

**CONTRACT DATA SHEET**

PSC Type (check one):  New  Addendum Sole Source:  Yes  No

**Contractor Information**

1. Legal Name of Contractor: UNIVERSITY OF LOUISVILLE RESEARCH FOUNDATION

2. Address: 300 E MARKET STREET, #300

3. City, State, & Zip: LOUISVILLE, KY 40202

4. Contractor Contact Person: KAREN ROBERTS

5. Phone: 502-852-8608 Email: KAREN.ROBERTS@LOUISVILLE.EDU

6. Revenue Commission Taxpayer ID# \_\_\_\_\_

7. Federal Tax ID # (SSN if sole proprietor) \_\_\_\_\_

**Department Information**

8. Requesting Department: YOUTH DETENTION SERVICES

9. Contact Person Name & Telephone: SYTISHA CLAYCOMB, 502-574-6335

**Contract Information**

10. Not to exceed amount: \$ 65,000.00

11. Are expenses reimbursed? NO

12. If yes list allowable expenses and maximum amount reimbursable: N/A

13. Beginning and ending date of the contract: 7/1/2015-6/30/2016

14. Funding Source GENERAL FUND Federal Funds yes  no

15. Scope & Purpose of the contract:  
**PROVIDE HEALTHCARE FOR YOUTH HOUSED AT THE CENTER. SEE ATTACHMENT FOR MORE DETAIL.**

**Authorizations**

Department Director: [Signature] Date: 6-29-15

Purchasing Director: [Signature] Date: 7/2/15

County Attorney: [Signature] Date: 7/10/15

*The County Attorney has written the attached Professional Service Contract or Sole Source Contract and has approved that document as to the legality of the instrument itself only and as to its form.*

**For Purchasing Use Only**

Contractor is registered and in good standing with the Revenue Commission

Human Relations Commission requirements have been met

Insurance requirements have been satisfied

If federally funded, Federal Debarment standing has been verified

**Attach all justification documentation to this form, along with signed Written Findings Form.**

**WRITTEN FINDINGS**

**EXPLAINING NECESSITY FOR USING NONCOMPETITIVE NEGOTIATION FOR PSC**

This document constitutes written request and findings, as required by KRS 45A.380 stating the need to purchase through noncompetitive negotiation. By the signatures listed below, the Requesting Department has determined, and the Chief Financial Officer concurs, that competition is not feasible because:

\_\_\_\_\_ A. An emergency exists which will cause public harm as a result of the delay in competitive procedures. **\*\* Mayors Approval required for emergency purchases exceeding \$10,000.**

\_\_\_\_\_ B. There is a single source within a reasonable geographic area of the supply or service to be procured or leased (attach sole source determination from the Purchasing Department).

  X   C. The contract is for the services typically provided by a licensed professional, such as an attorney, architect, engineer, physician, certified public accountant, registered nurse, or educational specialist; a technician such as a plumber, electrician, carpenter, or mechanic; an artist such as a sculptor, aesthetic painter, or musician; or a non-licensed professional such as a consultant, public relations consultant, advertising consultant, developer, employment department, construction manager, investment advisor, or marketing expert and the like.

\_\_\_\_\_ D. The contract is for the purchase of perishable items purchased on a weekly basis, such as fresh fruits, vegetables, fish, or meat.

\_\_\_\_\_ E. The contract is for replacement parts where the need cannot reasonably be anticipated and stockpiling is not feasible.

\_\_\_\_\_ F. The contract is for proprietary items for resale.

\_\_\_\_\_ G. The contract or purchase is for expenditures made on authorized trips outside the boundaries of the city.


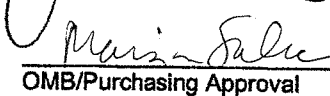
\_\_\_\_\_ H. The contract is for the purchase of supplies which are sold at public auction or by receiving sealed bids.

\_\_\_\_\_ I. The contract is for group life insurance, group health and accident insurance, group professional liability insurance, worker's compensation insurance, or unemployment liability insurance.

\_\_\_\_\_ J. The contract is for a sale of supplies at reduced prices that will afford a purchase at savings to the Metro Government.


\_\_\_\_\_ K. The contract was solicited by competitive sealed bidding and no bids were received from a responsive and responsible bidder.

\_\_\_\_\_ L. Where, after competitive sealed bidding, it is determined in writing that there is only one (1) responsive and responsible bidder.

	<u>  6-29-15  </u>
Requesting Department Director	Date
	<u>  7/2/15  </u>
OMB/Purchasing Approval	Date

_____	_____
**Mayor	Date
**Signature is required only for Written Finding A	

To: Purchasing

From: Yvette Gentry, Director – Youth Detention Services 

Date: 6/29/2015

Re: Sole Source – University of Louisville Research Foundation, Inc.

The University of Louisville Research Foundation (ULRF) provides health care for juveniles while housed at the Youth Center. The care they provide meets the recommendations of the American Academy of Pediatrics standards for Juvenile Court Residential Facilities that house confined youth. ULRF has provided this service for several years and has developed a good working relationship with the YDS nursing staff. ULRF has established a protocol that meets the needs of the Youth Center for visits and other health related matters that involve the care of YDS residents.

Any change to the existing operation workflow resulting from a bid process would significantly impact the efficiency of the department and the care of the residents of the Youth Center.

Should you need any additional information, please let me know. Thank you.

1. Contractor will comply with the Prison Rape Elimination Act (PREA):

- The contracting organization and all its employees shall adhere to 28 CFR 115, Prisons Rape Elimination Act: Juvenile Facility Standards.
- All persons who may have inmate contact shall complete PREA training per Department policy and procedure and the aforementioned PREA Standard for Juvenile Facilities.
- Any subcontracts made by the contractor shall require compliance with both these statements as well.

## **AGREEMENT**

**THIS CONTRACT**, made and entered into by and between the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, by and through its **LOUISVILLE METRO YOUTH DETENTION SERVICES** herein referred to as “**METRO GOVERNMENT**” or “**LMYDS**”, and **THE UNIVERSITY OF LOUISVILLE RESEARCH FOUNDATION, INC.**, a Kentucky non-profit corporation and agent of the University of Louisville (“UofL”) for the receiving grants, research agreements and other sponsored agreements from external funding sources and which owns and controls intellectual property on behalf of UofL, with offices located at University of Louisville, Department of Pediatrics, 571 S. Floyd Street, Suite 432, Louisville, Kentucky 40202, herein referred to as “**ULRF**” and “**CONSULTANT**”,

### **WITNESSETH:**

**WHEREAS**, the Metro Government is in need of certain services with respect to the following described functions: Provide juveniles in its care with health care that is compatible with the recommendations of the American Academy of Pediatric's Committee on Youth Health Standards for Juvenile Court Residential Facilities (Pediatrics Vol. 52, No. 3, September, 1973); and the Standards for Health Services in Juvenile Detention and Confinement Facilities, National Commission on Correctional Health Care, KRS 15A.210 regulations governing the operation of juvenile detention centers; and

**WHEREAS**, the Metro Government has determined that the ULRF is a sole source for providing these services; and

**WHEREAS**, the University of Louisville's Department of Pediatrics has been determined by the Metro Government to have the necessary experience, expertise and qualifications to provide those services.

**NOW, THEREFORE**, it is agreed by and between the parties hereto as follows:

**I. SCOPE OF SERVICES**

**A.** ULRF shall, at the request of the Metro Government, provide services under the terms of this Agreement. The ULRF's work product may be reviewed from time to time by the Metro Government for purposes of determining that the services provided are within the scope of this Agreement.

**B.** ULRF, while performing the services rendered pursuant to this Agreement, may incidental thereto utilize agents or employees of UofL. However, such use must be documented in the monthly invoice submitted for those services rendered.

**C.** If from time to time ULRF needs to utilize the records or personnel of the Metro Government relative to performing the services required of this Agreement, then ULRF shall notify the Louisville Metro Department of Youth Detention Services of this need and arrangements may be made for that contingency. However, at no time shall the Metro Government make available its resources without the full consent and understandings of both parties.

**D.** The services of ULRF shall include but not be limited to the following:

- 1.** On Tuesday and Friday of each week, a physician from the U of L Department of Pediatrics will provide physical examinations, and evaluate and treat to the extent he deems necessary, adolescents under control of LMYDS at the Louisville Metro Youth Detention

Center and Phoenix House Alternative Shelter. This will be at the mutually agreed upon time of 9:00 a.m. until 12:00 p.m. each Tuesday and Friday.

2. A hospital-based physician will be on call at all times with arrangements made with the Director for Detention Services concerning how to notify the physician. In addition, the Director of Medical Services will be available for call at all times by a beeper device provided for in the budget.

**E. Metro Government Duties**

1. LMYDS agrees to provide nursing assistance as is desirable and mutually agreeable, to include scheduling of adolescents to be examined, maintaining records and collecting data, ordering through LMYDS resources medical supplies and pharmaceuticals used in examinations and routine treatment of adolescents, and arranging for completion of laboratory examinations needed for complete evaluation of health problems.
2. It is the duty of LMYDS to obtain or give all necessary prior legal consent for all treatment by University physicians or given at their direction. LMYDS also agrees to allow Consultant to conduct any mutually agreed upon research projects that are in keeping with the human experimentation guidelines set up by the Department of HEW and the approval of appropriate review groups.

- F. Physician services subject to this agreement and not provided at LMYDS facilities will be provided at University of Louisville Hospital or Kosair Childrens Hospital, Inc.

**II. FEES AND COMPENSATION**

- A. The Metro Government agrees to pay Consultant **FIVE THOUSAND FOUR HUNDRED SIXTEEN DOLLARS AND SIXTY SEVEN CENTS (\$5,416.67)** per month to cover salary, fringe benefits of physician and malpractice insurance expense.

The Metro Government agrees to pay Consultant monthly upon submission of the request for reimbursement by the Consultant. The total amount paid to Consultant for services delivered under this Agreement shall not exceed **SIXTY FIVE THOUSAND DOLLARS (\$65,000.00)**.

- B. Payment shall only be made pursuant to a detailed invoice, which invoice shall describe the particular nature of the services provided. Copies of invoices or receipts for third party charges must be included with the Consultant's invoice when payment is requested.

- C. The Metro Government shall not reimburse out of pocket expenses under this Agreement.

- D. ULRF, to the extent that it provides the same or related services to other parties agrees that it will not charge Metro Government for services for which it is also billing other parties which are of benefit to the other parties. Should services rendered to Metro Government under this agreement be such that those services also benefit another party during the term of this agreement, ULRF agrees to pro-rate its billings to



Metro Government appropriately and to provide documentation to all parties to verify the pro-ration of such billings and expenses. In no event will the Metro Government pay bills which are considered to be double billing (i.e. billing two different parties for the same work or expense).

**III. DURATION**

**A.** This Agreement shall begin July 1, 2015 and shall continue through and including June 30, 2016.

**B.** This Agreement may be terminated by submitting thirty (30) days' written notice to the non-terminating party of such intent to terminate. This Agreement may also be terminated by any party, without notice to the non-terminating party, because of fraud, misappropriation, embezzlement or malfeasance or a party's failure to perform the duties required under this Agreement. A waiver by either party of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

**C.** In the event of termination, payment for services complete up to and including date of termination shall be based upon work completed as invoiced by ULRF. In the event that, during the term of this Agreement, the Metro Council fails to appropriate funds for the payment of the Metro Government's obligations under this Agreement, the Metro Government's rights and obligations herein shall terminate on the last day for which an appropriation has been made. The Metro Government shall deliver notice to ULRF of any such non-appropriation not later than 30 days after the Metro Government has knowledge that the appropriation has not been made.

#### **IV. EMPLOYER/EMPLOYEE RELATIONSHIP**

It is expressly understood that no employer/employee relationship is created by this Agreement nor does it cause ULRF to be an officer or official of the Metro Government. By executing this Agreement, the parties hereto certify that its performance will not constitute or establish a violation of any statutory or common law principle pertaining to conflict of interest, nor will it cause unlawful benefit or gain to be derived by either party.

#### **V. RECORDS-AUDIT**

ULRF shall maintain during the course of the work, and retain not less than five years from the date of final payment on this Agreement, complete and accurate records of all of ULRF's costs which are chargeable to the Metro Government under this Agreement; and the Metro Government shall have the right, at any reasonable time, to inspect and audit those records by authorized representatives of its own or of any public accounting firm selected by it. The records to be thus maintained and retained by ULRF shall include (without limitation): (a) payroll records accounting for total time distribution of ULRF's employees working full or part time on the work (to permit tracing to payrolls and related tax returns), as well as documentation of electronic payroll deposits , or signed receipts for payroll payments in cash if made; (b) invoices for purchases receiving and issuing documents, and all the other unit inventory records for ULRF's stores stock or capital items; and (c) paid invoices and canceled checks (if applicable) or procurement card supporting documentation for materials purchased and for subcontractors' and any other third parties' charges.

**VI. HOLD HARMLESS AND INDEMNIFICATION CLAUSE**

ULRF, as an agent of the University of Louisville (U of L), and an agent of the Commonwealth of Kentucky, although vested with sovereign immunity, is subject to the Board of Claims Act, KRS 44.070-44.160. Claims against ULRF relating to personal injury or property damage may be filed and decided under the provisions of the Act. To the extent permitted by that Act and other applicable law, ULRF as agent for the University of Louisville, shall defend, indemnify and hold harmless the Metro Government from and against any and all claims which may result from any error or omission arising out of ULRF's performance under this Agreement.

**VII. REPORTING OF INCOME**

The compensation payable under this Agreement may be subject to federal, state and local taxation. Regulations of the Internal Revenue Service require the Metro Government to report all amounts in excess of \$600.00 paid to non-corporate contractors. ULRF agrees to furnish the Metro Government with its taxpayer identification number (TIN) prior to the effective date of this Agreement. ULRF further agrees to provide such other information to the Metro Government as may be required by the IRS or the State Department of Revenue. Metro Government acknowledges ULRF's assertion that it is a non-profit tax-exempt corporation.

**VIII. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. In the event of any proceedings regarding this Agreement, the Parties agree that the venue shall be Franklin Circuit Court, Frankfort, Kentucky. All parties expressly consent to personal jurisdiction and venue in such Court

**6.5 Identity Theft Protection.** To the extent that Business Associate obtains access to patient information or other information constituting a "covered account" of Covered Entity within the meaning of the Identity Theft Red Flag Rules ("Red Flag Rules," 16 CFR 681.2), then Business Associate shall develop and implement an Identity Theft Prevention Program ("Program") that is designed to detect, prevent and mitigate identity theft in connection with such covered accounts. The Program shall be implemented and maintained in a manner such that if the covered accounts of Covered Entity were covered accounts of Business Associate, Business Associate would be in compliance with the requirements of the Red Flag Rules. Business Associate shall indemnify Covered Entity from all costs, fines and penalties associated with Business Associate's failure to fulfill the obligations of this Section 6.5. In addition, within five (5) days of receipt of a written request from Covered Entity for a copy of the Program and supporting documentation, Business Associate shall provide such documentation to Covered Entity evidencing its compliance with the obligations of this Section 6.5. Business Associate's performance of this Section 6.5 is a material term of the Agreement.

**6.6 Indemnification.**

Business Associate shall indemnify, hold harmless, and defend the Covered Entity, its elected and appointed officials, employees, agents and successors in interest from all claims, damages, losses and expenses including attorneys' fees, arising out of or resulting, directly or indirectly, from the Business Associate's (or Business Associate's Subcontractors, if any) performance or breach of the contract provided that such claim, damage, loss, or expense is: (1) attributable to breach of contract, and (2) not caused by the negligent act or omission or willful misconduct of the Louisville/Jefferson County Metro Government or its elected and appointed officials and employees acting within the scope of their employment. This Hold Harmless and Indemnification Clause shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Contract.

IN WITNESS WHEREOF, each of the undersigned Parties has caused this Agreement to be executed in its name and on its behalf as of the Effective Date.

Business Associate:

UNIVERSITY OF LOUISVILLE  
RESEARCH FOUNDATION, INC.

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Covered Entity:

Louisville/Jefferson County  
Metro Government

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

for the limited and sole purpose of proceedings relating to this Agreement or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.

**IX. AUTHORITY**

The ULRF, by execution of this Agreement, does hereby certify and represent that it is qualified to do business in the Commonwealth of Kentucky, has full right, power and authority to enter into this Agreement. Further, ULRF certifies that it has the authority to contract for these services with Metro Government for UofL.

**X. CONFLICTS OF INTEREST**

Pursuant to KRS 45A.455:

(1) It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his knowledge:

(a) He, or any member of his immediate family has a financial interest therein; or

(b) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or

(c) Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a party. Direct or indirect participation shall include but not

be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(2) It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.

(3) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(4) The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation therefor.

(5) It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

**XI. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter set forth herein and this Agreement supersedes any and all prior and contemporaneous oral or written agreements or understandings between the parties relative thereto. No representation, promise, inducement, or statement of intention has been made by the parties that is not embodied in this Agreement. This Agreement cannot be amended, modified, or supplemented in any respect except by a subsequent written agreement duly executed by all of the parties hereto.

**XII. OCCUPATIONAL HEALTH AND SAFETY**

ULRF agrees to comply with all statutes, rules, and regulations governing safe and healthful working conditions, including the Occupational Health and Safety Act of 1970, *29 U.S.C. 650 et. seq.*, as amended, and KRS Chapter 338.

**XIII. SUCCESSORS**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

**XIV. SEVERABILITY**

If any court of competent jurisdiction holds any provision of this Agreement unenforceable, such provision shall be modified to the extent required to make it enforceable, consistent with the spirit and intent of this Agreement. If such a provision cannot be so modified, the provision shall be deemed separable from the remaining provisions of this Agreement and shall not affect any other provision hereunder.

## **XV. COUNTERPARTS**

This Agreement may be executed in counterparts, in which case each executed counterpart shall be deemed an original and all executed counterparts shall constitute one and the same instrument.

## **XVI. CALCULATION OF TIME**

Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required hereunder and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time. For example, if on January 1, ULRF is directed to take action within ten (10) calendar days, the action must be completed no later than midnight, January 11.

## **XVII. CAPTIONS**

The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Agreement.

## **XVIII. VIOLATIONS OF AND COMPLIANCE WITH KENTUCKY LAWS**

The ULRF shall reveal any final determination of a violation by the ULRF or any subcontractor performing work under this Agreement ("Subcontractor") within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the ULRF or Subcontractor. The ULRF shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the ULRF or Subcontractor for the duration of the contract.



**XIX. HIPAA COMPLIANCE**

ULRF agrees that, in the event it receives from the Metro Government any protected health information, it will not disclose any of that information to any third party and, in that regard, ULRF agrees to comply with the rules and regulations of the Health Insurance Portability and Accountability Act (“HIPAA”), codified in 42 U.S.C. § 1320d and 45 C.F.R. 160-164. ULRF shall hold in strictest confidence all documentation, information, and observations gathered in the performance of this Agreement, and ULRF agrees to sign the Business Associate Agreement attached hereto as Attachment A. ULRF further agrees to require any of its subcontractors to both abide by the aforementioned HIPAA prohibitions against the unauthorized disclosure of confidential and protected health information and to sign the Metro Government’s Business Associate Agreement.

**XX. INSURANCE REQUIREMENTS**

Insurance coverage shall be required of ULRF in accordance with Attachment B attached hereto.

**XI. PRISON RAPE ELIMINATION ACT**

The Consultant shall comply with the requirements of the Prison Rape Elimination Act, 42 United States Code Chapter 147, and the regulations issued which implement it. Consultant shall:

- a. Adhere and require any of its subcontractors to adhere to 28 CFR 115, Prisons Rape Elimination Act: Juvenile Facility Standards.

WITNESS the agreement of the parties hereto by their signatures affixed hereon.

**APPROVED AS TO FORM AND LEGALITY:**

**LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**

\_\_\_\_\_  
MICHAEL J. O'CONNELL  
JEFFERSON COUNTY ATTORNEY

\_\_\_\_\_  
YVETTE GENTRY  
DIRECTOR, YOUTH DETENTION SERVICES

Date: \_\_\_\_\_

Date: 2.4-14

**UNIVERSITY OF LOUISVILLE RESEARCH FOUNDATION, INC.**

By: \_\_\_\_\_  
David L. Dunn, M.D., Ph.D.  
Executive Vice President for Health Affairs

By: \_\_\_\_\_  
Gerard P. Rabalais, M.D.  
Title: Chair, Department of Pediatrics

Date: 10-1-15

Date: 9/21/15

By: \_\_\_\_\_  
Toni M. Ganzel, M.D., M.B.A., F.A.C.S.  
Dean, School of Medicine

Taxpayer Identification No. (TIN): \_\_\_\_\_

Date: 9-22-15

Louisville/Jefferson County Revenue Commission Account No.: \_\_\_\_\_

*Glenn my  
9/21/15  
21 Sept 15*

Approved as to form and legality:

\_\_\_\_\_  
Glenn Bossmeyer  
Associate University Counsel

Date: 9/23/15

## ATTACHMENT A

### BUSINESS ASSOCIATE AGREEMENT

This agreement ("Agreement") is entered into this July 1, 2015 by and between Louisville/Jefferson County Metro Government ("Covered Entity") and the University of Louisville Research Foundation, Inc.. ("Business Associate").

#### Recitals

Whereas, Business Associate, for purposes of provision of healthcare for YDS youth, will receive recorded information some of which may constitute Protected Health Information ("PHI").

Whereas, Covered Entity and Business Associate are required to reasonably and appropriately protect the confidentiality, inappropriate use and disclosure of Protected Health Information and electronic Protected Health Information under the provisions of the Health Insurance Portability and Accountability Act ("HIPAA") OF 1996 and the Health Information Technology for Economic Clinical Health Act ("HITECH") and the corresponding Privacy Rule and Security Rule (45 CFR §§160, 162, and 164 ("HIPAA Rules")); and

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, the Parties agree as follows:

#### **Section 1** **Definitions**

(Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Security and Privacy Rule and HITECH)

- a. Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Spalding University.
- b. Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the Louisville/Jefferson County Metro Government, acting by and through its Youth Detention Services.
- c. HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160, 162 and 164
- d. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

- e. Electronic Protected Health Information (E-PHI). "E-PHI" shall have the same meaning as the term, "Protected Health Information" in 45 CFR §160.103, limited to information transmitted by, or maintained in, electronic media received by Business Associate from, or on behalf of, Covered Entity.
- f. HITECH. "HITECH" shall mean the Health Information for Economic and Clinical Health Act, Subtitle D-Privacy (§§13400-13424) enacted as part of the America Recovery and Reinvestment Act of 2009.
- g. Individual. "Individual" shall have the same meaning as the term "Individual" in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- h. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR parts §160 and §164, subparts A and E and includes relevant portions of HITECH.
- i. Security Rule. "Security Rule" shall mean the standards for security of Individually Identifiable Health Information at Subpart C of 45 CFR 164.

## **Section 2**

### **Obligations and Activities of Business Associate**

- 2.1 **Not to Use or Disclose PHI unless Permitted.** Business Associate agrees to not use or disclose Protected Health Information ("PHI") other than as permitted or required by this Agreement or as required or allowed by law.
- 2.2 **Safeguards/Security Rule.**
  - a. Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement or as otherwise required or allowed by law. Business Associate agrees to comply with the Privacy Rule including the implementation of administrative, physical, and technical safeguards that reasonably protect the confidentiality, integrity, and availability of Electronic Protected Health Information that Business Associate creates, receives, maintains, or transmits on behalf of the Covered Entity. Business Associate shall comply with Subpart C of 45 CFR 164.
- 2.3 **Mitigation of Harmful Effects.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- 2.4 **Report Certain Disclosure of PHI.**
  - a. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement or by law, including breaches of unsecured protected health information as required by 45 CFR 164.410, and any security incident of which it becomes aware. For any

such use or disclosure, Business Associate agrees that it shall be responsible for the breach notification requirements contained in 45 CFR 164. An attempted unauthorized access, for purposes of reporting to the Covered Entity, means any attempted unauthorized access that prompts Business Associate to investigate the attempt, or review or change its current security measures. The parties acknowledge that the foregoing does not require Business Associate to report attempted unauthorized access that results in Business Associate: (i) investigating but merely reviewing and/or noting the attempt, but rather requires notification only when such attempted unauthorized access results in Business Associate conducting a material and full-scale investigation (a "Material Attempt"); and (ii) continuously reviewing, updating and modifying its security measures to guard against unauthorized access to its systems, but rather requires notification only when a Material Attempt results in significant modifications to Business Associate's security measures in order to prevent such Material Attempt in the future.

- b. Business Associate agrees to notify Covered Entity of any breach by Business Associate (as "breach" is defined by HITECH) pertaining to unsecured protected health information without unreasonable delay and in no case later than 60 days after discovery of such breach by Business Associate.
- 2.5 **Compliance of Agents.** In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information
- 2.6 **Access.** To the extent the Business Associate maintains the Designated Record Set, Business Associate agrees to provide access to Protected Health Information in the original Designated Record Set, during normal business hours but only to the extent required by 45 CFR §164.524.
- 2.7 **Amendments.** Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual.
- 2.8 **Disclosure of Practices, Books, and Records.** Unless otherwise protected from discovery or disclosure by law or unless otherwise prohibited from discovery or disclosure by law, Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity or to the Secretary, for purposes of the Secretary determining compliance with the Privacy Rule, the Security Rule, and HITECH, but only to the extent such access is related to the use and disclosure of Protected Health Information received from the Covered Entity, or created or received by Business Associate on behalf of Covered Entity.

Business Associate shall have a reasonable time within which to comply with such requests.

**2.9 Accounting.**

- a. Business Associate agrees to maintain sufficient documentation to allow it to provide to Covered Entity a list of any disclosures of Protected Health Information by the Business Associate or its agents so as to allow the Covered Entity (or when appropriate for the Business Associate) to respond to a request by an individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.
- b. To the extent applicable, if Business Associate makes a disclosure of PHI through an electronic health record for payment, treatment, or health care operations, Business Associate will include such disclosure on an accounting in addition to maintaining an accounting of those other disclosures required by the Privacy Rule to be listed on the accounting under 45 CFR §164.528. To the extent applicable and required by the Privacy Rule and HITECH, Business Associate will provide an accounting of disclosures made through an electronic health record for payment, treatment, or health care operations.

**2.10 Release of Documentation of Certain Disclosures.** Business Associate agrees to provide to Covered Entity or an Individual, in a reasonable time and manner information collected in accordance with Section 2.9 of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528 and HITECH.

**2.11 Security and Privacy Requirements of HITECH.** In addition to the commitments made herein expressly, Business Associate will strive to comply with any other additional security or privacy requirements of HITECH applicable to Business Associate.

**Section 3**

**Permitted Uses and Disclosures by Business Associate**

**3.1 Use of PHI for Specified Purposes.** Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information only for purposes related to providing health care services provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity. Business Associate is not permitted to use the protected health information it receives to de-identify that information.

**3.2 Use of PHI for Business Associate's Management and Administration.** Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

- 3.3 **Disclosure Required by Law or With Reasonable Assurances.** Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information (“PHI”) for the proper management and administration of the Business Associate and to carry out the services described in 3.1 and its related responsibilities, provided that disclosures are required by law or allowed by law, or provided that Business Associate obtains the following reasonable assurances from the person or entity to whom the Protected Health Information is disclosed: 1) the PHI will remain confidential; 2) the PHI will be used or further disclosed only as required or allowed by law or for the purposes for which it was disclosed; and, 3) the person or entity will notify the Business Associate of any instances of which the person or entity is aware in which the confidentiality of the information has been breached.
- 3.4 **Data Aggregation Services.** Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B).
- 3.5 **Reporting Violations of the Law.** Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 42 §CFR164.502(j)(1).
- 3.6 **Minimum Necessary.** Absent an applicable exception to the minimum necessary rule as set forth in the Privacy Rule, as amended by HITECH, Business Associate shall limit use, disclosure, and requests of PHI to the minimum necessary (as defined by HIPAA and HITECH) to the accomplish intended purpose of the use or disclosure.

#### **Section 4** **Impermissible Requests by Covered Entity**

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule or Security Rule if done by Covered Entity, except that despite this Section 4, Business Associate may use or disclose Protected Health Information for data aggregation or management and administrative activities of Business Associate as is otherwise permitted by this Agreement.

**Section 5**  
**Term and Termination**

- 5.1 **Term.** The Term of this Agreement shall be effective as of the signing of this agreement, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is not feasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- 5.2 **Termination for Cause.** Upon Covered Entity's knowledge of a material breach by Business Associate of this Agreement, Covered Entity shall either:
1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
  2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
  3. If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.
- 5.3 **Effect of Termination.** Except as provided in paragraph 5.2 of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

**Section 6**  
**Miscellaneous Provisions**

- 6.1 **Regulatory References.** A reference in this Agreement to a section in the Privacy Rule, Security Rule, or HITECH means the section as in effect or as amended, and for which compliance is required.
- 6.2 **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the Privacy Rule, Security Rule, or HITECH and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- 6.3 **Survival.** The respective rights and obligations of Business Associate under this Agreement shall survive the termination of this Agreement
- 6.4 **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Rules.



## ATTACHMENT B

### **INSURANCE REQUIREMENTS**

Prior to commencing work, ULRF shall obtain at its own cost and expense the following types of insurance through insurance companies licensed in the State of Kentucky. Insurance written by non-admitted carriers will also be considered acceptable, in accordance with Kentucky Insurance Law (KRS 304.10-040). Workers' Compensation written through qualified group self-insurance programs in accordance with Kentucky Revised Statutes (KRS 342.350) will also be acceptable. ULRF shall not commence work under this Contract until all insurance required under the Contract Document has been obtained and until copies of policies or certificates thereof are submitted to **LOUISVILLE METRO YOUTH DETENTION SERVICES** and approved by the Louisville/Jefferson County Metro Government's Risk Management Division. ULRF shall not allow any subcontractor to commence work until the insurance required of such subcontractor has been obtained and copies of Certificates of Insurance retained by ULRF evidencing proof of coverages.

Without limiting ULRF 's indemnification requirements, it is agreed that ULRF shall maintain in force at all times during the performance of this agreement the following policy or policies of insurance covering its operations, and require subcontractors, to procure and maintain these same policies. The Louisville/Jefferson County Metro Government may require ULRF to supply proof of subcontractor's insurance via Certificates of Insurance, or at Louisville/Jefferson County Metro Government's option, actual copies of policies.

1. ULRF shall purchase and maintain at their own expense a **PROFESSIONAL LIABILITY (Errors and Omissions Liability)** insurance policy, which includes a minimum limit of liability of \$1,000,000 for each Wrongful Act, covering ULRF and all physicians, nurses etc assigned or authorized by ULRF under this agreement. In the event that ULRF 's policy is written on a "Claims Made" Form, ULRF shall, after work has been completed, furnish evidence that the liability coverage has been maintained for at least one year after completion of work, either by submitting renewal policies with a Retroactive Date of not later than the date work commenced under this contract, or by evidence that ULRF has purchased an Extended Reporting Period Endorsement that will apply to any and all claims arising from work performed under this contract.

Insurance is to be placed with Insurance Companies with an A. M. Best Rating of no less than "A- VI", unless proper financial information relating to the Company is submitted to and approved by the Louisville/Jefferson County Metro Government's Risk Management Division.

ULRF shall procure and maintain insurance policies as described herein and for which **LOUISVILLE METRO YOUTH DETENTION SERVICES** shall be furnished Certificates of Insurance upon the execution of the Contract. The Certificates shall include the name and address of the person executing the Certificate of Insurance as well as the

person's signature. If policies expire before the completion of the Contract, renewal Certificates of Insurance shall be furnished to Metro at least 15 days prior to the expiration of any policy(s).

**Upon execution of the contract, Certificates of Insurance as required above shall be furnished to:**

Louisville/Jefferson County Metro Government  
Youth Detention Services – Business Office  
611 West Jefferson Street  
Louisville, KY 40202

**Upon Renewal of insurance coverage (s), Certificates of Insurance evidencing renewal shall be furnished to:**

Louisville/Jefferson County Metro Government  
Office of Management and Budget  
Risk Management Division  
611 West Jefferson Street  
Louisville, Kentucky 40202

**CANCELLATION OR MATERIAL CHANGE OF COVERAGE: ULRF shall notify Metro's Risk Management Division of any policy cancellation within two business days of its receipt of same. Upon any material change (changes that reduce/restrict limit or terms and conditions to your insurance coverage) in coverage as required above, ULRF shall notify Metro's Risk Management Division within two business days. If ULRF fails to notify Metro as required by this Agreement, ULRF agrees that such failure shall be a breach of this Agreement. Metro reserves the right to require the insurance policy(s) required above to be specifically endorsed to provide notice of cancellation and/or material change of coverage in accordance with policy provisions. When requested by the Metro Government, a copy of the policy endorsement shall be provided to Metro's Risk Management Division.**

Approval of the insurance by Metro shall not in any way relieve or decrease the liability of ULRF hereunder. It is expressly understood that Metro does not in any way represent that the specified Limits of Liability or coverage or policy forms are sufficient or adequate to protect the interest or liabilities of ULRF.