay all costs of defending any claim, including but not limited to attorneys' fees of Health Department or any of its officers, board members, or employees, incurred in connection with any claim, action or defense of the same arising from this contract.
12. Contractor shall maintain such insurance as shall be required to

fully insure Contractor and Health Department against all claims of all kinds and nature for any damage to property or for personal injury (including death) made by anyone whomsoever, that may arise from operations carried on under this contract, either by Health Department or Contractor. The coverage shall be in an amount sufficient to insure Contractor and Health Department fully against any such loss, and shall name Health Department as an additional insured.

13. Contractor hereby agrees to comply and states it is in compliance with all applicable laws and regulations governing the services to be provided under the contract, including, but not limited to, Occupational Safety and Health Act (OSHA), Title VI of the Civil Rights Act of 1964, and all requirements imposed by or pursuant to the Regulation of the Department of Health, Education and Welfare (45 CFR, Part 80) of that Title
14. Contractor agrees to comply with the Americans with Disabilities Act (ADA) and not discriminate against applicants, Health Department patients, or employees with disabilities.
15. Contractor certifies that no Health Department employee is a partner, shareholder, owner, officer or employee of the Contractor and that no Health Department employee will directly or indirectly receive any benefits from the Contractor and that no Health Department employee will directly or indirectly receive any benefits from the contract. Moreover, Contractor agrees to provide The Health Department the names of all family members (spouse, child, grandparent, aunt, uncle, nephew, or niece) or family members of employees of the Contractor who are Health Department employees. Failure to provide such information is a violation of the Kentucky Revised Statutes.
16. **Confidentiality, Confidentiality Agreements and Limitations on Information and Data Use.**

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

- a. The Contractor shall cause all personnel who may have access to confidential information provided by the Health Department to enter into Health Department approved confidentiality agreements and shall maintain such

confidentiality agreements on file. The Health Department reserves the right to direct the removal from contract administration, or the termination of access to Health Department provided information, for any individual covered by this Agreement who has not signed a confidentiality agreement.

- b. Any subcontractor engaged by the Contractor to fulfill the requirements of this Agreement must provide written assurances that it and its agents and employees will abide by the terms of confidentiality as set forth in this Agreement, as well as any federal or state confidentiality agreement which may govern the terms and conditions in this Agreement.
- c. Any dissemination of information about projects funded and the scope of work described in the terms and conditions of this Agreement, must first be reviewed by the Health Department's project manager and must have the Health Department's written approval 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 Health Department, 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.

**17. HIPAA Compliance:**

The Business Associate Agreement pursuant to the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Health Information Technology for Economic and Clinical Health Act (HITECH) its implementing regulation, the Standards of Privacy of Individual Identifiable Health Information at 45 C.F.R. Part 160 and 164, Subpart A and E ("Privacy Rule"), LFCHD is required to enter into an agreement with the Business Associate, pursuant to which the Business Associate shall comply with and appropriately safeguard Protected Health Information ("PHI") that it will use and disclose when performing functions, activities or services ("Services") for LFCHD. The Business Associate by signing the contract shall comply with the following terms in addition to other applicable contract terms and conditions relating to the safekeeping, use and disclosure of PHI. See attached Business Associate Agreement. This BAA shall auto-renew when contract is in place between Business Associate and Covered Entity.

18. Discrimination Clause: The Health Department is an equal opportunity employer. Contractor hereby agrees not to discriminate in regard to race, color, creed, age, sex, national origin or disability and shall comply with all applicable laws and regulations governing the services to be provided under the contract, including, but not limited to, Title VI of the Civil Rights Act of 1964 to include the Federal Executive Order No. 13166 which requires that recipients of federal funds, its contractors, agents or subcontractors, shall provide language assistance designed to ensure meaningful access to services and that all person(s) can communicate effectively when services for persons with Limited English Proficiency (LEP) are provided. In addition, the Contractor agrees to comply with all requirements imposed by or pursuant to the Regulation of the Department of Health, Education and Welfare (45 CFR, Part 80) of that Title.
19. Licenses and Certifications: Contractor shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the contractor (includes all medical professionals).
20. Eligibility: The Contractor certifies that the Contractor, its agents, and sub-contractors are not debarred, suspended, voluntarily excluded, or otherwise ineligible for participation in federally assisted contracts under Executive Order 12549, "Debarment and Suspension". (24 CFR 24.505)
21. Electronic Storage/Signature: The parties hereto agree and stipulate that the original of this Agreement, including the signature page, may be scanned and stored in a computer database or similar device, and that any printout or other output readable by sight, the reproduction of which is shown to accurately reproduce the original of this document, may be used for any purpose just as if it were the original, including proof of the content of the original writing.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same agreement. Any electronically transmitted signature or photocopy of a signature to this Agreement shall be deemed an original signature to this Agreement and shall have the same force and effect as an original signature. For purposes of this Section, an "electronically transmitted signature" means a manually-signed original signature that is sent via the internet as a "pdf" (portable document format) attached to an e-mail message.

22. Conflict of Interest:

- a. The Contractor warrants that, to the best of its knowledge and belief, there are no relevant facts or circumstances that could give rise to a conflict of interest and that no Health Department employee will directly or indirectly receive any benefits from the contract.
- b. The Contractor agrees that if an actual or potential conflict of interest is discovered after the award of this contract, the Contractor shall make a full disclosure in writing within five (5) business days of discovery. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, to avoid, mitigate, or neutralize the actual or potential conflict of interest is discovered after the award of this contract, the Contractor shall make a full disclosure in writing within five (5) business days of discovery. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, to avoid, mitigate, or neutralize the actual or potential conflict.
- c. Failure to provide such information is a violation of the Kentucky Revised Statutes.

23. Compliance Program:

- a. The Contractor has been made aware that the Health Department operates in accordance with a corporate compliance program and has on staff, Compliance /Priva Officer (859-899-2257) as the contact person regarding questions, complaints or reports of non-compliance with any terms or conditions of this contract or any ethical, professional or legal standard or law which impacts both parties. It is understood that should the Contractor be found to have violated the compliance policies, the Health Department can terminate this Contract upon written notice.
- b. The Contractor has been informed that a copy of the Health Departments Compliance Program can be viewed online at <http://www.lexingtonhealthdepartment.org> and has been advised to review the policies of the Compliance Program.

24. This contract is made and entered into in the Commonwealth of Kentucky, and shall in all respects be interpreted, enforced, and governed by the laws of the Commonwealth of Kentucky. The language of all parts of this contract shall in all cases be interpreted as a whole, according to its fair meaning, and not strictly for or against any of the parties hereto. Contractor consents to the

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exclusive jurisdiction and venue of courts located in Fayette County, Kentucky, and agrees to waive any argument of lack of personal jurisdiction or forum non-conveniens with respect to any claim or controversy arising out of or relating to this contract, any actions taken pursuant to this contract, or any other contact or communication regarding this contract.


25. If any provision of this contract, or the application thereof to any person, entity or circumstances, shall be invalid or unenforceable to any extent, the remainder of this contract, and the application of such provision to other persons, entities or circumstances, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.



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IN WITNESS WHEREOF, the parties executed this Contract the day, month and year above written.

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:**

  
\_\_\_\_\_  
AUTHORIZED SIGNATURE

6-28-2016  
DATE

FEDERAL ID #: 61-0858140      SOCIAL SECURITY #:

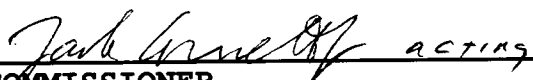
TITLE: **JIM GRAY, MAYOR**

TELEPHONE: **859-258-3100**

PERSON TO CONTACT WITH BILLING PROBLEMS:

NAME: KAREN HACKER      PHONE: 859-288-4040

**HEALTH DEPARTMENT:**

  
\_\_\_\_\_  
COMMISSIONER

6.8.16  
DATE

**\*CONTRACTOR:** Urban County Government/Family Care Center

\*For Follow-up please provide: Copy of Liability Insurance and Agency License



## LEXINGTON-FAYETTE COUNTY HEALTH DEPARTMENT

### BUSINESS ASSOCIATE AGREEMENT

This **BUSINESS ASSOCIATE AGREEMENT** (“Agreement”), dated and effective as of this day 1<sup>st</sup> of July, 2016, is entered into by and between **FAMILY CARE CENTER** (“Business Associate”) and the **LEXINGTON-FAYETTE COUNTY HEALTH DEPARTMENT** (“Covered Entity”).

#### WITNESSETH:

WHEREAS, the parties to this Agreement have entered into an arrangement under which Business Associate provides certain services to Covered Entity; and

WHEREAS, Covered Entity will or may disclose certain information to Business Associate, and Business Associate may receive, maintain, transmit or create certain information to or on behalf of Covered Entity, during the course of Business Associate’s provision of certain services, some of which may constitute “protected health information” (“PHI”) or “electronic protected health information” (“ePHI”), as those terms are defined in federal regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended, specifically 45 C.F.R. Parts 160 and 164 (the Privacy, Security, Breach Notification and Enforcement Rules, collectively “the Rules”); and

WHEREAS, Business Associate acknowledges that Business Associate must comply directly with numerous provisions of the Rules as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”); and

WHEREAS, both Business Associate and Covered Entity intend to comply with HIPAA, the HITECH Act and the Rules in order to protect the privacy and to provide for the security of PHI and ePHI disclosed to or maintained, transmitted, or created by Business Associate; and

WHEREAS, both Business Associate and Covered Entity wish to set forth the terms and the conditions pursuant to which PHI and ePHI received, maintained, transmitted, or created by Business Associate in the performance of services for Covered Entity will be handled or exchanged between themselves and with third parties in compliance with HIPAA, the HITECH Act, and the Rules;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms, and conditions contained herein, and intending to be legally bound, Business Associate and Covered Entity agree as follows:

#### **1. Definitions.**

The following terms shall be defined as set forth below. Terms used, but not otherwise defined in this Agreement, shall have the meanings given to them under HIPAA, the Rules and the HITECH Act.

(a) **Business Associate.** For purposes of this Agreement, "Business Associate" shall include the named Business Associate herein above. However, in the event that Business Associate is otherwise a Covered Entity under the Privacy Rule, that entity may appropriately designate a health care component pursuant to 45 C.F.R. § 164.103 as Business Associate for purposes of this Agreement.

(b) **Covered Entity.** For purposes of this Agreement, "Covered Entity" shall include the named Covered Entity herein above, as well as any other entity specifically identified in any joint Notice of Privacy Practices utilized pursuant to the Rules.

(c) **Electronic Protected Health Information or ePHI.** "Electronic Protected Health Information" or "ePHI" shall have the same meaning as that term is defined at 45 C.F.R. § 160.103, as may be amended, limited to the information received, maintained, transmitted, or created by Business Associate from or on behalf of Covered Entity.

(d) **HIPAA.** "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, as may be amended.

(e) **HITECH Act.** "HITECH Act" shall mean the Health Information Technology for Economic and Clinical Health Act, as may be amended.

(f) **Individual.** "Individual" shall have the same meaning as that term is defined at 45 C.F.R. § 160.103, as may be amended, and shall include a person who qualifies as a personal representative of an Individual in accordance with 45 C.F.R. § 164.502(g).

(g) **The Rules.** "The Rules" shall mean the HIPAA Privacy, Security, Breach Notification and Enforcement Rules promulgated at 45 C.F.R. Part 160 and Part 164, Subparts A, C, D and E, and any other applicable provision of HIPAA, and any amendments thereto, including the HITECH Act.

(h) **Protected Health Information or PHI.** "Protected Health Information" or "PHI" shall have the same meaning as that term is defined at 45 C.F.R. § 160.103, as may be amended, limited to the information received, maintained, transmitted, or created by Business Associate from or on behalf of Covered Entity. Unless otherwise stated in this Agreement, any provision, restriction, or obligation in this Agreement related to the use or disclosure of PHI shall apply equally to ePHI.

(i) **Required By Law.** "Required By Law" shall have the same meaning as that term is defined at 45 C.F.R. § 164.103, as may be amended.

(j) **Secretary.** "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services, or his or her designee.

(k) **Security Breach.** "Security Breach" shall have the same meaning as the term "Breach" is defined at 45 C.F.R. § 164.402, as may be amended, and shall mean the acquisition, access, use, or disclosure of PHI or ePHI in a manner not permitted under the Rules and in a manner which compromises the security or privacy of the PHI or ePHI.

(l) **Security Incident.** “Security Incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system as provided in 45 C.F.R. § 164.304, as may be amended.

(m) **Subcontractor.** “Subcontractor” shall mean a person to whom Business Associate delegates a function, activity, or other service, other than in the capacity of a member of the workforce of such Business Associate.

(n) **Unsecured PHI.** “Unsecured PHI” shall mean PHI or ePHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the guidance issued pursuant to § 13402 of the HITECH Act, as provided in 45 C.F.R. § 164.402.

## **2. Background of the Agreement.**

Business Associate is an entity that has been retained by Covered Entity to provide the following services to Covered Entity: HANDS SERVICES. These services may be more specifically described in a written agreement between Business Associate and Covered Entity. In the performance of these services, Covered Entity may disclose PHI to Business Associate, who may then need to use or disclose such PHI on behalf of Covered Entity. Business Associate acknowledges that certain sections of the Rules, as well as the HITECH Act, apply directly to Business Associate as they apply to Covered Entity. Both parties are committed to complying with the Rules under HIPAA, as amended by the HITECH Act, and accordingly, have entered into this Agreement to set forth the terms and conditions of how such PHI shall be handled between Business Associate, Covered Entity, and third parties.

## **3. Permitted Uses and Disclosures by Business Associate.**

(a) **General Use and Disclosure Provision.** Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI on behalf of Covered Entity for purposes of providing the services described herein above and described in any written agreement between the parties, provided that such use or disclosure does not violate HIPAA, the HITECH Act, or the Rules if done by Covered Entity, including, but not limited to, utilizing the minimum necessary PHI to accomplish the purpose of the use or disclosure and complying with the policies and procedures of Covered Entity. Business Associate agrees to comply with the Secretary’s guidance issued pursuant to the HITECH Act as to what constitutes the minimum necessary.

### **(b) Specific Use and Disclosure Provision.**

(i) Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of Business Associate, or to carry out the legal responsibilities of Business Associate.

(ii) Except as otherwise limited in this Agreement, Business Associate may disclose PHI to a third person for the proper management and administration of Business Associate, or carry out legal responsibilities of Business Associate, provided that such

disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and may be used or further disclosed only as Required By Law, or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it becomes aware in which the confidentiality of the information has been the subject of a Security Incident or Security Breach.

(iii) Except as otherwise limited in this Agreement, Business Associate may use PHI to provide data aggregation services relating to the health care operations of Covered Entity.

#### **4. Obligations and Activities of Business Associate.**

With regard to its use or disclosure of PHI, Business Associate agrees to:

(a) Not use or disclose PHI other than as permitted or required by this Agreement or as Required By Law.

(b) Use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to ePHI, to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate further agrees to implement the administrative, physical, and technical safeguards required for Business Associate under the Security Rule in order to protect the confidentiality, integrity, and availability of ePHI that Business Associate receives, creates, maintains, or transmits on behalf of Covered Entity, to the same extent as if Business Associate were a Covered Entity. Business Associate shall undertake such actions in a manner that is consistent with any guidance issued by the Secretary pursuant to the HITECH Act and the Rules.

(c) Ensure that any agent, including a Subcontractor, to whom it provides PHI received from Covered Entity, or received, maintained, transmitted or created by Business Associate on behalf of Covered Entity, agrees to the same restrictions, conditions and requirements that apply in this Agreement to Business Associate with respect to such information, including, but not limited to, the requirement that such agent or Subcontractor implement reasonable and appropriate safeguards to protect such information. Business Associate shall enter into a written agreement with any Subcontractor that receives, maintains, transmits or creates PHI on behalf of Business Associate. The written agreement shall require the Subcontractor to agree to the same restrictions, conditions and requirements that apply to Business Associate under this Agreement and are required by HIPAA, the HITECH Act and the Rules.

(d) Provide access, at the request of Covered Entity and within thirty (30) days of such request, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524. If an Individual makes a request for access to PHI directly to Business Associate, Business Associate shall notify Covered Entity of the request within three (3) business days of such request. Business Associate acknowledges that Individuals have the right to obtain access to their PHI in an electronic format, and Business Associate will provide PHI maintained in a Designated Record Set in an electronic format requested, if such format is readily producible, or in another readable electronic format as may be agreed to by the Individual.

**(e)** Make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of Covered Entity, within thirty (30) days of receiving such request. If an Individual makes a request for an amendment to PHI directly to Business Associate, Business Associate shall notify Covered Entity of the request within three (3) business days of such request.

**(f)** Document all such uses and disclosures of PHI and information as would be required to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. At a minimum, the following information regarding the disclosure will be documented: (1) the date of the disclosure; (2) the name of the entity or person who received the PHI, and the address of such entity or person; (3) a brief description of the PHI disclosed; (4) a brief statement regarding the purpose and an explanation of the basis of such disclosure; and (5) the names of Individuals whose PHI was disclosed.

**(g)** Provide to Covered Entity, within thirty (30) days of receiving a request by Covered Entity or an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528, information collected in accordance with Section 4(g) of this Agreement, to permit Covered Entity to respond to such a request. Alternatively, Covered Entity may elect to provide to the Individual requesting the accounting a list of all or some of its Business Associates, in which case a listed Business Associate shall provide a legally compliant accounting of disclosures within thirty (30) days of receiving a request made by an Individual directly to Business Associate for such an accounting.

**(h)** To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s); and in addition to, but not in lieu thereof, Business Associate shall at all times comply with the Notice of Privacy Practices and HIPAA policies and procedures of Covered Entity, as may be amended from time to time.

**(i)** Make its internal practices, books, and records relating to the use and disclosure of PHI received from Covered Entity, or received, maintained, transmitted, or created by Business Associate on behalf of Covered Entity, available to Covered Entity, or to the Secretary, for purposes of determining Business Associate's compliance with HIPAA, the HITECH Act, or the Rules.

**(j)** Not, directly or indirectly, receive remuneration in exchange for any PHI unless one of the following applies:

**(i)** Covered Entity has obtained an authorization from such Individual (and provided a copy of the authorization to the Individual) that meets the requirements of 45 C.F.R. § 164.508(c) which is signed and dated by the Individual and contains, at a minimum, a statement that direct or indirect remuneration to Covered Entity or Business Associate from a third party is involved; or

**(ii)** The purpose of the exchange meets an exception detailed in 45 C.F.R. § 164.502(a)(5)(ii)(B)(2).

**5. Reporting Obligations of Business Associate.**

**(a)** Business Associate agrees to report to Covered Entity immediately but in no event later than three (3) business days of becoming aware of any use or disclosure of PHI not provided for by this Agreement. In addition, Business Associate shall notify Covered Entity of any Security Incident, or Security Breach involving Unsecured PHI, immediately but in no event later than three (3) business days following the discovery of any Security Incident or Security Breach. This notice required by this Section shall include:

**(i)** the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, subject to the Security Incident or Security Breach;

**(ii)** a description of what happened, including the date of the Security Incident or Security Breach and the date of its discovery, if known;

**(iii)** a description of the types of Unsecured PHI that were involved in the Security Breach, including the nature and extent of the Unsecured PHI involved, including the types of identifiers and the likelihood of re-identification;

**(iv)** the identification of the unauthorized person who used the Unsecured PHI or to whom the disclosure was made, if known;

**(v)** information as to whether the Unsecured PHI was actually acquired or viewed; and

**(vi)** the extent to which the risk to the Unsecured PHI has been mitigated;

**(vii)** any steps that Individuals should take to protect themselves from potential harm resulting from the Security Breach;

**(viii)** a description of what Business Associate is doing to investigate the Security Breach, to mitigate harm to the Individuals, and to protect against further Security Breaches; and

**(ix)** 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.

**(b)** Business Associate agrees to fully cooperate with any investigation or risk assessment of a Security Breach performed by Covered Entity and to cooperate with Covered Entity and to take any actions reasonably requested by Covered Entity to mitigate a Security Breach and any harmful effect that is known to exist as a result of such unauthorized use or disclosure of PHI, such Security Incident, or such Security Breach. Business Associate further agrees to cooperate with Covered Entity in complying with all state and federal public notification requirements arising therefrom.

(c) In the event that Business Associate fails to notify and fully cooperate with Covered Entity as described in this Section 5(c), Business Associate shall have materially breached this Agreement and shall indemnify and hold Covered Entity harmless, as further described in Section 8 of this Agreement, from any and all liability, damages, costs (including reasonable attorneys' fees and costs) and expenses imposed upon or asserted against Covered Entity arising out of Business Associate's failure to timely and adequately notify Covered Entity of any unauthorized use or disclosure of PHI, Security Incident or Security Breach. This Section 5(c) shall survive termination of this Agreement and the underlying services arrangement.

**6. Obligations of Covered Entity.**

**(a) Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions.**

(i) Covered Entity shall notify Business Associate of any limitations in the Notice of Privacy Practices maintained by Covered Entity to the extent that such limitations may affect Business Associate's use or disclosure of PHI.

(ii) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission granted by an Individual under 45 C.F.R. §§ 164.506 or 164.508 to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

(iii) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to or that is required in accordance with 45 C.F.R. § 164.522, or in accordance with Section 13405 of the HITECH Act, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

**(b) Permissible Requests by Covered Entity.** Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Rules if done by Covered Entity.

**7. Term.**

The term of this Agreement shall be effective on the date the last of Business Associate and Covered Entity execute this Agreement, and shall remain in full force and effect until terminated pursuant to Section 7 below.

**8. Termination.**

**(a) No Termination by Business Associate.** Business Associate shall not be permitted to terminate this Agreement so long as the services of Business Associate for and on behalf of Covered Entity are ongoing.

**(b) Automatic Termination.** This Agreement will automatically terminate without any further action of the parties upon the termination of the services provided by Business Associate to or on behalf of Covered Entity.



(c) **Termination for Cause.** Covered Entity may immediately terminate this Agreement and any related agreements covering the services provided by Business Associate to or on behalf of Covered Entity if Covered Entity makes the determination that Business Associate has breached a material term of this Agreement. Alternatively, Covered Entity may elect to provide written notice of the material breach to Business Associate, after which Business Associate shall have thirty (30) days to take reasonable steps to cure the breach. If Business Associate does not cure the breach within this specified time, Covered Entity may terminate this Agreement. If neither cure nor termination is feasible, Covered Entity shall report the breach to the Secretary.

(d) **Effect of Termination.**

(i) Upon termination of this Agreement, Business Associate shall return or, if agreed to by Covered Entity, destroy all PHI received from Covered Entity, or created, received, maintained or transmitted by Business Associate on behalf of Covered Entity, that Business Associate maintains in any form. In the event Covered Entity directs Business Associate to destroy the PHI described above, Business Associate shall provide Covered Entity with a certificate from an authorized officer of Business Associate attesting to such destruction. This provision shall apply to PHI that is in the possession of Business Associate, and of Subcontractors or agents of Business Associate, and Business Associate shall so notify its Subcontractors or agents of these obligations. Business Associate and its Subcontractors or agents shall retain no copies of the PHI.

(ii) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make the return or destruction of such information infeasible. Upon such notification, 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 Business Associate maintains such PHI. In the event that it is infeasible for Business Associate to obtain from a Subcontractor or agent of Business Associate any PHI in the possession of the Subcontractor or agent, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction of such information from the Subcontractor or agent infeasible. Upon such notification, Business Associate shall require the Subcontractor or agent to 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 Subcontractor or agent maintains such PHI.

9. **Indemnification.**

Business Associate agrees to indemnify, defend, and hold harmless Covered Entity and its owners, directors, officers, and employees from any claims, causes of action, liabilities, damages, penalties, fines, costs (including, without limitation, costs associated with the provision of notice, such as printing and mailing costs), expenses or other losses (including, without limitation, attorneys' fees) arising out of any use or disclosure of PHI by Business Associate or its agents or Subcontractors in breach of this Agreement or in violation of state or federal law, including, without limitation, HIPAA, the HITECH Act, or the Rules. This Section 8 shall survive termination of this Agreement and the underlying services arrangement.

**10. Regulatory References.**

Any reference in this Agreement to a provision of HIPAA, the HITECH Act, or the Rules shall mean the relevant section as in effect or as amended.

**11. Survival.**

The respective rights and obligations of Business Associate under Sections 7(c), 7(d) and 8 of this Agreement shall survive the expiration or termination of this Agreement.

**12. No Third Party Beneficiaries.**

Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties, and their respective successors and assigns, any rights, remedies, obligations, or liabilities whatsoever.

**13. Disputes.**

If any dispute or claim arises between the parties with respect to this Agreement, the parties will make a good faith effort to resolve such matters informally, it being the intention of the parties that they reasonably cooperate with each other in the performance of the mutual obligations under this Agreement.

**14. Amendment.**

The parties agree to take such action as is necessary to amend this Agreement from time to time in order for Covered Entity to comply with the requirements of HIPAA, the HITECH Act and the Rules, as those statutes and their implementing regulations may be amended from time to time. In the event that the parties are unable to agree to such amendment, the parties may terminate this Agreement in accordance with Section 7. No amendment to this Agreement shall be effective until reduced to writing and duly signed by the authorized representatives of the parties.

**15. Non-Waiver.**

A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any other right or remedy as to any subsequent events.

**16. Assignment.**

Neither party may assign this Agreement or any of its rights or obligations under this Agreement, in whole or in part, without the prior written consent of the other party.

**17. Nature of Agreement.**

Nothing in this Agreement shall be construed to create a partnership, joint venture, or other joint business relationship between the parties or any of their affiliates, or a relationship of

employer and employee between the parties. Rather, it is the intention of the parties that their relationship shall be that of independent contractors.

**18. Entire Agreement.**

This Agreement constitutes the entire agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters.

**19. Severability.**

Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

**20. Notices.**

All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be in writing, and shall be effective upon receipt. Such notice may be made by personal delivery, by facsimile or electronic mail with return facsimile or electronic mail acknowledging receipt, by overnight delivery service with proof of delivery, or by certified or registered United States mail, return receipt requested. All such communications shall be sent to the last known address of the other party. Neither party shall refuse delivery of any notice hereunder.

**21. Successors and Assigns.**

This Agreement will inure to the benefit of and be binding upon the successors and assigns of Covered Entity and Business Associate. However, this Agreement is not assignable by either party without the prior written consent of the other party, except that Covered Entity may assign or transfer this Agreement to any entity owned or under common control with Covered Entity. Written consent will not be unreasonably withheld.

**22. Interpretation.**

Any ambiguity in this Agreement shall be resolved to permit the parties to comply with HIPAA, the HITECH Act and the Rules, as those statutes and their implementing regulations may be amended from time to time. The provisions of this Agreement shall prevail over any provision of any other agreement between Business Associate and Covered Entity that may conflict or be inconsistent with any provision in this Agreement.

**23. Governing Law.**

This Agreement and the rights and obligations of the parties hereunder shall be construed, interpreted, and enforced with, and shall be governed by, the laws of the Commonwealth of Kentucky and the United States of America.

**24. Counterparts.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

**25. State Law.**

Where any provision of applicable state law is more stringent or otherwise constitutes a basis upon which HIPAA is preempted, such state law controls and the parties agree to comply fully therewith.

**IN WITNESS WHEREOF**, the parties have duly executed this Agreement to be effective as of the date first above written.

**COVERED ENTITY**

**Lexington-Fayette County Health Department**

By: Katrina Howard  
Katrina Howard, MPH, MT (ASCP), CHC

Its: Compliance Officer

Date: 6-8-2016

**BUSINESS ASSOCIATE**

**FAMILY CARE CENTER**

By: Jin Gray  
Jin Gray

Its: Mayor

Date: 6-28-2016