



Commonwealth of Kentucky

CONTRACT

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

Doc Description: KNAT Reimbursement Multi-Provider FY 17/18	
Doc ID No: PON2 746 1600000320 1	Procurement Folder: 4240665
Procurement Type: Memorandum of Agreement	Record Date:
Issued By: BRENDA ABRAMS	Cited Authority: FAP111-44-00
Telephone:	

C O N T R A C T O R	Multiple Provider 702 Capitol Avenue OMPS Frankfort KY 40601 US
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Effective From: 07/01/2016 **Effective To:** 06/30/2018

Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	Kentucky Nurse Aide Training Program FY17		0.00		0.00000	300,000.00	300,000.00

Extended Description

The Department for Medicaid Services is responsible for reviewing and approving documentation submitted for reimbursement to health care facilities offering Nurse Aide Training to their own employees. The nurse aide training program shall be conducted by: (a) The Department for Technical Education; (b) Nursing facility program; (c) Community college; (d) University program; (e) A licensed proprietary education program; (f) A licensed health care facility offering a nurse aide training program to its own employees; or (g) A nonprofit, church related or tax supported program that is not identified in the above categories. Each entity specified above that wishes to provide nurse aide training shall request and receive approval of their agency's training program by the Department for Medicaid Services and sign a Medicaid provider agreement prior to operating the nurse aide training program in accordance with the criteria in the Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program.

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

Funding 50% Federal/50% State - General Admin.

CFDA #: 93.778

Contact Information:

Vicki Barber
 Division of Policy and Operations
 Department for Medicaid Services
 275 East Main Street,
 Frankfort, Kentucky 40621-0001
 (P) 502-564-6890 Ext 2093
 (F) 502-564-3852
 (E) Vicki.Barber@ky.gov

DMS Monitor:

David Locker
 (E) David.Locker@ky.gov

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

Effective From: 07/01/2016 Effective To: 06/30/2018

Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
2	Kentucky Nurse Aide Training Program FY18		0.00		0.00000	300,000.00	300,000.00

Extended Description

The Department for Medicaid Services is responsible for reviewing and approving documentation submitted for reimbursement to health care facilities offering Nurse Aide Training to their own employees. The nurse aide training program shall be conducted by: (a) The Department for Technical Education; (b) Nursing facility program; (c) Community college; (d) University program; (e) A licensed proprietary education program; (f) A licensed health care facility offering a nurse aide training program to its own employees; or (g) A nonprofit, church related or tax supported program that is not identified in the above categories. Each entity specified above that wishes to provide nurse aide training shall request and receive approval of their agency's training program by the Department for Medicaid Services and sign a Medicaid provider agreement prior to operating the nurse aide training program in accordance with the criteria in the Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program.

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B I L L T O	502105	S H I P T O
	CHFS DMS ADMIN AND FINANCIAL MGT	
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	FRANKFORT KY 40621 US	

Total Order Amount:	600,000.00
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ORIGINAL CONTRACT SIGNATURE PAGE

Approvals

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

1st Party:

_____		_____
Signature	Title	
_____		_____
Printed name	Date	

2nd Party:

Submittal of a MAP-576 form shall be acceptance and confirmation of compliance with the terms of this contract.

Approved as to form and legality:

Attorney

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Title Page

For

Memorandum of Agreement

Between a State Agency & Other Governmental Body or Political Subdivision

Cabinet for Health and Family Services

Department for Medicaid Services

Division of Policy and Operations

POINT OF CONTACT

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

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Section 1—Purpose and Background

1.00—Purpose and Background

This contract is established to provide for reimbursement of administrative costs for nurse aide training and competency evaluation programs provided by a nursing facility and for those individuals who paid for their training program and receive an offer of employment from a nursing facility no later than 12 months after completion of a nurse aide training and competency evaluation program in accordance with the criteria shown in the Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program, <http://chfs.ky.gov/dms/NAT.htm>.

1.01—Issuing Office

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

1.02—Communications

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

1.03—Terminology

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

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

Contract Specialist, Buyer, Purchaser, or Contract Officer

Proposal, or Offer

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

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

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

1.04—Definitions/Acronyms

MAP 576 - Nurse Aide Training Expense Report and Authorization for Payment form generated in Kentucky Medicaid Management Information System.

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1.05—Organization

This contract is organized in the following manner:

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

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

Section 3— Finance Terms and Conditions of the Contract

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

Section 5—Federal Requirements

Exhibit A – Required Affidavit for Bidders or Offerors

Section 2—Scope of Work

Section 2—Scope of Work

2.00—Regulatory Authority

Social Security Act §1909

http://www.ssa.gov/OP_Home/ssact/title19/1909.htm

907 KAR 1:450

<http://www.lrc.state.ky.us/kar/907/001/450.htm>

2.01—Required Services

Nursing facility providers, in accordance with signed provider agreements, shall:

1. Have a complete and approved MAP-414 – Application for Approval of Nurse Aide Training Program on file with the Department of Medicaid Services, Division of Policy and Operations.
2. Ensure the nurse aide training program is conducted by one of the following DMS pre-approved training facilities per the criteria shown in the Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program, <http://chfs.ky.gov/dms/NAT.htm>:
 - a. The Department for Technical Education;
 - b. Nursing facility program;
 - c. Community college;
 - d. University program;
 - e. A licensed proprietary education program;
 - f. A licensed health care facility offering a nurse aide training program to its own employees; or
 - g. A nonprofit, church related or tax supported program that is not identified in the above categories.

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3. Track and report all costs associated with nurse aide training and competency evaluations as a separate category of expenditures. These costs are defined by Centers for Medicare and Medicaid Services (CMS) as administrative expenditures and are reimbursed by CMS at a 50 percent match.

Approved expenditures may include:

- a. Curriculum materials, books and supplies.
- b. Equipment either leased or purchased.
- c. Trainer wages and related expenses for the applicable portion of an instructor's time to prepare and provide facility based training.
- d. Tuition expenses include those costs paid to other entities that provide state approved Nurse Aide Training (NAT) programs.
- e. Travel expenses include those costs incurred for travel, such as mileage and other related expenses.
- f. Rental expenses reflect the cost for space and related utilities located off site from the facility if the space is used solely for nurse aide training and competency evaluation programs.

4. Ad-hoc reports – Prepare and transmit to the Cabinet for Health and Family Services, Department for Medicaid Services, Division of Policy & Operations, Benefit Policy Branch, the Commissioner, and/or Commissioner's Staff, such reports as required and in the time requested.

2.02—Payment and Invoicing Requirements

Submit a completed MAP-576 – Nurse Aide Training Expense Report and Authorization for Payment for all actual and reasonable cost for services provided for the nurse aide training. MAP-576 shall be submitted to:

Nurse Aide Training Reimbursement
 ATTN: Vicki Barber
 Department for Medicaid Services
 275 East Main Street, 6W – D
 Frankfort, KY 40621

Submittal of a MAP-576 form and accompanying invoice (as outlined below) shall be acceptance and confirmation of compliance with the terms of this contract.

Each nursing facility provider shall complete and file a MAP-576 on an as needed basis. Nursing facilities shall bill only for their own employees and not employees of other facilities. Billings shall be initiated upon completion of the training program, no more than **thirty (30)** days after completion of the training program. Each entry must be verified by appropriate documentation.

Invoices for payment are to be submitted to the Division of Administration and Financial Management, Department for Medicaid Services, 275 East Main Street, Frankfort, KY 40621 or electronically to DMS.Invoice@ky.gov by the 30th of each month.

The invoice must include at a minimum:

1. Vendor's Name and Address

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2. Contract number Example: PON2 746 1600000320
3. Fiscal Year: FY 17
4. Clearly list dates of service (from and to). Example (Dates of Service From: July 1, 2016 To: July 31, 2016).
5. Date of Invoice (date invoice is prepared) July's invoice should be prepared and submitted to DMS no later than August 30, 2016.
6. **Total amount due for the current billing cycle (service dates). Services for this contract will be only the services completed (Request for reimbursement of training made by a student or facility provided training is completed) July 1, 2016 thru June 30, 2018. No other service dates are eligible to be paid from this contract.**

Examples:

Facility Provides Training

Example 1: The facility completes training for student(s) on July 30, 2016. The facility prepares a MAP- 576 and an accompanying invoice and submits both to DMS by August 30, 2016.

Student Paid for Training

Example 2: If a student completes the NAT course at their own expense and that student receives an offer of employment, from a NF, within twelve (12) months of successfully completing the NAT course. Then that student can submit a request to the NF for reimbursement of training completed. Therefore, if a student request reimbursement from the NF on July 30, 2016, then the NF should submit a MAP-576 and accompanying invoice to DMS by August 30, 2016. Service date would be the date the student requested reimbursement from the facility (July 30, 2016), not the actual dates of the student(s) training.

7. Cumulative Total for all invoices per contract line item to date.

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

Any and all services provided pursuant to this agreement, any and all billing or invoicing for such services, and any and all monitoring of such services shall be in compliance with all applicable state and federal statutes, regulations, policies, and procedures governing the Medicaid Program, including but not limited to the State Plan approved by the federal Centers for Medicare and Medicaid Services. Any and all payments made by DMS pursuant to this agreement shall only be made if they are in compliance with all applicable state and federal statutes, regulations, policies, and procedures governing the Medicaid Program, including but not limited to the State Plan approved by the federal Centers for Medicare and Medicaid Services.

2.03—CHFS/Agency Responsibilities

Each MAP-576 is reviewed by DMS staff for the following:

1. The nursing facility has an approved Kentucky Medicaid provider number.
2. The training facility has an approved Nurse Aide Training (NAT) Provider number.

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3. The nursing facility providing the NAT training is in good standing with the Office of the Inspector General or has been granted a NAT waiver by DMS.

4. Expenditures are appropriate and completed within the proper service dates.

2.04—Monitoring Requirements – Federal and State

DMS may:

- A. Monitor activities and evaluate performance pursuant to the contract requirements.
- B. Monitor for programmatic and fiscal compliance as related to both Federal requirement 42 CFR 483.156 and State requirement 907 KAR 1:450.

2.05—Performance and Evaluation

DMS may complete a Performance Evaluation (PE) twice a year to document contract performance. Estimated dates of completion are February 28, and August 31 of each FY. PE documents will be entered into the Commonwealth’s electronic financial system (eMARS). Performance documented by PE may be considered when making future awards. To obtain a copy of the PE documents completed for this contract, contact the contract specialist listed on the Title Page of this contract.

2.05—Subcontractors

No Subcontractor(s) have been authorized for this contract.

2.06—Related Documents and Materials Incorporated by Reference

The Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program can be found at <http://chfs.ky.gov/dms/NAT.htm>.

Section 3—Finance Terms and Conditions of the Contract

3.00—Beginning of Work

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

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

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3.01—Cancellation

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

3.02—Funding Out Provision

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

3.03—Reduction in Contract Worker Hours

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

3.04—Access to Records

The state agency certifies that it is in compliance with the provisions of KRS 45A.695, "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The Contractor, as defined in KRS 45A.030(8) and (10), agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this agreement for the purpose of financial audit or program review. The Contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the agreement and shall be exempt from disclosure as provided in KRS 61.878(1)(c).

3.05—Violation of tax and employment laws

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

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

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

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

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Contractor must check one:

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

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

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

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

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

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

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

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

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

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

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Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.

7. The Contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Section 4—CHFS Standard Terms and Conditions

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

4.00—Contract Components and Order of Precedence

The Commonwealth's acceptance of the Contractor's offer indicated by the issuance of a Contract Award by the Department named on the Title Page and approved by the Office of Policy and Budget, the Finance and Administration Cabinet and filed with the Government Contract Review Committee shall create a valid Contract between the Parties consisting of the following:

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

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

4.01—Term of Contract and Renewal Options

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

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

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

4.02—Changes and Modifications to the Contract

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

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

4.03—Notices

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

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

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

4.04—The Contract

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

4.05—Effective Date of Contract and Earliest Date of Payment

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

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

4.06—Contract Renewals

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

4.07—LRC Policies

Pursuant to KRS 45A.725, LRC has established policies which govern rates payable for certain professional services. These are located on the LRC webpage:

(<http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>) and would impact any contract established under KRS 45A.690 et seq., where applicable.

4.08—Choice of Law and Forum

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

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4.09—Authorized to do Business in Kentucky

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

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

4.10—Payment

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

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

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

4.11—Expenses

Travel expenses, if authorized:

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

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

Other expenses, if authorized herein:

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

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

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

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expenses.

- C. Invoicing for miscellaneous expenses: The Contractor must follow instructions prescribed in the specifications of the contract. Allowable expenses shall be documented and submitted on an original invoice or certified copy.

4.12—Purchasing and specifications

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

4.13—Conflict-of-interest laws and principles

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

4.14—Campaign Finance

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

4.15—Protest

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

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

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

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

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

4.16—Social security

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

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

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

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

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

4.18—Attachment(s)

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

4.19—Contract Conformance

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

4.20—Advertising Award

The Contractor shall not refer to the Award of Contract in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the Commonwealth of Kentucky.

4.21—No Required Use of Contract

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

4.22—Minority Recruitment, Hiring and Reporting Requirements

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

4.23—Assignment

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

4.24—Bankruptcy

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

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

4.25—Contractor Cooperation in Related Efforts

The Commonwealth of Kentucky may undertake or award other contracts for additional or related work, services, supplies, or commodities, and the Contractor shall fully cooperate with such other contractors and Commonwealth employees. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Commonwealth employees.

4.26—Headings

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

4.27—Severability

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

4.28—Indemnification

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

Provided, however, in the event the Contractor is a state agency or subcontracts for services with a state agency subject to the jurisdiction of the Board of Claims pursuant to KRS 44.070 through KRS 44.160,

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the state agency's tort liability shall be limited to an award from the Board of Claims up to the jurisdictional amount.

4.29—Sovereign Immunity

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

4.30—Force Majeure

Neither Party shall be liable for public utility performance (e.g., Postal service, telephone or water company) or for the consequence of public utility non-performance. Events or conditions beyond the reasonable control of the Parties, such as natural disasters, fires, floods, elements, transportation crashes, or utility failures shall not be construed as non-performance, nor shall reductions be applied as a result of such events, provided that CHFS shall have the right to obtain the necessary services elsewhere in the event of such non-performance by the Contractor and the Parties shall negotiate in good faith any appropriate offset to the compensation payable under this Contract. The Contractor shall cooperate and shall require that any Sub Contractor cooperate with CHFS in such event. The existence of such causes of delay or failure will extend the period of performance in the exercise of reasonable diligence until after the causes of delay or failure have been removed. Each Party must inform the other in writing with proof of receipt within five (5) business days of the existence of a force majeure event or otherwise waive this right as a defense.

4.31—Code of Ethics

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

4.32—Notices and Pamphlets

All notices, employment, advertisements, information pamphlets, research reports, and similar public notices prepared and released by the Contractor, pursuant to this Contract, shall include a statement identifying the appropriate source of funds, for the project or service, including but not limited to, identifying whether the funding is in whole or in part from federal, CHFS, or other state funds.

4.33—Service Delivery Requirements

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

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

4.34—Total Amount of Funds and Budget Revisions

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

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

4.35—Subcontractors

Unless provided in the scope of work and pre-approved at the Cabinet level, the Contractor shall make no subcontract with any other party for furnishing any of the work or services herein. This provision shall not require the approval of contracts of employment between the Contractor and personnel assigned for services thereunder. The Contractor shall be solely responsible for performance of the entire Contract whether or not subcontractors are used.

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

A. Responsibility for Subcontractor Contract Requirements

The Contractor shall have a Contract with any subcontractor that the Contractor contracts with to meet the statement of work, method of payment, and deliverables of this Contract that specifies the responsibilities of the parties and the cost. In addition, the Contractor's Contract with the subcontractor shall specify that all requirements of this Contract are applicable and binding on the subcontractor. Any plan to subcontract any of the provisions of this Contract must be set forth in the Contractor's proposal for the delivery of products or services and included in the body of the contract in the subcontractor's section. The subcontractor must make available to the Contractor and to CHFS, if requested, copies of personnel records and documentation of employees' compliance with the terms and conditions of this Contract.

No obligation or right of the Contractor under this Contract shall be subcontracted to another, without prior written approval, of CHFS after CHFS has had the opportunity to review all contract documents setting forth the terms and conditions for the subcontract. The Contractor, upon the cabinet's request, shall submit the subcontract for approval to: Cabinet for Health and Family Services, Name of Department, Department Address listed on the Title Page.

B. Subcontractor Monitoring Requirements

The Contractor shall monitor subcontractors for programmatic and fiscal compliance with the terms and conditions of this Contract and those specific provisions set out under the Contractor's contract with the subcontractor. The Contractor agrees to utilize restraints or requirements imposed by such factors as generally accepted sound business practices, arm's length bargaining, Federal and State laws regulations, and terms and conditions of the federal grant award in contracting with subcontractors.

The Contractor further understands and agrees, and shall ensure that any Subcontractor understands and agrees, that CHFS and any of its duly authorized agents or representatives shall have access to any books, documents, papers, records, or any other materials which are pertinent to this contract or Subcontract, for the purposes of making monitoring, auditing, examination, excerpts, and transcriptions.

4.36—Indirect Cost

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

4.37—Financial Record Retention

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The Contractor agrees to maintain all records pertaining to this contract for a period of not less than three (3) years after all matters pertaining to this contract (e.g., audit, settlement of audit exceptions, disputes) are resolved in accordance with applicable federal and/or state laws, regulations, and policies (except as may otherwise be specified in this contract).

4.38—Response/Compliance with Audit Findings

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

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

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

4.39—Equipment and Property

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

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

A. Property of CHFS

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

B. Property Control Ledger/Logs

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

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corresponding property.

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

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

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

C. Requirement of Inventory

1. Inventory Tracking

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

2. Loss/Destruction

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

3. Surplus

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

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

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

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

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

4.40—Maintenance of Insurance

During the term of this Contract, the Contractor shall maintain and shall require any Subcontractor to maintain their directors and officers liability insurance, workers' compensation insurance, employer liability insurance, and such other liability insurance as reasonably necessary in the Contractor's business judgment to provide adequate coverage against losses and liabilities attributable to the respective acts or omissions of the Contractor and the Subcontractor(s) in the performance of this Contract. The Contractor shall provide or cause to be provided and shall require any Subcontractor to provide or cause to be provided evidence of such coverage upon request.

To the extent that the Contractor and any Subcontractor are not self-insured, each shall, in any event, name CHFS as an additional insured on any policy of coverage, with the exception of the workers compensation and any reinsurance. The Contractor and any Subcontractor shall notify CHFS of the evidence of insurance coverage within five (5) business days of coverage. Notice shall be sent in writing to the Department.

CHFS shall not be responsible for any premiums or assessments on the policy or policies held by the Contractor or any Subcontractor under this Contract. CHFS may, at its sole option, pay one or more premiums, if it decides that to do so would be in the best interest of the Cabinet. Should CHFS exercise this option, it shall be fully reimbursed by the Contractor, either by Contractor directly or by an offset against future payments.

The Certificate of Insurance for any policy other than self-insurance or any reinsurance must require that the insurer shall not cancel the coverage without thirty (30) days prior written notice to CHFS.

Contractor shall notify CHFS within five (5) business days of any cancellation or interruption of Contractor or Subcontractor's insurance coverage. CHFS shall require in any subcontracts that the Subcontractor provide such notice within five (5) business days the Contractor and CHFS. Contractor shall assure and require that any Subcontractor assure that insurance is in effect at all times during the life of this Contract. If their respective insurance coverage expires at any time during the term of this Contract, the Contractor and any Subcontractor shall provide at least thirty (30) calendar days prior to the expiration date, to the extent possible, a new Certificate of Insurance evidencing coverage as provided herein for not less than the remainder of the term of this Contract.

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4.41—Research Project Approval and Institutional Review Board Requirements

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

4.42—Scientific Misconduct

The Contractor shall set out a procedure for the inquiry, investigation, appeal, and disposition of complaints alleging misconduct in activities involving any and all research projects funded, in whole or in part, with federal funds included in this Contract, and as authorized under the Public Health Services research grants. Such policies and procedures shall be in accordance with the provisions of 42 CFR 50.101 to 50.104 and 900 KAR 1:080 as amended, and shall be made available, upon request, to the Cabinet for Health and Family Services. The Contractor shall immediately report to CHFS any activity reported to the Contractor under these terms and conditions. Notice shall be sent in writing to the Department.

4.43—Intellectual Property

The Contractor agrees that any formulae, methodology, other reports and compilations of data provided by the Department to the Contractor for the purposes of meeting the terms and conditions of this Contract shall be the exclusive property of the Cabinet, unless the specific ownership of any proposed or developed formulae, methodology or data compilation analyses is otherwise identified in any Attachment(s). The Contractor further agrees that any formulae, methodology, other reports and compilations of data prepared or produced by the Contractor during the course of work pursuant to this Contract shall be made available to CHFS for the Cabinet's use upon request and without charge. Any use of these materials other than for the purposes of meeting the terms and conditions of this Contract must be reviewed and approved in advance by CHFS.

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

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

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

4.44—Turnover Assistance

Upon receipt of notice of termination of the Contract from CHFS, the Contractor shall provide any turnover assistance reasonably necessary to enable CHFS or its designee to effectively close out the Contract and move the work to another vendor or to perform the work by itself.

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4.45—Licensure, Certification, and Registration

The Contractor shall:

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

4.46—Permits, Licenses, Taxes and Laws

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

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

4.47—Legal Proceedings

Except as specifically disclosed in writing to CHFS by the Contractor, prior to the date of this Contract, Contractor certifies there are no suits, investigations, or other proceedings pending or threatened against Contractor or any subcontractor which would have a material effect on Contractor's ability to perform under this Contract, or on Subcontractors ability to perform under their respective subcontracts, if applicable. Further, the Contractor shall use its best efforts to notify CHFS within one (1) business day, and in writing within three (3) business days, of all suits, investigations, or other proceedings involving the Contractor related to this Contract. The Contractor shall send written notice to the Department.

4.48—Certification Regarding Drug Free Workplace

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

- A. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited from the Contractor's workplace and specifying actions that will be taken against employees for violation of such prohibition;
- B. Establish an ongoing drug free awareness program to inform employees about:
 - 1. The dangers of drug abuse in the workplace;
 - 2. The Contractor's policy of maintaining a drug free workplace;
 - 3. Available drug counseling, rehabilitation and employee assistance programs; and
 - 4. The penalties that may be imposed upon employees for drug abuse violation.

4.49—Confidential Information

The Contractor shall comply with the provisions of the Privacy Act of 1974 and instruct its employees to use the same degree of care as it uses with its own data to keep confidential information concerning client data, the business of the Commonwealth, its financial affairs, its relations with its citizens and its

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employees, as well as any other information which may be specifically classified as confidential by the Commonwealth in writing to the Contractor. All Federal and State Regulations and Statutes related to confidentiality shall be applicable to the Contractor. The Contractor shall have an appropriate agreement with its employees to that effect, provided however, that the foregoing will not apply to:

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

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

4.50—Confidentiality, Confidentiality Agreements and Limitations on Information and Data Use

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

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

4.51—HIPAA Confidentiality Compliance

The Contractor agrees to abide by the "HIPAA Privacy Rule," 45 CFR Parts 160 and 164, established under the Health Insurance Portability and Accountability Act, Public Law 104-191 (42 USC 1320d) to protect the security, confidentiality, and integrity of health information. In the event, the Contractor is

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determined to be a business associate under HIPAA Privacy Rule, the Contractor agrees to execute a separate Business Associate Agreement, and use and disclose Protected Health Information only in accordance with HIPAA Privacy Rule.

4.52—No Grant of Employment or Agency

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

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

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

Section 5—Federal Requirements

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

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

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

5.00.01—Remedies for Breach

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

5.00.02—Provisions for Termination

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

This Contract may be terminated:

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

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

5.00.03—Clean Air Act and Federal Water Pollution Control Act

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

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

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

5.00.05—Certification of Lobbying Activities

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

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