

## IMPACT PLUS SUB-CONTRACTOR AGREEMENT

THIS IMPACT PLUS SUB-CONTRACTOR AGREEMENT REFRENCING, HEALTH INSURANCE PORTABILITY and ACCOUNTABILITY ACT OF 1996, PUBLIC LAW 104-191, 45 CFR PARTS 160 and 164 ("HIPAA Privacy Rule") PROVISION, AND THE HITECH (HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH) ACT SIGNED INTO LAW IN FEBRUARY OF 2009, is hereby made and entered into effective July 1, 2012, to June 30, 2013, by and between the Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Behavioral Health, Developmental and Intellectual Disabilities, (hereinafter referred to as "the Department"), and the Department for Behavioral Health, Developmental and Intellectual Disabilities acting on behalf of the Department for Community Based Services and Transformations, hereinafter referred to as "the Sub-contractor." It is agreed that all previous IMPACT Plus Agreements and amendments hereto between the Department and the Sub-contractor will be considered null and void upon the execution of this Agreement.

**Tax ID: 611351752**

**DBHDID ID: 29102357**

**DCBS ID: 29202355**

WITNESSETH, THAT:

Whereas, the Department, in the exercise of their lawful duties in relation to the administration of the IMPACT Plus Program pursuant to 907 KAR 3:030 (or as amended), are permitted by applicable federal and state regulations and policies to enter into agreements for the provision of IMPACT Plus services by individuals and organizations; and

Whereas, the Department desires to subcontract with the Sub-contractor for the provision of IMPACT Plus services on behalf of the Department.

Therefore, it is hereby mutually agreed by and between the parties hereto as follows:

### SECTION 1: SCOPE OF WORK

The Sub-contractor and all persons providing services hereunder on the Sub-contractor's behalf:

1.01

Agrees to provide all of the following authorized IMPACT Plus services: Behavioral Health Evaluation, Collateral Therapy, Group Therapy, Individual Therapy, Targeted Case Management, Therapeutic Child Support (ParaProfessional), Therapeutic Child Support (Professional)

1.02

Agrees that the provision of services shall be restricted to the following geographic regions unless other locations are approved in writing by the Department: 6J, 6S

1.03

Agrees to provide authorized IMPACT services in the following manner:

- a. In adherence and compliance with all applicable laws and regulations, including but not limited to those laws and regulations related to the Kentucky Medicaid Program with respect to persons receiving IMPACT Plus services; the State Medicaid Managed Care Contracts, and 907 KAR 3:030, as amended.
- b. In adherence and compliance with the IMPACT Plus Sub-contractor manual located at the Department for Behavioral Health, Intellectual and Developmental Disabilities website; all contractual requirements set forth in Impact Plus Sub-contractor's "Impact Plus Sub-contractor Agreement" by and between the Sub-contractor and the Department; and any policies, procedures, and manual(s) the Sub-contractor is required to comply with at the Department's request.
- c. If, due to the Sub-contractor's noncompliance with applicable law or regulations or the Sub-contractor Agreement, sanctions or penalties are imposed on the Department, the Department may, in its sole discretion, offset such sanction or penalty amounts against any amounts due the Sub-contractor from Department or require the Sub-contractor to reimburse the Department for the amount of any such sanction or penalty;
- d. In accordance with an IMPACT Plus Sub-contractor Agreement application for enrollment or re-enrollment, submitted as described within 907 KAR 3:030 (or as amended) and generally accepted medical and behavioral health practices including a comprehensive psychosocial assessment to accurately plan treatment and measure treatment progress;
- e. In accordance with a collaborative service plan developed in accordance with 907 KAR 3:030 (or as amended); and
- f. In cooperation with the parent, guardian, or caregiver of a recipient who is under eighteen (18) years of age or the recipient if over eighteen (18) years of age and other IMPACT Plus Sub-contractors selected by parent, guardian, or caregiver of a recipient who is under eighteen (18) years of age or the recipient if over eighteen (18) years of age, or if recipient is over (18) years of age but is still under the legal guardianship / custody of the parent, guardian, or caregiver.

1.04

Certifies that the Sub-contractor and any person providing services on behalf of the Sub-contractor is licensed or certified under applicable laws of Kentucky for a service



authorized by this agreement, and is complying with the terms of such license or certification, including but not limited to the individual's professional code of ethics;

1.05

Certifies that a service under this agreement shall be provided by or under the supervision of a person or organization licensed or certified under the applicable laws of Kentucky to provide the service within the scope of such license or certificate;

1.06

Agrees to submit pertinent credentialing documentation to the Department that verifies the qualifications of any person, employed or contracted (hereinafter referred to as "person" or "individual"), intending to provide IMPACT Plus services on behalf of the Sub-contractor prior to the provision of any service by the individual including:

- a. Current Professional License or Certificate, if applicable;
- b. Current Resume, if applicable;
- c. College Transcript(s), if applicable;
- d. Current Administrative Office of the Courts (AOC) background check results;
- e. Current Department for Community Based Services (DCBS) background check results;
- f. Current Statement of Disclosure (SOD);
- g. Current Professional Liability Insurance, if applicable;
- h. Current Clinical Supervision Contract, if applicable;
- i. Any and all applicable sanction information (i.e. Medicaid sanctions from any state; disciplinary action taken by the professional licensing board; disciplinary action taken by a state agency); and
- j. Any other information requested by the Department.

1.07

Agrees that no person shall provide any service under this contract until that individual is approved by the Department after review of the documents submitted pursuant to Section 1 (E).

1.08

Agrees to annually update and maintain on file at agency location copies of the following information for any individual delivering IMPACT Plus services:

- a. AOC background check results;
- b. DCBS background check results; and

- c. Signed Statement of Disclosure.

1.09

Agrees to update and maintain on file at agency location copies of following information for any licensed or certified individual delivering IMPACT Plus services:

- a. Current Professional License or Certificate;
- b. Current Professional Liability Insurance; and
- c. Current Clinical Supervision Contract, if applicable.

1.10

Agrees that the Department may provide any and all credentialing information for such purposes to include systems loading and auditing to any applicable Managed Care Organizations and/or Department of Medicaid Services. The Sub-contractor agrees to provide the Department with any additionally requested credentialing information within three (3) business days of the Department's request, or more quickly if such information is required by a regulatory agency or DMS.

1.11

Agrees to immediately inform the Department:

- a. Of any situation which develops regarding the Sub-contractor, when notice of that situation has been given to the Sub-contractor by a State agency that licenses the Sub-contractor, or any other licensing or accreditation agency or board, or any situation involving an investigation or complaint filed by a State agency that licenses the Sub-contractor, or any other licensing or accreditation agency or board, regarding a complaint against the Sub-contractor or any person providing IMPACT Plus services on behalf of the Sub-contractor's license or certification;
- b. If the Sub-contractor or any person delivering IMPACT Plus services on behalf of the Sub-contractor is suspended or excluded under a federal health care program, including, but not limited to, Medicaid;
- c. If any government agency requests access to the Sub-contractor's records;
- d. If any lawsuit or claim filed is asserted against the Sub-contractor or any other person providing IMPACT Plus services on behalf of the Sub-contractor alleging professional malpractice, regardless of whether the lawsuit or claim involves an IMPACT Plus recipient;
- e. If the Sub-contractor or any person delivering IMPACT Plus services on behalf of the Sub-contractor is under a prevention plan or any other action enforced by the Department for Community Based Services during an investigation of abuse, neglect,

or exploitation of any child or adult. A copy of the prevention plan must be submitted to Central Office staff within three (3) business days;

- f. If the Sub-contractor or any person delivering IMPACT Plus services on behalf of the Sub-contractor is under investigation for a felony or a misdemeanor; or if the Department for Community Based Services has initiated an investigation against said person following an allegation of abuse, neglect, or exploitation. Furthermore, agrees to immediately cease all direct client services of said person and assist with the transition of client care;
- g. If the Sub-contractor or any person delivering IMPACT Plus services on behalf of the Sub-contractor has been convicted of a felony offense; convicted of a misdemeanor offense involving an illegal substance; convicted of, or have entered a plea of guilty, or Alford plea to a sex crime; convicted as, or have entered a plea of guilty, or Alford plea as a violent offender; or has an incident of abuse or neglect of a child or adult substantiated by the Department for Community Base Services after having been provided an opportunity to appeal the substantiation to an administrative or judicial body. Furthermore, agrees to immediately cease all direct client services of said person and assist with the transition of client care;
- h. Of any final court dispositions for a felony, misdemeanor, abuse, neglect, or exploitation and any final findings by the Department for Community Based Services regarding investigations of a person delivering IMPACT Plus services on behalf of the Sub-contractor, within three (3) days of a ruling; and
- i. Of any suspected fraud or abuse committed by any person providing IMPACT Plus services to IMPACT Plus recipients.

#### 1.12

Agrees to immediately inform the Department when any certified or licensed individual, delivering IMPACT Plus services on behalf of the Sub-contractor's license or certification, is affected or any form of reportable discipline is taken against such license or certification. Furthermore, agrees to immediately cease all direct client services of said person and assist with transition of client care.

#### 1.13

Agrees to maintain policies of general and professional liability insurance and other insurance as are necessary to insure the Sub-contractor, or any other person providing services hereunder on the Sub-contractor's behalf against any claim(s) of personal injuries or death alleged or caused by the Sub-contractor, or any other person providing services hereunder on the Sub-contractor's behalf, performed under this Agreement. Such insurance shall be obtained through a licensed carrier and include, but not be limited to:



- a. Tail or prior acts coverage necessary to avoid any gap in coverage;
- b. A minimum amount of one million dollars (\$1,000,000) per occurrence, and have an annual aggregate of no less than three million dollars (\$3,000,000);
- c. Statutory Worker's Compensation (if required);
- d. Comprehensive Business Liability for operations; and
- e. Transport for Hire / Business Automobile Liability coverage for vehicles used to transport clients.

1.14

Agrees to provide the Department with at least ten (10) business days' notice from the date it first receives notice of cancellation, non-renewal, lapse, or adverse material modification of insurance coverage of the Sub-contractor, or any other person providing services hereunder on the Sub-contractor's behalf. Upon the Department's request, the Sub-contractor will furnish the Department with evidence of the Sub-contractor insurance within three (3) business days. If this information is not provided, agrees to immediately cease all direct client services of said person and assist with transition of client care.

1.15

Agrees to initially inform Central Office staff by telephone within two (2) business days prior to a change in the Sub-contractor's name, ownership, address, telephone and fax numbers, program description, type of practice, approved service provision, exiting personnel, licensure or legal status; and furthermore agrees to inform the Department and Department of Medicaid Services of the same changes in writing on the Sub-contractor's letterhead within three (3) business days of the initial phone call. The Sub-contractor agrees that any applicable Managed Care Organization may use the Sub-contractor's name, address, phone number, type of practice, and an indication of the Sub-contractor's willingness to accept additional IMPACT Plus recipients in any applicable Managed Care Organization's roster of participating health care providers and marketing materials.

1.16

Agrees that the Department shall not be liable for, nor will it exercise control over, the manner or method by which the Sub-contractor provides or arranges for IMPACT Plus Services, except as set forth in 907 KAR 3:030. The Sub-contractor understands that determinations, if any, to deny payments for services which any Managed Care Organization does not deem to constitute IMPACT Plus services or which were not provided in accordance with the requirements of this Agreement may result in non-payment. Such a denial does not absolve the Sub-contractor's responsibility to exercise independent judgment in treatment decisions. Nothing in this Agreement is intended to interfere with the Sub-contractor's provider-patient relationship with any individual.

1.17

The Sub-contractor agrees not to disparage any applicable Managed Care Organization in any manner during the term of this Agreement or in connection with any expiration, termination or non-renewal of this Agreement.

1.18

Agrees to follow and use all current billing instructions, and forms issued by the Department and any applicable Managed Care Organization for the routine administration of the program.

1.19

Agrees to fully comply with all policies, procedures, limitations, and service requirements as written by the Department and included in the official IMPACT Plus User's Manual.

1.20

Agrees to furnish the Department upon request with policies and procedures, employee handbooks, and any other documentation relevant to the daily operations of the Sub-contractor.

1.21

The Sub-contractor will provide services without discrimination on account of race, sex, sexual orientation, age, color, religion, national origin, place of residence, health status, type of Payor, source of payment, physical or mental disability or veteran status, and will ensure that its facilities are accessible as required by Title III of the Americans With Disabilities Act of 1991 ("ADA"). The Sub-contractor recognizes that as a governmental contractor, the Department is subject to various federal laws, executive orders and regulations regarding equal opportunity and affirmative action, which also may be applicable to subcontractors.

1.22

The Sub-contractor shall comply with the following laws, among others:

- a. Title VI of the Civil Rights Act of 1964 (Public Law 88-352);
- b. Rules and regulations prescribed by the United States Department of Labor in accordance with 41 C.F.R. Parts 60-741;
- c. Regulations of the United States Department of Labor recited in 20 C.F.R. Part 741, and Section 504 of the Federal Rehabilitation Act of 1973 (Public Law 93-112); and

- d. Requirements set forth in 42 C.F.R. 438.

1.23

The Sub-contractor shall not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, disability or national origin. The Sub-contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, age, color, religion, sex, disability or national origin. 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 compensation; and selection for training, including apprenticeship. The Sub-contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- a. The Sub-Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Department for fulfillment of services covered in this Sub-contractor Agreement, state that all qualified applicants will receive consideration for employment without regard to race, age, color, religion, sex, or national origin;
- b. The Sub-contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Sub-contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment;
- c. The Sub-contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor;
- d. The Sub-contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.;
- e. In the event of the Sub-contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this Agreement may be cancelled, terminated or suspended in whole or in part and the Sub-contractor may be declared ineligible for further Government contracts in



accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law; and

- f. The Sub-contractor will include the provisions of paragraphs (A) through (G) 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, 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 may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Sub-contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Sub-contractor may request the United States to enter into such litigation to protect the interests of the United States.

1.24

Agrees to allow the Department to conduct all on-site inspections of Impact Plus Sub-contractor office space used to provide or administer IMPACT Plus services. At any time, the Department shall maintain the right to inspect medical records on location or at an off-site location as determined by the Department. The Sub-contractor agrees to compile any and all information in a timely manner required to evidence the Sub-contractor's compliance with this Agreement, as requested by the Department. The Sub-contractor agrees that any applicable Managed Care Organization may participate in, with notification to the Department, on-site inspections, and will receive a report on the results of any on-site inspection completed by the Department.

1.25

Agrees to allow the Department and the Auditor of Public Accounts on site access to and the offsite release of records of services and payments relating to IMPACT Plus recipients for the purposes of program audit or investigation.

1.26

Agrees to the immediate recoupment of any and all payments made by the Department to the Sub-contractor for the delivery of IMPACT Plus covered services when a determination is made by the Department, the Department for Medicaid Services, or any applicable Managed Care Organization, that said Services were not delivered in accordance with 907 KAR 3:030 (or as amended); the IMPACT Plus Sub-contractor Agreement; or the IMPACT Plus Sub-contractor Manual.

1.27

Agrees not to provide an unauthorized IMPACT Plus service, or expand an authorized service outside an agreed upon geographic coverage area, without the prior written approval of the Department.

1.28

Agrees to accept and to abide by any corrective action plan(s) issued by the Department or any applicable Managed Care Organization.

1.29

Agrees to accept payment from the Department for submitted claims as full and final payment for services rendered. The Sub-contractor shall not seek further payment from a recipient or the parent, guardian, or custodian of the recipient for a service beyond the amount paid by the Department.

1.30

Agrees to maintain the confidentiality of patient records, data submissions, and communications in accordance with applicable sections of Chapter 42 and 45 of the Code of Federal Regulations (CFR). In addition, the Sub-contractor will maintain detailed medical, financial and administrative records concerning IMPACT Plus services provided to IMPACT Plus recipients under this Agreement. The Sub-contractor will retain the records for the period of time required by all applicable laws or regulations. The Sub-contractor agrees that the Department may conduct regular compliance and quality of care reviews of the Sub-contractor's medical, financial and administrative records, and will report any results or findings to any applicable Managed Care Organization or state or federal agency, as applicable. The Sub-contractor agrees that any applicable Managed Care Organization, as well as authorized State and federal agencies, shall have the right to review records related to services rendered to IMPACT Plus recipients, and the Sub-contractor agrees to cooperate with any Managed Care Organization and any State or federal agency in making available, and in arranging or allowing inspection of, such records. Further, the Sub-contractor agrees to obtain any necessary releases from IMPACT Plus recipients with respect to their records and the information contained therein to permit any Managed Care Organization and/or State and federal agencies, access to such records. The Sub-contractor agrees that each IMPACT Plus recipient's medical records shall be treated as confidential so as to comply with all State and federal laws and regulations regarding the confidentiality of patient records. Subject to the foregoing, the Sub-contractor will ensure that any State and federal agencies are supplied with copies of any IMPACT Plus recipient's medical records upon request at no charge. Sub-contractor agrees that the intentional unauthorized release of



confidential records may result in termination of this subcontract. This clause shall survive the termination of this subcontract.

1.31

Agrees to participate in any system established by the Department or any applicable Managed Care Organization to facilitate the sharing of records as appropriate with providers involved in the IMPACT Plus recipient's care in order to facilitate the provision of a coordinated and seamless continuum of care, subject to applicable confidentiality requirements. The Sub-contractor will cooperate in the transfer of any IMPACT Plus recipient's medical records to other service providers, including other IMPACT Plus Sub-contractors, to assume any cost associated therewith, and shall use best efforts to transfer any medical records in the Sub-contractor's custody within fifteen (15) business days of an IMPACT Plus recipient's request.

1.32

Agrees to make information available to the general community regarding the nature, type, and quality of service(s) the Sub-contractor offers. Furthermore, agrees to refrain from actively recruiting or soliciting recipients receiving IMPACT Plus services from another agency; this prohibition includes but is not restricted to making contact with a prospective recipient in an effort to influence or persuade him or her to choose the agency as their service Sub-contractor. This clause is intended to survive the termination of the subcontract

1.33

Agrees to report immediately to the Department a sentinel event of an IMPACT Plus recipient. A sentinel event is defined as a serious injury or suicide attempt requiring medical attention, a death, or a sexual assault that occurs when a client is under direct supervision of a staff member of the Sub-contractor. Following a sentinel event, the Sub-contractor further agrees to complete an internal review and to document the event, implement improvements to reduce risk, and monitor the effectiveness of those improvements. At the discretion of the Department, Central Office staff may initiate an external review of the event.

1.34

Agrees to accept those limitations and restrictions placed on the Sub-Contractor's service provision as deemed necessary by the Department. Limitations and restrictions may be imposed in response to sentinel events, substantiated complaints, program review findings, failure to adequately respond to a corrective action plan, client safety concerns or any act of noncompliance with this Agreement. Limitations may include a restriction on the Sub-contractor to accept any new clients until the agency demonstrates full compliance and/or involuntary termination of this Agreement.



1.35

Agrees to establish and comply with written policies and procedures for the administration and operation of IMPACT Plus services as set forth in in 907 KAR 3:030 (or as amended) including:

- a. A description of the organizational structure specifying the responsibility, function, and interrelations of each organizational unit, and the lines of administrative and clinical authority;
- b. Client grievance policies and procedures;
- c. Confidentiality practices and use of client records in accordance with federal, state, and local statutes and regulations and HIPAA Privacy Notice;
- d. Personnel policies and procedures;
- e. Policies and procedures related to the Sub-contractor's determination of staff qualifications, staff supervision, and staff training;
- f. Policies and procedures related to a Quality Improvement Program to measure and report an outcome of the provision of a service, to improve the quality of a service, and to monitor the utilization of a service;
- g. Policies and procedures related to Referral of clients to the Sub-contractor;
- h. Policies and procedures related to Freedom of Choice;
- i. Policies and procedures related to Permission for Treatment;
- j. Policies and procedures related to Informed Consent;
- k. Policies and procedures related to Intake;
- l. Policies and procedures related to Release of Information;
- m. Policies and procedures related to Targeted Case Manager Assessment, if applicable;
- n. Policies and procedures related to Psychosocial for guiding treatment;
- o. Policies and procedures related to Collaborative Service Plan, including Treatment Team Meetings with Behavioral Health Professional guidance;
- p. Policies and procedures related to documentation for each service provided;
- q. Policies and procedures related to Transition and Discharge Planning;
- r. Policies and procedures related to Documentation Error and Correction;
- s. Policies and procedures related to Billing and Billing Correction;
- t. Policies and procedures related to Sentinel Event Reporting;
- u. Policies and procedures related to Outcomes Information System, if

applicable;

- v. Policies and procedures related to Risk Management, including reporting to IMPACT Plus Central Office staff felony or misdemeanor investigations; Department for Community Based Services (DCBS) investigations, prevention plans, or final rulings related to misdemeanor, abuse, neglect, or exploitation of any child or adult; and license or certification suspension;
- w. Policies and procedures related to accessibility of the facilities as required by the Americans With Disabilities Act of 1991;
- x. Policies and procedures related to Title VI of the Civil Rights Act of 1964 (Public Law 88-352);
- y. Policies and procedures in accordance with 41 C.F.R. Parts 60-741;
- z. Policies and procedures in accordance with 20 C.F.R. Part 741;
- aa. Policies and procedures in accordance with Section 504 of the Federal Rehabilitation Act of 1973 (Public Law 93-112);
- bb. Policies and procedures in accordance with 42 C.F.R. 438; and
- cc. Policies and procedures in accordance with Executive Order 11246 of Sept. 24, 1965.

1.36

Agrees to provide all services in a manner that ensures dignity and respect for the person served, recognizes and supports cultural diversity, is based on the goals of the person served, recognizes the community as a valued resource making use of supports and specialized services, develops services in integrated community settings to meet individual needs, and evaluates those services on the basis of individual outcomes and fidelity to evidenced based practices.

1.37

Agrees that all requirements contained in the contractual agreement authorizing the Department to administer the IMPACT Plus Program are applicable and binding on the Sub-contractor.

1.38

Agrees that the Department has the authority to bind the Sub-contractor to the terms of its contract with any applicable Managed Care Organization.

1.39

Agrees that prior to any provision of an IMPACT Plus service under this Agreement, the Sub-contractor's information and status as an approved Sub-contractor, must be provided by the Department to any applicable Managed Care Organization.

## SECTION 2. THE DEPARTMENT

In consideration of approved services rendered for IMPACT Plus recipients on or following the date of written approval, the Department agree, subject to the availability of federal and state funds, to reimburse the Sub-contractor in accordance with current applicable federal and state laws, rules, regulations, and policies for appropriate billings and documentation prescribed by the Department.

## SECTION 3. TERMS AND CONDITIONS

### 3.01—Attachment(s)

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

### 3.02—Effective Date of Contract and Earliest Date of Payment

The Second Party agrees to perform the services and functions specified during the term of this Contract. It is understood that this Contract is not effective and binding until approved by the Office of Policy and Budget and the Secretary of the Finance and Administration Cabinet and filed with the Government Contract Review Committee in accordance with KRS Chapter 45A.690-.725. CHFS shall provide timely notice to the Second Party of disapproval of this Contract or any amendment thereto under KRS Chapter 45A.690-.725.

### 3.03—Extension Periods and Amendments to Contract

The terms and conditions of this Contract may be extended or amended according to the provisions of KRS Chapter 45A.690-.725, and are subject to the approval of the Office of Policy and Budget and the Secretary of the Finance and Administration Cabinet and filed with the Government Contract Review Committee. The Second Party may request an amendment by submitting a written request to the Cabinet for Health and Family Services, Department for Behavioral Health, Developmental and Intellectual Disabilities, 100 Fair Oaks Lane 4 E-A, Frankfort, Kentucky 40621-0001. Amendments are not in effect until written approval is received from CHFS. The Second Party shall not request an amendment within the first ninety (90) days or the last sixty (60) days of the Contract period.

### 3.04—Funding

This Contract is expressly conditioned on the availability of state and federal appropriated funds. CHFS shall fund the delivery of services and supports, and activities under the terms and conditions of this Contract to the extent that the funding allocations specified are made available to CHFS. The Second Party shall have no right of action



against CHFS in the event that CHFS is unable to perform its obligations under this Contract as a result of the suspension, termination, withdrawal, or failure of funding to CHFS or lack of sufficient funding to CHFS for any activities or functions contained within the scope of this Contract.

Other provisions of this Contract notwithstanding, the Second Party agrees that if funds are not appropriated or are not otherwise made available to CHFS for the purpose of making payments hereunder, then CHFS shall be authorized to make payment to the extent possible and/or terminate this Contract in accordance with the Termination clause without obligation for the payment of any cancellation or termination charges and without any other obligation or liability hereunder.

### 3.05—Assignment

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

### 3.06—Bankruptcy

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

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

### 3.07—Contractor Cooperation in Related Efforts

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

### 3.08—Notice

Unless otherwise provided, all notices, consents, and other communications required and/or permitted by this Contract shall be in writing as specified in Section 3.07 and shall be deemed given to a Party when:

- a) Delivered to the appropriate address by hand, United States Postal Service, or by a nationally recognized overnight courier service (costs prepaid);
- b) Sent by facsimile with confirmation of transmission by the transmitting equipment; or
- c) Received or rejected by the addressee if sent by certified mail, return receipt requested.

If personally delivered, such notice shall be effective upon delivery and if mailed as provided for above, such notice shall be deemed effective three (3) calendar days after it is placed in the mail.

### 3.09—Headings

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

### 3.10—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.

### 3.11—Indemnification

The Second Party 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 Second Party and or its Subcontractor(s); (c) the policies and procedures of the Second Party, specifically including all Second Party employment practices employed by Second Party during the term of this or any prior Agreement with CHFS; (d) any dishonest, fraudulent, criminal, or negligent or unauthorized acts or errors or omissions which are committed by Second Party or any of Second Party'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 Second Party or as a result of the express written request of CHFS; or (f) Second Party's failure to comply with any applicable state or federal laws or regulations.

Provided, however, in the event the Second Party is a state agency or subcontracts for services with a state agency subject to the jurisdiction of the Board of Claims pursuant to



KRS 44.070 through KRS 44.160, the state agency's tort liability shall be limited to an award from the Board of Claims up to the jurisdictional amount.

### 3.12—Sovereign Immunity

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

### 3.13—Force Majeure

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

### 3.14—Obligation of Good Faith

Each party shall be obligated to act in good faith in the performance and enforcement of its obligations herein, and shall deal fairly, honestly and reasonably with the other party, having due regard for all relevant facts and circumstances.

### 3.15—Code of Ethics

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

### 3.16—Influence on Purchasing and Other Business Transactions

The Second Party shall not attempt, in any manner, to unlawfully influence any business transactions in any way or respect, nor attempt in any way to influence specifications for



or purchasing of services, commodities, or equipment by the Commonwealth of Kentucky.

### 3.17—Notices and Pamphlets

All notices, employment, advertisements, information pamphlets, research reports, and similar public notices prepared and released by the Second Party, 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.

### 3.18—Service Delivery Requirements

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

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

### 3.19—Roles and Responsibilities for Proposed and Existing Staff

The roles and responsibilities and the written qualifying criteria for all personnel to be employed under the scope of work for all projects funded under this Contract, including any proposed employees under subcontract to the Second Party, shall be in compliance with state and federal laws governing the distribution of funds and the performance of activities as set forth in this Contract. The Second Party shall maintain and make available, upon written request, documentation of all personnel policies and procedures that govern the recruitment, hiring and performance evaluation for all personnel funded under this Contract. All employees hired by the Second Party or its subcontractors and funded under the terms and conditions of this Contract, shall have position descriptions which set out the required qualifications, skills and knowledge required to complete the scope of work as set out under this Contract.

### 3.20—Terms and Conditions of Contract Payments

The Second Party shall not begin work on this Contract until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the Contract and until the Contract has been filed with the Government Contract Review Committee.  
[KRS 45A.695 (1)]

CHFS shall make payment to the Second Party only after the Contract is approved by the Secretary of the Finance and Administration Cabinet or his designee and filed with the Government Contract Review Committee. Once approved, CHFS shall make payment to the Second Party within thirty (30) business days of receipt of accurate, acceptable and timely invoices, as specified in the Contract, submitted by the Second Party under the terms and conditions of the Contract. Payment is contingent upon Second Party's continued satisfactory performance throughout the duration of the Contract, as determined by CHFS.

Payment on personal service Contracts shall not be authorized for services rendered after the Government Contract Review Committee's 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 of the Finance and Administration Cabinet. [KRS 45A.695(7)]

CHFS shall reimburse the Second Party for services rendered only. If, for any reason, the Second Party is unable to render services, CHFS shall not be liable for payment to the Second Party for the time period in which the Second Party does not provide the services for which CHFS contracted.

CHFS shall reimburse the Second Party for benefits accrued during the Contract period only in accordance with the Approved Budget and shall not be liable for benefits accrued prior to the beginning of, or after the end of, the Contract period. All invoices for benefits, including sick, compensation, and annual leave time, must be submitted prior to the Contract expiration date to be considered appropriate, acceptable, and timely.

Payment is subject to the availability and allocation of local agency or governmental funds, or state or federal funds necessary to finance the performance of the services described in this Contract. CHFS retains the right to withhold payment if the Second Party does not comply with CHFS programmatic and fiscal reporting and monitoring requirements.

IMPORTANT CHANGES TO THE LAW GOVERNING INVOICING OF PERSONAL SERVICE CONTRACTS \* HB 387, which passed during the 2010 Regular Session and became law upon the approval of the Governor on April 5, 2010, requires that "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." HB 387 amends KRS 45A.695. At the August 10, 2010 Government Contract Review Committee meeting, the committee established a personal service contract invoice form. A copy of the form is attached. This information can also be located on the GCRC web page.

HB 387 may be found at: <http://www.lrc.ky.gov/record/10rs/HB387.htm>

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



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

### 3.21—Total Amount of Funds and Budget Revisions

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

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

### 3.22—Travel and Travel Hourly Rate

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

### 3.23—Subcontractors

The Contractor shall make no subcontract with any other party for furnishing any of the work or services herein contracted without written consent of the Contract Specialist. This provision shall not require the approval of contracts of employment between the Contractor and personnel assigned for services thereunder. The Contractor shall be solely responsible for performance of the entire Contract whether or not subcontractors are used.

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

### 3.24—Responsibility for Subcontractor Contract Requirements

The Second Party shall have a Contract with any subcontractor that the Second Party contracts with to meet the statement of work, method of payment, and deliverables of this Contract that specifies the responsibilities of the parties and the cost. In addition, the



Second Party's Contract with the subcontractor shall specify that all requirements of this Contract are applicable and binding on the subcontractor. Any plan to subcontract any of the provisions of this Contract must be set forth in the Second Party's proposal for the delivery of products or services and included in the body of the contract in the subcontractor's section. The subcontractor must make available to the Second Party and to CHFS, if requested, copies of personnel records and documentation of employees' compliance with the terms and conditions of this Contract.

No obligation or right of Second Party under this Contract shall be subcontracted to another, without prior written approval, of CHFS after CHFS has had the opportunity to review all contract documents setting forth the terms and conditions for the subcontract. Second Party, upon the cabinet's request, shall submit the subcontract for approval to: Cabinet for Health and Family Services, Department for Behavioral Health, Developmental and Intellectual Disabilities, 100 Fair Oaks Lane 4 E-A, Frankfort, Kentucky 40621-0001.

### 3.25—Subcontractor Monitoring Requirements

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

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

### 3.26—Cost Principles, Requirements and Limitations

The Second Party shall conform to the cost principles as set forth in 200 KAR 5:317; 45 C.F.R Parts 74, 92, 96; 48 C.F.R.31 and Contract Cost Principles and Procedures, Office of Management and Budget Circular A-122, Cost Principles for Non-Profit Organizations (as revised) and OMB Circular A-110, Uniform Administrative Requirements for Grants and Contracts with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations unless excluded by Federal laws or regulations, as applicable.

### 3.27—Requirements and Limitations on Indirect or Administrative Cost Requirements

Pursuant to OMB A-122, the Second Party shall maintain a written indirect cost allocation plan of direct and/or indirect costs, in instances where the Second Party operates more than one (1) project, service, program, or activity.

The cost allocation plan shall be consistently and uniformly applied except where it is determined in writing by the CHFS Secretary or his or her designee to be in the best interest of CHFS to do otherwise.

In the event the Second Party has an indirect cost allocation rate and/or plan in operation that has been accepted and approved by the Second Party's cognizant federal agency, CHFS shall recognize the cost allocation plan for purposes of recording and reporting reimbursable costs to the extent that such costs are allowable and within the administrative and/or indirect cost limitation as set forth in the approved budget for each funding source of this Contract. Two (2) copies of the approved indirect cost allocation rate and/or plan shall be furnished to the agency contact identified in Section 3.07.

### 3.28—Financial Record Retention

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

### 3.29—Access to Records, Books, and Documents

The contractor, as defined in KRS 45A.030 (9) 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 contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). 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.

In the event of a dispute between the contractor and the contracting agency, Attorney General, or the Auditor of Public Accounts over documents that are eligible for production and review, the Finance and Administration Cabinet shall review the dispute and issue a determination, in accordance with Secretary's Order 11-004. (See attachment)

### 3.30—Audit Requirements

In the event that the contract is funded in whole or in part by a federal agency, and the Second Party is a non-federal entity determined to be a sub-recipient pursuant to OMB Circular A-133, § \_\_.210, the Second Party shall have a single audit conducted in accordance with Government Auditing Standards (GAS), Generally Accepted Auditing Standards (GAAS), and OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations issued by the Comptroller General of the United States and the



Office of Management and Budget as amended. See current requirements at <http://www.whitehouse.gov/omb/circulars/index.html>.

The audit report's accompanying financial statements shall be issued in accordance with Generally Accepted Accounting Principles (GAAP) and reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited.

The audit shall cover each sub-recipient fiscal year period of the contract duration, and a copy of the Second Party's audit report(s), schedule of expenditures of federal awards, supplemental information by cost center and/or program and audit findings with corrective action plan shall be submitted to the agency contact identified in Section 3.07, within the earlier of thirty (30) days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period.

Should the audit report refer to a separate management letter of findings, the Second Party shall include a copy of the management letter with the audit report and comments and/or a corrective action plan. All material findings shall be reported in the audit section of audit findings and shall include the management's response and/or corrective action as required by OMB Circular A-133.

The audit report shall include a schedule of expenditures of federal awards as stipulated by OMB Circular A-133 requirements and contain the following:

- a) Total Federal Awards expended for each individual federal program;
- b) The Catalog of Federal Domestic Assistance (CFDA) number;
- c) CFDA title/description; and
- d) Pass-through entity's name and contract number.

The audit report shall include supplemental information of all federal grant and/or award expenditures by cost centers and/or programs identifying all administrative and indirect cost for each sub-recipient fiscal year. The Second Party shall include in the supplemental information a list of their subrecipients of federal monies received through this Contract and provide the following:

- a) Subrecipients name;
- b) CFDA number, title/description;
- c) Subrecipient's contract number; and
- d) Subrecipient's expenditures.

A copy of the engagement letter shall be submitted to the agency contact identified in Section 3.07 no later than three (3) months prior to the Second Party's fiscal year end, unless the Cabinet grants an extension in writing. If the Auditor of Public Accounts (APA) is to perform the audit, the name of the APA auditor and the anticipated start date shall be submitted to the agency contact identified in Section 3.07 no later than three (3)



months prior to fiscal year end, unless that office or its designee grants an extension in writing.

### 3.31—Response/Compliance with Audit Findings

The Second Party 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 Second Party's delivery to CHFS, for CHFS's approval, a Corrective Action Plan that addresses deficiencies identified in any audit(s), review(s), or inspection(s) within thirty (30) calendar days of the close of the audit(s), review(s), or inspection(s).

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

- a)--Required by a Kentucky or Federal law, regulation, rule or other audit requirement relating to Second Party's business;
- b)--Performed by Second Party as part of this Contract; or
- c)--Necessary due to Second Party's noncompliance with any law, regulation, rule, or audit requirement imposed on Second Party.

CHFS may impose sanctions pursuant to OMB Circular A-133 § \_\_.225 upon the Second Party's noncompliance with the requirements in Sections 4.30 or 4.31 of this agreement.

### 3.32—Equipment and Furniture

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

### 3.33—Property of CHFS

Property purchased by CHFS for the purposes of fulfilling the requirements of this Contract, and which may include, but not be limited to, furniture, computer software, computer hardware, office equipment, and supplies are considered the property of CHFS with any single item purchase of \$500.00 or more, as well as single item purchases of \$5000.00 or more (capital expenditures), requiring prior approval by the Cabinet. Any Capital Expenditures of \$5,000 or more with Federal Dollars must also have the Federal Agency Prior Approval before the Federal government will allow the costs in accordance with 2 CFR Part 225 Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87). All computer and information technology equipment purchases, regardless of cost, require prior approval from the Office of Administrative and Technology Services and must comply with state technology standards. All required prior approvals shall be obtained by e-mailing the Contract Specialist referenced in Section

3.07 of this contract. This property will remain as such, unless otherwise set forth in this Contract or other controlling documents incorporated herein by reference.

### 3.34—Property Control Ledger/Logs

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

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

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

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

### 3.35—Requirement of Inventory

#### 1. Inventory Tracking

The Second Party shall conduct a complete, physical inventory of all equipment and/or furniture provided by CHFS and/or purchased with funds from this contract and provide such to the CHFS Agency Property Officer by February 1st of each year unless otherwise stated herein. Said findings shall include the information in section 4.34 as well as acknowledgement that the item was located or missing, and where applicable the steps taken to locate the item and/or report such to the police. If an item is/has been transferred to another location or there is a custodian change, a CHFS-117 form is to be immediately completed and routed to the Cabinet's Agency Property Officer, but no later than February 1st, or as otherwise stated, with the corresponding inventory.



2. Loss/Destruction

The Second Party shall immediately notify the CHFS, Department for Behavioral Health, Developmental and Intellectual Disabilities, 100 Fair Oaks Lane 4 E-A, Frankfort, Kentucky 40621-0001, immediately if an item purchased by CHFS is damaged, missing, or stolen. In compliance with KRS 45.313, the Second Party shall forward in writing to CHFS the item description and corresponding property tag number with a written explanation of how the item was damaged, missing, and a police report if the item was stolen. The Department for Behavioral Health, Developmental and Intellectual Disabilities will immediately notify the Agency Property Officer and the DFM, such that the proper steps can be taken to document/claim this loss to support replacement of the item if possible.

3. Surplus

All state owned property and supplies no longer needed, may be declared surplus and disposed of upon prior approval from the Cabinet. The CHFS, Office of Administrative and Technology Services staff are responsible for sanitizing all computer equipment prior to disposal. Upon identification of items to be surplus or returned, the Second Party shall complete a B-217 and mail it to the CHFS Agency Property Officer with a copy to the Department for Behavioral Health, Developmental and Intellectual Disabilities, 100 Fair Oaks Lane 4 E-A, Frankfort, Kentucky 40621-0001, within thirty (30) calendar days when any of the following occurs:

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

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

As soon as possible, but no later than five (5) business days of terminating this contract for any reason, the Second Party shall deliver to CHFS a complete and current inventory, including the information referenced in Section 4.34, of any and all of the Cabinet's equipment and furniture in its possession, custody, or control. Within thirty (30) business days of the contract expiration/termination date, the Second Party shall return or make available any equipment and/or furniture.

If needed, both the CHFS 117 and 217 forms can be obtained by contacting your Contract Specialist listed in Section 3.07.



### 3.36—Maintenance of Insurance

During the term of this Contract, the Second Party 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 Second Party's business judgment to provide adequate coverage against losses and liabilities attributable to the respective acts or omissions of the Second Party and the Subcontractor(s) in the performance of this Contract. The Second Party 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 Second Party 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 Second Party 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 CHFS for Health and Family Services, Department for Behavioral Health, Developmental and Intellectual Disabilities, 100 Fair Oaks Lane 4 E-A, Frankfort, Kentucky 40621-0001.

CHFS shall not be responsible for any premiums or assessments on the policy or policies held by the Second Party 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 Second Party, either by Second Party 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.

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

### 3.37—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 900 KAR 1:060 which provide for a Cabinet review of research projects supported or funded in whole or in part through CHFS. If the proposed research project involves human subjects, it shall comply

with federal regulations 45 CFR 46 and the requirements of the Cabinet's Institutional Review Board for the Protection of Human Subjects, which CHFS is required to establish and maintain to protect the rights and welfare of human subjects of research conducted or sponsored by CHFS. The project manager assigned by CHFS will provide all documentation and protocols for review and approval by the Cabinet for Health and Family Services Institutional Board. No research may begin until such time as the Board reviews and approves the project.

### 3.38—Scientific Misconduct

The Second Party shall set out a procedure for the inquiry, investigation, appeal, and disposition of complaints alleging misconduct in activities involving any and all research projects funded, in whole or in part, with federal funds included in this Contract, and as authorized under the Public Health Services research grants. Such policies and procedures shall be in accordance with the provisions of 42 CFR 50.101 to 50.104 and 900 KAR 1:080 as amended, and shall be made available, upon request, to the Cabinet for Health and Family Services. The Second Party shall immediately report to CHFS any activity reported to the Second Party under these terms and conditions. Notice shall be sent in writing to the Cabinet for Health and Family Services, Department for Behavioral Health, Developmental and Intellectual Disabilities, 100 Fair Oaks Lane 4 E-A, Frankfort, Kentucky 40621-0001.

### 3.39—Intellectual Property

The Second Party agrees that any formulae, methodology, other reports and compilations of data provided by CHFS to the Second Party for the purposes of meeting the terms and conditions of this Contract shall be the exclusive property of the Cabinet, unless the specific ownership of any proposed or developed formulae, methodology or data compilation analyses is otherwise identified in any Attachment(s). The Second Party further agrees that any formulae, methodology, other reports and compilations of data prepared or produced by the Second Party 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 Second Party under this Contract.

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

a)--Patents;



- b)--Trademarks as proposed or registered with the U. S. Patent and Trademark Office; or
- c)--Copyrights proposed or certified with the Library of Congress, U.S. Copyright Office.

### 3.40—Provisions for Termination

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

This Contract may be terminated:

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

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

### 3.41—Turnover Assistance

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

### 3.42—Remedies for Breach

It is agreed by the Parties that in the event of breach of contract by the Second Party, 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 Second Party to CHFS for noncompliance as provided for in this Contract.

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

The Second Party certifies the following by signing the Contract:

- a) That neither it nor its principals and/or subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency;
- b) Where the prospective recipient of federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall submit an explanation in writing to CHFS; and
- c) That should Second Party or its principals, and/or its subcontractors become debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency, it shall immediately by telephone and within in five (5) business days in writing notify CHFS of same.

#### 3.44—Licensure, Certification, and Registration

The Second Party shall:

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

#### 3.45—Permits, Licenses, Taxes and Commonwealth Registration

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

The Contractor shall 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. Additional local registration or license may be required, which shall be the responsibility of the Contractor.

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.

#### 3.46—Conflict of Interest Laws and Principles



The Second Party certifies that the Second Party is legally entitled to enter into this Contract with the Commonwealth of Kentucky, and by holding and performing this Contract will not be violating either any conflict of interest statute, KRS 45A.330-45A.340, 45A.990, KRS 164.390, or KRS 11A.040 of the Executive Branch Code of Ethics, relating to the employment of former public servants.

### 3.47—Campaign Finance

The Second Party certifies that neither he/she nor any member of his/her immediate family having an interest of ten percent (10%) or more in any business entity involved in the performance of this Contract, has contributed more than the amount specified in KRS 121.056 (2), to the campaign of the gubernatorial candidate elected at the election last preceding the date of this Contract. The Second Party 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 (Exhibit A).

### 3.48—Legal Proceedings

Except as specifically disclosed in writing to CHFS by the Second Party, prior to the date of this Contract, Second Party certifies there are no suits, investigations, or other proceedings pending or threatened against Second Party or any subcontractor which would have a material effect on Second Party's ability to perform under this Contract, or on Subcontractors ability to perform under their respective subcontracts, if applicable. Further, the Second Party 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 Second Party related to this Contract. The Second Party shall send written notice to the Cabinet for Health and Family Services, Department for Behavioral Health, Developmental and Intellectual Disabilities, 100 Fair Oaks Lane 4 E-A, Frankfort, Kentucky 40621-0001.

### 3.49—Certification of Lobbying Activities

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

(1)--No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2)--If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3)--The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### 3.50--Discrimination Prohibited (Because of Race, Religion, Color, National Origin, Sex, Age, or Disability)

During the performance of this contract, the Second Party shall:

- a)--Not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex or age. The Second Party 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 individuals with a disability under any program or activity. The Second Party agrees to provide needed reasonable accommodations upon request. The Second Party shall take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment without regard to their race, religion, color, national origin, sex, 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 compensation; and selection for training, including apprenticeship. The Second Party agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- b)--In all solicitations or advertisements for employees placed by or on behalf of the Second Party, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, age or disability.
- c)--Send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the Second Party's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Second Party 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.



d)--Comply with all provisions of Executive Order No. 11246 of September 24, 1965, Equal Employment Opportunity as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

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

f)--Comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and all implementing regulations and executive orders. No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in relation to activities carried out under this contract on the basis of race, color, age, religion, sex, disability or national origin.

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

a)--Be consistent with the general guidance document (LEP Guidance) issued by the Department of Justice which sets forth the compliance standards recipients of Federal financial assistance must follow to ensure that LEP persons have meaningful access to the program's services and activities;

b)--Have a method of identifying LEP individuals; and

c)--Provide language assistance measures (e.g. oral interpretation and written translation services; training of staff; providing notice to LEP persons; monitoring compliance and updating the plan.)

In the event of the Second Party'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 Second Party may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.

The Second Party shall 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 sub-contractor or vendor. The Second Party shall 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 Second Party becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the Second Party may request the United States to enter into such litigation to protect the interests of the United States.

### 3.51—Minority Recruitment, Hiring and Reporting Requirements

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

### 3.52—Violation of Tax and Employment Laws

KRS 45A.485 requires the Second Party to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the Second Party within the previous five (5) year period of the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342. These statutes relate to the state sales and use tax, corporate and utility tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers' compensation insurance laws (Exhibit A).

To comply with the provisions of KRS 45A.485, the Second Party shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination. KRS 45A.485 also provides that, for the duration of any contract, the Second Party shall be in continuous compliance with the provisions of those statutes which apply to the Second Party's operations, and that the Second Party's failure to comply with the above statutes for the duration of the contract, shall be grounds for the Commonwealth's cancellation of the contract and the Second Party's disqualification from eligibility for future state contracts for a period of two (2) years.

### 3.53—Certification Regarding Drug Free Workplace

The Second Party hereby certifies that it will, or will continue to, provide a drug free workplace in accordance with 45 CFR Part 82. The Second Party shall at a minimum:

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



### 3.54—Confidential Information

The Contractor shall comply with the provisions of the Privacy Act of 1974 and instruct its employees to use the same degree of care as it uses with its own data to keep confidential information concerning client data, the business of the Commonwealth, its financial affairs, its relations with its citizens and its employees, as well as any other information which may be specifically classified as confidential by the Commonwealth in writing to the Contractor. All Federal and State Regulations and Statutes related to confidentiality shall be applicable to the Contractor. The Contractor shall have an appropriate agreement with its employees to that effect, provided however, that the foregoing will not apply to:

- 1.--Information which the Commonwealth has released in writing from being maintained in confidence;
- 2.--Information which at the time of disclosure is in the public domain by having been printed and published and available to the public in libraries or other public places where such data is usually collected; or
- 3.--Information, which, 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.

### 3.55—Confidentiality, Confidentiality Agreements and Limitations on Information and Data Use

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

- a)--The Second Party shall cause all personnel who may have access to confidential information provided by CHFS to enter into CHFS approved confidentiality agreements and shall maintain such confidentiality agreements on file. CHFS reserves the right to direct the removal from contract administration, or the termination of access to CHFS provided information, for any individual covered by this Contract who has not signed a confidentiality agreement.
- b)--Any subcontractor, their agent, and any of their employees who enter into any type of agreement to fulfill the requirements of this contractual agreement with the Second Party, must provide written assurances that they and any of their agents will abide by the terms of confidentiality as set forth in this Contract, as well as any federal or state confidentiality agreements which may govern the terms and conditions in this Contract.

c)--Any dissemination of information about projects funded and the scope of work described in the terms and conditions of this Contract, must be fully documented and reviewed by the Cabinet's project manager before any representation, electronic or otherwise, of projects, their funding sources, use of data, or data analyses may be posted to a web page or otherwise published.

d)--The Second Party 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.

### 3.56--HIPAA Confidentiality Compliance

The Second Party agrees to abide by the "HIPAA Privacy Rule," 45 CFR Parts 160 and 164, established under the Health Insurance Portability and Accountability Act, Public Law 104-191 (42 USC 1320d) to protect the security, confidentiality, and integrity of health information. In the event, the Second Party is determined to be a business associate under HIPAA Privacy Rule, the Second Party agrees to execute a separate Business Associate Agreement, and use and disclose Protected Health Information only in accordance with HIPAA Privacy Rule.

### 3.57--Governing Law and Regulations

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

### 3.58--EEO Requirements

The Kentucky EEO Act, KRS 45.560-45.640, applies to all State government projects with an estimated value exceeding \$500,000.00. The Contractor shall comply with all terms and conditions of the Act. If applicable, the Department for Behavioral Health, Developmental and Intellectual Disabilities requests the successful vendor to submit EEO documentation with their proposal response. Prior to issuing a contract award, Department for Behavioral Health, Developmental and Intellectual Disabilities will send copies of this documentation to the Finance and Administration Cabinet, Office of EEO and Contract Compliance (EEO/CC) for review and approval. No contract award will become effective until all forms are satisfactorily submitted and the office of EEO/CC has certified compliance.

If applicable to this project, the Contractor is advised that the following documents are required in accordance with the requirements of the Solicitation:

--EEO-1: Employer Information Report,



—Affidavit of Intent to Comply,

—a Subcontractor Report

OR

—A copy of the Kentucky EEO Approval Letter issued by the EEO/CC.

Contractors may obtain copies of the required EEO documents at:

[http://finance.ky.gov/services/stateplan/Documents/EEO1ReportandInstructions\\_May07.doc](http://finance.ky.gov/services/stateplan/Documents/EEO1ReportandInstructions_May07.doc).

Failure to complete, sign and submit all required documents will delay the award process as incomplete submissions will not be processed.

Contractors must advise each subcontractor with a subcontract of more than \$500,000.00 of the Contractor's obligation to comply with the KY EEO Act. Further, Contractors are responsible for compiling EEO documentation from their subcontractors and submitting the documentation to the office of EEO/CC.

Pursuant to KRS 45.610 (2), the office of EEO/CC reserves the right to request additional information and/or documentation and to conduct on-site monitoring reviews of project sites and/or business facilities at any point for the duration of any contract which exceeds \$500,000.00 to ascertain compliance with the Act and such rules, regulations and orders issued pursuant thereto.

All questions regarding EEO forms or contract compliance issues should be directed to the office of EEO/CC via e-mail: [Finance.ContractCompliance@ky.gov](mailto:Finance.ContractCompliance@ky.gov) or via telephone: (502) 564-2874.

Failure to comply or remain compliant with the Act may result in non-award, withdrawal of award, cessation of contract payments, etc.

### 3.59—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, Administrative Regulation, or otherwise to reduce contract hours, the contract will be reduced by the amount specified in that document.

### 3.60—No Grant of Employment or Agency

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

At no point shall any individual providing services under this Contract be considered an employee of CHFS, for any purpose, including but not limited to unemployment, taxes, withholding, health insurance, liability, retirement, workers' compensation, vacation, sick

or other leave, the Family Medical Leave Act, accrued benefits, evaluations, or any other purpose. At all times, any such individual shall be considered and deemed to be an employee of the Second Party.

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

#### **SECTION 4. SUSPENSION OR TERMINATION OF THE AGREEMENT**

4.01

The Department may immediately suspend or terminate this agreement for cause, as set forth in 907 KAR 3:030 (or as amended), , or Federal regulations, upon written notice served upon the Sub-contractor by registered or certified mail with return receipt requested to confirm the notification. Cause shall include, but not be limited to, violation of any of the terms or conditions of this contract and violation of any state or federal statute, regulation, policy or procedure.

4.02

Termination of another contract with the Sub-contractor for cause by the Department or another state agency may be considered cause for the termination of this agreement;

4.03

Failure to comply with any of the terms of this agreement may be considered cause for termination of this agreement

4.04

Either party shall have the right to terminate this agreement for convenience at any time upon thirty (30) days written notice served upon the other party by certified or registered mail. Any termination that gives thirty days written notice shall be considered for convenience regardless of whether cause is denoted.

4.05

When written notification to terminate this agreement is submitted by either party, the Sub-contractor agrees to assist with transitioning all IMPACT Plus recipients served by the Sub-contractor by making client records available to the Department (if requested) and other IMPACT Plus Sub-contractors within seven (7) business days, contingent upon proper release of information authorization; and by referring clients to alternative services and/or Sub-contractors, attending service team meetings with new Sub-contractors, and providing consultation to new Sub-contractors as indicated by the recipient's needs, or as directed by the Department. This section shall survive the termination of this subcontract.



4.06

Sub-contractor acknowledges the right of the Department or any applicable Managed Care Organization to inform IMPACT Plus recipients of the Sub-contractor's termination.

## SECTION 5. SIGNATURES

I, the undersigned representative for the Sub-contractor, do hereby affirm all information contained in this Sub-contractor Agreement and the attached regulation, 907 KAR 3:030, have been disseminated to and read by all contracted or employed persons of said Sub-contractor. By signing as the Sub-contractor's designated representative, I acknowledge the Sub-contractor's responsibility for any failure to comply with the requirements of 907 KAR 3:030 and of the Sub-contractor Agreement by all contracted or employed persons of said Sub-contractor:

Sub-contractor: Transformations

Signature

Teresz Lloyd Laura Kados Lewis  
Printed Name:

Title:

owner / partner

Date:

6-28-12

Cabinet for Health and Family Services,  
Department for Behavioral Health,  
Developmental and Intellectual  
Disabilities

Signature

Printed Name: Louis A. Kurtz

Title: ACTING DIVISION  
DIRECTOR

Date:

7-2-12

Department for Community Based  
Services

Signature

Printed Name: Tina Webb

Title:

Assistant Director

Date:

7/6/12



**BUSINESS ASSOCIATE AGREEMENT  
BY AND BETWEEN**

**AND  
THE CABINET FOR HEALTH AND FAMILY SERVICES,  
DEPARTMENT FOR MENTAL HEALTH AND MENTAL RETARDATION SERVICES**

This Business Associate Agreement ("Agreement") effective on July 1, 2012 ("Effective Date") is entered into by and between Transformations (the "Business Associate") and the Cabinet for Health and Family Services, Department for Mental Health and Mental Retardation Services (the "Covered Entity").

**WITNESSETH:**

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, known as "the Administrative Simplification provisions," direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information; and

WHEREAS, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services has issued regulations modifying 45 CFR Parts 160 and 164 (the "HIPAA Privacy Rule"); and

WHEREAS, the Parties wish to enter into or have entered into an arrangement whereby the Business Associate will provide certain services to the Covered Entity, and, pursuant to such arrangement, Business Associate may be considered a "business associate" of the Covered Entity as defined in the HIPAA Privacy Rule; and

WHEREAS, Business Associate may have access to Protected Health Information (as defined below) in fulfilling its responsibilities under such arrangement; and

WHEREAS, Business Associate agrees to collect and destroy any and all recyclable material produced by the Covered Entity, and is to assume responsibility for these documents upon receipt; and

THEREFORE, in consideration of the Parties' continuing obligations under the Arrangement Agreement, the Parties agree to the provisions of this Agreement in order to address the requirements of the HIPAA Privacy Rule and to protect the interests of both Parties.

**I. DEFINITIONS**

Except as otherwise defined herein, terms used in this Agreement shall have the same meaning as those terms set forth in the HIPAA Privacy Rule.

The term "Arrangement Agreement" means the Master Contract entered into between the Covered Entity and the Business Associate on July 1, 2012.

## II. AMENDMENT TO ARRANGEMENT AGREEMENT.

The Parties have a prior Arrangement Agreement under which the Business Associate regularly uses and/or discloses protected health information in its performance of services for the Covered Entity. The Parties intend this Agreement to be an Amendment or Addendum to the Arrangement Agreement executed by the Parties for services involving the use, creation, or transmission of protected health information.

## III. COORDINATION WITH HIPAA PRIVACY RULE

In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Privacy Rule, as amended, the HIPAA Privacy Rule in effect at the time shall control. Where provisions of this Agreement are different than those mandated in the HIPAA privacy Rule, but are nonetheless permitted by the HIPAA Privacy Rule, the provisions of this Agreement shall control.

The Parties agree that, in the event that any documentation of the arrangement pursuant to which the Business Associate provides services to the Covered Entity contains provisions relating to the use or disclosure of Protected Health Information, which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of this Agreement are intended to establish the minimum requirements regarding the Business Associate's use and disclosure of Protected Health Information.

## IV. CONFIDENTIALITY REQUIREMENTS

(a) Business Associate shall use or disclose any protected health information solely as permitted or required by this Agreement, the Arrangement Agreement (if consistent with this Agreement and the HIPAA Privacy Rule), or as required by law.

(b) Business Associate shall ensure that its agents, including a subcontractor, to whom it provides protected health information received from or created by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that, apply to Business Associate with respect to such information. In addition, Business Associate agrees to take reasonable steps to ensure that its employees' actions or omissions do not cause Business Associate to breach the terms of this Agreement;

(c) Business Associate shall implement appropriate safeguards to prevent use or disclosure of protected health information other than as permitted or required by this Agreement;

(d) Business Associate shall permit the Secretary of Health and Human Services to audit Business Associate's records and practices related to use and disclosure of protected health information to ensure Covered Entity's compliance with the terms of the HIPAA Privacy Rule;



(e) Business Associate shall report to Covered Entity any use or disclosure of protected health information which is not in compliance with the terms of this Agreement of which it becomes aware; and

(f) Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of protected health information by Business Associate in violation of the requirements of this Agreement.

## **V. AVAILABILITY OF PROTECTED HEALTH INFORMATION**

(a) Business Associate shall at the request of Covered Entity, provide access to protected health information in a designated record set to Covered Entity or, as directed by Covered Entity, to an individual, in a time and manner sufficient to permit Covered Entity to comply with the requirements of 45 CFR §164.524.

(b) Business Associate shall at the request of Covered Entity or an individual, make any amendment(s) to protected health information in a designated record set that are directed by or agreed to by Covered Entity, in a time and manner sufficient to permit Covered Entity to comply with the requirements of 45 CFR §164.526.

(c) Business Associate shall document disclosures of protected health information and information related to such disclosures in a manner sufficient to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of protected health information in accordance with 45 CFR §164.528 and provide such documentation to Covered Entity or an individual as directed by Covered Entity.

## **VI. OBLIGATIONS OF THE COVERED ENTITY**

(a) Covered Entity shall notify the Business Associate of any limitation(s) in its notice of privacy practices of the Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation may affect the Business Associate's use or disclosure of the protected health information, and the Business Associate shall abide by any such limitation(s).

(b) Covered Entity shall notify the Business Associate of any changes in, or revocation of, permission by an individual to use or disclosure of protected health information, to the extent that such changes may affect the Business Associate's use or disclosure of the protected health information, and the Business Associate shall abide by any such changes or revocations.

(c) Covered Entity shall notify the Business Associate of any restriction to the use or disclosure of protected health information that the Covered entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect the vendor's use or disclosure of the protected health information, and the Business Associate shall abide by any such restrictions.

(d) Covered Entity shall not request the Business Associate to use or disclose protected health information in any manner that would not be permissible under the Privacy Rule if done by the Covered entity, except that the Covered Entity may use or disclose protected health information as permitted by the Arrangement Agreement, for data aggregation or management, and administrative activities of the Business Associate.

## VII. TERMINATION

(a) Term. The Term of this Agreement shall be effective as of the date first written above, and shall terminate when all of the protected health information 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 the protected health information, protections are extended to such information, in accordance with the termination provisions in this Section.

(b) Termination for cause. Upon the Covered Entity's knowledge of a material breach by the Business Associate, the Covered Entity shall:

- (i) Have the right to immediately terminate this Agreement; or
- (ii) Provide an opportunity for the Business Associate to cure the breach or end the violation or, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, terminate this Agreement and the Arrangement Agreement.

(c) Cure. If the Covered Entity provides the Business Associate with an opportunity to cure the material breach this Agreement, the Business Associate shall have thirty (30) days from the date of the notice from the Covered Entity to cure the violation, as set forth in the Agreement, or if there is no such provision to cure, then within. If such violation is not cured within the time period set forth in this Agreement, the Covered Entity may declare a material breach of the Agreement and terminate the Agreement or, if not feasible to terminate the Agreement, report the problem to the Secretary of the United States' Department for Health and Human Services, as set forth in 45 CFR §164.522(e)(1)(ii)(B).

(d) Return or destruction of protected health information. At termination of this Agreement, the Arrangement Agreement (or any similar documentation of the business relationship of the Parties), or upon request of Covered Entity, whichever occurs first, Business Associate shall:

- (i) If feasible, return or destroy all protected health information received from or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form. Business Associate shall only destroy protected health information with the written approval of Covered Entity. After return or destruction, Business Associate shall retain no copies of such information.



- (iii) If return or destruction is not feasible, Business Associate will provide Covered Entity with documentation explaining the reason that it is not feasible. If the protected health information is not returned or destroyed, Business Associate will extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information not feasible.

## VIII. MISCELLANEOUS

(a) Scope. All protected health information that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to the Business Associate or is created or received by Business Associate on Covered Entity's behalf shall be subject to this Agreement.

(b) Survival. The obligations of the Business Associate under this Agreement shall survive the expiration, termination, or cancellation of this Agreement, the Arrangement Agreement and/or the business relationship of the Parties, and shall continue to bind the Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

(c) Amendment. This Agreement may be amended or modified only in a writing signed by the Parties. The Parties agree that this Agreement will be automatically amended to conform to any changes in the Privacy Rule as is necessary for the Covered Entity to comply with the current requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.

(d) Assignment. No Party may assign its respective rights and obligations under this Agreement without prior written consent of the other Party.

(e) Independent Contractor. None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship.

(f) No Rights in Third Parties. Except as expressly stated herein or the HIPAA Privacy Rule, the Parties to this Agreement do not intend to create any rights in any third parties.

(g) Governing Law. This Agreement will be governed by the laws of the State of Kentucky.

(h) Interpretation. Any ambiguity of this Agreement shall be resolved in favor of a meaning that permits the Covered Entity to comply with the Privacy Rule.

(i) No Waiver. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any

continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

(j) Severability. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.

(k) Notice. Any notification required in this Agreement shall be in writing to the representative of the other Party who signed this Agreement or the person currently serving in that representative's position with the other Party.

(l) Indemnity. Business Associate agrees to indemnify and hold harmless the Covered Entity and any agency, affiliate, officer, director, employee or agent from and against any claim, cause of action, liability, damage, cost or expense including attorneys' fees and court or proceeding costs, arising out of or in connection with any non-permitted or violating use or disclosure of protected health information or other breach of this Agreement by the Business Associate or any subcontractor, agent, person or entity under the Business Associate's control.

(m) Headings. The headings in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

Cabinet for Health and Family Services,  
Department for Behavioral Health,  
Developmental and Intellectual  
Disabilities  
(The Covered Entity):

Transformations  
(The Business Associate):

Louis A. Kury  
Signature

Teresa Lloyd  
Signature

LOUIS A. KURY  
Print Name

Teresa Lloyd  
Print Name

ACTING DIRECTOR  
Title

owner/partner  
Title

Date: 7-2-12

Date: 6-28-2012





I have read the Impact Plus Sub-Contractor Agreement and the Business Associate Agreement between the Department for Behavioral Health, Developmental and Intellectual Disabilities and Transformations. I agree to comply with the terms of this contract.

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Signature, credentials, and date