



# Commonwealth of Kentucky

## CONTRACT MODIFICATION

OK AS TO FORM  
AMH 5-2-2025

**Document Number:** PON2 728 2400001647 **Version:** 2

**Record Date:**

**Document Description:** Vaccine Barriers to Immunization C4858

**Cited Authority:** FAP111-44-00  
Memorandum of Agreement

**Reason for Modification:** Modification #1  
April 3, 2025

Previous Contract Amount: \$324,650  
Increase Contract Amount: \$162,325  
New Contract Amount: \$486,975

The modification is being done to increase funding and to extend the contract until 06/30/2026 to address vaccine hesitancy and barriers to immunization among under immunized communities in Kentucky, including rural and urban minority communities to provide educational vaccine activities and events for students and families as well as pop up vaccine clinics. This will also provide an Advanced Practice Registered Nurse (APRN) who will serve as an on-site (all-in-one) Vaccines for Children (VFC) coordinator and establish a permanent VFC site at each location.

Buyer information has been updated.

Commodity Line 1 and Accounting Line have been revised.  
Commodity Line 2 has been added in its entirety.

Opening paragraph revised.  
Section 2 and 3 language has been revised.  
Section 4 has been updated to the latest boilerplate.

Finance terms have been updated.

### Issuer Contact:

**Name:** Desiree Douglas  
**Phone:**  
**E-mail:** Desiree.Douglas@Ky.Gov

<b>Vendor Name:</b>	<b>Vendor No.</b>	KY0035849
JEFFERSON COUNTY BOARD OF EDUCATION	<b>Vendor Contact</b>	
3332 NEWBURG RD	<b>Name:</b>	Hannah O. Lehman
LOUISVILLE	<b>Phone:</b>	5024857727
KY 40218	<b>E-mail:</b>	hannah.lehman@jefferson.kyschools.us

**Effective From:** 2024-07-01

**Effective To:** 2026-06-30

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
1		0.00000		Vaccine Barriers to Immunization	\$0.000000	\$324,650.00	\$324,650.00

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**Extended Description:**

Jefferson County Board of Education (JCBE) through Jefferson's County Public Schools (JCPS) shall address vaccine hesitancy and barriers to immunization among under immunized communities in Kentucky, including rural and urban minority communities.

Funding:  
100% Federal Funding  
CFDA#93.268

Agency Contact:  
Brandi Newhouse  
brandi.newhouse@ky.gov  
239-810-6968

Vendor Contact:  
Steven Leach  
stephen.leach2@jefferson.kyschools.us  
502-485-3947

Shipping Information:	Billing Information:
	CHFS DPH Division of Epidemiology HS2EA 275 E Main Street HS2EA  Frankfort KY 40621

Effective From: 2024-07-01      Effective To: 2026-06-30

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
2		0.00000		Vaccine Barriers to Immunization	\$0.000000	\$162,325.00	\$162,325.00

**Extended Description:**

100% Federal Funding  
CFDA#93.268

Shipping Information:	Billing Information:
	CHFS DPH Division of Epidemiology HS2EA 275 E Main Street HS2EA  Frankfort KY 40621

TOTAL CONTRACT AMOUNT	\$486,975.00
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## Modification History

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Buyer information has been updated.

The following Commodity Line (CL) and Accounting Line (AL) have been updated:

Commodity Line 2 has been added in its entirety.

Opening paragraph language has been revised.

Section 2.01 language has been revised.

Section 3.00 language has been revised.

Section 4.00.02 has been updated to the latest boilerplate.

Section 4.00.03 has been updated to the latest boilerplate.

Section 4.00.04 has been updated to the latest boilerplate.

Section 4.00.05 has been updated to the latest boilerplate.

Section 4.00.06 has been updated to the latest boilerplate.

Section 4.00.07 has been updated to the latest boilerplate.

Section 4.01.13 has been updated to the latest boilerplate.

Section 4.02.04 has been updated to the latest boilerplate.

Section 4.02.06 has been updated to the latest boilerplate.

Section 4.02.10 has been updated to the latest boilerplate.

Section 4.02.11 has been updated to the latest boilerplate.

Section 4.03.02 has been updated to the latest boilerplate.

Section 4.03.03 has been updated to the latest boilerplate.

Finance terms have been updated.



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**Memorandum of Agreement Terms and Conditions**  
**Regular (Government/Quasi-Governmental) (PON2)**

This Memorandum of Agreement (MOA) between the Commonwealth of Kentucky, Cabinet for Health and Family Services Department for Public Health (“the Commonwealth”) and Jefferson County Board of Education (“The Contractor”) to conduct “A Collaborative Approach Between Local Extension and Community Pharmacy to increase Vaccine Education and Immunization Rates in Diverse Populations in Kentucky”, which will combine efforts with partners to communicate the importance of disease preventable vaccines. The initial MOA is effective from 07/01/2024 through 06/30/~~2025~~ 2026.

**SECTION 1-ADMINISTRATIVE OVERVIEW**

**1.00-Purpose and Background**

The Kentucky Department for Public Health (KDPH), with 150 programs and (7) seven divisions, is dedicated to improving the health and safety of Kentuckians through prevention, promotion, and protection. Through education and collaboration, the Kentucky Division of Epidemiology and Health Planning Immunization Branch works to prevent and reduce the risk and incidence of vaccine preventable diseases throughout the state.

Jefferson County Board of Education (JCBE) through Jefferson County Public Schools (JCPS) is a large, urban public school district in Louisville, Kentucky. With more than 93,600 students and 6,200 teachers across 166 school sites, JCPS is the largest district in the state and the 29th largest in the U.S. Last year, 66% of JCPS students were eligible for free or reduced-price lunch due to low household income, 13% had an individualized education program due to disability diagnosis, and more than 3% experienced homelessness. Nearly two-thirds of the district’s students identify as students of color, and 14% are classified as English Learners.

The JCPS is seeking funding to reach their overarching goal of providing onsite vaccine education and vaccinations during the 2023-24 and 2024-25 school years at two JCPS locations serving our English Language Learner students: ESL Intake Center and Newcomer Academy.

**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 the behalf of the Department for Public Health Division of Epidemiology and Health Planning. 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 Issuer identified on page 1 is the point of contact during the procurement process and for communications concerning contract issues during the life of the contract. After the Award of the Contract, all contractual communications are to be sent to the Agency Contact Person listed in the Extended Description of Commodity Line 1. Notices by the Cabinet shall be sent to the Contractor representative listed in the Extended Description of Commodity Line 1. Unless otherwise stated, all notices, consents, and other contractual communications shall be in writing.

**1.03-Terminology**

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

- Vendor: Contractor, Offeror, The Second Party, Proposer
- Issuer of Contract: Buyer, Purchaser, Contract Officer
- Commonwealth of Kentucky: Commonwealth, State
- Cabinet for Health and Family Services: the Cabinet, the Department, the Agency, CHFS
- Fiscal Year is the Commonwealth fiscal year: July 1 through June 30
- Biennium is the Commonwealth biennium: July 1 of each even numbered year through June 30 of the next even numbered year.

**1.04-Organization**

This Contract is organized in the following manner:

Section 1-Administrative Overview

Section 2-Scope of Services



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Section 3-Pricing/Invoicing

Section 4-CHFS General Terms and Conditions

Section 5-Federal Requirements

Finance Terms and Conditions of the Contract

#### **1.05-Definitions/Acronyms**

1. JCBE – Jefferson County Board of Education
2. JCPS – Jefferson County Public Schools
3. KDPH – Kentucky Department for Public Health
4. APRN – Advanced Practice Registered Nurse
5. FRYSC – Family Resource and Youth Service Centers
6. ESL – English as a Second Language
7. LMOIA – Louisville Metro Office of Immigrant Affairs
8. LMPHW – Louisville Metro Public Health and Wellness
9. CBOs – Community-Based Organizations
10. VFC – Vaccines for Children

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

#### **2.00-Services Required**

JCPS shall conduct the following activities:

1. Hire two (2) Advanced Practice Registered Nurse (APRNs)
2. APRN's shall complete Vaccines for Children (VFC) Training
3. APRNs shall assess and administer all state-mandated immunizations to students at Newcomer Academy and the ESL Intake Center.
4. APRNs shall collaborate with internal (JCPS) and external partners for outreach and communication to increase vaccine awareness and confidence.
5. The Newcomer Academy APRN shall meet with the Family Resource and Youth Service Centers (FRYSC) monthly to coordinate family communications about VFC site status, upcoming vaccine clinics and classroom programs, and to provide immunization information.
6. APRN shall also work with existing JCPS immunization outreach staff to make calls to families regarding immunization needs for their student(s).
7. Both APRNs shall collaborate with La Casita Center, Somali Community of Louisville, Louisville Metro Office of Immigrant Affairs (LMOIA), and Louisville Metro Public Health and Wellness (LMPHW) to host vaccination events for the local international community.

#### **2.01-Deliverables**

JCPS shall conduct the following activities:

1. APRNs shall be expected to perform assessments on, develop immunization plans for, and/or administer vaccines.
2. By the end of each school year, 100% of international students who newly enrolled in JCPS that year will have received an immunization plan to educate families on the vaccinations needed by their student(s).
3. APRNs shall go to students' assigned schools to assess and administer vaccinations to students as needed.
4. Expand the staff and capacity of the JCPS to support these efforts and make sure they are sustainable beyond the grant period.
5. Partner with Community-Based Organizations (CBOs) to hold community vaccine events.
6. If federal funding is available in FY26, Immunizations will continue to support one APRN position in the anticipated amount of \$162,325 to continue the work included in this agreement. This line item is subject to removal if funds are not available.

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## 2.02-Reporting Requirements

JCPS shall be responsible for submitting a detailed monthly report including any successes, barriers, and challenges in addressing each of the eight listed under Section Two Scope of Services, 2.01 Services Required.

## 2.03-Subcontractors

Sub-contractors are allowable to ensure all services can be completed, but must be pre-approved by the Department for Public Health, Division of Epidemiology and Health Planning (DPH/DEHP) and meet the needs of the contract. In addition, they must adhere to the conditions set forth in Section 4.02.03-Subcontractors.

## 2.04-CHFS/Department for Public Health Responsibilities

CHFS and the Department for Public Health is responsible for:

1. Provide technical assistance and data specific to health information.
2. May provide GIS maps showing where communities in greatest need are across the Commonwealth.

## 2.05-Monitoring Requirements

KDPH may conduct an annual program performance and compliance site review of JCPS. Monitoring may consist of an off-site review of data and documentation. On-site reviews shall be conducted at the discretion of KDPH. A summary report will be provided by JCPS.

## SECTION 3-PRICING/INVOICING

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

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

The current approved budget is attached to this contract, with the understanding that individual line items within the budget are subject to change, as appropriate, but not to exceed the total contract amount of \$324,650.

Travel expenses are not to be charged to this contract.

Payment ~~shall be is~~ conditioned upon receipt of appropriate, accurate, and acceptable invoices submitted in a timely manner. Invoices for payment shall be submitted electronically to CHFSPayablesBranch@ky.gov. Invoices must be submitted no later than thirty (30) calendar days after completion of the service period.

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

1. Vendor's name and address.
2. PON2 number that invoice(s) are using for funding.
3. Clearly listed dates of service (from and to).
4. Date of Invoice (date invoice is prepared).
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 above requirements will be rejected and returned to the Contractor for re-invoicing.

## SECTION 4-CHFS GENERAL TERMS AND CONDITIONS

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

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

A valid contract between the Parties consists of the following:

1. This written Agreement, all attachments, 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 the Contract provisions, the order of precedence shall be as enumerated above.

#### 4.00.02-Changes and Modifications to the Contract

Pursuant to 200 KAR 5:311, no modification or change of any provision in the Contract shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the Contractor and the Commonwealth, and incorporated as a written amendment by the ~~Department-Cabinet~~ prior to the effective date



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of such modification or change. Modification shall be subject to prior approval from the Secretary of the Finance and Administration Cabinet, or ~~this-his or her~~ authorized designee, and the LRC Government Contract Review Committee. Memoranda of Understanding, written clarification, and/or correspondence shall not be construed as amendments to the Contract.

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

#### ~~4.00.03-Notice~~

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

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

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

#### ~~4.00.04-4.00.03~~ -LRC Policies

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

A link to the LRC webpage is as follows:

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

#### ~~4.00.06-4.00.04~~ -Choice of Law and Forum

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

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

#### ~~4.00.07-4.00.05~~-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.

#### ~~4.00.08-4.00.06~~-Registration with the Secretary of State by a Foreign Entity

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

#### ~~4.00.08 4.00.07~~-Payment

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

### 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. Neither this Contract nor any rights or obligations may be assigned, in whole or in part, without the prior written consent of CHFS, Division of Procurement and Grant Oversight, and the Finance and Administration Cabinet.

#### 4.01.03-No Required Use of Contract



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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. The Cabinet may establish or award other contracts for additional or related work, services, supplies, or commodities, and the Contractor shall fully cooperate with any 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**

If any part of this Contract is held by a court of competent jurisdiction to be illegal or in conflict with any law of the Commonwealth or the United States of America, the validity of the remaining parts 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 held to be invalid, if the remainder of the Contract is capable of performance.

#### **4.01.05-Indemnification**

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

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

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

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

#### **4.01.07-Force Majeure**

Events or conditions beyond the reasonable control of the Parties shall not be construed as non-performance, nor shall reductions be applied as a result of such events. Events or conditions beyond the Party's reasonable control include, but not are not limited to, natural or man-made disasters, weather events, transportation crashes, labor strike or shortage, war, riot or other civil unrest, or state or national declared emergency, including a pandemic, or public utility failures. However, CHFS retains the right to obtain any necessary services elsewhere in the event of such non-performance by the Contractor. In this event, 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 with confirmation of receipt, as soon as possible of the existence of a force majeure event. 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 force majeure event or otherwise waive this right as a defense to a claim by the other Party of non-performance.

#### **4.01.08-Maintenance of Insurance**

During 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 and shall require any Subcontractor to provide evidence of such coverage upon request.

If the Contractor and any Subcontractor are not self-insured, each shall name CHFS as an additional insured on any policy of coverage, except the Workers' Compensation and any reinsurance. The Contractor and any Subcontractor shall provide proof of coverage within five (5) business days of coverage upon request.

CHFS shall not be responsible for any premiums or assessments on any policy held by the Contractor or any subcontractor under this Contract. CHFS may, at its sole discretion, pay one or more premiums, if doing so would be in the Cabinet's best interest. Should CHFS exercise this option, the Contractor shall fully reimburse CHFS, either directly or by an offset against future payments.

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

The Contractor shall notify CHFS within five (5) business days of any cancellation or interruption of the Contractor or Subcontractor's insurance coverage. In any subcontract, the Contractor shall require that any Subcontractor also provide such notice to the Contractor and CHFS. Any insurance must remain in effect at all times during this Contract. If any insurance coverage expires during this Contract, the Contractor and any Subcontractor shall provide at least thirty (30) calendar days prior to the expiration date a new Certificate of Insurance evidencing coverage for not less than the remainder of the Contract.

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

The Contractor shall ensure that all licenses, registrations, and/or certifications necessary for performance under this Contract are in good standing and maintained at all times; readily accessible; and available for production upon request.

#### **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 related to this Contract. Any other taxes levied upon this Contract, shall be borne by the Contractor.

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

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

Except as specifically disclosed in writing to CHFS 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 this Contract or, if applicable, any subcontracts. The Contractor shall notify CHFS within one (1) business day, and in writing within three (3) business days, of any suits, investigations, or other proceedings involving the Contractor related to this Contract.

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

Nothing in this Contract shall be construed, in any way, as granting any individual providing services under the Contract any of the claims, privileges, or rights under KRS Chapter 18A or KAR Title 101. No individual providing services under this Contract shall be considered a full-time or part-time employee of CHFS, for any purpose, including but not limited to unemployment, taxes, withholding, health insurance, liability, retirement, Workers' Compensation, vacation, sick or other leave, the Family Medical Leave Act, accrued benefits, evaluations, or any other purpose. At all times, any such individual shall be an employee, volunteer, or independent contractor of the Contractor. No employee, volunteer, or independent contractor of the Contractor shall be a third-party beneficiary of this Contract or an agent of the Commonwealth.

#### **4.01.13-CHFS Discrimination Prohibited**

During this Contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment or any individual requesting or receiving services from Contractor ~~based on race, religion, color, national origin, sex, disability, age, political beliefs on the grounds of sex, including gender identity and sexual orientation, race, color, age, political belief, religious creed, disability, national origin,~~ veteran's status, ~~national origin,~~ or any other protected class identified in federal, state or local laws. The Contractor will not retaliate for prior civil rights activity. The Contractor agrees to comply with, as applicable, the Kentucky Civil Rights Act, the Americans with Disabilities Act of 1990 as Amended (ADA), ~~the ADA Amendments Act of 2008 (ADAAA),~~ Section 1557 of the Patient Protection and Affordable Care Act, Title VI of the Civil Rights Act of 1964, ~~Title IX of the Education Amendments of 1972, Section 11(c) of the Food and Nutrition Act of 2008, (as amended at 7 CFR 272.6(a)),~~ Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and all other applicable federal, state and local laws prohibiting discrimination.

2. 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 ~~and, if applicable, including the USDA And Justice for All Poster.~~

~~The Contractor agrees to post in a conspicuous place a notice informing individuals with limited English proficiency about the availability of free language assistance services in a language that they can understand.~~

~~The Contractor agrees to post in a conspicuous place a notice informing individuals with disabilities about the availability of free reasonable modifications and auxiliary aids and services in a format that they can understand. Both notices should also inform the public of the process for requesting these free services.~~



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3. In all program or service solicitations or advertisements related to this Contract and in all solicitations or advertisements for employees related to this Contract 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 (**including gender identity and sexual orientation**), 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.

4. In the event of the Contractor noncompliance with this section, this Contract may be terminated or suspended (in whole or in part); and/or other sanctions may be imposed and remedies invoked.

5. In compliance with the prohibition against **Disability-disability** discrimination and **in-compliance-with** the implementing guidance for the **Americans-with-Disabilities-Aet (ADA)** and the **ADAAA issued-by-the Department-of-Justice**, the Contractor agrees to provide, free of charge, appropriate accommodations and **reasonable modifications** for applicants or recipients with disabilities, including auxiliary aids and services for persons with disabilities who require alternative means of communication.

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

A. Be consistent with **any guidance documents 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** UDSA Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons With limited English proficiency (79 FR 70771) at <https://www.federalregister.gov/documents/2014/11/28/2014-27960/guidance-to-federal-financial-assistance-recipients-regarding-the-title-vi-prohibition-against>;

B. Have a method of identifying LEP individuals; and

C. Provide language assistance measures (e.g., **qualified and competent** oral interpretation and written translation services; training of staff; **note-notice** to LEP persons of availability of language access assistance; monitoring compliance, etc.).

#### 4.01.14-Staffing

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

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

#### 4.02-Contract Performance

##### 4.02.01-Service Delivery Requirements

All services provided by the Contractor shall be in accordance with all applicable federal and state statutes and regulations.

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

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

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

##### 4.02.03-Subcontractors

Subcontractors are allowable to ensure all services can be completed. Before engaging a Subcontractor or replacing a Subcontractor, the Contractor will notify CHFS and provide information regarding the proposed Subcontractor, including but not limited to, the proposed Subcontractor's relevant qualifications, experience, and key personnel. CHFS reserves the right to approve or disapprove any proposed Subcontractor.

##### 4.02.03.01-Responsibility for Subcontractor Contract Requirements

All references to the Contractor shall be construed to encompass both the Contractor and any Subcontractors of the Contractor. The Contractor's contract with any Subcontractor related to this Contract shall specify that all



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requirements of this Contract are applicable and binding on the Subcontractor. If requested, the Subcontractor must make available to the Contractor and CHFS, copies of personnel records and documentation of employees' compliance with this Contract.

**Prime** Contractor is responsible for carrying out the Affirmative Action Steps outlined in 2 CFR Part 200.321 when selecting subcontractors.

#### **4.02.03.02-Subcontractor Monitoring Requirements**

The Contractor shall monitor Subcontractors for compliance with this Contract and the specific provisions of the Contractor's contract with the Subcontractor.

#### **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 Contract records for not less than three (3) years after all Contract matters (e.g., audit, settlement of audit exceptions, disputes) are resolved and 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 state and federal law governing access to and use of information and data provided by CHFS or collected by the Contractor. The Contractor will use such information or data only for purposes expressly authorized in this Contract. The Contractor will keep all confidential information and data confidential. The Contractor shall have an appropriate agreement or policy with its employees to that effect. ~~Any dissemination of information about projects funded and the scope of work described in the terms and conditions of this Contract, must be fully documented and reviewed by the Cabinet's project manager before any representation, electronic or otherwise, of projects, their funding sources, use of data, or data analyses may be posted to a web page or otherwise published.~~

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

The Cabinet, the Office of the Attorney General, the Office of the Auditor of Public Accounts, or any representative of a government funding agency authorized to review records for audit or investigation purposes shall have unrestricted access on demand to The Contractor's policies and procedures for 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**

If applicable, 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 comply with and shall ensure any Subcontractor complies with any finding of noncompliance with any law, regulation, audit, inspection, or generally accepted accounting principle relating to this Contract. The Contractor will provide CHFS, for CHFS' approval, a Corrective Action Plan that addresses the deficiencies identified in any audit, review, or inspection within thirty (30) calendar days of the close of the audit, review, or inspection. The Contractor shall bear the expense of compliance with any noncompliance finding that impacts or is related to the Contractor's work under this Contract. Noncompliance may also result in penalties as described in Section 4.02.10-Performance-Based Penalties.

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



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If applicable, any proposed research project under this Contract shall follow the procedures and protocols in 920 KAR 1:060, which provides for the Cabinet's review of research projects supported or funded in whole or in part through CHFS. If the proposed research project involves human subjects, it shall comply with 45 CFR 46 and the requirements of the Cabinet's Institutional Review Board for the Protection of Human Subjects (IRB). The CHFS project manager will provide all documentation and protocols for review and approval by the CHFS IRB. No research may begin until the IRB 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 the contract for each instance of non-performance.

If the Cabinet elects not to exercise a penalty clause, this shall not be construed as a waiver of the Cabinet's right to pursue the future assessment of any performance standard requirement and associated penalties. The Cabinet 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-Agency Contact~~ 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~~ may 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-describe~~ the time and manner in which each deficiency is to be corrected. The plan shall be subject to approval by the Finance and Administration Cabinet or the ~~Department-Cabinet~~, 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. ~~The~~ Cabinet may reduce the time allowed for corrective action depending on 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 in 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 in up to a \$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 ~~designated~~ representative ~~designated in the Letter of Concern or the written deficiency notice and state~~. The ~~written~~ request shall contain a justification and proposed extension period. If an extension is granted, the penalty per day for both a late Letter of Concern or a late Corrective Action Plan would begin after the expiration of the extension period.

2. Failure to Correct any identified deficiency may result in an action pursuant to Finance Terms-~~Section 3.00~~ Cancellation of this Contract.

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

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

#### 4.02.11-Performance and Evaluation



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CHFS may complete a Performance Evaluation (PE) twice 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 for this Contract, contact the Issuer **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, communication, or technical support system. Such plans shall enable the Contractor to continue to meet all contractual requirements. The Contractor shall provide a copy of its plans upon request. All costs associated with activating and sustaining the execution of all plans shall be borne by the Contractor.

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

When applicable, contractors that receive Personal Information, as defined by KRS 61.931, shall secure and protect the Personal Information by complying with all applicable requirements of the Personal Information Security and Breach Requirements contained in KRS 61.931- KRS 61.934.

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 and 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/ociso/Pages/InformationSecurityPolicies,StandardsandProcedures.aspx>

The Contractor shall comply with all applicable notification provisions in KRS 61.932 and KRS 61.933. The Contractor agrees to undertake a prompt and reasonable investigation of any security breach, as defined in KRS 61.931, as required by KRS 61.933. Upon conclusion of an investigation of a security breach of Personal Information, the Contractor agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach. The Contractor agrees that the Commonwealth may withhold payment(s) owed to the Contractor for any violation of the requirements contained in KRS 61.931- KRS 61.934. The Contractor agrees to cooperate with the Commonwealth in complying with any response, mitigation, correction, investigation, and notification requirements of the Act.

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

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

In the event of a breach of contract by the Contractor, CHFS may pursue any remedy available to it under this Contract, KRS Chapter 45A, or by law. The remedies 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.

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

In the event of **insolvency, bankruptcy, dissolution, withdrawal, or the closure of business operations, the Contractor shall give the Commonwealth at least thirty (30) days written notice of such closure. In the event of non-renewal or termination, upon receipt of the required notice of non-renewal or termination, or the Contractor's closure of business operations**, 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.
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, within fourteen (14) calendar days, CHFS shall provide written instructions to the Contractor as to the packaging, documentation, delivery location, and delivery date of all records needed for an orderly transition. If CHFS determines that the Transition Document is missing necessary information, CHFS shall provide the Contractor written instructions as to the information that is still needed, and the Contractor shall amend the Transition Document to include the necessary information.



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4. Deliver a ~~full and~~ complete ~~accounting and~~ report ~~as of the date of termination about on~~ the status of services. This report shall be provided to CHFS ~~within twenty-one (21) days of the effective by the close of business on the~~ date of termination.

5. Deliver a complete accounting report to CHFS within ninety (90) days of the effective date of termination.

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

67. 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.

78. 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.

9. If the Commonwealth determines the Vendor was providing necessary, direct public services, the Vendor shall also notify any individual receiving such services of the non-renewal, termination, or closure of business operations and advise the individual of reasonable, alternative service options. The Vendor shall provide written certification to the Commonwealth once all individuals have been notified.

Such cost will be determined by the Finance and Administration Cabinet pursuant to KRS 45A.230.

#### 4.03.03 Disputes

The parties agree to take reasonable steps to resolve any disputes arising under this Contract.

#### 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 Contractor or its services are endorsed or preferred by the Commonwealth of Kentucky.

##### 4.04.02-Bankruptcy

In the event the Contractor becomes a 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 or a debtor-in-possession 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 personnel who may provide services under this Contract or any subcontract with the Contractor shall abide by any applicable code of ethics or conduct. Failure of the Contractor to abide by the applicable code of ethics may 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

If applicable, the Contractor shall set out a procedure for the inquiry, investigation, appeal, and disposition of complaints alleging misconduct in activities involving any 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 42 CFR Part 93 and shall be made available, upon request, to CHFS. The Contractor shall immediately notify CHFS of any activity reported to the Contractor under this section.

##### 4.04.06-Intellectual Property

Any formulae, methodology, or other reports and compilations of data provided by CHFS to the Contractor to meet the terms and conditions of this Contract shall be the exclusive property of CHFS. Any other use of these materials

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must be reviewed and approved in advance by CHFS. Any intellectual property owned by the Contractor prior to this Contract shall remain the exclusive property of the Contractor.

Any formulae, methodology, other reports, or compilations of data prepared or produced by the Contractor pursuant to this Contract shall, upon request, be made available for use by CHFS without charge. The Cabinet reserves a royalty-free, non-exclusive, and irrevocable right to reproduce, publish, or otherwise use the formulae, methodology, or other reports and compilations of data prepared or produced under this Contract.

#### **4.04.07-Data Use Agreement**

Not Required

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

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

### **SECTION 5-FEDERAL REQUIREMENTS**

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

#### **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 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, 2 CFR 180.300, 2 CFR 200.318, 2 CFR 200.303, and FAP 111-59-00, the Contractor certifies 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. If debarred during the life of the contract, the vendor shall notify the Commonwealth buyer of record within seventy-two (72) hours of the federal debarment. For 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 a subsidiary, division, or business segment, and similar positions).

##### **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.

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#### **5.00.04-Equipment**

For reimbursement-type contracts, the Contractor shall not purchase equipment or property with contract funds, unless specifically authorized under the scope of work and specifications of this Contract.

Equipment and property reimbursed by CHFS to fulfill the requirements of this Contract, requires prior approval by the Cabinet and the federal agency before the federal government will allow the costs in accordance with 2 CFR Part 200.

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

In accordance with 2 CFR § 200.216, Contractors and subrecipients are prohibited from obligating or expending loan or grant funds to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
  - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
  - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
  - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

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

In accordance with 2 CFR § 200.322(a):

- (a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- (b) For purposes of this section:
  - (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
  - (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

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

In accordance with 2 CFR § 200.323:

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

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

The Contractor certifies that it will comply with the drug-free workplace requirements in 2 CFR Part 182.



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## Memorandum of Agreement Standard Terms and Conditions Revised August 2024

### 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.

The vendor shall be paid, upon the submission of proper invoices to the receiving agency at the prices stipulated for the supplies delivered and accepted, or services rendered. Unless otherwise specified, payment will not be made for partial deliveries accepted. Payments will be made within thirty (30) working days after receipt of goods or a vendor's invoice in accordance with KRS 45.453 and KRS 45.454.

### 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 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.150, "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

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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 contract to reveal to the Commonwealth any final determination of a violation by the Contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to corporate and utility tax, sales and use tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively. Disclosure of any violations is required prior to the award of any state contract and throughout the duration the contract.

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

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

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

## **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, 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



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

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**Approvals**

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

**CHFS Cabinet Approval:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
Date

**Contractor Approval:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
Date

**CHFS Department Review:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
Date

**Approved as to form and legality:**

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Date