

OK AS TO FORM  
A.M.H. 4.13.2020



# Commonwealth of Kentucky CONTRACT

<b>DOC ID NUMBER:</b>			
PON2	730	2000001674	Version: 1
			Record Date:

Document Description: SUBRECIPIENT AmeriCorps C2343

Cited Authority: CFDA 94.006  
Americorps State and National

Reason for Modification:

**Issuer Contact:**

Name: Leslie Proctor  
Phone: 502-564-7736  
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<b>Vendor Name:</b> JEFFERSON COUNTY BOARD OF EDUCATION  3332 NEWBURG RD  LOUISVILLE KY 40218	<b>Vendor No.</b> KY0035849  <b>Vendor Contact</b> Name: CORDELIA HARDIN Phone: 502-485-3353 Email: CORDELIA.HARDIN@JEFFERSON.KYSCHOOLS.US
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**Effective From:** 2020-08-01      **Effective To:** 2022-08-31

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
1		0.00000		Jefferson County Public Schools REACH Corps FY 20-21 AmeriCo	\$0.000000	\$362,955.00	\$362,955.00

**Extended Description:**

Second Party to this agreement shall provide statutorily established AmeriCorps programs as a cost reimbursement subaward, in accordance with the Application for Federal Assistance submitted by each subrecipient. Payments shall not exceed the total amount authorized by the final Notice of Grant Award (NGA) and the related Program Summary Chart, as issued by the Corporation for National and Community Service (CNCS). This is a subaward of federal financial assistance.

Funding 100% Federal  
CFDA: 94.006  
FAIN: 20AFHKY001 / 18ACHKY001 / 21ACHKY001 (See "Grant Number" per Program Summary Chart)

Contractor Contact: Ben Langley  
Phone 502-485-3926  
ben.langley@jefferson.kyschools.us

First Party contact: Jill Lancaster  
Phone 502-564-7420 ext. 3845  
Email: Jill.Lancaster@ky.gov

Term of Contract: 8/1/2020 to 8/31/2022

Effective From: 2020-08-01

Effective To: 2022-08-31

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
2		0.00000		Jefferson County Public Schools REACH Corps FY 21-22 AmeriCo	\$0.000000	\$362,955.00	\$362,955.00

**Extended Description:**

Second Party to this agreement shall provide statutorily established AmeriCorps programs as a cost reimbursement subaward, in accordance with the Application for Federal Assistance submitted by each subrecipient. Payments shall not exceed the total amount authorized by the final Notice of Grant Award (NGA) and the related Program Summary Chart, as issued by the Corporation for National and Community Service (CNCS). This is a subaward of federal financial assistance.

Funding 100% Federal

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Term of Contract: 8/1/2020 to 8/31/2022

Shipping Information:	Billing Information:
	CHFS DFRCVS/KCCVS 275 E Main Street 3W-E  Frankfort KY 40621

<b>TOTAL CONTRACT AMOUNT:</b>	<b>\$725,910.00</b>
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	<i>Document Description</i>	<i>Page 3</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

**Memorandum of Agreement Terms and Conditions**

This Memorandum of Agreement (MOA) is entered into, by and between the Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Family Resource Centers and Volunteer Services, Serve Kentucky (“the Commonwealth”) and Jefferson County Public Schools (JCPS) (“the Contractor”) to establish an agreement for AmeriCorps Cost Reimbursement Subawards. The initial MOA is effective from August 1, 2020 through August 31, 2022.

**SECTION 1-ADMINISTRATIVE OVERVIEW**

**1.00-Purpose and Background**

AmeriCorps State and National Grants are administered by the Corporation for National and Community Service (CNCS), a federal agency whose mission is to improve lives, strengthen communities, and foster civic participation through service and volunteering. Through all its programs, CNCS seeks to expand economic opportunity – helping Americans acquire the skills, education, and training they need for productive employment. By helping more Americans graduate, pursue higher education, and find work, national service can provide immediate and long term benefits by expanding individual opportunity, building family stability, and creating more sustainable, resilient communities.

The purpose of AmeriCorps State and National Grants awarded to eligible organizations is to engage AmeriCorps members in evidence-based or evidence-informed interventions to strengthen communities. An AmeriCorps member is an individual who engages in community service through an approved national service position. Members may receive a living allowance and other benefits while serving. Upon successful completion of their service, members earn a Segal AmeriCorps Education Award from the National Service Trust that members can use to pay for higher education expenses or apply to qualified student loans.

Serve Kentucky is the State Agency federally mandated to fulfill the obligations and services under Catalog of Federal Domestic Assistance (CFDA) numbers 94.006 and 94.021 from the Corporation for National & Community Service (CNCS). The Commonwealth of Kentucky has established Serve Kentucky to administer these programs.

**1.01-Issuing Office**

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

**1.02-Communications**

The Contract Specialist identified on page 1 is the point of contact for communications concerning contract issues.

**1.03-Terminology**

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

- Vendor: Contractor, Offeror, Second Party, Proposer

	<i>Document Description</i>	<i>Page 4</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

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

**1.04-Definitions/Acronyms**

- (PR) Progress Report
- (CNCS) Corporation for National and Community Service
- (FFR) Federal Financial Report
- (CFR) Code of Federal Regulations
- (NGA) Notice of Grant Award
- (PER) Program Expense Report

**1.05-Organization**

This Contract is organized in the following manner:

- Section 1-Administrative Overview
- Section 2-Scope of Services
- Section 3-Pricing
- Section 4-CHFS General Terms and Conditions
- Section 5-Federal Requirements
- Finance Terms and Conditions of the Contract

**SECTION 2-SCOPE OF SERVICES**

**2.00-Services Required**

The Second Party shall receive federal financial assistance to recruit, train, and supervise AmeriCorps members meeting critical community needs in the areas of education, disaster services, health, environmental stewardship, economic opportunity, and service to veterans and military families. The grant application on file with CNCS, including any amendments, specifies the program design and size, including service activities for a team of members serving full- or reduced-time for one year or during the summer. The federal awarding agency issues a separate grant identifying number for each subawardee. The Second Party shall operate the AmeriCorps program in accordance with Second Party's approved application for federal financial assistance.



	<i>Document Description</i>	<i>Page 5</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

In accordance with the requirements of CNCS, the federal funding agency, and as a requirement to receive funding through this agreement, the Second Party shall adhere to the following:

1. Provide training on prohibited service activities in the pre-service training for members and their site supervisors. Each member and site supervisor shall sign a written statement acknowledging they have read and understand their duties and the activities in which they cannot participate. The Program agrees to display the Prohibited Activity poster, provided by Serve KY at all host site locations. The Program staff shall also review member's monthly activity report and journal entries to further ensure compliance.
2. Recruit members at the national level, using the online recruitment system provided by CNCS. Members shall be recruited at the state level through applications for teaching or support positions received by host sites. Some members may be recruited through Kentucky secondary institutions from social work and teaching programs.
3. Recruit members who are a minimum of 17 years of age, have a high school diploma or GED equivalent and have successfully completed an intensive interview process.
4. Provide members with orientation and training before they report to their respective service sites. Members shall receive at least quarterly training in relevant topics.
5. Ensure AmeriCorps branding requirements are followed:
  - a. Logo: Prominently display the standard AmeriCorps logo on websites, most notably on the home page and "About Us" sections. AmeriCorps is a registered service mark of CNCS.
  - b. Language: Use standardized language to describe the program in press releases, public documents, and all speaking events to identify the organization's AmeriCorps affiliation.
  - c. Gear: Include appropriate AmeriCorps logo on all gear for AmeriCorps-funded programs. Issue the AmeriCorps service gear to all members, who shall then be required to identify themselves as an AmeriCorps member, at all service times, to increase national identification and awareness.
  - d. Sites: Display signs or posters that feature the grantee and the AmeriCorps logo at all sites where AmeriCorps members are serving, especially those to which elected officials or private-sector partners are invited to visit.
  - e. Public Materials: Subgrantees shall use the AmeriCorps name and logo on public materials such as stationery, application forms, recruitment brochures, on-line position postings, orientation materials, member curriculum materials, signs, banners, press releases, and publications related to their AmeriCorps program in accordance with CNCS requirements.
  - f. Refer to the 2020 and 2021 (as applicable) AmeriCorps State Terms and Conditions-Specific and Terms and Conditions-General and utilize the AmeriCorps Branding Guide available through the CNCS Knowledge Network or from Serve Kentucky.
6. Provide all site supervisors with an intensive one-day training, prior to AmeriCorps recruitment and placement. All service site supervisors shall also attend regional orientation training prior to member placement. Topics at such training shall include: supervisor roles and responsibilities; reporting requirements; match and recording systems; prohibited activities (as defined by CNCS); and development of goals, objectives and a sustainability plan.
7. Ensure the service site coordinator or program staff completes a written evaluation (detailing required number of hours, assignments, etc.) for each member at least twice a year.

	<i>Document Description</i>	<i>Page 6</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

8. Ensure that the service site coordinators and the Program staff approve all member timesheets and monthly travel logs.

9. Ensure that service sites assume the lead role in recruitment and selection of members; attend all mandatory trainings and conference calls; direct supervision of members; coordinate local in-service training opportunities; monitor the progress toward members goals and objectives; cooperate with the evaluation process by completing, distributing and collecting evaluation forms; and maintain accurate in-kind match records.

10. Ensure that service sites submit a report of any in-kind match. Service sites may provide supervision, office space, office supplies, technology, mileage and some program support as in-kind match. Other sources of match may include training and technical assistance to members and site supervisors and similar non-federal resources provided free of charge to the subrecipient. Notwithstanding anything to the contrary herein, any such match shall comply with all provisions of the AmeriCorps Grant, the subrecipient's federally approved plan, and/or the policies and procedures of the CNCS in order to qualify as match.

11. Provide the required match as outlined in the federally approved grant application. Second Party shall be fully liable for federal refund of any match deficiencies identified in audit. Audit disallowances such as insufficient match or inappropriate expenditures shall be remitted to Serve Kentucky. Serve Kentucky may utilize a manual hold of program reimbursement to ensure receipt of disallowed costs. The cost sharing or matching contributions shall meet all of the following criteria:

- a. Are verifiable from the Second Party's records;
- b. Are not included as match contributions for any other Federal award;
- c. Are necessary and reasonable for accomplishment of project or program objectives;
- d. Are allowable under 2 CFR 200, Subpart E—Cost Principles, where applicable;
- e. Are not paid by the Federal government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs and written authorization has been received from the other Federal program; and
- f. Conform to other provisions of 2 CFR 200, as applicable.

12. Comply with the National Service Criminal History Check requirements. Under the Serve America Act (SAA), all subrecipients must conduct National Service Criminal History checks on participants and program employees in AmeriCorps, Foster Grandparent, Senior Companion and any other programs funded by CNCS under National Service laws. All employees, participants, and others who receive a salary (paid or in-kind), national service education award, living allowance, or stipend under CNCS grants, even if the activities don't involve service with vulnerable populations, must complete the checks prior to beginning employment or service. A satisfactory criminal history check must be completed prior to the issuance of payment for salary or living allowance within the program. Documentation as outlined within CNCS and KY AmeriCorps Program Director Guidance shall be maintained in the member's file and made available upon request by Serve Kentucky. Designated staff members must complete NSCHC on-line training at least annually. Should the subrecipient be determined to be non-compliant under the National Service Criminal History Check Enforcement Guide issued by the Corporation for National and Community Service, subrecipient shall immediately remit the amount of the identified disallowance to Serve Kentucky. Serve Kentucky may utilize a manual hold of program reimbursement to ensure receipt of disallowed costs.

	<i>Document Description</i>	<i>Page 7</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

13. Adhere to all the requirements of the federally approved grant application, the AmeriCorps Grant Provisions, and the sub-recipient's federally approved plan, including continuation plan and attachments and modifications. The Serve Kentucky AmeriCorps Program Director Guidance Document and the AmeriCorps Terms and Conditions (specific to the grant year), are hereby incorporated by reference as if set forth fully herein and are available from the CHFS Department for Family Resource Centers and Volunteer Services and on the CNCS website at <https://www.nationalservice.gov/resources/financial-management/terms-conditions-and-certifications-assurances-cnacs-grants> .

14. Obtain written permission from the Cabinet prior to the reproduction and/or distribution of any videos and/or any materials developed under this agreement, as these are considered the property of the Cabinet.

15. Programs shall utilize the member file sheet provided by Serve Kentucky and ensure that, at a minimum, the applicable documentation of the required information that is pre-printed on the sheet is included in each member's file.

16. Ensure that member's service hours are awarded on an hour-for-hour basis only, based on detailed daily time log of service and in accordance with the following:

- a. Service hours cannot be awarded on a bonus basis.
- b. Members cannot receive hours for babysitting or service to family members.
- c. Service hours shall be traceable to a service objective or a member development objective that aligns with the program.
- d. Service hours for teleservice activities must be those activities which produce a tangible product and receive supervisory prior written approval for each instance of teleservice, whether for planned or unplanned site closure or other teleservice necessity. Teleservice may not exceed 5% of a member's total service hours. Teleservice may only be utilized if the program has a policy allowing teleservice activity (See Serve Kentucky AmeriCorps Program Director Guidance).

17. Secure an audit in accordance with 2 CFR, Part 200, Subpart F, if applicable, and provide a copy thereof, along with all related reports, to the Financial Officer at Serve Kentucky. This audit, commonly known as a Single Audit, is an examination of an entity that expends \$750,000 or more of federal funds (including those that have passed through state or local government agencies) performed by independent certified public accountants. See 5.01.02 - Audit Requirements, below.

18. Provide Health Insurance to eligible members.

19. The Second Party shall ensure that AmeriCorps members and Site Supervisors receive training/certification to recognize and refrain from participation in the following activities prohibited under Federal regulations:

Prohibited Activities. While charging time to the AmeriCorps program, accumulating service or training hours, or otherwise performing activities supported by the AmeriCorps program or the Corporation, staff and members may not engage in the following activities (see 45 CFR § 2520.65):

- a. Attempting to influence legislation;
- b. Organizing or engaging in protests, petitions, boycotts, or strikes;

	<i>Document Description</i>	<i>Page 8</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

- c. Assisting, promoting, or deterring union organizing;
- d. Impairing existing contracts for services or collective bargaining agreements;
- e. Engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;
- f. Participating in, or endorsing, events or activities that are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation, or elected officials;
- g. Engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization;
- h. Providing a direct benefit to -
  - i. A business organized for profit;
  - ii. A labor union;
  - iii. A partisan political organization;
  - iv. A nonprofit organization that fails to comply with the restrictions contained in section 501(c)(3) of the Internal Revenue Code of 1986 except that nothing in this section shall be construed to prevent participants from engaging in advocacy activities undertaken at their own initiative; and
  - v. An organization engaged in the religious activities described in paragraph (g) of this section, unless Corporation assistance is not used to support those religious activities;
  - vi. Conducting a voter registration drive or using Corporation funds to conduct a voter registration drive;
  - vii. Providing abortion services or referrals for receipt of such services; and
  - viii. Such other activities as the Corporation may prohibit.

AmeriCorps members may not engage in the above activities directly or indirectly by recruiting, training, or managing others for the primary purpose of engaging in one of the activities listed above. Individuals may exercise their rights as private citizens and may participate in the activities listed above on their initiative, on non-AmeriCorps time, and using non-Corporation funds. Individuals should not wear the AmeriCorps logo while doing so.

20. Ensure member fundraising does not exceed 10% of agreed upon service hours per member, in accordance with federal program regulations [45 CFR §2520.45]. Ensure member fundraising is directly in support of the program's service activities in accordance with federal program regulations [45 CFR § 2520.40].

21. Comply with all applicable Federal and State law (including but not limited to statutes, regulations, federal grant policy determinations and court decisions) for services provided under this Contract, specifically including but not limited to the National and Community Service Act of 1990 as amended by the Serve America Act, AmeriCorps State and National Regulations (CFR Title 45, Subtitle B, Chapter XXV, Sections 2510, 2520, 2521-2530, 2540, and 2555), all the conditions, terms, or requirements of AmeriCorps State and National Grants; (which can be found at <http://www.nationalservice.gov/build-your-capacity/grants/managing-ameri-corps-grants>, and under the Catalog of Federal Domestic Assistance (CFDA) or Assistance Listings #94.006 at [www.cfda.gov](http://www.cfda.gov) or [beta.SAM.gov](http://beta.SAM.gov)), and KRS 273.453, 922 KAR 6:010; 45 CFR Part 75 (except where state procedure, including Kentucky Administrative Regulations, specifically excludes certain sections of Part 75); OMB 2 CFR Part 200 et al.

	<i>Document Description</i>	<i>Page 9</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

22. Respond to any Statement of Deficiencies that is presented by the Cabinet for Health and Family Services, by submitting a Corrective Action Plan for review and approval by the Cabinet and then complying with all provisions of any approved Corrective Action Plan, which shall be subject to monitoring by the Cabinet.

23. Comply with the non-discrimination policy specific to AmeriCorps programs. CNCS prohibits all forms of discrimination based upon race, color, national origin, gender, age, religion, sexual orientation, disability, gender identity or expression, political affiliation, marital or parental status, or military service. All programs administered by, or receiving Federal financial assistance from CNCS, must be free from all forms of harassment. It is also unlawful to retaliate against any person who, or organization that, files a complaint about such discrimination. In addition to filing a complaint with local and state agencies that are responsible for resolving discrimination complaints, parties may bring a complaint to the attention of the Corporation for National and Community Service.

24. In addition to the insurance requirements identified in Section 4.01.08 - Maintenance of Insurance, below, subrecipient shall ensure coverage of AmeriCorps Members and volunteers in addition to employees.

25. Budget for and attend the annual National Service Training / Launch, including subrecipient staff and members. Concerning the periodic Serve Kentucky Program Directors' meetings, at least one staff member must attend from each program. Attendance exceptions must be documented by written notice / confirmation between the subrecipient Project Director and the Serve Kentucky Program Officer.

26. Supplies meeting the definition stipulated in 2 CFR §200.94, having a per unit acquisition cost less than \$5,000, shall follow property standards outlined in 2 CFR §200.314, when purchased with federal funds for the AmeriCorps programs, CFDA 94.006 or 94.021, under this agreement. Section 4.02.06, 4.02.06.01-.03. contained herein (Property/Ledger/Inventory), shall not apply to purchases of supplies having a per unit acquisition cost less than \$5,000 and purchased with federal funds from the AmeriCorps programs.

27. Adhere to the requirements referenced in memorandum, "2018.02: AmeriCorps State and National – Changes in the Enrollment Process to Facilitate SSN and Citizenship Verification and Promote Criminal History Check Compliance and Posting Member Opportunities on CNCS Recruitment Website," issued May 30, 2018, from Chester W. Spellman, including any clarifications and related Frequently Asked Questions issued thereafter.

28. In addition to the requirements included under Section 4.02.14, below, Personally Identifiable Information (PII) shall not be transmitted through email unless encrypted or secured within password protected files. The PII of AmeriCorps members and volunteers is protected by federal laws, including the Privacy Act of 1974, as amended, which can include criminal penalties and fines for violations.

29. Under CFDA 94.021, the Volunteer Generation Fund (VGF), if included as a commodity line within this agreement, provides federal financial assistance to increase volunteerism, support strategies for volunteer recruitment and management, assist with increasing the capacity of volunteer organizations, participate in volunteer management training or implement National Days of Service and Community Engagement Mini-Grant Initiative and/or Alternative Service Break (Serve Kentucky) projects. The following provisions shall apply specifically to Second Party funding identified as CFDA 94.021 if contained within this agreement. For purposes of CFDA 94.021, Second Party shall:

- a. Adhere to all program design and budget limitations as indicated within the Letter of Project Approval issued by Serve Kentucky to the Second Party. The grant application or proposal on file with Serve Kentucky, including any amendments, specifies the basic program design and activities.



	<i>Document Description</i>	<i>Page 10</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

b. Comply with all applicable provisions of 2 CFR 200 and Section 2.00, above, with particular attention to items 11, 12 and 19 – match requirements, National Service Criminal History Check requirements and prohibited activities.

c. Provide the required project match as outlined in the Letter of Project Approval.

d. Submit reports on or before deadlines outlined in the Letter of Project Approval.

e. Submit final financial report/requests for reimbursement on the project as outlined in the Letter of Project Approval.

f. Ensure co-branding with the VGF and AmeriCorps logos on all AmeriCorps and VGF program materials and publicity, including all brochures, t-shirts and other related items. Ensure that the Martin Luther King, Jr. logo is also included where the VGF Letter of Project Approval includes an MLK project.

30. Serve Kentucky may mobilize Kentucky AmeriCorps program staff and AmeriCorps members to deploy and help communities prepare for, respond to and recover from disasters. (See [Serve Kentucky AmeriCorps Program Director Guidance](#) for guidance and policy.)

## 2.01-Deliverables

In accordance with the AmeriCorps State and National Grants awarded by the Corporation for National and Community Service, the Second Party shall adhere to all Federal Goals and Performance Measures set forth in all Applications for Federal Assistance submitted as required to the Corporation for National and Community Services for AmeriCorps State and National Grants FY 2020 and FY 2021, which are incorporated herein by reference, as if fully set forth herein. Second party shall provide the AmeriCorps program, as outlined within the referenced application, from August 1, 2020, through August 31, 2022.

## 2.02-Reporting Requirements

Second Party shall:

1. Submit an end-of-year progress report including continuous improvement issues such as performance measures, volunteer management and recruitment, and member enrollment and retention statistics to Serve Kentucky, according to the schedule outlined below. All such reports shall be submitted using an online information system approved by Serve Kentucky. In addition, member time logs shall be submitted quarterly on or before the 15th of the month following the end of the quarter for which the time log is being submitted using the federally-based electronic information system. Program close out documents covering the period September 1 through the end of the program year shall be submitted no later than ten (10) days after the end of the term of this agreement. Electronic submission of all documents, reports and invoices shall be acceptable unless otherwise specified by Serve Kentucky. Reports shall be delivered to the Serve Kentucky Program Officer, unless otherwise specified. The Serve Kentucky Program Officer and Financial Officer may each alter the reporting schedules of their respective areas through email communication delivered to the subrecipient Program Director.

2. Use the Serve Kentucky reporting systems to report service activities performed under this agreement. Second Party shall be required to meet any compliance activities associated with the federally-based electronic information system. All forms can be obtained from the federally-based electronic information system or Serve Kentucky Financial Officer.

Summary of Reports – Time Period Covered – Due Dates

	<i>Document Description</i>	<i>Page 11</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

Enrollment and Time Reports: Due September 15, January 15, May 15, and July 15.

End-of-Year Progress Report (Covers entire program year): Due no later than 30 days following the scheduled end of the program year.

Program close out documents: Due No later than thirty (30) days following the scheduled end of the program year.

Invoices and PERs: Due on the 15th of every month; covers expenditures in the previous month.

Federal Financial Report (FFR)--Due April 15; covers expenditures from the beginning of program year through March 31

Federal Financial Report (FFR), Equipment and Residual Supplies Inventory statement—Due no later than thirty (30) days after the end of each program year; FFR covers April 1 through the end of program year. Equipment and Residual Supplies Inventory is as of the end of the program year.

### **2.03-Subcontractors**

Subcontractors will be not considered acceptable for this contract, unless such expenditures are designated within the application budget submitted and approved as set forth in the Application for Federal Assistance.

### **2.04-CHFS/Serve Kentucky Responsibilities**

Serve Kentucky may:

- A. Provide invoice forms and instructions to complete the contract requirements.
- B. Ensure that all policy decisions, changes, interpretations, and reinterpretations affecting this contract are distributed promptly to the program established.
- C. Provide the Sub Grant numbers for each program name along with the awarded Member Service Years (MSYs), awarded Members and awarded CNCS funds.

### **2.05-Monitoring Requirements**

The Second Party hereby acknowledges and agrees that Serve Kentucky may monitor each subrecipient in accordance with 2 CFR 200.331. The Second Party acknowledges and agrees that Serve Kentucky may use standardized monitoring procedures to conduct an onsite and/or desk review(s) of each eligible entity, in accordance with applicable law, to determine whether the Second Party has met the performance goals, administrative standards, financial management requirements, organizational standards and other requirements of the Terms and Conditions for AmeriCorps State and National Grants, as specified by the federal awarding agency. Serve Kentucky may also conduct on-site visits to program sites.

### **2.06-Related Documents and Materials Incorporated by Reference**

All Notices of Grant Awards (NGA) and related Program Summary Charts issued by CNCS.

Program Application and Budget as submitted to CNCS.

Terms and Conditions (General and Specific) for AmeriCorps State and National awards, Certificates and Assurances, available at: <https://www.nationalservice.gov/resources/terms-and-conditions-cnccs-grants>.

Title 2 CFR 200, in its entirety, and 45 CFR Chapter XXV as applicable to AmeriCorps programs.

National and Community Service Act of 1990 (42 USC 12501 et seq.)

	<i>Document Description</i>	<i>Page 12</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

### SECTION 3-PRICING

The Second Party hereby acknowledges and agrees that it shall follow any and all requirements imposed by the law, the governmental entities, or the specific grants or other sources providing the funding for this Contract. The Second Party further acknowledges and agrees that, in the event that there is a final determination that any such requirements were violated or that any funds provided pursuant to this Contract were either handled, spent, paid, matched, maintained, documented, or supported insufficiently or inappropriately, any recoupment of such funds or any other damages related thereto, which are suffered by the Cabinet, shall be specifically subject to the indemnification provisions of this Contract. Detailed description of services shall be provided.

The Second Party shall submit monthly invoices, no later than the 15th of every month, for reimbursement of services performed during the previous month, in accordance with this Section. Monthly payments as requested on these invoices shall be in accordance with the budget submitted by the Second Party to CNCS and Serve Kentucky. Said budget is set forth in the Application for Federal Assistance submitted to the Corporation for National and Community Services for AmeriCorps State and National Grants, which is incorporated herein by reference, as if fully set forth herein. Payments must be submitted by using the "Payment Request Form" to be provided by Serve Kentucky. This invoice form is to be completed in a manner prescribed by Serve Kentucky, using the invoice format supplied by Serve Kentucky and submitted by email to [CHFSServeKY@ky.gov](mailto:CHFSServeKY@ky.gov) or delivered to the following address when requesting any and all payments associated with this contract:

Cabinet for Health and Family Services  
 Department for Family Resource Centers and Volunteer Services  
 Serve Kentucky  
 275 East Main Street, 3W-E  
 Frankfort, Kentucky 40601-2321  
 Email: [CHFSServeKY@ky.org](mailto:CHFSServeKY@ky.org)

All monthly invoices for reimbursement must be accompanied by a monthly financial report called Program Expense Report (PER). The Program Expense Report (PER) format shall be provided to the Second Party by Serve Kentucky.

Serve Kentucky may at any time request copies of any and all supporting documentation of all requests for payment (monthly invoices) made in association with this contract, for any given month or months. Additionally, the Second Party shall be prepared to supply any and all monthly general ledger printouts upon request, along with any explanation and/or clarification of the accounting codes.

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

The Contractor shall submit invoices in the format provided by Serve Kentucky, and must include at a minimum:

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

Example

Monthly Invoice: Dates of Service from: July 1, 2020 to: July 31, 2020



	<i>Document Description</i>	<i>Page 13</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

4. Date of Invoice (date invoice is prepared). July's invoice should be prepared no later than August 15, 2020.
5. Total amount due for the current billing cycle.
6. Cumulative total for all invoices to date.
7. Detailed description of services provided.

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

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

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

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

#### **4.00.01-Contract Components and Order of Precedence**

The Commonwealth's acceptance of the Contractor's offer indicated by the issuance of a Contract Award by the Department named on page 1 of this Contract and approved by the Division of Procurement and Grant Oversight, the Finance and Administration Cabinet and filed with the Government Contract Review Committee shall create a valid Contract between the Parties consisting of the following:

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

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

#### **4.00.02-Term of Contract**

The term of the Contract is to be for the period of August 1 2020 through August 31, 2022.

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

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

#### **4.00.03-Changes and Modifications to the Contract**

Pursuant to [200 KAR 5:311](#), no modification or change of any provision in the Contract shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the Contractor and the Commonwealth, and incorporated as a written amendment by the Department prior to the effective date of such modification or change. Modification shall be subject to prior approval from the Secretary of the Finance and Administration Cabinet, or this authorized designee, and the LRC Government Contract Review Committee. Memoranda of Understanding, written clarification, and/or correspondence shall not be construed as amendments to the Contract.

	<i>Document Description</i>	<i>Page 14</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

If the Contractor finds at any time that existing conditions make modification of the Contract necessary, it shall promptly report such matters to the Contract Specialist identified on page 1 for consideration and decision.

#### **4.00.04-Notice**

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

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

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

#### **4.00.05-Renewals**

Not applicable to Memorandum of Agreements.

#### **4.00.06-LRC Policies**

Pursuant to [KRS 45A.725](#), LRC has established policies which govern rates payable for certain professional services. These are located on the LRC webpage and would impact any contract established under [KRS 45A.690 - 45A.725](#), where applicable.

A link to the LRC webpage is as follows:

See: <http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>

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

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

This contract shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. Any action brought against the Commonwealth on the contract, including but not limited to actions either for breach of contract or for enforcement of the contract, shall be brought in Franklin Circuit Court, Franklin County, Kentucky in accordance with [KRS 45A.725](#).

#### **4.00.08-Authorized to do Business in Kentucky**

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

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

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

Pursuant to [KRS 45A.725](#), an agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity required by [KRS 14A.9-010](#) to obtain a certificate of authority to transact business in the Commonwealth ("certificate") from the Secretary of State under [KRS 14A.9-030](#). If the foreign entity is not required to obtain a



	<i>Document Description</i>	<i>Page 15</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

certificate as provided in [KRS 14A.9-010](#), the foreign entity should identify the applicable exception. Foreign entity is defined within [KRS 14A.1-070](#).

#### **4.00.10-Payment**

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

#### **4.00.11-Expenses**

##### **Travel expenses, if authorized:**

The Contractor shall be paid for no travel expenses unless and except as specifically authorized by the specifications of this Contract or authorized in advance and in writing by the Commonwealth. Either original or certified copies of receipts must be submitted for airline tickets, hotel bills, restaurant charges, rental car charges, and any other miscellaneous expenses.

##### **Other expenses, if authorized herein:**

The Contractor shall be reimbursed for no other expenses of any kind, unless and except as specifically authorized within the specifications of this Contract or authorized in advance and in writing by the Commonwealth.

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

#### **4.00.12-Purchasing and specifications**

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

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

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

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

#### **4.00.14-Campaign Finance**

The Contractor certifies that neither the Contractor nor any member of the Contractor's immediate family having an interest of ten percent (10%) or more in any business entity involved in the performance of this Contract, has contributed more than the amount specified in [KRS 121.056\(2\)](#), to the campaign of the gubernatorial candidate elected at the election last preceding the date of this Contract. The Contractor further swears under the penalty of perjury, as provided by [KRS 523.020](#), (i) that neither the Contractor nor the company that the Contractor represent, has knowingly violated any provisions

	<i>Document Description</i>	<i>Page 16</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

of the campaign finance laws of the Commonwealth, and (ii) that the award of a contract to him/her or the company which the Contractor represent will not violate any provisions of the campaign finance laws of the Commonwealth.

#### **4.00.15-Social Security**

The parties are cognizant that the state is not liable for social security contributions, pursuant to [42 U.S. Code, Section 418](#), relative to the compensation of the Contractor for this Contract.

### **4.01-General Provisions**

#### **4.01.01-Headings**

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

#### **4.01.02-Assignment**

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

#### **4.01.03-No Required Use of Contract**

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

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

#### **4.01.04-Severability**

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

#### **4.01.05-Indemnification**

The Contractor shall indemnify and hold harmless CHFS and its agents, representatives, officers, directors, employees, insurers, successors, and assigns from and against any and all expenses, costs (including attorneys' fees), causes of action, liability, loss and/or damages suffered or incurred by it or any of them, that results from or arises out of (a) this Contract; (b) any and all acts of the Contractor and or its Subcontractor(s); (c) the policies and procedures of the Contractor, specifically including all Contractor employment practices employed by the Contractor during the term of this or any prior Agreement with CHFS; (d) any dishonest, fraudulent, criminal, or negligent or unauthorized acts or errors or omissions which are committed by the Contractor or any of the Contractor's employees or agents or Subcontractors; (e) the publication translation, reproduction, delivery, performance, use or

	<i>Document Description</i>	<i>Page 17</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

disposition of any data produced by CHFS in an unauthorized manner, provided that such action was not taken by the Contractor or as a result of the express written request of CHFS; or (f) the Contractor's failure to comply with any applicable state or federal laws or regulations.

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

**4.01.06-Sovereign Immunity**

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

**4.01.07-Force Majeure**

Neither Party shall be liable for public utility performance (e.g., Postal Service, Telephone, or Water Company) or for the consequence of public utility non-performance. Events or conditions beyond the reasonable control of the Parties, such as natural disasters, fires, floods, elements, transportation crashes, or utility failures shall not be construed as non-performance, nor shall reductions be applied as a result of such events, provided that CHFS shall have the right to obtain the necessary services elsewhere in the event of such non-performance by the Contractor and the Parties shall negotiate in good faith any appropriate offset to the compensation payable under this Contract. The Contractor shall cooperate and shall require that any Subcontractor cooperate with CHFS in such event. The existence of such causes of delay or failure will extend the period of performance in the exercise of reasonable diligence until after the causes of delay or failure have been removed. Each Party must inform the other, orally or in writing, as soon as possible of the existence of a force majeure event. In order to preserve this right as a defense each Party must inform the other in writing, with confirmation of receipt, within twenty (20) business days of the existence of a force majeure event or otherwise waive this right as a defense.

**4.01.08-Maintenance of Insurance**

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

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

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

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



	<i>Document Description</i>	<i>Page 18</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

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

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

The Contractor shall:

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

**4.01.10-Permits, Licenses, Taxes, and Laws**

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

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

**4.01.11-Legal Proceedings**

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

**4.01.12-No Grant of Employment or Agency**

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

At no point shall any individual providing services under this Contract be considered a full-time or part-time employee of CHFS, for any purpose, including but not limited to unemployment, taxes, withholding, health insurance, liability, retirement, Workers' Compensation, vacation, sick or other leave, the Family Medical Leave Act, accrued benefits, evaluations, or any other purpose. At all times, any such individual

	<i>Document Description</i>	<i>Page 19</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

shall be considered and deemed to be an employee, volunteer, or independent contractor of the Contractor.

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

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

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

1. The Contractor will not discriminate against anyone applying for or receiving assistance or services based on race, religion, color, national origin, sex, disability, age, political beliefs or reprisal or retaliation for prior civil rights activity or any other protected class identified in federal, state or local laws. The Contractor agrees to comply with the provisions of the [Kentucky Civil Rights Act](#), the Americans with Disabilities Act of 1990 as Amended (ADA), Section 1557 of the Patient Protection and Affordable Care Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, as applicable, and all other applicable federal, state and local regulations relating to prohibiting discrimination.
2. The Contractor will take action to ensure that service applicants and recipients are given services in the same manner, based on eligibility, and are not based on membership in a protected class: denied aid, care, services, or other benefits provided under this Contract; subjected to segregation or different treatment in any matter related to receipt of assistance; restricted in any way in the enjoyment of any advantages or privileges enjoyed by others receiving similar services; given different treatment in determining eligibility; or meeting other requirements or conditions that must be met to receive benefits.
3. The Contractor agrees to post in conspicuous places, available to program or service applicants or recipients, notices setting forth the provisions of this non-discrimination clause.
4. In all program or service solicitations or advertisements placed by or on behalf of the Contractor, the Contractor will state that they will not discriminate against anyone applying for or receiving assistance or services based on race, religion, color, national origin, sex, disability, age, political beliefs, or reprisal or retaliation for prior civil rights activity, or any other protected class identified in federal, state, or local laws.
5. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be cancelled, terminated or suspended in whole or in part, and such other sanctions that may be imposed and remedies invoked as provided in or as otherwise provided by law.
6. In compliance with the prohibition against Disability discrimination and in compliance with the implementing guidance for the Americans with Disabilities Act issued by the Department of Justice, the Contractor agrees to provide, free of charge, appropriate accommodations for applicants or recipients with disabilities, including auxiliary aids and services for persons with disabilities who require alternative means of communication.
7. In compliance with the prohibition against National Origin discrimination and, by extension discrimination based on Limited English Proficiency (LEP), the Contractor agrees to provide meaningful language assistance measures free of charge to program or service applicants or recipients with Limited English Proficiency. The language services shall:

	<i>Document Description</i>	<i>Page 20</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

- A. Be consistent with the general guidance document issued by the Department of Justice, which sets forth the compliance standards recipients of federal financial assistance must follow to ensure that LEP persons have meaningful access to the program's services and activities;
- B. Have a method of identifying LEP individuals; and
- C. Provide language assistance measures (e.g., oral interpretation and written translation services; training of staff; note to LEP persons of availability of language access assistance; monitoring compliance, etc.).

**4.02-Contract Performance**

**4.02.01-Service Delivery Requirements**

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

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

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

In addition to Section 4.00.12-Expenses, CHFS shall have the right to recoup the amount of any overpayment, regardless of the reason for the overpayment. Any reconciliation or settlement of fund balances contained in the Summary Line Item Section of this Contract shall be negotiated between CHFS and the Contractor and determined as soon as feasible before the end of the scope of work as set forth under the Contract.

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

**4.02.03-Subcontractors**

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

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

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

**4.02.03.01-Responsibility for Subcontractor Contract Requirements**



	<i>Document Description</i>	<i>Page 21</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

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

No obligation or right of the Contractor under this Contract shall be subcontracted to another, without prior written approval, of CHFS after CHFS has had the opportunity to review all contract documents setting forth the terms and conditions for the subcontract. The Contractor, upon the Cabinet's request, shall submit the subcontract for approval to the Contract Specialist identified on page 1.

**4.02.03.02-Subcontractor Monitoring Requirements**

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

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

**4.02.04-Indirect Cost**

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

**4.02.05-Financial Record Retention**

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

**4.02.06-Confidential Information**

The Contractor shall comply with the state and federal rules and regulations governing access to and use of information and data provided by CHFS or collected by the Contractor, and will use such information or data only for those purposes expressly delineated, defined, and authorized in this Contract. The provisions of the Privacy Act of 1974, 5 U.S.C. § 552a. The Contractor shall instruct its employees to use the same degree of care as it uses with its own data to keep confidential information concerning client data, the business of the Commonwealth, its financial affairs, its relations with its citizens and its employees, as well as any other information that may be specifically classified as confidential by the Commonwealth in writing to the Contractor. The Contractor agrees to ensure that all confidential information and data shall remain confidential. The Contractor shall have an appropriate agreement with its employees to that effect.

	<i>Document Description</i>	<i>Page 22</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

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

The Contractor shall permit unrestricted access on demand to personnel of the Cabinet, the Office of the Attorney General, the Office of the Auditor of Public Accounts, and any representative of a government funding agency authorized to review records for audit or investigation purposes to its current policies and procedures for ensuring compliance with these confidentiality requirements, the confidentiality agreements with its personnel, and Subcontractor confidentiality assurances.

The foregoing will not apply to:

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

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

#### **4.02.07-HIPAA Confidentiality Compliance**

The Contractor agrees to abide by the "HIPAA Privacy Rule," [45 CFR Parts 160](#) and [164](#) established under the Health Insurance Portability and Accountability Act, Public Law 104-191 ([42 USC 1320d](#)).

#### **4.02.08-Response/Compliance with Audit Findings**

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

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

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

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

Any proposed research project undertaken under the terms and conditions of this Contract shall follow the procedures and protocols established under [920 KAR 1:060](#) that provide for a Cabinet review of

	<i>Document Description</i>	<i>Page 23</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

research projects supported or funded in whole or in part through CHFS. If the proposed research project involves human subjects, it shall comply with federal regulations [45 CFR 46](#) and the requirements of the Cabinet's Institutional Review Board for the Protection of Human Subjects, which CHFS is required to establish and maintain to protect the rights and welfare of human subjects of research conducted or sponsored by CHFS. The project manager assigned by CHFS will provide all documentation and protocols for review and approval by the CHFS Institutional Board. No research may begin until such time as the Board reviews and approves the project.

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

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

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

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

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

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

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

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

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

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

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

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

###### **D. Request for Extension**

Upon request, CHFS may extend the time allowed for both a response to the Letter of Concern and a Corrective Action Plan depending upon the nature of the deficiency. The Contractor shall request an extension of time in writing from the representative designated in the Letter of Concern or the written deficiency notice. The written request shall contain a justification and proposed extension



	<i>Document Description</i>	<i>Page 24</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

period. If an extension is granted, the penalty per day for both a late Letter of Concern or a late Corrective Action Plan would begin after the expiration of the extension period.

2. Failure to Correct any identified deficiency may result in action pursuant to Section 3.00 Cancellation clause of this Contract.

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

- A. Resolution within 30 days: at least 75% will be reimbursed to Contractor.
- B. Resolution within 60 days: at least 50% will be reimbursed to Contractor.
- C. Resolution within 90 days: at least 25% will be reimbursed to Contractor.
- D. Resolution after 90 days: total penalty withholdings are forfeited.

**4.02.11-Performance and Evaluation**

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

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

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

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

Contractors that receive Personal Information as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, [KRS 61.931](#), [KRS 61.932](#), [KRS 61.933](#), and [KRS 61.934](#), (the "Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

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

The Contractor shall notify as soon as possible, but not to exceed seventy-two (72) hours, the contracting agency, the Commissioner of the Kentucky State Police, the Auditor of Public Accounts, and the Commonwealth Office of Technology of a determination of or knowledge of a breach, unless the exception set forth in [KRS 61.932\(2\)\(b\)2](#) applies and the Contractor abides by the requirements set forth in that exception. If the agency is a unit of government listed in [KRS 61.931\(1\)\(b\)](#), the Contractor shall notify the Commissioner of the Department of Local Government in the same manner as above. If the agency is a public school district listed in [KRS 61.931\(1\)\(d\)](#), the Contractor shall notify the Commissioner of the Department of Education in the same manner as above. If the agency is an educational entity listed under [KRS 61.931\(1\)\(e\)](#), the Contractor shall notify the Council on Postsecondary Education in the same manner as above. Notification shall be in writing on a form developed by the Commonwealth Office of Technology.

	<i>Document Description</i>	<i>Page 25</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

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

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

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

In accordance with [KRS 61.932\(2\)\(a\)](#) the Contractor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth Office of Technology:

See:

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

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

##### **4.03.01-Remedies for Breach**

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

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

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

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

The Contractor shall:

1. Provide detailed transition documents at no additional cost to CHFS.
2. Be responsible for the orderly transition of work and the accuracy of data in coordination with the new Contractor. CHFS shall ensure the cooperation of the new Contractor to facilitate a smooth transition.
3. Within ten (10) calendar days after written notification by CHFS of the initiation of transition, provide a detailed Transition Document. Upon receipt of the detailed Transition Document by CHFS, CHFS shall review the document and within fourteen (14) calendar days provide written instructions to the Contractor as to the packaging, documentation, delivery location, and delivery date of all records, as needed to provide orderly transition. If CHFS determines upon review that the Transition Document is missing necessary information, CHFS shall provide the Contractor written instructions as to the information that is still needed, and the Contractor shall amend the Transition Document to include the necessary information.
4. Deliver a full and complete accounting and report as of the date of termination about the status of services. This report shall be provided to CHFS within twenty-one (21) days of the effective date of termination.

	<i>Document Description</i>	<i>Page 26</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

5. Transfer all documents and records of every kind, including electronic, microfilm, paper, or otherwise, in their possession that pertain to this Contract, including but not limited to, all those listed in the contract, within twenty-one (21) days of the effective date of termination. All documents shall be in a CHFS-approved format.

6. Provide reasonable and appropriate assistance to CHFS and its designee(s) regarding the contents of such documents and records, and shall provide reasonable and appropriate reference materials, including data models and file documentation. This assistance shall be provided to the CHFS within twenty (20) days of the effective date of termination.

7. Pay any and all additional costs incurred by CHFS that are the result of the Contractor's failure to provide the requested records, documents, data or materials within the time frames agreed to in the Transition Document.

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

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

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

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

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

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

##### **4.04.03-Code of Ethics**

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

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

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

##### **4.04.05-Scientific Misconduct**

The Contractor shall set out a procedure for the inquiry, investigation, appeal, and disposition of complaints alleging misconduct in activities involving any and all research projects funded, in whole or in part, with federal funds included in this Contract, and as authorized under the Public Health Services research grants. Such policies and procedures shall be in accordance with the provisions of 42 CFR

	<i>Document Description</i>	<i>Page 27</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

Part 50 and 900 KAR 1:080, as amended, and shall be made available, upon request, to CHFS. The Contractor shall immediately report to CHFS any activity reported to the Contractor under these terms and conditions. Notice shall be sent in writing to the Department.

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

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

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

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

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

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

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

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

#### **4.04.08-Business Associate Agreement**

A Business Associate Agreement has been determined to be unnecessary for this Agreement.

## **SECTION 5-FEDERAL REQUIREMENTS**



	<i>Document Description</i>	<i>Page 28</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

If federal funds are utilized, the Contractor is responsible for complying with all provisions of [2 CFR Part 200, Appendix II](#), regarding Contract provisions for non-federal entity Contracts under federal award.

The following terms shall apply:

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

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

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

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

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

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

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

##### **5.00.03-Certification of Lobbying Activities**

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit [Standard Form-LLL](#), "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by [Section 1352, Title 31, U.S. Code](#). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

##### **5.01-Subrecipient Provisions**

This Contract has been identified as a sub-recipient agreement. Therefore the Contractor (subrecipient) and all lower tier sub-recipients shall comply with the provisions of [2 CFR, Part 200](#), Uniform Administrative



	<i>Document Description</i>	<i>Page 29</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), and the federal funding agency implementing regulations, in their entirety.

Federal agency implementing regulations for the Uniform Guidance are located as follows:

- [2 CFR Part 300](#), Department of Health and Human Services
- [2 CFR Part 400](#), Department of Agriculture
- [2 CFR Part 800](#), Department of Veterans Affairs
- [2 CFR Part 900](#), Department of Energy
- [2 CFR Part 1500](#), Environmental Protection Agency
- [2 CFR Part 2200](#), Corporation for National and Community Service
- [2 CFR Part 2400](#), Department of Housing and Urban Development
- [2 CFR Part 2800](#), Department of Justice
- [2 CFR Part 2900](#), Department of Labor
- [2 CFR Part 3400](#), Department of Education

Unless otherwise indicated by this Agreement, this sub-award does not include Research and Development.

The Contractor (sub-recipient) and all lower tier sub-recipients shall adhere to all the requirements of the federally approved grant application, Notice(s) of Grant Award and Terms and Conditions. The Contractor shall be fully liable for federal refund of any deficiencies identified in audit, state or federal review.

#### **5.01.01-Federal Funding Accountability and Transparency Act Compliance**

The Contractor shall comply with the Federal Funding Accountability and Transparency Act (FFATA or Transparency Act - [P.L. 109-282](#), as amended by Section 6202(a) of [P.L. 110-252](#)), in accordance with [2 CFR, Part 170](#), including registration of a Data Universal Numbering System (DUNS) identifier number if the amount of Federal funding awarded to the Contractor is \$25,000.00 or more. Details on how to register and acquire a DUNS number are available at <http://fedgov.dnb.com/webform>, and are free for all entities required to register for grant awards under these provisions. The Contractor must disclose to CHFS the names of the top five executives and total compensation to each, if:

1. More than 80% of the Contractor's annual gross revenues originate from federal funds (received directly or indirectly), and those revenues are greater than \$25,000,000.00 annually; and
2. Compensation information is not already available to the public (such as, through reporting under the Securities Exchange Act of 1934. [See 2 CFR, Part 170](#) for additional details regarding executive compensation requirements).

#### **5.01.02-Audit Requirements**

The Contractor (sub-recipient) shall have an audit conducted in accordance with Generally Accepted Government Auditing Standards and [2 CFR, Part 200](#), Uniform Guidance, Subpart F – Audit Requirements. 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 fiscal year period of the contract duration, and a copy of the Contractor's audit report(s), federal schedule of expenditures, supplemental information by cost center and/or program and audit findings with corrective action plan shall be submitted to the Contract Specialist within nine (9) months after the fiscal year end.

Should the audit report refer to a separate management letter of findings, the Contractor 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 [2 CFR, Part 200](#), Subpart F.

	<i>Document Description</i>	<i>Page 30</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

The audit report shall include a schedule of expenditures of federal awards and all federal award identification information as stipulated by [2 CFR, Part 200, Subpart F](#) requirements.

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 state fiscal year. The Contractor shall include in the supplemental information a list of their sub-recipients of federal monies received through this Agreement and provide their sub-recipient name, DUNS, Catalog of Federal Domestic Assistance (CFDA) number and description, sub-recipient's expenditures and related contract number in addition to all other information as required in [2 CFR, Part 200](#).

A copy of the engagement letter shall be submitted to the agency contact identified in the Contract Commodity Line 1 Extended Description no later than three (3) months prior to the Contractor's fiscal year end, unless CHFS 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 the Contract Commodity Line 1 Extended Description no later than three (3) months prior to fiscal year end, unless that office or its designee grants an extension in writing.

#### **5.01.03-Response/Compliance with Audit Findings**

The Contractor shall take action to ensure its or a sub-recipient's or 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 Agreement. This action will include the Contractor's delivery to CHFS, for CHFS approval, a Corrective Action Plan that addresses deficiencies identified in any audit(s), review(s), or inspections(s) within thirty (30) calendar days of the close of the audit(s), review(s) or inspection(s).

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

1. Required by a Kentucky or federal law, regulation, rule or other audit requirement relating to the Contractor's business;
2. Performed by the Contractor as part of this Agreement; or
3. Necessary due to the Contractor's noncompliance with any law, regulation, rule or audit requirement imposed on the Contractor.

#### **5.01.04-Reporting Requirements**

1. Single Audit Report: When applicable, the Contractor shall ensure audit reports are made available through the Federal Audit Clearinghouse, in accordance with [2 CFR 200.512\(b\)](#), and shall provide notice of audit completion and availability within ten (10) calendar days of submission to the Federal Audit Clearinghouse, to the individual identified on page 1 of the Contract. If not required to submit audit reports through the Federal Audit Clearinghouse, the Contractor shall submit three (3) written copies of the audit report or an electronic copy to the individual identified on page 1 of the Contract no later than six (6) months following the end of the fiscal year audited, unless an extension is approved in writing by CHFS.

2. All reports and documentation: Electronic submission of required documents may be acceptable at the discretion of the Agency Contact identified on page 1 of the Contract.

#### **5.01.05-Indirect Cost**

The Contractor (sub-recipient) shall be reimbursed for indirect costs only where the Contractor incurs indirect costs in addition to costs that are reimbursed as direct program costs. Indirect cost rates shall be recognized in the following order:

1. The Contractor's federally approved negotiated rate, if one exists, shall be recognized for the purposes of charging indirect cost to the federal programs administered through this sub-recipient agreement, except where limited by federal statute. The Contractor shall submit the federally approved indirect cost rate document to the Contract Specialist identified on page 1 of the Contract. A federally approved negotiated rate may exist in cases where the Contractor conducts business



	<i>Document Description</i>	<i>Page 31</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

directly with the federal government other than as related to this Agreement. CHFS may issue an acceptance letter in addition to this Agreement to acknowledge the appropriate federally approved rate.

2. If no federally approved negotiated rate exists, the Contractor may request to utilize an indirect cost rate or cost allocation plan developed in accordance with [2 CFR, Part 200, Subpart E](#), by submitting a request and detailed indirect cost plan description to the Contract Specialist identified on page 1 of the Contract. Plan or rate approval must be evidenced by formal written acknowledgement by the Contractor as acceptable for purposes of billing, to be applied to federal programs except where limited by federal statute. If this option is approved, CHFS will issue a separate letter of acceptance which shall be valid for the term of this Agreement.

If options 1 or 2 above are not utilized, the Contractor may elect to utilize the de minimis rate (10% of Modified Total Direct Costs) as outlined in [2 CFR, §200.414\(f\)](#), for purposes of requesting reimbursement for indirect costs as a sub-recipient, to be applied to federal programs except where limited by federal statute.

#### **5.01.06-Cost Share or Matching**

If indicated elsewhere in this Agreement, the Contractor (Sub-recipient) shall provide the required match as outlined in the federally approved grant application. The Contractor shall be fully liable for federal refund of any match deficiencies identified in audit. The cost sharing or matching contributions shall meet all of the following criteria:

- Are verifiable from the Contractor's records;
- Are not included as match contributions for any other federal award;
- Are necessary and reasonable for accomplishment of project or program objectives;
- Are allowable under [2 CFR Part 200, Subpart E](#) – Cost Principles;
- Are not paid by the federal government under another federal award, except where the federal statute authorizing a program specifically provides that federal funds made available for such program can be applied to matching or cost sharing requirements of other federal programs and written authorization has been received from the other federal program; and
- Conform to other provisions of [2 CFR, Part 200](#), and the federal funding agency implementing regulation for [2 CFR, Part 200](#), as applicable.

#### **5.01.07-Additional Information Required Under 2 CFR §200.331(a)(1)**

2 CFR §200.331(a)(1), Federal Award Identification, stipulates the data elements to be identified for each sub-award. Due to differences in timing of the state fiscal year based contract document compared with differing federal grant award dates, some of the information required under this provision may not be available at the time of contract issuance. Where feasible, required information will be included in the Extended Description of each federal Commodity Line beginning on page 1 of this document. In addition to the resources listed below, the Contractor may request updated information from the Contract Specialist identified on page 1 of the Contract at any time during the contract period.

Required information is located as follows:

- (i) Subrecipient name (which must match the name associated with its unique entity identifier); (See Contract Header Attachment – Contractor DUNS Listing)
- (ii) Subrecipient's unique entity identifier; (See Contract Header Attachment – Contractor DUNS Listing)
- (iii) Federal Award Identification Number (FAIN); (See Extended Description within each federal Commodity Line, beginning on page 1 of this document. Updates to FAINs will be made available directly to subrecipients via file access, internet access or through direct correspondence, as determined by each Department.)

	<i>Document Description</i>	<i>Page 32</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

- (iv) Federal Award Date (see §200.39 Federal award date); (See Note A, below)
- (v) Subaward Period of Performance Start and End Date; (See Extended Description within each Federal Commodity Line, beginning on page 1 of this document or within Section 3.00.02.
- (vi) Amount of Federal Funds Obligated by this action; (See Note A, below)
- (vii) Total Amount of Federal Funds Obligated to the subrecipient; (See federal program totals per Commodity Line for amounts awarded to the Subrecipient)
- (viii) Total Amount of the Federal Award; (See Note A, below)
- (ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA); (See Note B, below)
- (x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official, (See Note A, below)
- (xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement; (See CFDA number included with each federal Commodity Line, beginning on Page 1 of this document. Corresponding CFDA Official Titles are publically available at [www.CFDA.gov](http://www.CFDA.gov))
- (xii) Identification of whether the award is R&D (See Note C, below); and
- (xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs). (Indirect Cost rates are specific to each Subrecipient based on Section 4.01.05-Indirect Cost, above)

**Note A:** This information is specific to the Notice of Grant Award (NGA) for the Prime Recipient (CHFS) rather than the Subrecipient. NGAs or equivalent federal documents will be made available directly to Subrecipients via file access, internet access or through direct correspondence, as determined by each Department.

**Note B:** Only the Prime Recipient (CHFS) submits FFATA information. Descriptions submitted by CHFS through FFATA are limited to the general program description. FFATA information is available publically at [www.USASPENDING.gov](http://www.USASPENDING.gov).

**Note C:** Unless specified in the Commodity Line Extended Description, subawards issued by CHFS do not contain Research and Development (R&D).

(Rev. 04/07/20)

	<i>Document Description</i>	<i>Page 33</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

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

**1.00 Effective Date:**

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

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

**2.00 EEO Requirements**

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

**3.00 Cancellation clause:**

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

**4.00 Funding Out Provision:**

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

**5.00 Reduction in Contract Worker Hours:**

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional

	<i>Document Description</i>	<i>Page 34</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

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

**6.00 Access to Records:**

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

**7.00 Violation of tax and employment laws:**

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

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

KRS 45A.485 also provides that, for the duration of any contract, the Contractor and all subcontractors performing work under the agreement shall be in continuous compliance

	<i>Document Description</i>	<i>Page 35</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

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

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

Contractor must check one:

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

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

**8.00 Discrimination:**

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

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



	<i>Document Description</i>	<i>Page 36</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

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

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

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

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

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

In the event of the Contractor's noncompliance with the nondiscrimination clauses of this agreement or with any of the said rules, regulations or orders, this agreement may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.

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



	<i>Document Description</i>	<i>Page 37</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

	<i>Document Description</i>	<i>Page 38</i>
2000001674	SUBRECIPIENT AmeriCorps C2343	

**Approvals**

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

**CHFS Cabinet Approval:**

\_\_\_\_\_  
Signature Title

\_\_\_\_\_  
Printed Name Date

**Contractor Approval:**

\_\_\_\_\_  
Signature Title

\_\_\_\_\_  
Printed Name Date

**CHFS Department Commissioner Review:**

\_\_\_\_\_  
Signature Title

\_\_\_\_\_  
Printed Name Date

**Approved as to form and legality:**

\_\_\_\_\_  
Attorney