



# Commonwealth of Kentucky

## CONTRACT

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ISLAND PEER REVIEW

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Effective From: 07/01/2024

Effective To: 06/30/2026

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
1		0.00000		FY25 External Quality Review Organization	\$0.000000	\$2,299,447.00	\$2,299,447.00

**Extended Description:**

Island Peer Review will be responsible for assisting the Department for Medicaid Services (DMS) in evaluating the Kentucky Managed Care Program.

Funding: 75% Federal / 25% State

CFDA: 93.778

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**Effective From:** 07/01/2024

**Effective To:** 06/30/2026

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
2		0.00000		FY26 External Quality Review Organization	\$0.000000	\$2,339,421.00	\$2,339,421.00

**Extended Description:**

Funding: 75% Federal / 25% State

CFDA: 93.778

Shipping Information:	Billing Information:
	CHFS DMS Division of Fiscal Management 275 E Main Street 6W-C  Frankfort KY 40621

<b>TOTAL CONTRACT AMOUNT:</b>	<b>\$4,638,868.00</b>
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External Quality Review Organization (C4756)

PERSONAL SERVICE CONTRACT FOR  
EXTERNAL QUALITY REVIEW ORGANIZATION

BETWEEN

THE COMMONWEALTH OF KENTUCKY

CABINET FOR HEALTH AND FAMILY SERVICES/  
DEPARTMENT FOR MEDICAID SERVICES

AND

ISLAND PEER REVIEW ORGANIZATION

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This Personal Service Contract (PSC) is entered into, by and between the Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Medicaid Services (“the Commonwealth”) and Island Peer Review Organization (IPRO) (“IPRO”) to establish a contract for External Quality Review Organization (EQRO). The initial PSC is effective from July 1, 2021, through June 30, 2022.

Per the solicitation, the Commonwealth reserves the right to renew this Contract for up to two (2) additional two-year periods.

This Contract is being renewed at the completion of the 1<sup>st</sup> renewal contract period for one (1) additional two-year period. **This PSC is effective 07/01/2024 and expires 06/30/2026.**

RFP 746 2100000119

INITIAL CONTRACT: PON2 746 2100003007 – 07/01/2021-6/30/2022

1<sup>st</sup> RENEWAL: PON2 746 2200003529 - 07/01/2022 – 06/30/2024

2<sup>nd</sup> RENEWAL: PON2 746 2400001346 - 07/01/2024 – 06/30/2026

The Commonwealth and Contractor agree to the following:

## SECTION 1 – SCOPE OF CONTRACT

### 1.00 Purpose and Background

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State Medicaid agencies are required under federal law 42 CFR 438 to contract with an independent External Quality Review Organization (EQRO) for performing an annual External Quality Review (EQR) for each contracting Managed Care Organization (MCO). The Commonwealth of Kentucky has six (6) MCOs. Federal law permits State Medicaid programs to contract with an EQRO for the performance of other EQR activities. The Department for Medicaid Services (DMS) has approved optional section requirements within 42 CFR 438 Section E and 42 CFR 433. The annual review and activities performed by the EQRO will assist DMS in evaluating Medicaid managed care beneficiaries' access to timely and quality care and to develop quality improvement strategies. The Balanced Budget Act of 1997 (BBA) directed the Department for Health and Human Services (DHHS) to develop protocols to be used to fulfill the statutory requirement for the external, independent review of the quality outcomes and timeliness of, and access to, services provided by Medicaid managed care organizations. In response to the BBA requirement, protocols, along with an appendix to the protocols, were developed. DHHS' final rule on Medicaid managed care organizations states the EQR activities must follow the protocols for any Centers for Medicare and Medicaid Services (CMS) required EQRO activity. Remaining protocols are for use at the option of DMS whenever a state wants information from these activities used as a component of EQR and enhanced Federal Financial Participation in the costs of these activities. DMS requires the EQRO to follow the CMS protocols in conducting all contracted EQR and EQR related activities. The protocols are located at <https://www.medicaid.gov/medicaid/quality-of-care/medicaid-managed-care/external-quality-review/index.html>.

As described in the State Health Official Letter #09-013, the Children's Health Insurance Program Reauthorization Act (CHIPRA) requires that a contract between a managed care organization and Kentucky Children's Health Insurance Program (KCHIP) include an annual external review of the quality of care provided by the MCO. This review requires a qualified and independent EQRO in accordance with protocols developed by CMS. The EQRO shall incorporate all regulatory changes or protocol additions that pertain to State CHIPs and/or Medicaid managed care programs to perform the contracted External Quality Review (EQR) activities.

### 1.01 Scope of Work

IPRO shall:

1. At a minimum, review the areas of Performance Improvement, Performance Measurement and Plan Compliance.
2. Perform activities that will help the MCOs improve their performance with respect to quality, timeliness and access to care for the managed care of Kentucky Medicaid and Kentucky Children's Insurance Program (KCHIP) enrollees.
3. Assist in the monitoring and oversight of MCO quality improvement programs of the Medicaid and Kentucky Children's Insurance Program (KCHIP) enrollees.
4. Provide all services and deliverables as required herein and meet all service and delivery timelines as specified by this Proposal.
5. Under the direction of the DMS, conduct the EQRO functions. IPRO shall meet the EQRO requirements for competence and independence as set forth in 42 CFR §438.354 and perform external quality review and other EQR-related activities as set forth in 42 CFR §438.358.
6. Produce EQR technical reports to assist DMS in identifying areas for quality improvement and ensure alignment among a MCO Quality Assurance Assessment and Performance Implementation (QAPI) Plan requirements, the state's quality strategy and EQR activities.
7. Be responsible for producing all regularly scheduled monthly, quarterly and annual reports.

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8. Maintain a data platform and system to enable all functions of the EQRO. Possess hardware and software solutions capable of analyzing a database of approximately 500GB, expandable as the data set grows over time. Acceptable configurations are either:

- a) Oracle 19c running on a UNIX or Windows 2016 (or above) platform or
- b) SQL Server 2017 (or above) running on a Windows Server 2016 (or above) platform.

IPRO shall be capable of loading and analyzing data from ASCII delimited files and table layouts. Contractor shall utilize an On-Line Analytical Processing (OLAP) tool, such as Business Objects, in order to analyze data in an efficient manner.

9. Provide consultation and support to DMS and the MCOs.

10. Perform accurate and timely external independent third party reviews in compliance with 907 KAR 17:035.

## 1.02 Deliverables

IPRO shall:

A. Submit a detailed Project Work Plan that will identify each milestone and deliverable no later than July 15 of each contracted year. The detailed Project Work Plan will include, but shall not be limited to the following:

1. Business improvement objectives and outcomes for the upcoming year,
2. Resource/ financial changes,
3. Projects undertaken and/or major scope changes,
4. Outline of all major activities planned for the upcoming year,
5. Methodology for performing activities and meeting objectives,
6. A list of staff assigned to each task,
7. Specific deliverables associated with each task,
8. Timeframes for completion of each task,
9. Written procedures for reporting status,
10. Written procedures for approvals of changes to the project plan, and
11. A list of project milestones toward completion of the work and an estimate of planned expenditures related to the project plan milestones.

B. Coordinate a kick-off meeting with DMS within 15 business days of contract initiation to discuss the project strategy, work plan, timeline and identify stakeholders.

C. Conduct Initial MCO Meetings at the discretion of and on an agreed upon date determined by DMS, IPRO and MCO. The meeting may be onsite, by teleconference, video conference or alternative means approved by DMS. The meetings shall include, but not be limited to:

1. MCO responsibilities and requirements with IPRO.
2. Initial assessment of each MCO's QAPI Plan.
3. Presentation of IPRO's Work Plan and timeline.

D. Submit a summary report to DMS within 45 business days following the MCO meeting. The summary shall include:

1. Minutes from the MCO meeting, including agenda and attendees, and

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2. Summary of initial assessment of each MCO's QAPI Plan.

### 1.02.01 Quality Companion Guide and Administrative Meetings

IPRO shall:

- A. Conduct Administrative Meetings between IPRO and DMS monthly or as otherwise requested by DMS.
- B. Develop a Quality Companion Guide (QCG) that shall include, but not be limited to, instruction for Performance Improvement Projects (PIPs), Performance Measures (PM) specifications and validation processes.
- C. Provide DMS with a copy of the Quality Companion Guide (QCG) by August 1, 2022.

### 1.02.02 Compliance Review

IPRO shall:

- A. Establish Compliance Thresholds and review criteria tools and submit to DMS for approval no later than August 15, each contracted year. Work with DMS to review and validate the methodology utilized annually to ensure proper analysis of each MCO's compliance with contract standards.
- B. Develop and implement a Deeming option if applicable. Provide Deeming Strategy for DMS review no later than August 15, of each contract year. The Deeming Strategy is to include but not be limited to:
  1. Completion of a crosswalk (a method of comparison) of federal and state program requirements with National Committee for Quality Assurance (NCQA) accreditation standards;
  2. Identification of opportunities when information from private accreditation agency reviews meet state and federal program requirements. IPRO shall submit a deeming option proposal for review to DMS, and if approved, IPRO will provide technical assistance to DMS to implement the proposal;
  3. Demonstrate knowledge of DMS administrative compliance assessment system and comparison with other states; and
  4. Use 42 CFR 438 as the authoritative source of requirements against the MCO's accreditation standards. To determine comparability, IPRO shall assess whether each accreditation standard meets the relevant CFR in entirety or parts. To ensure DMS's compliance with CMS requirements, and for the related standard to be exempt from review, the MCO's score on the accreditation standard/element must be one hundred 100 percent of the point value during the most recent accreditation survey (within a recent three (3) year period). Otherwise, the MCO will be subject to a full review of the standard by IPRO.
- C. Prepare each MCO for an annual review by completing the following activities:
  1. A conference call with the appropriate staff of each MCO in conjunction with DMS to describe the process (both document review and on-site interviews) and detail the topics to be reviewed.

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2. Once approved by DMS, the EQRO shall share the review criteria/tools with each MCO to ensure adequate preparation and discussion.

D. Perform Preliminary Review and conduct MCO Site Visits to complete a full compliance review annually for each MCO not accredited by NCQA or exempt in accordance with 42 CFR 438. Based on federal regulations, MCOs with evidence of national accreditation within a previous three-year period may be eligible for exemption from a review of certain administrative functions when the accrediting organization's standards are comparable to DMS requirements and the accreditation covers the survey period under review.

Compliance reviews will start in October of each contract year as directed by DMS.

For each annual review IPRO shall:

1. Review and assess MCO compliance with state and federal standards, including but not limited to Medicaid and KCHIP managed care regulations, all other applicable sections as required by 42 CFR 438 (including Subparts D and E), and Kentucky's MCO contract requirements regarding the following operational areas:

- a. Availability and access of services;
- b. Continuity and coordination of care;
- c. Coverage and authorization of services;
- d. Establishment of provider networks;
- e. Enrollee rights;
- f. Enrollment and disenrollment;
- g. Grievance systems;
- h. Sub-contractual relationships and delegation;
- i. Use of practice guidelines;
- j. Health information system capabilities to ensure the MCO maintains a health information system that collects, analyzes, integrates, and reports data for areas including, but not limited to, utilization, grievances, and appeals and disenrollment for other than loss of Medicaid eligibility. IPRO shall annually assess the strength of the MCO's information system capabilities to include processing, collecting and reporting data;
- k. Mechanisms to detect under and over-utilization of services; and
- l. Mechanisms to detect fraud and abuse.

2. Ensure the following two required main sources of information are used to determine compliance with regulatory and contract requirements:

- a. Document review; and
- b. Interviews with MCO personnel.

E. Compile and analyze the annual findings.

F. Meet on-site or tele/video conference with DMS to discuss findings within (seven) 7 business days of conclusion of all MCO on-site reviews.

G. Provide a report to DMS detailing the results of each MCO's compliance with Federal, State and MCO contract requirements. This shall include compliance issues, compliance ratings for regulatory provisions, and an overall finding for MCO performance, highlighting areas of deficiency with recommendations for remediation of all non-compliant findings. The report is due no later than December 31, of each contract year.

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H. Make recommendations as applicable per MCO Corrective Action Plans (CAP) to assist in compliance.

### 1.02.03 Validation of Performance Measures

IPRO and DMS shall receive the audited MCO Healthcare Effectiveness Data and Information Set (HEDIS) performance measures by August 1, of each contract year. DMS may also require validating the CMS Core Set of Children and Adult Health Care Quality Measures, as well as National Quality Forum (NQF) measures.

IPRO shall follow CMS protocols to analyze and compare the MCO data to performance targets and national benchmarks and rank their performance.

IPRO shall:

- A. Define the scope of the validation.
- B. Assess the integrity of the MCO's Information System.
- C. Conduct a detailed review of the measures.
- D. Initiate review of medical record data collection.
- E. Prepare MCOs for and conduct onsite visits, if applicable
- F. Determine preliminary validation findings for each measure.
- G. Assess and document the accuracy of the performance measure reports.
- H. Submit validation report to DMS .
- I. Make recommendations to DMS on a set of performance measure specifications used by MCOs and updating the data submission tool to reflect each year's data collection requirements. The performance measures are refined annually as needed or as directed by CMS in an attempt to develop a core set of reliable and valid quality measures based on national standards or best practices. IPRO shall recommend measures, benchmarks, performance standards, and methodology improvements (including potential risk adjustment, if appropriate). IPRO must provide research, analytical and technical support as needed.
- J. Provide DMS the following reports no later than October 1, of each contract year:
  1. MCO specific report of evaluation findings and comparative results and recommendations regarding the use of Kentucky Medicaid- specific measures and HEDIS performance measures.
  2. A Statewide HEDIS Analysis Report showing in aggregate the MCO performance relative to various benchmarks, along with conclusions and recommendations for improvement.
  3. Comparison chart of the last three (3) years HEDIS and CAHPS data from all MCOs, including aggregate and individual MCO charts, KY state averages, and a comparison of the MCOs' HEDIS and CAHPS data in relation to the NCQA Accreditation Benchmarks.



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IPRO shall provide DMS a summary of the MCO's HEDIS, CAHPS and KY specific measures comparing to the previous three (3) year results. IPRO shall also send DMS a summary of HEDIS and CAHPS scores in the format specified by the Adult and Child Centers for Medicare and Medicaid Services Abstraction and Reporting Tool (CART) reporting.

#### **1.02.04 Validation of Performance Improvement Projects (PIPs)**

IPRO shall:

Monitor and evaluate the quality of care and services by reviewing the PIP(s) that were underway the preceding twelve months in accordance with 42 CFR §438.330(b)(1). MCOs are required to annually perform two (2) PIPs that focus on clinical and nonclinical areas or as directed by DMS. A collaborative PIP will be determined by DMS with input from IPRO and MCO. All PIPs shall consist of a proposal baseline, an interim and a final determination submission. IPRO shall work with the MCOs and DMS to:

- A. Select the PIP(s) based on the MCOs quality assessment and performance improvement (QAPI) program.
- B. Review the study design and methodology sections of the proposal, conduct conference calls with each of the MCOs and DMS to discuss recommended changes, and develop a PIP process-tracking sheet. IPRO shall update and share the tracking sheet with DMS by the 15th of each month throughout the review process (September through February). IPRO will use a template provided by DMS for the PIP process-tracking sheet or other Contractor templates as approved by DMS.
- C. Develop a final PIP project proposal for each of the MCOs incorporating any recommended changes.
- D. Review the baseline, interim and final reports of all PIPs underway by the MCOs, including the collaborative PIPs.
- E. Utilize standard research methodology practices in validating the performance improvement methodologies and results including, but not limited to:
  1. Develop a work plan for the duration of the validation process to be included as part of the annual work plan,
  2. Validate any necessary background research,
  3. Validate population/sample selection criteria,
  4. Validate data collection methods and tools,
  5. Validate any relevant data verification and ensure MCO validation,
  6. Validate data analysis and interpretation process, including tables and graphics, and
  7. Validate results/final reports and executive summary according to standard research reporting guidelines.
- F. The collaborative PIP will follow the same review process as MCO-specific PIPs.
- G. Submit a final review of all MCO-specific and Collaborative PIP Proposals with baseline data including recommendations for changes and improvements due November 1, of each contract year.
- H. Submit a final review of all MCO-specific and Collaborative PIPs Interims and Final PIPs due January 31, of each contract year. The PIPs shall include scoring and confidence rating per CMS Protocol.

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**1.02.05 Quality of Care Focus Studies Scope of Work**

IPRO shall:

- A. Design and implement focus studies as determined by DMS. Focus studies may be performed for quality improvement, administrative, legislative or other purposes.
- B. Work collaboratively with DMS to develop the area of focus based on clinical or non-clinical aspects of care provided by the MCOs.
- C. Submit the study proposal for DMS review and approval prior to conducting the study.

Each study proposal shall contain the following:

- 1. Defined study question(s),
  - 2. Practice guidelines/standards used in the study,
  - 3. Identification of indicators, criteria, and goals,
  - 4. Population and sample identification, and
  - 5. Data collection and analysis plan.
- D. Follow standard research methodology practices in conducting the studies, including but not limited to:
- 1. Developing a work plan for the duration of the study,
  - 2. Conducting any necessary background research,
  - 3. Reviewing population/sample selection criteria,
  - 4. Devising data collection methods and tools,
  - 5. Performing any relevant data verification and validation,
  - 6. Performing data analysis and interpretation, including provision of tables and graphs, and
  - 7. Developing results/final reports according to standard research reporting guidelines and with an executive summary
- E. Analyze focus study findings utilizing available resources about the focus study population, the MCO(s) and the environment.
- F. Produce recommendations from the focus studies for concrete actions that the MCO(s), Enrollees, and DMS can undertake to improve the health of Medicaid enrollees.
- G. Submit an annual final report for each study, following standard research reporting guidelines to include an executive summary, and other presentation materials, by April 15, of each contract year.

**1.02.06 Comprehensive Evaluation and Progress Summary of the Medicaid Managed Care Program Scope of Work**

IPRO shall:

- A. Complete a comprehensive program review of DMS accountability strategy, monitoring mechanisms, and compliance assessment system of the DMS managed care program.
- B. Compare the Kentucky Medicaid managed care regulatory program and structure with other states. Key stakeholders may include, but not be limited to, the Department for Behavioral Health,

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Developmental and Intellectual Disability (DBHDID), Department for Public Health (DPH), and the Department of Insurance (DOI).

C. Include results of EQR activities conducted, identify and recommend key performance measures for DMS' consideration.

D. Provide a comprehensive report of the findings as specified by DMS, by May 15, of each contract year.

#### **1.02.07 Access and Availability Surveys Scope of Work**

IPRO shall:

A. Conduct annual surveys of, at a minimum, primary care providers and selected specialists, dentists, and behavioral health providers to assess availability and member access to providers.

Specific tasks in conducting access and availability surveys include:

1. Assist in the development of, and revisions to, the methodology used to conduct the survey.
2. Select random sample of providers from data provided by DMS.
3. Prepare and update scripted scenarios for surveys (approved by DMS), as necessary.
4. Conduct the telephone surveys using scripted scenarios.
5. Prepare and submit preliminary and final reports.
6. Work with DMS and the MCOs to correct discrepancies discovered.

B. Ensure the access and availability surveys are conducted telephonically to a sample of provider offices/sites by completing an average of 250 calls via a sample for each of the DMS contracted MCOs to determine access and availability for specific appointment standards including routine appointments, non-urgent but sick appointments, and after-hours calls.

C. Make additional calls if the MCO does not achieve an 80% pass rate in satisfying the standards for access and availability. Once the MCO has had an opportunity to implement a corrective action plan, IPRO shall make additional calls to verify the implementation of the MCO's corrective action plan. IPRO is responsible for completing the follow up calls and including the results of the findings in the annual activity report.

D. Provide DMS with the discrepancies identified during the survey,(such as name and address changes or incorrect phone numbers) for use in auditing Provider Network Submissions.

E. Provide a summary analysis of the top ten diagnosis codes from the selected provider type by region to determine access/availability concerns geographically.

F. Provide DMS with an annual MCO specific findings report summarizing the results of activities listed in Section 1.02.07(A)– Access and Availability Surveys, numbers 1 – 6, by June 1, of each contract year.

#### **1.02.08 Network Adequacy Validation**

The MCOs must meet all applicable provider panel requirements established by DMS for their entire designated service area to ensure access to medically necessary Medicaid covered services.

A. Audit the provider panel information submitted by the MCOs to verify the accuracy of the data, to ensure that the MCOs are meeting provider capacity requirements (i.e. access standards). This

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should also ensure accuracy of the provider listings in the provider directory. This shall include, but is not limited to:

1. Auditing of the MCO provider directories both in print as well as online searchable directories. Information in the provider directories must match the information submitted to DMS.
2. Conducting provider telephone surveys. The vendor will be required to contact a sample of the providers to verify if information submitted is accurate.

B. In conducting these activities:

1. Recommend the information set or data field is validated.
2. Develop the data collection tool and analysis plan.
3. Identify the random sample of providers.

C. Produce a MCO-specific report of the findings in PDF and Word semi-annually. The report shall be submitted to DMS no later than December 30 and June 30 of each state fiscal year during the contract period.

#### **1.02.09 Health Plan Report Cards**

IPRO shall develop and submit a Health Plan Report Card in collaboration with DMS by July 30, each contract year for use during the Open Enrollment period. The report cards shall compare MCOs' scores on selected HEDIS and CAHPS measures in relation to national NCQA percentiles in a format determined by DMS. The report card will compare performance based on the selected measures of each MCO to assist members in choosing a MCO.

#### **1.02.10 Individual/Case Review**

IPRO shall:

- A. If requested by DMS, perform a review of all quality of care complaints filed with each MCO to determine whether a complete case review occurred; a quality issue remains unaddressed; or if significant findings were identified.
- B. In the event DMS's determination differs from the MCO's, review the specific cases and issue a determination based upon the review of the medical record and other supporting information.
- C. Function as an independent reviewer and assist DMS in resolving specific medical/quality of care complaints on a timely basis.
- D. Perform case reviews when concerns arise from sources other than a complaint filed with an MCO.
- E. Submit a summary of each case with an analysis of the information and rationale for the determination. Each summary shall identify the discipline of the individual(s) reviewing the case.
- F. Establish a formal process for the identification of appropriate clinicians to respond to specific medical issues, and timeframes associated with the review and submission of medical determinations or opinions.
- G. Provide DMS with a Case Summary report for each case reviewed to include if a quality of care issue exists, results from the case review, recommendations to resolve any issues found

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and the discipline of the individual(s) reviewing the case. Summaries are due 30 days after case review is completed.

#### **1.02.11 Technical Assistance for DMS and Ad Hoc Reports**

IPRO shall provide up to 500 hours of technical assistance as requested by DMS in areas not related to regular Scope of Work of this contract. DMS shall define the specific nature of the technical assistance and/or ad hoc report on a case-by-case basis.

DMS may identify topics of interest based on data provided by the MCOs. IPRO shall produce ad hoc reports as requested by DMS. IPRO shall provide technical assistance hours in addition to the required technical assistance and activities described in the Scope of Work. IPRO shall report these hours on the quarterly invoice. Prior to starting, IPRO shall inform DMS when technical assistance is outside the Scope of Work and chargeable to the 500 hours. IPRO shall also provide an estimated cost of additional work prior to beginning. IPRO can only act on ad-hoc reporting after DMS approval. IPRO shall bill the technical assistance and the ad hoc reports in the quarterly invoice in which IPRO performs the work. The hours worked will be billed on invoice with a description of work, who performed it, number of hours worked, pay rate of person performing work and a cumulative total of hours billed. Any technical assistance required beyond the included 500 hours per contract shall require DMS to request and receive a contract modification prior to IPRO providing assistance.

#### **1.02.12 External Independent Third-Party Case Reviews/Senate Bill 20**

Senate Bill 20 (SB20) provided for the creation of 907 KAR 17:035 External Independent Third-Party Review (EITPR). This establishes provisions regarding a Medicaid provider's right to an external independent third-party review of a managed care organization's adverse final decision of a provider's appeal of denial of a claim for reimbursement or a service.

Upon the provider's request for an external third-party review of an adverse final decision based on medical necessity, or request for an administrative review, DMS shall assign IPRO the case to review. DMS shall provide IPRO with the documentation received from the MCO related to the final decision of the provider's appeal.

IPRO shall:

- A. Follow all provisions specified in 907 KAR 17:035 when performing EITPR.
- B. Maintain a signed statement for each EITPR stating the reviewer has no conflict of interest regarding the review.
- C. Transmit and receive all data via encryption or secure file transport protocol (FTP) site.
- D. Make medical necessity determinations by a clinician or clinicians who have clinical expertise regarding the subject matter; and are currently licensed, preferably in the Commonwealth of Kentucky, regarding the subject matter.
- E. Make administrative determinations such as determining whether the Medicaid program covers the service, or whether the provider followed the MCO's requirements for the covered service. These determinations shall be made by an appropriate professional or specialist with expertise in the subject matter.
- F. Complete each review within thirty (30) calendar days of the MCO submitted material and produce a summary and final decision to DMS, the MCO and the provider.

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G. Have a formal process for the identification of appropriate clinicians to respond to specific medical issues and timeframes associated with the review and submissions of medical determinations or opinions.

H. Submit a summary of each case with an analysis of the information and rationale for the determination. Each summary shall identify the discipline of the individual(s) reviewing the case.

I. Invoice per case that will include all aspects of the review including the reviewer, indirect costs, administrative fees and incidental expenses.

J. Complete and submit to DMS a quarterly detail and summary report, 30 days past the quarter, and an annual report by June 30 each contract year. Reports are to be provided in Excel and the reports shall include the following:

1. Total number of EITPR by MCO
2. Total number of EITPR by MCO by medical necessity versus administrative (SB 20)
3. The total number overturned, upheld or partially overturned per MCO.
4. Total number completed in 30 days or less.
5. The total number completed in longer than 30 days.
6. The average turnaround time per EITPR.
7. Report detail and other reports as requested.

### **1.02.13 Follow-up Activities**

IPRO shall conduct all of the follow-up activities listed below as related to the external quality review of the MCOs' programs/services:

A. Verify activities to determine if problem resolution was obtained and quality improvement activities were implemented following the previous external quality reviews.

B. Address the clinical findings or health services delivery issues identified from prior external quality reviews, including, but not limited to:

1. Establishing historically accurate trends in key areas of clinical practice of interest to DMS.
2. Determining compliance or non-compliance with recommendations from previous reviews.
3. Assisting DMS in identifying clinical conditions or health service delivery issues that have the highest prevalence or incidence and for which appropriate care has the greatest potential for improving health outcomes.
4. Establishing a baseline for future assessments to see if care has actually improved.

C. Analyze findings for continuing action as needed.

D. Review and make recommendations for cost containment initiatives when opportunities for cost saving are identified in the course of monitoring activities performed for this contract. In particular, IPRO should include specific opportunities for quality improvement and cost saving in the summary of IPRO review reports.

### **1.03 Reporting Requirements**

Transmittal and receipt of all data shall be via encryption or secure file transport protocol (FTP) site.

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Upon completion of the annual external quality review of the MCOs, IPRO shall:

A. Produce a detailed final technical report to be submitted to DMS by March 31, each contract year that describes the manner in which data from all EQR and EQR related activities were aggregated, analyzed and conclusions drawn as to the quality, timeliness and access to care furnished by the MCOs.

The report shall include:

1. An assessment of the MCOs' strengths and weaknesses and recommendations for improvement for each of the activities conducted.
2. An assessment of DMS's strengths and weaknesses and recommendations for improvement.

B. The final written report will include an Executive Summary and key findings and recommendations for the MCO(s). The report shall include separate chapters for each of the required activities, referencing each of the components listed in the Scope of Work.

In addition, the report shall contain the following:

1. Valid, historically-trended information about access to care and trends in health outcome indicators;
2. A description of the care delivered by MCOs to their enrolled Medicaid members;
3. Documentation of findings and recommendations from all the required and optional EQR activities for actions that the MCOs, Enrollees, and DMS may use to improve health care received from the MCO;
4. Identification of individual MCO issues and other issues that may have statewide policy implications; and
5. Methodologically complete, comparative information about all the MCOs operating in Kentucky.

C. Submit a draft of the written report to DMS by March 15, each contract year. IPRO shall revise and/or provide additional information to ensure a comprehensive and thorough written report.

D. Submit technical report format to DMS for approval. The final technical report submittal shall include one copy in Word and a PDF.

E. If requested by DMS following submission of the final report, participate in discussions of review findings and recommendations to DMS.

F. Maintain confidentiality of information or results contained in the final technical report or other deliverables. Disclosure of such information to any individual or entity shall require prior approval by DMS.

G. Ensure the release of the report complies with the privacy of patient information as per 42 CFR 438.

H. Be responsible for producing all regularly scheduled monthly, quarterly and annual reports.

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I. Develop report formats that meet all State and Federal reporting requirements. IPRO shall compose the reports in a manner consistent with DMS specifications and with IPRO's stated criteria. All report formats shall have prior approval by DMS.

J. IPRO shall be responsible for ensuring complete understanding regarding the specifications and requirements for all reporting and other activities under the contract.

K. Ensure the accuracy of all reports including correct tables, charts, data, grammar, punctuation and spelling prior to providing the report in final form to DMS. IPRO shall provide DMS with written reports that are clear, concise and useful for the intended audience.

L. Respond to all DMS requests for information concerning reports within 10 calendar days following request, unless otherwise agreed upon by both parties.

M. Report the information in a manner that is consistent with the needs of DMS and that utilizes generally accepted auditing principles and standards. Submission of all draft Contractor reports shall undergo internal review before submission to DMS with the understanding that all reports are potentially made public other than those with PHI documentation. IPRO will consistently identify those areas of the quality review that demonstrate opportunities for improvement.

N. Submit monthly, quarterly, and annual status reports to DMS during the course of the contract and upon request. Reports to be generated shall not be limited to those listed below and shall include additional categories as required for State and Federal reports as described under the Scope of Work. Reports from the Required Review Activities shall include but not be limited to:

1. Analysis of the MCO data with comparison to previous performance.
2. Comparison of the data analysis to selected goals and/or industry benchmarks.
3. Comparison of the analysis with findings from other states or national studies.
4. Presentation of numerical data in a meaningful way that provides accurate, clear, and easily understandable information.

O. If IPRO fails to submit a report, including the EITPR report, within the required timeframe, a corrective action plan will be initiated and a penalty can be imposed of \$100.00 per day until the report is received.

P. Penalties can be assessed as described in Section 6.01.09 – Performance Based Penalties. The Department may impose additional remedial actions, intermediate sanctions, penalties or liquidated damages and/or elevate the violation to a higher Category of Risk if the non-compliance continues, or if IPRO fails to comply with the originally imposed action.

#### **1.04 Subcontractors**

Subcontractors may be allowed with prior written approval by DMS.

#### **1.05 Subrecipient**

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

#### **1.06 Pricing and Payment Requirements**

The Senate Bill 20 External Independent Third-Party Case Reviews shall have a fixed fee of \$500 per case, billed in the quarter conducted, to include specialty matched clinician review, indirect costs, administrative fees and incidental expenses related to the reviews.



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Any and all services, monitoring of such services, and billing and invoicing for 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. No payment shall be made for non-compliant services or invoices. Services are to be billed as follows:

Invoices for payment shall be submitted electronically to [CHFSpayablesbranch@ky.gov](mailto:CHFSpayablesbranch@ky.gov). Invoices must be submitted no later than thirty (30) calendar days after the Quarter in which the completion of the service(s) occurs.

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

IPRO shall submit quarterly invoices in two parts:

1. Legislative Research Commission's Government Contract Review Committee Invoice Form; and
2. The EQRO Invoicing Form developed by DMS, broken down by the percentage of deliverable time worked and/or completed work, along with any Supporting Documentation.

The invoice shall:

1. Be itemized per the following categories, if applicable, with the percentage of time worked noted.

- A. Annual Work Plan
- B. Quality Companion Guide and Administrative Calls
- C. Compliance Review
- D. Performance Measure validation
- E. PIP Validation
- F. EQRO Results Final Technical Report
- G. Quality of Care Focus Study
- H. Comprehensive Evaluation & Medicaid Managed Care Progress Summary
- I. Access and Availability Survey
- J. Validation of Managed Care Provider Network
- K. Health Plan Report Cards
- L. Individual Case Reviews
- M. Ad-Hoc Reports/Reviews

2. Senate Bill 20 External Independent Third Party Reviews at the rate of \$500/Review.

3. Senate Bill Technical Assistance – DMS and Ad-hoc Reports based on the hours worked, description of work, pay rate and who performed it, number of hours worked, and a cumulative total of hours billed on the quarterly invoice in which IPRO performs and/or completes the work with names of the following staff:

- A. Contract Manager/Activity Lead
- B. Health Data Analyst I
- C. Nurse Reviewer
- D. Health Data Analyst II
- E. Administrative Assistant
- F. Subject Matter Expert
- G. Review Activity Lead – Compliance
- H. Technical Writer
- I. Physician Advisor

4. Summarize the following categories by the federal CMS 64.10 Line 17 External Quality Review breakdown:

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- A. Mandatory Validation of Performance Improvement Project (PIP)
- B. Mandatory Validation of Performance Measures
- C. Mandatory Validation of Compliance Data
- D. Mandatory Network Adequacy Validation (once the protocol is created)
- E. Optional Validation of Encounter Data
- F. Optional Administration or validation of consumer or provider surveys of quality of care
- G. Optional Calculation of Performance Measures
- H. Optional Implementation of PIPs
- I. Optional Focus studies on Quality of Care
- J. Technical Assistance
- K. Optional Network Adequacy Validation
- L. Optional Quality Rating System EQRO Support

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

### 1.07 EQRO Qualifications and Staffing Requirements Qualifications

IPRO shall be qualified to perform external quality review activities consistent with federal regulations and protocols. IPRO shall provide and maintain evidence of the following qualifications:

1. Competence – IPRO shall have knowledge of:

- A. Medicaid recipients, policies, data systems and processes.
- B. Managed care delivery systems, organizations, and financing.
- C. Quality assessment and improvement technologies.
- D. Research design and methodology, including statistical analysis.
- E. Certification and validation of encounter data.
- F. Other clinical and non-clinical skills necessary to carry out EQR and EQR related activities and to oversee the work of subcontractors.

2. Sufficient physical, technological and financial resources to conduct EQR and other activities under the scope of this contract.

3. Independence: IPRO shall be independent from DMS and from the MCOs they review.

4. Staff skills and Experience—IPRO shall be skilled and experienced in:

A. Statistics

B. Encounter data analysis, including the use of one or more of the following case-mix adjustment systems:

- i. Chronic Illness and Disability Payment System.
- ii. Adjusted Clinical Groups.
- iii. Diagnostic Cost Groups.
- iv. Clinical Risk Groups.
- v. Global Risk Assessment Model.

C. Encounter data validation/certification, including certification to ensure that data is sufficiently complete and accurate to support quality management and for setting capitation payments.

D. Health care issues research and writing for publication.

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E. Clinical evaluation competence or direct contract access to such competence in the following areas including, but not limited to:

- i. Pediatrics.
- ii. Acute care.
- iii. Mental health, behavioral health and chemical dependency.
- iv. Rehabilitative Medicine.
- v. Chronic illness and disability.
- vi. Complex special health care needs.
- vii. Women's health.

5. Using or analyzing one or more of the following performance measurement systems:

- A. Health Employer Data Information Set (HEDIS).
- B. Foundation for Accountability (FACCT).
- C. Consumer Assessment of Health Plans Study (CAHPS).
- D. RAND Quality Care Measurement System.
- E. Other systems recommended by DMS.

#### **1.07.01 Staffing**

1. General Staffing:

A. IPRO shall retain adequate staffing and implement all aspects of the work required herein within the stated timeframes. Staffing levels shall be sufficient to support and complete all the responsibilities under the scope of work. IPRO shall determine staffing requirements by both individual positions and complexity according to Full Time Equivalent (FTE) hours. Specified positions are detailed in the Specific Staffing Requirements of this Section. Commonwealth hours of operation are 8:00 a.m. to 4:30 p.m. EST, Monday through Friday. Holidays are defined as those recognized by the Commonwealth.

B. DMS reserves the right to approve or deny approval of all initial or replacement key personnel prior to their assignment to Contractor's project. IPRO must notify DMS within ten (10) business days in the event of any changes to key staff. IPRO must replace departing key staff within sixty (60) days with a person of equivalent experience, knowledge and talent. DMS shall have the right to require IPRO to remove any personnel found by Medicaid to be unwilling or unable to perform under the terms of the contract.

C. IPRO must ensure that all entities or individuals, whether defined as "Key Personnel" or not, performing services under this contract are not "Ineligible Persons" to participate in the Federal health care programs or in Federal procurement or non-procurement programs or have been convicted of a criminal offense that falls within the ambit of 42 U.S.C 1320a-7(a), but has not yet been excluded, debarred, suspended, or otherwise declared ineligible. Exclusion lists include Department of Health and Human Services/ Office of Inspector General List of Excluded Individuals/Entities and the General Services Administration's List of Parties Excluded from Federal Programs.

D. All temporary, permanent, subcontracted, part-time and full-time Contractor staff working on this contract must complete an annual statement that includes an acknowledgement of confidentiality requirements and a declaration as to whether the individual has been convicted of

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a felony crime or has been determined an "Ineligible Person" to participate in Federal healthcare programs or in Federal procurement or non-procurement programs.

E. IPRO shall keep the individual statements on file and submit a comprehensive list of all current staff in an annual statement to the Contract Monitor, indicating if the staff is free of convictions or ineligibility as referenced above.

F. If IPRO has actual notice that any temporary, permanent, subcontracted, part-time, or full-time Contractor staff has become an "Ineligible Person" as defined above, IPRO shall remove said personnel immediately from any work related to this contract and notify DMS on the same date IPRO receives the notice of a conviction or ineligibility. For felony convictions, DMS will determine if IPRO shall remove the individual from the contract project permanently.

G. IPRO must provide staff that has a thorough understanding of the epidemiological and statistical measurement of health status indicators in defined populations, including the scope and methodology of data collection, the interpretation of data, and an understanding of the social and economic factors that affect the interpretation of the data.

H. IPRO shall have sufficient information system staff to manage contract requirements, including data collection, analysis and storage.

I. IPRO shall have on staff or sub-contract with an NCQA-certified Healthcare Effectiveness and Data Information Set (HEDIS) Compliance Auditor.

J. Project staffing shall include the following required key personnel positions assigned to this project,

- i. A Project Director and a back-up Project Director.
- ii. Contract Manager.
- iii. Medical Director.
- iv. Health Data Analyst.
- v. Data Base Administrator.
- vi. Review Activity Leads.
- vii. Statistician(s).
- viii. Professional Technical Writer(s).
- ix. Copy Editor.

IPRO shall report the above-listed key personnel, including the names, job descriptions and CVs by July 15, each contract year.

2. Specific Staffing - IPRO shall provide the following:

**A. Project Director**

Project Director shall be responsible for the overall management of the Kentucky Medicaid assigned Contractor staff. Must have a bachelor's or a master's degree in health administration, public administration, business management or other related field and preferred Medicare or Medicaid operations/health care industry experience.

**B. Contract Manager**

Shall have a bachelor's or master's degree in health administration or in any of the health related fields with at least 3 years' experience in health care research, health policy analysis or similar research experience. The Contract Manager shall be the primary point person and day to day liaison between DMS and IPRO. The Contract Manager shall be dedicated to the Kentucky

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Medicaid program. The Contract Manager shall be responsible for the successful implementation and ongoing operations of this Contract.

- i. Previous Medicare or Medicaid operations/health care industry experience preferred.
- ii. Proven leadership and problem solving abilities.
- iii. Demonstrated organization, facilitation, communication, and presentation skills.

#### C. Medical/Clinical Director

I PRO shall have access to, or contract with, a board certified Doctor of Medicine with an unrestricted license to practice medicine to act as the EQRO Medical Director. The Medical Director shall have responsibility to provide clinical leadership to the EQR activities and be available to DMS on an as needed basis. The Medical Director shall have:

- i. Previous Medicare or Medicaid operations/health care industry experience required;
- ii. Proven leadership and problem solving abilities; and
- iii. Demonstrated organization, facilitation, communication, and presentation skills.

#### D. Health Data Analyst

Shall have four (4) years' experience with a Health Insurance Company, health care provider, or similar entity in underwriting, financial analysis, data analysis, statistical evaluations, and/or research analysis as it relates to health care. This position will oversee the collection and evaluation of data obtained under terms of the contact.

#### E. Database Administrator

Shall have four (4) years professional experience in computer programming and/or systems analysis. This position will administer and support a data base management system. This position will also define, create, maintain and monitor data base related components and perform other duties as required. It is also preferred that the analyst have 24 months of experience with Medicaid information systems.

#### F. Review Activity Leads

For each proposed review activity, the EQRO shall assign an individual who will act as project leader. One individual may act as the project lead for more than one project. I PRO shall ensure that project leaders are readily accessible and available to DMS during normal business hours and as needed.

#### G. Statistician

Shall have at minimum a master's degree in Statistics, Mathematics or Bio-Statistics, or a PhD in a related field. The Statistician must also have at least three (3) years' experience drawing complex stratified samples and weighting results.

#### H. Professional Technical Writer(s)

Shall have at least three (3) years of experience writing health care related reports.

#### I. Copy Editor

Shall have a minimum of a bachelor's degree in journalism, Communications, English or a related field or two (2) years' experience as a copy editor. Before each report is submitted to DMS by I PRO, the Copy Editor shall:

- i. Proofread documents to detect and correct errors in spelling, punctuation, and syntax; and
- ii. Verify facts, dates, and statistics using standard reference sources.

### 1.08 CHFS Responsibilities

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The CHFS/Department for Medicaid Services may:

1. Provide IPRO with a contact person who will coordinate the activities required under the contract;
2. Provide IPRO with related program information required by IPRO for accomplishing their contract responsibilities;
3. Conduct reviews of all materials submitted to DMS by IPRO;
4. Modify any report format and timetables for submission because of changes in Commonwealth policy or direction;
5. Provide timely notifications to IPRO of all changes and/or amendments to the MCOs' contract(s) and/or any waiver terms and conditions and
6. Review and approve/disapprove IPRO's invoices and supporting documents.

### **1.09 Monitoring Requirements – Federal and State**

IPRO shall comply with the following monitoring requirements:

1. Faithful performance of the Agreement and shall have internal monitoring procedures and processes in place to ensure quality and compliance.
2. Cooperate with the Department and/or its agents in any monitoring, tracking and/or auditing activity, provide documents, allow random inspections of its facilities, participate in scheduled meetings and monitoring, respond to requests for corrective action plans, and provide management reports as requested by the Department. Participation in these activities shall be at no additional cost to the Department.

The Department and or its agents reserve the right to monitor, audit and track the Contract's performance over the course of the Contract. The information gathered may be used in administration of the Contract, including payment.

### **1.10 Related Documents and Materials Incorporated by Reference**

Attachment A: Legislative Research Commission's Government Contract Review Committee Invoice Form

Attachment B: Department for Medicaid Services Required EQRO Invoicing Form

Attachment C: Current CMS Protocols for EQR Activities

Attachment D: PIP Tracking Sheet

## **SECTION 2 – CONTRACT COMPONENTS AND ORDER OF PRECEDENCE**

The Commonwealth's acceptance of IPRO's offer in response to the Solicitation, indicated by the issuance of a Contract Award shall create a valid contract between the Parties consisting of the following:

1. Procurement Statutes, Regulations and Policies;
2. This written agreement and any subsequent written amendments to this Agreement;
3. Any Addenda to the Solicitation;

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4. The Solicitation and all attachments thereto; including PSC Standard Terms and Conditions;
5. Any Best and Final Offer;
6. Any clarifications concerning IPRO's proposal in response to the Solicitation;
7. IPRO's proposal in response to the Solicitation.

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

### **SECTION 3 – NEGOTIATED ITEMS**

Not Applicable.

### **SECTION 4 – PRICING**

The Senate Bill 20 External Independent Third-Party Case Reviews shall have a fixed fee of \$500 per case, billed in the quarter conducted, to include specialty matched clinician review, indirect costs, administrative fees and incidental expenses related to the reviews.

Any and all services, monitoring of such services, and billing and invoicing for 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. No payment shall be made for non-compliant services or invoices. Services are to be billed as follows:

### **SECTION 5 – INVOICING**

Invoices for payment shall be submitted electronically to [CHFSpayablesbranch@ky.gov](mailto:CHFSpayablesbranch@ky.gov). Invoices must be submitted no later than thirty (30) days after the Quarter in which the completion of the service(s) occurs.

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

IPRO shall submit quarterly invoices in two parts:

1. Legislative Research Commission's Government Contract Review Committee Invoice Form; and
2. The EQRO Invoicing Form developed by DMS, broken down by the percentage of deliverable time worked and/or completed work, along with any Supporting Documentation.

The invoice shall:

1. Be itemized per the following categories, if applicable, with the percentage of time worked noted.
  - A. Annual Work Plan
  - B. Quality Companion Guide and Administrative Calls
  - C. Compliance Review
  - D. Performance Measure validation
  - E. PIP Validation

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- F. EQRO Results Final Technical Report
- G. Quality of Care Focus Study
- H. Comprehensive Evaluation & Medicaid Managed Care Progress Summary
- I. Access and Availability Survey
- J. Validation of Managed Care Provider Network
- K. Health Plan Report Cards
- L. Individual Case Reviews
- M. Ad-Hoc Reports/Reviews

2. Senate Bill 20 External Independent Third Party Reviews at the rate of \$500/Review.

3. Senate Bill Technical Assistance – DMS and Ad-hoc Reports based on the hours worked, description of work, pay rate and who performed it, number of hours worked, and a cumulative total of hours billed on the quarterly invoice in which IPRO performs and/or completes the work with names of the following staff:

- A. Contract Manager/Activity Lead
- B. Health Data Analyst I
- C. Nurse Reviewer
- D. Health Data Analyst II
- E. Administrative Assistant
- F. Subject Matter Expert
- G. Review Activity Lead – Compliance
- H. Technical Writer
- I. Physician Advisor

4. Summarize the following categories by the federal CMS 64.10 Line 17 External Quality Review breakdown:

- A. Mandatory Validation of Performance Improvement Project (PIP)
- B. Mandatory Validation of Performance Measures
- C. Mandatory Validation of Compliance Data
- D. Mandatory Network Adequacy Validation (once the protocol is created)
- E. Optional Validation of Encounter Data
- F. Optional Administration or validation of consumer or provider surveys of quality of care
- G. Optional Calculation of Performance Measures
- H. Optional Implementation of PIPs
- I. Optional Focus studies on Quality of Care
- J. Technical Assistance
- K. Optional Network Adequacy Validation
- L. Optional Quality Rating System EQRO Support

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

## **SECTION 6 - CHFS STANDARD TERMS AND CONDITIONS**

### **6.00.01 Headings**

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

### **6.00.02 Assignment**

This Contract shall be binding upon and inured 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



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or in part, without the prior written consent of CHFS, Division of Procurement and Grant Oversight, and the Division of Accounting Services.

#### **6.00.03 Beginning of Work**

The Contractor shall not commence any billable work until a valid Contract has been fully executed. This Contract shall represent the entire agreement between the parties.

#### **6.00.04 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 CHFS 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 authorized designee, and the LRC Government Contract Review Committee. Memoranda of Understanding, written clarification, and/or other correspondence shall not be construed as amendments to the Contract.

#### **6.00.05 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 the Contract, all communications of a contractual or legal nature are to be made to the Agency Contact.

#### **6.00.06 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.

#### **6.00.07 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.

#### **6.00.08 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. 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

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### 6.00.09 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.

### 6.00.10 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.

### 6.00.11 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 to 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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#### **6.00.12 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.

#### **6.00.13 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.

Contractor shall be responsible for all applicable Federal (including FICA), State and Local tax withholdings.

#### **6.00.14 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 that 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 Contractor related to this Contract. The Contractor shall send written notice to the Department.

#### **6.00.15 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.

#### **6.00.16 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

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

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

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

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

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

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

- a. Be consistent with the general guidance document issued by the Department of Justice, which sets 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.).

## **6.01 – Contract Performance**

### **6.01.00 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;
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

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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.

#### **6.01.01 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.

#### **6.01.02 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.

#### **6.01.03 Indirect Cost**

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

#### **6.01.04 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).

#### **6.01.05 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 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.

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### 6.01.06 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](#)).

### 6.01.07 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:

1. Required by a Kentucky or Federal law, regulation, rule, or other audit requirement relating to Contractor's business;
2. Performed by Contractor as part of this Contract; or
3. Necessary due to Contractor's noncompliance with any law, regulation, rule, or audit requirement imposed on Contractor; or
4. Deficiencies may also result in the assessment of penalties as described in Section 6.01.09- Performance-Based Penalties.

### 6.01.08 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.

### 6.01.09 Performance-Based Penalties

Upon a determination of failure to perform services outlined in Section 1 - Scope of Work, 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 below (Section 6.01.09(1)(b)).

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

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the designated representative regarding a Letter of Concern, the Department shall proceed to the additional enforcement contained in this Contract.

b. Corrective Action Plan

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 either 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 6.02-Breach and Contract Termination.

3. Upon timely resolution of all performance based issues outlined in the Correction 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.

#### **6.01.10 Performance and Evaluation**

CHFS may complete a Performance Evaluation (PE) 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 listed on page 1.

#### **6.01.11 Business Continuity, Disaster Recovery, and Information Security Requirements**

Upon request, the Contractor shall provide 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.

All costs associated with activating and sustaining execution of all plans shall be borne solely by the Contractor.

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Test all backup procedures no less than quarterly.

#### **6.01.11.01-Information Security Plan**

The Vendor shall:

- A. Submit a detailed Information Security Plan, for the Department's approval and prior to implementing, within thirty (30) calendar days of execution of the Contract.
- B. Review the Information Security Plan annually, at a minimum, or in the event of a significant system change (as defined by the Centers for Medicare and Medicaid Services (CMS)), update as needed. The annual Information Security Plan shall be submitted to the Department during the yearly contract monitoring review.
- C. Ensure all software and hardware components used to deliver this solution are supported by the Original Equipment Manufacturer (OEM) of that particular software or hardware and all other technologies used are uncompromised/secure.
- D. Ensure access to all sensitive information (such as Personally Identifiable Information [PII], Protected Health Information [PHI], etc.) is restricted to vetted United States personnel only.
- E. Ensure all data, including backups and archives, are maintained at all times within the contiguous United States. All sensitive data, as defined by CMS, shall be encrypted in-transit and at rest at all times.
- F. The Contractor shall notify their CHFS point of contact and CHFS Information Security on all Security incidents within one (1) hour of their discovery.
- G. All databases/spreadsheets containing sensitive data such as PII and PHI shall be monitored for any breaches. The Contractor shall set up alerts based on triggers that fire when a predetermined threshold is reached.
- H. Cyber Insurance:

The Contractor shall hold Cyber Insurance policies, or obtain a performance bond, to cover liability that includes, but is not limited to, costs of cyber security breaches, unauthorized data disclosure, data tampering, data loss, credit monitoring, system restoration/repair, follow-on lawsuits, and other damages during the entire life of this contract, including any renewals. This is not a substitute for a robust security program.

If a performance bond is chosen, pursuant to 45A.190 and 200 KAR 5:305, the Contractor shall furnish a performance bond satisfactory to the Commonwealth in the amount of the full contract amount as security for the faithful performance of the Contract. The bond furnished by the Contractor shall incorporate by reference the terms of the Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract is amended, the penal sum of the performance bond shall be deemed increased by like amount.

The initial bond shall be submitted to the Commonwealth Buyer within thirty (30) days of execution of this Contract. Any required amendment to the bond shall be submitted to the Commonwealth Buyer within thirty (30) days of said amendment.

The Department shall have the right to enforce the Contractor's Performance Bond pursuant to the terms thereof for any material breach of this Contract after prior written notice to Contractor and an opportunity to cure such material breach within thirty (30) days of the date of the notice.

- I. No production data shall exist in any other environment other than production. All non-production environments shall be designed to use data masking routines to transform personal and confidential data, while retaining its contextual meaning and referential integrity. The authorized Commonwealth management staff and CHFS Security shall approve any exceptions.



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#### **6.01.11.02-Independent Security Review**

The Contractor shall perform an Infrastructure Vulnerability Assessment and full-scale Penetration Testing annually with Commonwealth Office of Technology (COT) and an independent security assessment company agreed upon with Commonwealth, at no additional cost to the Commonwealth. The Contractor shall submit a copy of the Infrastructure Vulnerability Assessment and industry standard Penetration Test Report to the Commonwealth within fourteen (14) business days of its execution. The Contractor shall provide a Risk Mitigation Plan outlining options and recommending actions to enhance opportunities and reduce identified project risks.

#### **6.01.12 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.

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>

#### **6.01.13-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.

## 6.02 – Breach and Contract Termination

### 6.02.00 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.

### 6.02.01 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, at no additional cost to the Department:

- A. Provide detailed transition documents.
- B. 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.
- C. Within ten (10) 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) 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 lacking 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.
- D. 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 following the termination date.
- E. 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 and any records as required by federal funding agencies, if applicable, within twenty-one (21) days following the termination date. All documents shall be in a CHFS-approved format.
- F. 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 CHFS within twenty-one (21) days following the termination date.

G. 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.

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**6.02.01.01-Data Conversion Plan**

The Conversion Plan shall define the strategy, preparation, and specifications for converting data from the source system(s) to the target system(s). The Conversion Plan shall include any security or privacy considerations associated with the conversion, including but not limited to, compliance to regulations regarding standards for privacy, security, and individually identifiable health information, as identified in the HIPAA. The Contractor shall work with the CHFS to determine file format and transmission method.

**6.02.01.02-Turn Over**

The Contractor shall plan and implement a coordinated transfer of system data, licenses, and operations duties to another entity upon direction of CHFS. Knowledge transfer and turnover activities shall include, at a minimum:

- A. Standard policies, procedures, business processes, and organizational contacts necessary for day-to-day operations;
- B. Transfer of, and assistance on, all existing documentation;
- C. Conversion or migration of all work in progress; and,
- D. Data conversion and migration assistance.

**6.03 – Miscellaneous Provisions****6.03.00 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.

**6.03.01 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.

**6.03.02 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 codes 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.

**6.03.03 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.

**6.03.04 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

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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.

#### **6.03.05 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.

#### **6.03.06 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:

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.

#### **6.03.07 Data Use Agreement**

Not Required

#### **6.03.08 Business Associate Agreement**

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:

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Cabinet for Health and Family Services  
Department for Medicaid Services  
275 East Main Street, 6W-A  
Frankfort, Kentucky 40621

Business Associate:

IPRO  
1979 Marcus Avenue  
Lake Success, New York 11042-1072

### 6.03.09 Record Checks

A criminal record check that is satisfactory with no convictions or outstanding charges which would constitute a disqualifying offense under 900 KAR 1:009, shall be completed through the Kentucky State Police Information Center or the Administrative Office of the Courts. If an individual providing 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 7 - FEDERAL REQUIREMENTS

If federal funds are utilized, IPRO 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:

### 7.00 Certain Provisions Contained Within 2 CFR, Part 200, Appendix II

#### 7.00.00 Clean Air Act and Federal Water Pollution Control Act

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.

#### 7.00.01 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion, Lower Tier Covered Transactions

In accordance with [Federal Acquisition Regulation 52.209-5](#), IPRO shall certify, by signing the Solicitation, that to the best of its knowledge and belief, IPRO 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.

IPRO shall be compliant with [2 CFR 180](#) at the time of award and throughout the contract period.

#### 7.00.02 Certification of Lobbying Activities

Contractor shall disclose any lobbying activities in accordance with [Section 1352, Title 31, U.S. Code](#). IPRO 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

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

#### **7.00.03 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.

#### **7.00.04 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 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

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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.

#### **7.00.05 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.

#### **7.00.06 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.

## **Endnotes**



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**Personal Service Contract Standard Terms and Conditions  
Revised June 2023**

**Whereas**, the first party, the state agency, 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  
**Whereas**, the second party, the Contractor, is available and qualified to perform such function; and  
**Whereas**, for the abovementioned reasons, the state agency desires to avail itself of the services of the second party;

**NOW THEREFORE**, the following terms and conditions are applicable to this contract:

**1.00 Effective Date**

This contract 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 submitted to the Legislative Research Commission, Government Contract Review Committee ("LRC"). However, in accordance with KRS 45A.700, contracts in aggregate amounts of \$10,000 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 Renewals**

Upon expiration of the initial term, the contract may be renewed in accordance with the terms and conditions in the original solicitation. Renewal shall be subject to prior approval from 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.

**3.00 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 <https://apps.legislature.ky.gov/moreinfo/Contracts/homepage.html> and would impact any contract established under KRS 45A.690 et seq., where applicable.

**4.00 Choice of Law and Forum**

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.

**5.00 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.

**6.00 Cancellation**

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

**7.00 Funding Out Provision**

The state agency may terminate this contract 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 contract. The state agency shall provide the Contractor thirty (30) calendar days' written notice of termination of the contract due to lack of available funding.



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**8.00 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 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.

**9.00 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.

**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:

<https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=40424> 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: <https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=44318>, the foreign entity should identify the applicable exception in its solicitation response. Foreign entity is defined within KRS 14A.1-070: <https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=50474>

Businesses can register with the Secretary of State at:  
<https://www.sos.ky.gov/bus/business-filings/Pages/default.aspx>

**10.00 Invoices for fees**

The Contractor shall maintain supporting documents to substantiate invoices and shall furnish same if required by state government. The invoice must conform to the method described in Section V of this contract.

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

**11.00 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 by the Commonwealth. The Contractor shall maintain supporting documents that substantiate every claim for expenses and shall furnish same if requested by the Commonwealth.

**12.00 Other expenses, if authorized herein**

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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.

### **13.00 Purchasing and specifications**

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.

### **14.00 Conflict-of-interest laws and principles**

The Contractor certifies that he/she is legally entitled to enter into this contract with the Commonwealth of Kentucky, and by holding and performing this contract, he/she 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.

### **15.00 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.

### **16.00 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).

### **17.00 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 vendors in connection with the solicitation or selection for award of a contract.

Any actual or prospective vendor, who is aggrieved in connection with the solicitation or selection for award of a 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

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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:

**Holly M. Johnson, Secretary**

Commonwealth of Kentucky  
Finance and Administration Cabinet  
Office of the Secretary  
200 Mero Street, 5th Floor  
Frankfort, KY 40622

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

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

**18.00 Social Security**

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The parties are cognizant that the state is not liable for social security contributions, pursuant to 42 U.S. Code, section 418, relative to the compensation of the second party for this contract.

Any exceptions to this stipulation require an attachment or exhibit that explicitly addresses, and provides a basis for, payment of second party's social security contributions by the state, pursuant to 42 U.S. Code, section 418.

**19.00 Violation of tax and employment laws**

KRS 45A.485 requires the Contractor and all subcontractors performing work under the contract to reveal to the Commonwealth 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. Disclosure of any violations is required prior to the award of any state contract and throughout the duration the contract.

Failure to disclose violations, shall be grounds for the Commonwealth's disqualification of a contractor or subcontractor from eligibility for future state contracts for a period of two (2) years.

To comply with KRS 45A.485, the Contractor and all subcontractors performing work under this contract shall report any such final determination(s) of any violation(s) within the previous five (5) years to the Commonwealth by providing a list of the following information regarding any violation(s): (1) specific KRS violated, (2) date of any final determination of a violation, and (3) state agency which issued the final determination.

A list of any disclosures made prior to award of a contract shall be attached to the contract. The Contractor affirms that it has not violated any of the provisions of the above statutes within the previous five (5) year period, aside from violations explicitly disclosed and attached to this contract. Contractor further affirms that it will (1) communicate the above KRS 45A.485 disclosure requirements to any subcontractors and (2) disclose any subcontractor violations it becomes aware of to the Commonwealth.

**20.00 Discrimination**

This section applies only to contracts 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,

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sexual orientation, gender identity, age, or disability) is prohibited. During the performance of this contract, 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, 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/her 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 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 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 that 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 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.

## **21.00 Bidder, Offeror, or Contractor Mandatory Representations Compliance with Commonwealth Law**

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The contractor represents that, pursuant to [KRS 45A.485](#), they and any subcontractor performing work under the contract will be in continuous compliance with the KRS chapters listed below and have revealed to the Commonwealth any violation determinations within the previous five (5) years:

[KRS Chapter 136](#) (CORPORATION AND UTILITY TAXES)  
[KRS Chapter 139](#) (SALES AND USE TAXES)  
[KRS Chapter 141](#) (INCOME TAXES)  
[KRS Chapter 337](#) (WAGES AND HOURS)  
[KRS Chapter 338](#) (OCCUPATIONAL SAFETY AND HEALTH OF EMPLOYEES)  
[KRS Chapter 341](#) (UNEMPLOYMENT COMPENSATION)  
[KRS Chapter 342](#) (WORKERS' COMPENSATION)

**Boycott Provisions**

The contractor represents that, pursuant to [KRS 45A.607](#), they are not currently engaged in, and will not for the duration of the contract engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which Kentucky can enjoy open trade. **Note:** The term Boycott does not include actions taken for bona fide business or economic reasons, or actions specifically required by federal or state law.

**Lobbying Prohibitions**

The contractor represents that they, and any subcontractor performing work under the contract, have not violated the agency restrictions contained in [KRS 11A.236](#) during the previous ten (10) years, and pledges to abide by the restrictions set forth in such statute for the duration of the contract awarded.

The contractor further represents that, pursuant to [KRS 45A.328](#), they have not procured an original, subsequent, or similar contract while employing an executive agency lobbyist who was convicted of a crime related to the original, subsequent, or similar contract within five (5) years of the conviction of the lobbyist.

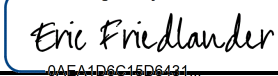
**2400001346**

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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:  
  
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Signature

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Eric Friedlander

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Printed Name

Secretary

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Title


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1/29/2024 | 10:29 AM EST

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Date

**Contractor Approval:**

DocuSigned by:  
  
9264D18DA71C428...

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Signature

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Clare B. Bradley, MD, MPH

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Printed Name

CMO

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Title

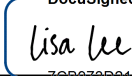
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1/25/2024 | 9:16 AM EST

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Date

**CHFS Department Review:**

DocuSigned by:  
  
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Signature

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Lisa Lee

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Printed Name

Commissioner

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Title


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1/28/2024 | 8:46 AM PST

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Date

**Approved as to form and legality:**

DocuSigned by:  
  
6C49A1572D72441

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Attorney

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1/23/2024 | 3:09 PM EST

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Date

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (Agreement) is entered into as of 7/1/2024 (Effective Date) by and between Cabinet for Health and Family Services (CHFS) ("Covered Entity" hereinafter), whose principal place of business is located at 275 East Main Street, Frankfort, KY 40621 and Island Peer Review Organization Inc. (IPRO) ("Business Associate" hereinafter), whose principal place of business is located at 1979 Marcus Ave 1<sup>st</sup> Floor, Lake Success, NY 11042, in conformance with the Health Insurance Portability and Accountability Act of 1996, and its implementing regulations ("HIPAA RULES" hereinafter).

### RECITALS

**Whereas**, the Covered Entity has engaged the services of the Business Associate for or on behalf of the Covered Entity in Memorandum of Agreement # PON2 746 2400001346;

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

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

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

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

Now Therefore, the parties hereby agree as follows:

### SECTION I – DEFINITIONS

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

- 1.1 "Breach" is defined as any unauthorized acquisition, access, use or disclosure of PHI which compromises the security or privacy of the PHI, unless the Covered Entity or Business Associate, as applicable, demonstrates that there is a low probability that the PHI has been compromised based upon a risk assessment as required under 45 CFR § 164.402. The definition of Breach excludes the following uses and disclosures:
  - a. Unintentional acquisition, access or use of protected health information by a workforce member or person acting under the authority of a Covered Entity or Business Associate, if performed in good faith and within the scope of authority, and does not result in further unauthorized disclosures;
  - b. Inadvertent one-time disclosure between Covered Entity or Business Associate work force member to another work force member at the same covered entity or Business Associate who is authorized to access PHI and information received or disclosed is not further used or disclosed in a manner not permitted under Subpart E found at 45 CFR § 164.500, et seq.; and
  - c. The Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain the information.
- 1.2 "Business Associate" shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §160.103, and includes a person or entity who creates, receives, maintains, or transmits PHI for a function or activity of the covered entity as set out under the regulation, and includes any subcontractor of the business associate who creates, receives, maintains, or transmits PHI on behalf of the business associate under 45 CFR § 160.103 (3) (iii).
- 1.3 "Covered Entity" shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §160.103.
- 1.4 "Data Aggregation" shall have the meaning given to such term under the HIPAA Rules, including but not limited to, 45 CFR §164.501.

- 1.5 "Designated Record Set" shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §164.501.
- 1.6 "Effective Date" shall be the Effective Date of this amended and restated Agreement.
- 1.7 "Electronic Protected Health Information" or "Electronic PHI" shall have the meaning given to such term at 45 CFR §160.103, limited to information of the Covered Entity that the Business Associate creates, receives, maintains or transmits in electronic media on behalf of the Covered Entity under the terms and conditions of this Agreement.
- 1.8 "Health Care Operations" shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §164.501.
- 1.9 "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules codified at 45 CFR Part 160 and Part 164.
- 1.10 "Individual" shall have the meaning given to such term in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- 1.11 "Individually Identifiable Health Information" shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §160.103.
- 1.12 "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an Individual; the provision of health care to an Individual; or the past, present or future payment for the provision of health care to an Individual; and (ii) that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual, and shall have the meaning given to such term in 45 CFR §160.103, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
- 1.13 "Required by Law" shall have the meaning given to such phrase in 45 CFR §164.103.
- 1.14 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- 1.15 "Security Incident" shall have the meaning given to such phrase in 45 CFR §164.304.
- 1.16 "Unsecured Protected Health Information" shall mean protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary. (45 CFR §164.402), except that Unsecured Protected Health Information shall be limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.

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

The Business Associate agrees to the following:

- 2.1 Not to use or further disclose PHI other than as permitted or required by this Agreement and to fulfill its responsibilities under the contract setting out the scope of work for the Business Associate, or as required by law, or for the proper management and administration of the business associate under the requirements set out in Section III below;
- 2.2 To use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Agreement;
- 2.3 To mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this Agreement or the HIPAA Privacy and Security Rules;
- 2.4 To report to the Covered Entity any use or disclosure involving PHI not provided for by this Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR § 164.410, and any Security Incident of which it becomes aware. The business associate shall immediately report to the covered entity any breach of unsecured PHI, except as provided by 45 CFR § 164.412 based upon a request from law enforcement to delay the notice in that such would impede a criminal investigation or cause damage to national security. The Business Associate shall provide to the covered entity the following information: (1) a brief



description of what happened; including the date of the breach and date of discovery of the breach, if known; (2) identification of each individual whose unsecured PHI has been affected by the breach; (3) description of the type of unsecured PHI involving the breach; (4) any steps the individuals should take to protect themselves from harm from the breach; and (5) steps the Business Associate is taking to investigate the breach, to mitigate harm and protect against other breaches. The Business Associate, in consultation with the covered entity, shall be responsible for breach notifications to individuals affected by the unauthorized use or disclosure no later than sixty (60) days following its discovery or by exercise of reasonable due diligence would have been known to the Business Associate, as required by 45 CFR § 164.404. The Business Associate shall be solely responsible for any and all costs associated with the notification requirements to the individuals as provided herein. The Business Associate shall be responsible for any penalties, assessments or fees assessed by the Office for Civil Rights/Department of Health & Human Services due to any breach caused by the Business Associate or based upon the failure of the Business Associate to comply with the HIPAA Privacy and Security Rules. The covered entity, in consultation with the Business Associate, shall make all needed notices to the media and the Secretary of HHS. The Business Associate shall report immediately to the covered entity any security incident of which it becomes aware as required by 45 CFR § 164.314 (a) (2) (i) (C). The Business Associate shall report to the covered entity the operative facts surrounding the security incident, what steps are to be taken to address the security incident, and other information which may be requested by the covered entity relative to the security incident.

- 2.5 In accordance with 45 CFR §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees in writing to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such PHI;
- 2.6 To provide access to PHI in a Designated Record Set, at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to the Covered Entity, or as directed by the Covered Entity, to the Individual or the Individual's designee as necessary to meet the Covered Entity's obligations under 45 CFR §164.524; provided, however, that this Section 2.6 is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
- 2.7 To make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of the Covered Entity or an Individual, and in the time and manner designated by the Covered Entity; provided, however, that this Section 2.7 is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
- 2.8 To make internal practices, books and records, including policies and procedures on PHI, relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of, the Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary's determining the Covered Entity's and the Business Associate's compliance with the HIPAA Rules;
- 2.9 To document non-routine disclosures of PHI and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528, where applicable;
- 2.10 To provide to the Covered Entity or an Individual, in a time and manner designated by the Covered Entity, information collected in accordance with Section 2.9 of this Agreement, to permit the Covered Entity to respond to a request by an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
- 2.11 That if it creates, receives, maintains, or transmits any electronic PHI (other than enrollment/disenrollment information and Summary Health Information, which are not subject to these restrictions) on behalf of the covered entity, it will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information, and it will ensure that any agents (including subcontractors) to whom it provides such electronic PHI agrees to implement reasonable and appropriate security measures to protect the information. ;
- 2.12 Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent the use or disclosure of protected health other than is permitted for under this Agreement or required by law;

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

### **SECTION III – THE PARTIES AGREE TO THE FOLLOWING**

#### **PERMITTED USES AND DISCLOSURES BY THE BUSINESS ASSOCIATE**

- 3.1 Business Associate agrees to make uses and disclosures and requests for PHI consistent with the Covered Entity's minimum necessary policies and procedures.
- 3.2 Except as otherwise limited in this Agreement, the Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, the Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by the Covered Entity; and
- 3.3 Except as otherwise limited in this Agreement, the Business Associate may:
  - a. Use for management and administration. Use PHI for the proper management and administration by the Business Associate or to carry out the legal responsibilities of the Business Associate; and,
  - b. Disclose for management and administration. Disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required by Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

#### **SECTION IV – NOTICE OF PRIVACY PRACTICES**

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

#### **SECTION V – BREACH NOTIFICATION REQUIREMENTS**

- 5.1 With respect to any Breach by the Business Associate as provided in Section 2.4 above, the Business Associate shall notify each individual whose Unsecured Protected Health Information has been, or is reasonably believed by

the Covered Entity to have been, accessed, acquired, used, or disclosed as a result of such Breach, except when law enforcement requires a delay pursuant to 45 CFR §164.412:

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

## **SECTION VI – TERM AND TERMINATION**

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

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

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

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

6.3 Effect of Termination.

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

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

## **SECTION VII – GENERAL PROVISIONS**

- 7.1 Regulatory References. A reference in this Agreement to the HIPAA Rules or a section in the HIPAA Rules means that Rule or Section as in effect or as amended from time to time.
- 7.2 Compliance with Law. In connection with its performance under this Agreement, Business Associate shall comply with all applicable laws, including but not limited to laws protecting the privacy personal information about individuals.
- 7.3 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Parties to comply with the HIPAA Rules and any other applicable law. This Agreement may not be modified, nor shall any provision herein be waived or amended, except in a writing duly signed by the authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.
- 7.4 Confidentiality Obligations. In the course of performing under this Agreement, each Party may receive, be exposed to or acquire “Confidential Information,” including but not limited to, all information, data, reports, summaries, tables and studies, whether written or oral, fixed in hard copy or contained in a computer data base or computer readable form, as well as any information identified as “Confidential Information” of the other Party. For purposes of this Agreement “Confidential Information” shall not apply to PHI, the privacy and security of which is the subject of this Agreement and addressed throughout the terms herein. The parties including their employees, agents and representatives shall: (a) not disclose to any third-party “Confidential Information” of the other party except as permitted under this Agreement; (b) only permit use of “Confidential Information” of employees, agents or representatives having a need to know in connection with performance under this Agreement, and (c) advise each of its employees, agents and representatives of their obligations to keep such “Confidential Information” confidential. This provision shall not apply to “Confidential Information”: (i) after it becomes publicly available through no fault of either party; (ii) which is later publicly released, in writing, by the party that owned the material; (iii) which is lawfully obtained by the third parties without restriction; or (iv) which can be shown to be previously known or developed by either party independently of the other party.
- 7.5 No Third-Party Beneficiary. The parties do not express or imply by any terms in this Agreement to confer any rights, remedies or entitlements upon any third person not a party to this Agreement herein. The parties agree that there are no third-party beneficiaries intended to be benefited by this Agreement.
- 7.6 Indemnification by Business Associate. Business Associate agrees to indemnify, defend and hold harmless the Covered Entity and its employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as “Indemnified Party,” against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with Business Associate’s actions arising out of this Agreement. Accordingly, on demand, Business Associate shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys’ fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results for Business Associate’s breach hereunder. The obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement for any reason.
- 7.7 Survival. The respective rights and obligations of Business Associate under Section II and Section 6.3(b) of this Agreement shall survive the termination of this Agreement.
- 7.8 Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Rules.

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

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

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

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

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

**In Witness Wherefore**, the Parties hereto acknowledge agreement with the terms herein and have duly executed this Agreement as of the Effective Date as defined here above by setting forth their signatures below.

**Covered Entity**

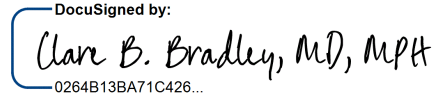
By:  DocuSigned by:  
Eric Friedlander  
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Name: Eric Friedlander

Title: Secretary

Date: 1/29/2024 | 10:29 AM EST

**Business Associate**

By:  DocuSigned by:  
Clare B. Bradley, MD, MPH  
0264B13BA71C426...

Name: Clare B. Bradley, MD, MPH

Title: CMO

Date: 1/25/2024 | 9:16 AM EST