



# Commonwealth of Kentucky

## CONTRACT

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Memorandum of Agreement

Reason for Modification:

**Issuer Contact:**Name: Earl Gresham  
Phone: 502-564-8196  
E-mail: Earl.Gresham@ky.gov**Vendor Name:**

LEXINGTON FAYETTE URBAN CO GOVERNMENT

200 EAST MAIN STREET

LEXINGTON KY 40507

**Vendor No.**

KY0032969

**Vendor Contact**Name: Chad Hancock  
Phone: 8592583313  
Email: chancock@lexingtonky.gov

Effective From: 2022-07-01

Effective To: 2023-06-30

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
1		0.00000		KORE SOR II QRT	\$0.000000	\$75,150.00	\$75,150.00

**Extended Description:**

Lexington Fayette Urban County Government shall maintain a Quick Response Team (QRT) comprised of a collaborative, interdisciplinary partnership between any of the following community partners: treatment providers, first responders, health department staff, local community-based organizations including faith-based groups and peer support professionals with lived experience.

Federal Funding: 100%  
CFDA#: 93.788Vendor Contact: Chad Hancock  
Email: Chancock@lexingtonky.govAgency Contact: Jamie Redmon  
Phone: 502-782-0226  
Email: JamieK.Redmon@ky.gov**Shipping Information:****Billing Information:**CHFS DBHDID - Commissioner  
275 E Main Street 4WF

	Frankfort KY 42240
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<b>TOTAL CONTRACT AMOUNT:</b>	<b>\$75,150.00</b>
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## **Memorandum of Agreement Terms and Conditions Regular (Government/Quasi-Governmental) (PON2)**

This Memorandum of Agreement (MOA) is entered into, by and between the Commonwealth of Kentucky, Cabinet for Health and Family Services Department for Behavioral Health, Developmental and Intellectual Disabilities (“the Commonwealth”) and Lexington Fayette Urban County Government (“The Contractor”) to establish an agreement to maintain a Quick Response Team (QRT). The initial MOA is effective from 07/01/2022 through 06/30/2023.

### **SECTION 1-ADMINISTRATIVE OVERVIEW**

#### **1.00-Purpose and Background**

The Kentucky Opioid Response Effort (KORE) seeks to expand and sustain a comprehensive, equitable recovery-oriented system of care to address opioid use disorder (OUD) and stimulant use disorder (StimUD) for all individuals throughout Kentucky. To achieve this aim, KORE and its partners commit to implementing a trauma- and resilience-informed care approach within a racial equity framework to reduce overdose deaths and increase access to high quality, evidence-based prevention, treatment, and recovery support services that are culturally responsive. Informed by data on populations most in need, the KORE projects will focus on five primary populations with OUD and/or StimUD: 1) opioid overdose survivors, 2) pregnant and parenting women, 3) justice-involved individuals, 4) children, transition-age youth, and families impacted by OUD and StimUD, and 5) individuals with co-occurring OUD, StimUD, and mental health disorders.

Lexington Fayette Urban County Government shall maintain a Quick Response Team (QRT). A QRT provides a way for public safety officials to work with behavioral health providers to serve individuals who have experienced or is at risk of experiencing an opioid related overdose or complication. The goal of the QRT is to reduce the incidence of overdoses and overdose fatalities by increasing the number of people who receive OUD treatment, harm reduction and recovery support services.

#### **1.01-Issuing Office**

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

#### **1.02-Communications**

The Contract Specialist identified on page 1 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:

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- Vendor: Contractor, Offeror, The Second Party, Proposer
- Contract Specialist: Buyer, Purchaser, Contract Officer
- Commonwealth of Kentucky: Commonwealth, State
- Fiscal Year will be defined as the Commonwealth fiscal year: July 1 through June 30
- Biennium will be defined as the Commonwealth biennium: July 1 of each even numbered year through June 30 of the next even numbered year.

### **1.04-Organization**

This Contract is organized in the following manner:

Section 1-Administrative Overview

Section 2-Scope of Services

Section 3-Pricing/Invoicing

Section 4-CHFS General Terms and Conditions

Section 5-Federal Requirements

Finance Terms and Conditions of the Contract

Exhibit A – BAA

## **SECTION 2-SCOPE OF SERVICES**

### **2.00-Services Required**

Lexington Fayette Urban County Government shall:

1. Maintain a Quick Response Team (QRT) comprised of a collaborative, interdisciplinary partnership between any of the following community partners: treatment providers, first responders, health department staff, local community-based organizations including faith-based groups and peer support professionals with lived experience. QRT shall have the capacity to provide the following:
  - a. Engage with individuals who have experienced an opioid overdose or opioid-related complications.
  - b. Provide assertive linkages to harm reduction, evidence-based treatment interventions, and recovery services, which support multiple pathways to recovery including the use of FDA-approved medications for opioid use disorder (MOUD).
  - c. Provide assertive engagement and relationship building to educate individuals, family members and the larger community about addiction, available evidence-based resources for prevention, harm-reduction, treatment and recovery and the ways in which the QRT can assist individuals and families.
2. Develop and facilitate a training plan for the QRT focused on the following key competencies:
  - a. Health Insurance Portability and Accountability Act of 1996 (HIPAA) regulations and practices.

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- b. Post overdose training.
  - c. Offer a naloxone prescription and/or kit to all patients who present with opioid overdose or other sequelae of OUD along with overdose education and training on naloxone administration.
  - d. Casey's Law education.
  - e. Motivational Interviewing.
  - f. Trauma-informed care.
3. Maintain a steering committee, advisory board, Board of Directors, or some other project governance mechanism with at least one-third of the voting membership comprised of individuals in recovery and/or family members of individuals in recovery. Key community partners can include law enforcement, emergency responders, jails, judges, specialty court staff, political officials and city governments, health departments, community and faith-based organizations and substance use treatment and recovery systems. This group must be committed to designing, implementing, and overseeing a plan of timely response, outreach and education focused toward individuals who have experienced an opioid overdose.

## 2.01-Deliverables

Lexington Fayette Urban County Government shall:

1. Maintain a steering committee or advisory board including all community partners through a regular standing meeting to:
  - a. Expand and maintain diverse community partnerships.
  - b. Discuss trends identified by the team in the community, identify barriers and collaborate to develop solutions.
  - c. Review outcomes data for continuous quality improvement.
  - d. Develop and implement a sustainability plan with input from key stakeholders.
3. Maintain a QRT with capacity to initiate in-person contact within 24 – 72 hours following an opioid overdose or opioid related complication and provide ongoing follow-up in person contact whenever possible through home visits, in-reach to jails and prisons, emergency departments, syringe service programs as well as other communication spaces where individuals may be or where overdoses may be occurring within sixty (60) days of a fully executed contract to include a minimum a Certified Social Worker and a Firefighter/Paramedic.
4. Provide linkage to evidence-based treatment, including medications for OUD (i.e., methadone, buprenorphine, extended-release naltrexone), harm reduction and recovery support services.
5. Develop and maintain clear procedures for how QRT will operate, what the responsibilities of each partner will be and set hours of availability to best meet the needs of the population outside of weekly 9 am – 5 pm hours of operation.
6. Utilize a uniform resource packet.

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7. Develop and maintain an action plan for individuals wanting immediate treatment from QRT. The action plan will consist of what steps to take first, transportation guidelines and procedures as well as referrals to treatment or other resources. The action plan will also consist of transportation guidelines and procedures for the completion of intake and assessment forms.
8. Maintain infrastructure by development of Standard Operating Policies and Procedures with regard to how information will be obtained, HIPAA laws and procedures, how visits will take place and with whom, professional behavior policy, data collection, safety and risk management and Naloxone distribution.
9. Maintain a data-tracking/quality improvement and communication system for the QRT that is secure, HIPAA compliant and includes a regular disaggregation of data to ensure services are being provided to communities of color, individuals who may be unhoused and others who are at an increased risk of overdose and health disparities.
10. Provide assertive engagement to underserved communities currently experiencing an increased risk of overdose and disparities in health by doing the following:
  - a. Canvass and offer QRT services in areas identified by individuals living in these communities.
  - b. Initiate and maintain regular communication and relationship building with the Black, Indigenous, People of Color (BIPOC) community.
  - c. Consult and take direction from individuals living in underserved communities to provide perspective and awareness of racial/ethnic, social, emotional, and cognitive needs of the population.
  - d. Develop a trauma-informed and culturally responsive marketing strategy including in-person and virtual community engagement, leveraging of social media platforms and partnership collaboration alongside traditional forms of advertising.
11. Participate in KORE learning and resource sharing community through digital and in-person meetings.
12. Notify KORE prior to media communications and acknowledge federal funding in all communications activities using the following tag line: "This project is supported by the Kentucky Opioid Response Effort (KORE) via Substance Abuse and Mental Health Services Administration (SAMHSA) Grant H79TI083283."

## **2.02-Reporting Requirements**

1. Complete an intake Government Performance and Results Act (GPRA) with 100% of consenting individuals with a history or OUD and/or stimulant use disorder and a six (6) month follow-up interview with at least 80% of individuals who complete an intake. Data shall be submitted to the Web Infrastructure for Treatment Services (WITS) platform within fourteen (14) days of service delivery.
2. Collect and report client demographics for all persons served through SOR-funded services as identified by KORE. Data shall be submitted quarterly by January 15th, April 15th, July 15th, and October 15th to [KOREReporting@ky.gov](mailto:KOREReporting@ky.gov).

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3. Track QRT service delivery and outcomes in WITS platform. Outcomes shall include, but not be limited, to the following:
  - a. Description of persons engaged (e.g., person with substance use disorder, family member, friend, etc.)
  - b. Service types initiated (e.g., residential, outpatient, harm reduction, shelter, etc).
  - c. Outcome of visit and follow-up plan (e.g., individual not home, will return within 48 hours; individual declined participating in all services but consented to continued QRT follow-up calls and visits, etc.)
4. If applicable, submit reports on any trainings conducted as a part of KORE-funded activities. Data shall be submitted quarterly by January 15th, April 15th, July 15th, and October 15th to [KOREReporting@ky.gov](mailto:KOREReporting@ky.gov).

Reports shall include, but not be limited, to the following information:

- a. Date of training;
- b. Type of training/Content focus;
- c. Number of individuals attending training; and
- d. Professional type for each trainee (physician, social worker, etc.).

### **2.03-Subcontractors**

Subcontractors may be used upon approval of DBHDID.

### **2.04-CHFS/Department for Behavioral Health, Developmental and Intellectual Disabilities Responsibilities**

DBHDID is responsible for providing technical assistance, oversight, and coordination for the provision of services under this contract.

### **2.05-Monitoring Requirements**

DBHDID may conduct an annual program performance and compliance site review of Lexington Fayette Urban County Government. Monitoring may consist of an off-site review of data and documentation as well as an on-site review of operations and documentation. A summary report will be provided to Lexington Fayette Urban County Government. and may require submission of a corrective action plan.

## **SECTION 3-PRICING/INVOICING**

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

An indirect rate of 10% has been approved and included in the budget.

Submit a monthly invoice for expense reimbursement which shall include a detailed accounting of expenditures by activities including personnel/fringe, supplies and other operating expenses. The current approved budget is attached to this contract, with

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understanding that individual line items within the budget are subject to change, as appropriate, but not to exceed the total contract amount of \$75,150.

KORE funds for services as of September 30, 2022 are contingent upon approval from Substance Abuse and Mental Health Services Administration (SAMHSA).

Services shall be provided and reimbursed in accordance with the approved budget attached.

Invoices for payment shall be submitted to [KOREinvoice@ky.gov](mailto:KOREinvoice@ky.gov) by the 15th day of the month for the previous month's services, activities, etc. pursuant to the scope of work.

Payment shall be conditioned upon receipt of appropriate, accurate, and acceptable invoices submitted in a timely manner.

The Contractor shall submit monthly invoices. The invoice must include at a minimum:

1. Vendor's name and address.
2. PON2 number that invoice(s) are using for funding.
3. Clearly list dates of service (from and to).

Example

Monthly Invoice: Dates of Service from: July 1, 20XX to: July 31, 20XX

4. Date of Invoice (date invoice is prepared). July's invoice should be prepared no later than August 15, 20XX.
5. Total amount due for the current billing cycle.
6. Cumulative total for all invoices to date.
7. Detailed description of services provided.

Invoices that do not contain the requirements above will be rejected and sent back to the Contractor for re-invoicing.

SAMHSA grant funds may not be used to purchase, prescribe, or provide marijuana or treatment using marijuana. See, e.g., 45 C.F.R. 75.300(a) (requiring HHS to ensure that Federal funding is expended in full accordance with U.S. statutory and public policy requirements); 21 U.S.C. 812(c)(10) and 841 (prohibiting the possession, manufacture, sale, purchase or distribution of marijuana).

Funds may not be expended through the grant or a subaward by any agency which would deny any eligible client, patient or individual access to their program because of their use of MOUD for the treatment of substance use disorders (e.g., methadone, buprenorphine products including buprenorphine/naloxone combination formulations and buprenorphine monoproduct formulations, naltrexone products including extended-release and oral formulations or implantable buprenorphine.) Specifically, patients must be allowed to participate in methadone treatment rendered in accordance with current federal and state methadone dispensing regulations from an Opioid Treatment Program and ordered by a physician who has evaluated the client and determined that methadone is an appropriate medication treatment for the individual's opioid use disorder. Similarly, medications available by prescription or office-based implantation



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must be permitted if it is appropriately authorized through prescription by a licensed prescriber or provider. In all cases, MOUD must be permitted to be continued for as long as the prescriber or treatment provider determines that the medication is clinically beneficial. Grantees must assure that clients will not be compelled to no longer use MOUD as part of the conditions of any programming if stopping is inconsistent with a licensed prescriber's recommendation or valid prescription.

## **SECTION 4-CHFS GENERAL TERMS AND CONDITIONS**

### **4.00-Memorandum of Agreement Standard Terms and Conditions**

#### **4.00.01-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 page 1 of this Contract and approved by the Division of Procurement and Grant Oversight the Finance and Administration Cabinet and filed with the Government Contract Review Committee shall create a valid Contract between the Parties consisting of the following:

1. This written agreement, all attachments thereto, and any subsequent written amendments to this Agreement; and
2. The Contractor's final written budget or 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.

#### **4.00.02-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 prior to the effective date of such modification or change. Modification shall be subject to prior approval from the Secretary of the Finance and Administration Cabinet, or this authorized designee, and the LRC Government Contract Review Committee. 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 Contract Specialist identified on page 1 for consideration and decision.

#### **4.00.03-Notice**

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

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

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

#### **4.00.04-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 and would impact any contract established under KRS 45A.690 - 45A.725, where applicable.

A link to the LRC webpage is as follows:

See: <https://apps.legislature.ky.gov/moreinfo/Contracts/homepage.html>

#### **4.00.05-Choice of Law and Forum**

This section does not apply to governmental or quasi-governmental entities.

This contract shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. Any action brought against the Commonwealth on the contract, including but not limited to actions either for breach of contract or for enforcement of the contract, shall be brought in Franklin Circuit Court, Franklin County, Kentucky in accordance with KRS 45A.245.

#### **4.00.06-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.

If a foreign entity, The Contractor shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this Contract. Such registration is obtained from the Secretary of State, who will also provide the certification thereof.

#### **4.00.07-Registration with the Secretary of State by a Foreign Entity**

Pursuant to KRS 45A.480(1)(b), an agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity required by KRS 14A.9-010 to obtain a certificate of authority to transact business in the Commonwealth ("certificate") from the Secretary of State under KRS 14A.9-030. 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. Foreign entity is defined within KRS 14A.1-070.

#### **4.00.08-Payment**

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

#### **4.00.09-Expenses**

Travel expenses, if authorized:

The Contractor shall be paid for no travel expenses unless and except as specifically authorized by the specifications of this Contract or authorized in advance and in writing

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by the Commonwealth. Either original or certified copies of receipts must be submitted for airline tickets, hotel bills, restaurant charges, rental car charges, and any other miscellaneous expenses.

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 this Contract or authorized in advance and in writing by the Commonwealth.

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 the Commonwealth.

#### **4.00.10-Purchasing and Specifications**

This section does not apply to governmental or quasi-governmental entities.

The Contractor certifies that he/she will not attempt in any manner to influence any specifications to be restrictive in any way or respect nor will he/she attempt in any way to influence any purchasing of services, commodities or equipment by the Commonwealth of Kentucky. For the purpose of this paragraph and the following paragraph that pertains to conflict-of interest laws and principles, "he/she" 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/she" is construed to mean any person with an interest therein.

#### **4.00.11-Conflict-of-Interest Laws and Principles**

The Contractor certifies that it is legally entitled to enter into this Contract with the Commonwealth of Kentucky, and by holding and performing this Contract, The Contractor will not be violating either any conflict of interest statute (KRS 45A.330-45A.340, 45A.990, 164.390), nor KRS 11A.040 of the executive branch code of ethics, relating to the employment of former public servants.

#### **4.00.12-Campaign Finance**

The Contractor certifies that neither The Contractor nor any member of The Contractor's immediate family having an interest of ten percent (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, (i) that The Contractor represent, has knowingly violated any provisions of the campaign finance laws of the Commonwealth, and (ii) that the award of a contract to him/her or the company The Contractor represent will not violate any provisions of the campaign finance laws of the Commonwealth.

#### **4.01-General Provisions**

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#### **4.01.01-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.

#### **4.01.02-Assignment**

This Contract shall be binding upon and inure to the benefit of the respective legal successors of the Parties. However, neither this Contract nor any rights or obligations hereunder may be assigned, in whole or in part, without the prior written consent of CHFS, Division of Procurement and Grant Oversight, and the Division of Accounting Services.

#### **4.01.03-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.

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.

#### **4.01.04-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.

#### **4.01.05-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 Contractor during the term of this or any prior Contract with CHFS; (d) any dishonest, fraudulent, criminal, or negligent or unauthorized acts or errors or omissions which are committed by Contractor or any of 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's failure to comply with any applicable state or federal laws or regulations.

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Provided, however, in the event the Contractor is an agency of the Commonwealth of Kentucky, the state agency's liability shall be governed instead by KRS 49.010 through KRS 49.180 and limited to any award from the Board of Claims up to the jurisdictional amount.

#### **4.01.06-Sovereign Immunity**

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

#### **4.01.07-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, a pandemic requiring the issuance of a State of Emergency Declaration by the Governor of the Commonwealth of Kentucky, or utility failures shall not be construed as non-performance, nor shall reductions be applied as a result of such events, provided that CHFS shall have the right to obtain the necessary services elsewhere in the event of such non-performance by the Contractor and the Parties shall negotiate in good faith any appropriate offset to the compensation payable under this Contract. The Contractor shall cooperate and shall require that any Subcontractor cooperate with CHFS in such event. The existence of such causes of delay or failure will extend the period of performance in the exercise of reasonable diligence until after the causes of delay or failure have been removed. Each Party must inform the other, orally or in writing, as soon as possible of the existence of a force majeure event. In order to preserve this right as a defense each Party must inform the other in writing, with confirmation of receipt, within twenty (20) business days of the existence of a force majeure event or otherwise waive this right as a defense.

#### **4.01.08-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.

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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 The 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.

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

#### **4.01.09-Licensure, Certification, and Registration**

The Contractor shall:

1. Ensure that all appropriate licenses, registrations, and/or certifications necessary are maintained at all times to the extent such are required for performance under this Contract;
2. Ensure that it has readily accessible copies of licenses, registration, and/or certifications necessary; and
3. Produce copies of any required license, registration, and/or certification at the request of CHFS or the Cabinet's designee.

#### **4.01.10-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.

To the extent required by law, 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.

#### **4.01.11-Legal Proceedings**

Except as specifically disclosed in writing to CHFS by The Contractor, prior to the date of this Contract, The Contractor certifies there are no suits, investigations, or other proceedings pending or threatened against The Contractor or any Subcontractor that

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would have a material effect on The 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.

#### **4.01.12-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 a full-time or part-time 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, volunteer, or independent contractor of the Contractor.

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

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

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

1. The Contractor will not discriminate against anyone applying for or receiving assistance or services based on race, religion, color, national origin, sex, disability, age, political beliefs or reprisal or retaliation for prior civil rights activity or any other protected class identified in federal, state or local laws. the Contractor agrees to comply with the provisions of the Kentucky Civil Rights Act, the Americans with Disabilities Act of 1990 as Amended (ADA), Section 1557 of the Patient Protection and Affordable Care Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, as applicable, and all other applicable federal, state and local regulations relating to prohibiting discrimination.
2. The Contractor will take action to ensure that service applicants and recipients are given services in the same manner, based on eligibility, and are not based on membership in a protected class: denied aid, care, services, or other benefits provided under this Contract; subjected to segregation or different treatment in any matter related to receipt of assistance; restricted in any way in the enjoyment of any advantages or privileges enjoyed by others receiving similar services; given different treatment in

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determining eligibility; or meeting other requirements or conditions that must be met to receive benefits.

3. The Contractor agrees to post in conspicuous places, available to program or service applicants or recipients, notices setting forth the provisions of this non-discrimination clause.

4. In all program or service solicitations or advertisements placed by or on behalf the Contractor will state that they will not discriminate against anyone applying for or receiving assistance or services based on race, religion, color, national origin, sex, disability, age, political beliefs, or reprisal or retaliation for prior civil rights activity, or any other protected class identified in federal, state, or local laws.

5. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be cancelled, terminated or suspended in whole or in part, and such other sanctions that may be imposed and remedies invoked as provided in or as otherwise provided by law.

6. In compliance with the prohibition against Disability discrimination and in compliance with the implementing guidance for the Americans with Disabilities Act issued by the Department of Justice, the Contractor agrees to provide, free of charge, appropriate accommodations for applicants or recipients with disabilities, including auxiliary aids and services for persons with disabilities who require alternative means of communication.

7. In compliance with the prohibition against National Origin discrimination and, by extension discrimination based on Limited English Proficiency (LEP), the Contractor agrees to provide meaningful language assistance measures free of charge to program or service applicants or recipients with Limited English Proficiency. The language services shall:

A. Be consistent with the general guidance document issued by the Department of Justice, which sets 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; note to LEP persons of availability of language access assistance; monitoring compliance, etc.).

#### **4.01.14-Staffing**

Any individual providing services under this Contract must not be included on any formal registry or listing that is required by law and which relates to abuse, neglect, sexual offenses, or other inappropriate practices or which, in any way, prohibits their employment for or performance of the services required herein, including but not limited to the nurse aid abuse registry and the Child Abuse Prevention and Treatment Act registry. In the event of any such listing or registration, the Contractor shall immediately notify CHFS.



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Any individual providing services under this Contract must not be prohibited or debarred from providing services or participating in any state or federal governmental program, including but not limited to the Medicare and Medicaid programs. In the event of any such prohibition or debarment, the Contractor shall immediately notify CHFS.

#### **4.02-Contract Performance**

##### **4.02.01-Service Delivery Requirements**

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

1. All applicable federal and state statutes and regulations as they are currently in effect;
2. 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
3. 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.

##### **4.02.02-Total Amount of Funds and Budget Revisions**

CHFS shall have the right to recoup the amount of any overpayment, regardless of the reason for the overpayment. Any reconciliation or settlement of fund balances contained in the Summary Line Item Section of this Contract shall be negotiated between CHFS and the Contractor and determined as soon as feasible before the end of the scope of work as set forth under the Contract.

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

##### **4.02.03-Subcontractors**

Sub-contractors are allowable to ensure all services can be completed. Before engaging a Subcontractor not identified in the Contractor's response or replacing a Subcontractor identified in the Contractor's response, the Contractor will notify the agency and provide the agency with information regarding the proposed Subcontractor, including but not limited to, the proposed Subcontractor's relevant qualifications, experience, and key personnel. The agency reserves the right to approve or disapprove any Subcontractor proposed by the prime Contractor; such approval shall not be unreasonably withheld.

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

##### **4.02.03.01-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

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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 the Contract Specialist identified on page 1.

#### **4.02.03.02-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 that are pertinent to this Contract or Subcontract, for the purposes of making monitoring, auditing, examination, excerpts, and transcriptions.

#### **4.02.04-Indirect Cost**

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

#### **4.02.05-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, etc.) are resolved in accordance with applicable federal and/or state laws, regulations, and policies (except as may otherwise be specified in this Contract).

#### **4.02.06-Confidential Information**

The Contractor shall comply with 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. The Contractor shall comply with the applicable provisions of the Privacy Act of 1974, 5 U.S.C. § 552a. The Contractor shall 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 that may be specifically classified as confidential by the

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Commonwealth in writing to the Contractor. The Contractor agrees to ensure that all confidential information and data shall remain confidential. The Contractor shall have an appropriate agreement with its employees to that effect.

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.

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.

The foregoing will not apply to:

1. Information that the Commonwealth has released in writing from being maintained in confidence;
2. Information that 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
3. Information that, after disclosure, becomes part of the public domain as defined above, through no act of the Contractor; or
4. 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.

#### **4.02.07-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).

#### **4.02.08-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' 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:

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1. Required by a Kentucky or Federal law, regulation, rule, or other audit requirement relating to The Contractor's business;
2. Performed by The Contractor as part of this Contract; or
3. Necessary due to The Contractor's noncompliance with any law, regulation, rule, or audit requirement imposed on The Contractor; or
4. Deficiencies may also result in the assessment of penalties as described in Section 4.02.10-Performance-Based Penalties.

#### **4.02.09-Research Project Approval and Institutional Review Board Requirements**

Any proposed research project undertaken under the terms and conditions of this Contract shall follow the procedures and protocols established under 920 KAR 1:060 that 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 CHFS Institutional Board. No research may begin until such time as the Board reviews and approves the project.

#### **4.02.10-Performance-Based Penalties**

Upon a determination of failure to perform services outlined in Section 2-Scope of Services, the Cabinet may issue penalties up to five percent (5%) of the total amount of contract for each instance of non-performance.

If the Cabinet elects not to exercise any of the penalty clauses herein in a particular instance, this decision shall not be construed as a waiver of the Department's right to pursue the future assessment of any performance standard requirement and associated penalties. In addition, a Corrective Action Plan may be issued as outlined in item 1.B. below.

The Department will work with the Contractor to resolve performance issues at all times.

##### **1. Requirement of Corrective Action:**

###### **A. Letter of Concern**

Should the Department determine that the Contractor or any Subcontractor is in violation of any requirement of this Contract, the Department shall notify the Contractor of the deficiency through a "Letter of Concern." The Contractor shall contact the Department's representative designated by the Department within two (2) business days of receipt of the Letter of Concern and shall indicate how such concern is unfounded or how it will be addressed. If the Contractor fails to timely contact the designated representative regarding a Letter of Concern, the Department shall proceed to the additional enforcement contained in this Contract.

###### **B. Corrective Action Plan**

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Should the Cabinet determine that the Contractor or any Subcontractor is not in substantial compliance with any material provision of this Contract, the Cabinet shall issue a written deficiency notice and require a corrective action plan be filed by the Contractor within ten (10) business days following the date of the notice.

A corrective action plan shall delineate the time and manner in which each deficiency is to be corrected. The plan shall be subject to approval by Finance or the Department, which may accept the plan as submitted, may accept the plan with specified modifications, or may reject the plan within ten (10) business days of receipt. Cabinet may reduce the time allowed for corrective action depending upon the nature of the deficiency.

#### C. Failure to Respond to Letter of Concern or Corrective Action Plan Notice

Failure of the Contractor to respond to a Letter of Concern within two (2) business days of receipt of the Letter of Concern may result up to a \$500.00 per day penalty for each day until the response is received. Failure of the Contractor to submit a Corrective Action Plan within ten (10) business days following the date of the written deficiency notice may result up to \$1,000.00 per day penalty for each day until the Corrective Action Plan is received.

#### D. Request for Extension

Upon request, CHFS may extend the time allowed for both a response to the Letter of Concern and a Corrective Action Plan depending upon the nature of the deficiency. The Contractor shall request an extension of time in writing from the representative designated in the Letter of Concern or the written deficiency notice. The written request shall contain a justification and proposed extension period. If an extension is granted, the penalty per day for both a late Letter of Concern or a late Corrective Action Plan would begin after the expiration of the extension period.

2. Failure to Correct any identified deficiency may result in action pursuant to Finance Terms Section 5.00 Cancellation of this Contract.

3. Upon timely resolution of all performance based issues outlined in the Corrective Action Plan, the Contractor shall receive reimbursement of a percentage of the amount withheld based on the following tier schedule:

A. Resolution within 30 days: at least 75% will be reimbursed to Contractor.

B. Resolution within 60 days: at least 50% will be reimbursed to Contractor.

C. Resolution within 90 days: at least 25% will be reimbursed to Contractor.

D. Resolution after 90 days: total penalty withholdings are forfeited.

#### 4.02.11-Performance and Evaluation

CHFS may complete a Performance Evaluation (PE) once a year to document contract performance. PE documents will be entered into the Commonwealth's electronic financial system (eMARS). Performance documented by PE may be considered when making future awards. To obtain a copy of the PE documents completed for this Contract, contact the Contract Specialist identified on page 1.

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#### **4.02.12-Business Continuity, Disaster Recovery, and Information Security Requirements**

The Contractor shall maintain and implement a Business Continuity Plan, Disaster Recovery Plan, and Information Security Plan, which shall detail the steps The Contractor will take in the event of an outage or failure of either The Contractor's or CHFS' data or communication or technical support system. Such plans shall enable The Contractor to continue to meet all requirements of CHFS. The Contractor shall provide a copy of its plans upon request. All costs associated with activating and sustaining execution all plans shall be borne solely by The Contractor.

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

When applicable, contractors 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, KRS 61.932, KRS 61.933, and KRS 61.934, (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.

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

The Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor shall notify the Council on Postsecondary Education in the same manner as above. Notification shall be in writing on a form developed by the Commonwealth Office of Technology.

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

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

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

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In accordance with KRS 61.932(2)(a) the Contractor 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:

See:

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

#### **4.03-Breach and Contract Termination**

##### **4.03.01-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.

##### **4.03.02-Transition/Turnover**

In the event CHFS requires a transition after a non-renewal or termination by either party, CHFS shall notify The Contractor at the same time CHFS serves notice of the non-renewal or termination, as the case may be.

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 Contractor or to perform the work by itself.

The Contractor shall:

1. Provide detailed transition documents at no additional cost to CHFS.
2. Be responsible for the orderly transition of work and the accuracy of data in coordination with the new Contractor. CHFS shall ensure the cooperation of the new Contractor to facilitate a smooth transition.
3. Within ten (10) calendar days after written notification by CHFS of the initiation of transition, provide a detailed Transition Document. Upon receipt of the detailed Transition Document by CHFS, CHFS shall review the document and within fourteen (14) calendar days provide written instructions to The Contractor as to the packaging, documentation, delivery location, and delivery date of all records, as needed to provide orderly transition. If CHFS determines upon review that the Transition Document is missing necessary information, CHFS shall provide The Contractor written instructions as to the information that is still needed, and The Contractor shall amend the Transition Document to include the necessary information.

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4. Deliver a full and complete accounting and report as of the date of termination about the status of services. This report shall be provided to CHFS within twenty-one (21) days of the effective date of termination.
5. Transfer all documents and records of every kind, including electronic, microfilm, paper, or otherwise, in their possession that pertain to this Contract, including but not limited to, all those listed in the contract, within twenty-one (21) days of the effective date of termination. All documents shall be in a CHFS-approved format.
6. Provide reasonable and appropriate assistance to CHFS and its designee(s) regarding the contents of such documents and records, and shall provide reasonable and appropriate reference materials, including data models and file documentation. This assistance shall be provided to the CHFS within twenty (20) days of the effective date of termination.
7. Pay any and all additional costs incurred by CHFS that are the result of The Contractor's failure to provide the requested records, documents, data or materials within the time frames agreed to in the Transition Document.

#### **4.04-Miscellaneous Provisions**

##### **4.04.01-Advertising Award Prohibition**

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.

##### **4.04.02-Bankruptcy**

In the event the Contractor becomes the subject debtor in a case pending under the Federal Bankruptcy Code, the Commonwealth's right to terminate this Contract may be subject to the rights of a trustee in bankruptcy to assume or assign this Contract. The trustee shall not have the right to assume or assign this Contract unless the trustee:

1. Promptly cures all defaults under this Contract;
2. Promptly compensates the Commonwealth for the monetary damages incurred as a result of such default; and
3. Provides adequate assurance of future performance, as determined by the Commonwealth.

##### **4.04.03-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.

##### **4.04.04-Notices and Pamphlets**



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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.

#### **4.04.05-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 Part 50 and CHFS Policy for Responding to Allegations of Scientific Misconduct, as amended, and shall be made available, upon request, to CHFS. 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.

#### **4.04.06-Intellectual Property**

The Contractor agrees that any formulae, methodology, or 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 CHFS, unless the specific ownership of any proposed or developed formulae, methodology, or other reports and compilations of data 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:

1. Patents;
2. Trademarks as proposed or registered with the U.S. Patent and Trademark Office; or
3. Copyrights proposed or certified with the Library of Congress, U.S. Copyright Office.

#### **4.04.07-Certification Regarding Drug-Free Workplace**

The Contractor hereby certifies that it will, or will continue to, provide a drug-free workplace in accordance with 2 CFR Part 182. The Contractor shall at a minimum:

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

**4.04.08-Data Use Agreement**

Not Required

**4.04.09-Business Associate Agreement**

The Contractor shall comply with and execute the attached Business Associate Agreement (BAA) that is in accordance with HIPAA and outlines the requirements imposed by the Health Information Technology for Economic and Clinical Health (HITECH) Act, as enacted by the American Recovery and Reinvestment Act of 2009.

For the purposes of the Business Associate Agreement the following entities are defined:

Covered Entity:

Cabinet for Health and Family Services

275 East Main Street

Frankfort, KY 40621

Business Associate:

Lexington Fayette Urban County Government

200 East Main Street

Lexington, KY, 40507

**4.04.09-Record Checks**

A current and satisfactory criminal record check that is satisfactory with no convictions or outstanding charges which would constitute a disqualifying offense under 900 KAR 1:009. A criminal record check shall be completed through the Kentucky State Police Information Center or the Administrative Office of the Courts. If an individual providing

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services under the contract has resided or worked in a state other than Kentucky a satisfactory records check shall be required of those states as well.

## **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, regarding Contract provisions for non-federal entity Contracts under federal award.

The following terms shall apply:

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

#### **5.00.01-Clean Air Act and Federal Water Pollution Control Act**

The Contractor and Subcontractors 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.

#### **5.00.02-Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion, Lower Tier Covered Transactions**

In accordance with Federal Acquisition Regulation 52.209-5 and 2 CFR 180, the Contractor shall certify, by signing the Contract, that to the best of its knowledge and belief, the Contractor and/or its Principals is (are) not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency.

For the purposes of this certification, "Principals," means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of subsidiary, division, or business segment, and similar positions.

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

#### **5.00.03-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.

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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 \$10,000.00 and not more than \$100,000.00 for each such failure.

#### **5.00.04-Equipment**

For reimbursement type contracts, 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.

Equipment and property reimbursed by CHFS for the purposes of fulfilling the requirements of this Contract, and that may include, but not be limited to, furniture, computer software, computer hardware, office equipment, and supplies with any single item purchase of \$5,000.00 or greater (capital expenditures), requires prior approval by the Cabinet and the federal agency before the federal government will allow the costs in accordance with [2 CFR, Part 200](#).

#### **5.00.05 Telecommunications and Video Surveillance Services or Equipment**

In accordance with 2 CFR § 200.216 Prohibition on certain telecommunications and video surveillance services or equipment Contractors and subrecipients are prohibited from obligating or expending loan or grant funds to:

- (1) Procure or obtain;
  - (2) Extend or renew a contract to procure or obtain; or
  - (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications

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Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

#### **5.00.06 Domestic Preferences for Procurements**

In accordance with 2 CFR § 200.322 Domestic preferences for procurements.

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

#### **5.00.07 Procurement of Recovered Materials**

In accordance with 2 CFR § 200.323 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

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## Endnotes

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**Memorandum of Agreement Standard Terms and Conditions**  
**Revised December 2019**

**1.00 Effective Date:**

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

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.

**2.00 EEO Requirements**

The Equal Employment Opportunity Act of 1978 applies to All State government projects with an estimated value exceeding \$500,000. The contractor shall comply with all terms and conditions of the Act.

**3.00 Cancellation clause:**

Both parties shall have the right to terminate and cancel this contract at any time not to exceed thirty (30) days' written notice served on the other party by registered or certified mail.

**4.00 Funding Out Provision:**

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

**5.00 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

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service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the agreement will be reduced by the amount specified in that document. If the contract funding is reduced, then the scope of work related to the contract may also be reduced commensurate with the reduction in funding. This reduction of the scope shall be agreeable to both parties and shall not be considered a breach of contract.

**6.00 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, 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).

**7.00 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 corporate and utility tax, sales and use 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



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with the provisions of those statutes, which apply to their operations, and that their failure to reveal a final determination as described above, or failure to comply with the above statutes for the duration of the agreement shall be grounds for the Commonwealth's cancellation of the agreement and their disqualification from eligibility for future state contracts for a period of two (2) years.

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

Contractor must check one:

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

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

### **8.00 Discrimination:**

This section applies only to agreements disbursing federal funds, in whole or part, when the terms for receiving those funds mandate its inclusion. Discrimination (because 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:

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,

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available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

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.

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.

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.

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.

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.

The Contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action

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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.

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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.

**CHFS Cabinet Approval:**

DocuSigned by:

*Eric Friedlander*

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Signature

Eric Friedlander

Printed Name

Secretary

Title

5/5/2022 | 7:36 PM EDT

Date

**Contractor Approval:**

DocuSigned by:

*Linda Gorton*

260DA68464084E5...

Signature

Linda Gorton

Printed Name

Mayor

Title

5/5/2022 | 11:12 AM EDT

Date

**CHFS Department Review:**

DocuSigned by:

*Stephanie Craycraft*

E04D670702D145F...

Signature

Stephanie Craycraft

Printed Name

Deputy Commissioner

Title

5/5/2022 | 9:31 AM PDT

Date

**Approved as to form and legality:**

DocuSigned by:

*Marian Hogan*

1E04E90DE94AE4BE...

Attorney

4/14/2022 | 8:52 AM PDT

Date