



**Office of Management and Budget
Division of Purchasing
Non-Competitive Contract Request Form**

Department	Youth Detention Services	Department Contact	Gloria Fuqua
Contact Email	Gloria.Fuqua@louisvilleky.gov	Contact Phone	502-574-6335

Contract Type: check one	New	Amendment		
		Additional Funds	Time Extension	Scope
Professional Service	✓			
Sole Source (goods/services)				
	Start	End		
Requested Contract Dates (MM/DD/YYYY)	07/01/2019	12/31/19		

VENDOR INFORMATION

Vendor Legal Name	University of Louisville			
DBA	School of Medicine Department of Pediatrics			
Point of Contact	Tina Hembree	Email	tina.himbree@louisville.edu	
Street	323 E Chestnut Street			
Suite/Floor/Apt	Abell Administration, Suite 208	Phone	502-852-7881	
City	Louisville	State	KY	Zip Code 40292
Federal Tax ID#		SSN# (if sole proprietor)		
Louisville Revenue Commission Account #				
Human Relations Commission Certified Vendors	Certified Minority Owned Business	Certified Woman Owned business	Disabled Owned business	
Select if applicable				

FINANCIAL INFORMATION

Not to Exceed Contract Amount	\$72,500		(including reimbursement expenses, if applicable)		
Fund Source: General Fund	✓				
Federal Grant		Federal Granting Agency			
Other		Describe:			
Account Code String #	1101	375	3621	362101	521362
Payment Rate	\$6,041.00	per hour		per day	
		per month		Other	
Payment Frequency	✓	Monthly		Upon Completion / Delivery	
		Quarterly		Other	



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CONTRACT SCOPE and PURPOSE (Attach additional documentation if necessary)

Amendments: Describe the circumstances under which a time extension or scope change is needed.

New: Be specific about the work to be performed / product to be purchased including but not limited to: scope of work; description of service; work product created; why the service / product is necessary; and benefit to Louisville Metro Government.

Medical Director Services. Physician shall serve as Medical Director of the LMYDS. Physician's duties will be the customary duties of a Medical Director of a pediatric clinic, including but not limited to:

1. Acting as a liaison between LMYDS and Consultant and working in concert with LMYDS to carry out the policies and reasonable goals of LMYDS;
2. Consulting, as reasonably necessary, with members of LMYDS administrative staff in matters relating to management and administration of LMYDS;
3. Conducting training of LMYDS staff as reasonably necessary;
4. Performing such other medical direction and/or administrative services relating to LMYDS as mutually agreed upon by the parties, including, but not limited to, providing appropriate supervision of the LMYDS medical staff; and
5. Medical Director will serve on and attend meetings to include, but not limited to, Resident Care Plan Meetings, Quality Improvement Committee, Ethics Committee and other committees which LMYDS deem necessary to comply with the licensing regulations of a skilled nursing facility.

JUSTIFICATION FOR NON-COMPETITIVE GOOD/SERVICE (Attach additional documentation if necessary)

Provide justification including but not limited to: a description of the unique features that prohibit competition; research conducted to verify the vendor as the only known source (sole source); why the service (PSC) is not feasible to be provided by LMG staff or expertise does not exist; known compatibility, proprietary and/or timing issues.

The University of Louisville School of Medicine Department of Pediatrics 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. University of Louisville has provided this service for several years and has developed a good working relationship with the YDS nursing staff. University of Louisville 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.

AUTHORIZATIONS: Per KRS 45A.380, I have determined that competition is not feasible for the above described good / service and there is a single source within a reasonable geographical area of the good / service to be procured; or the resulting contract is for the services of a licensed professional, technician, artist, or other non-licensed professional service.

Department Director Endora Davis Date 6-6-19
Signature Endora Davis
Printed Name

Purchasing Director Joel Neaveill Date 6/6/19
Signature
Joel Neaveill

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**, with offices located at University of Louisville, Department of Pediatrics, 323 East Chestnut Street, Suite 208, Louisville, Kentucky 40202, herein referred to as “**U of L**” 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 U of L 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. U of L shall, at the request of the Metro Government, provide services under the terms of this Agreement. The U of L'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. U of L, 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 U of L needs to utilize the records or personnel of the Metro Government relative to performing the services required of this Agreement, then U of L 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 U of L 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 –Specifically listed in Attachment B, 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. This will be at the mutually agreed upon time of 9:00 a.m. until 12:00 p.m. each Tuesday and Friday.
2. An outpatient-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 cellular telephone provided by LMYDS.

3. A U of L physician shall serve as Medical Director of LMYDS. Physician's duties shall be the customary duties of a medical director including but not limited to:

- i. Acting as a liaison between LMYDS and U of L and working in concert with LMYDS to carry out the policies and reasonable goals of LMYDS; and
- ii. Consulting, as reasonably necessary, with members of LMYDS administrative staff in matters relating to management and administration of LMYDS; and
- iii. Conducting training of LMYDS staff as reasonably necessary; and
- iv. Performing other such medical direction and/or administrative services as mutually agreed upon by the parties, including but not limited to providing appropriate supervision of LMYDS medical staff; and
- v. Medical Director shall serve on at least the following committees and attend the following meetings: Resident Care Plan meetings, Quality Improvement Committee, Ethics Committee, and other committees which LMYDS concludes are necessary to comply with licensing regulations of a skilled nursing facility; and

vi. Medical Director will serve as advisor and participant in the development and staging of LMYDS health related in-service training programs for staff members.

4. UofL shall use the ERMA (Electronic Risk Management Assistant) web database system to store and document medical information for youth.

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 **SIX THOUSAND FORTY ONE DOLLARS (\$6,041.00)** 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 **SEVENTY TWO THOUSAND FIVE HUNDRED DOLLARS (\$72,500.00)**.

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. U of L, 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, U of L 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, 2019 and shall continue through and including December 31, 2019.

B. This Agreement may be terminated by any party 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 U of L. 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 U of L 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 U of L 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

U of L 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 U of L'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 U of L shall include (without limitation): (a) payroll records accounting for total time distribution of U of L'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 U of L'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

U of L, as an agent of the Commonwealth of Kentucky, although vested with sovereign immunity, is subject to the Claims Commission Act, KRS 49.010-49.180. Claims against U of L 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, U of L, 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 U of L'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. U of L agrees to furnish the Metro Government with its taxpayer identification number (TIN) prior to the effective date of this Agreement. U of L 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 U of L'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 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

U of L, 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, U of L 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

U of L 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 AND ASSIGNABILITY

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns. This Agreement shall not be assigned without first obtaining prior written consent of the non-assigning party.”

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, U of L 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 U of L shall reveal any final determination of a violation by the U of L 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 U of L or Subcontractor. The U of L shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the U of L or Subcontractor for the duration of the contract.

XIX. PRISON RAPE ELIMINATION ACT AND OTHER LAWS

A. 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:

1. Adhere and require any of its subcontractors to adhere to 28 CFR 115, Prisons Rape Elimination Act: Juvenile Facility Standards.
2. Ensure that all Consultant’s agents, including any subcontractors, who may have inmate contact shall complete PREA training per Youth Detention policies and procedures and 28 CFR 115.

B. U of L shall meet any applicable requirements (Including audit finding and record retention schedules) defined by law or governing agencies including but not limited to those set forth by:

1. The National Commission on Correctional Health Care
2. The American Correctional Association
3. Kentucky Department of Juvenile Justice
4. Juvenile Detention Alternatives Initiatives

XX. INSURANCE REQUIREMENTS

Consultant shall comply with the insurance requirements attached hereto and fully incorporated herein as Attachment A.

XIX. HIPAA COMPLIANCE U of L 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, U of L 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. U of L shall hold in strictest confidence all documentation, information, and observations gathered in the performance of this Agreement, and U of L agrees to sign the Business Associate Agreement attached hereto as Attachment C. U of L 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.

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


APPROVED AS TO FORM AND
LEGALITY CONTINGENT
UPON APPROVAL OF
OF THE APPROPRIATION FOR
THIS CONTRACT BY THE
METRO COUNCIL



MICHAEL J. O'CONNELL
JEFFERSON COUNTY ATTORNEY

Date: 9/24/19

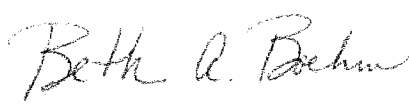
LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT



URSULA MULLINS
DIRECTOR, YOUTH DETENTION
SERVICES

Date: 10-2-19

UNIVERSITY OF LOUISVILLE


Beth A. Boehm
Executive Vice President and University Provost

Date: 10/01/2019

Taxpayer Identification No.
(TIN): _____

Louisville/Jefferson County
Revenue Commission Account
No.: _____

Approved as to form and legality:

Prior to commencing work, U of L 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. U of L 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. U of L 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 U of L evidencing proof of coverages.

Without limiting U of L 's indemnification requirements, it is agreed that U of L 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 U of L to supply proof of subcontractor's insurance via Certificates of Insurance, or at Louisville/Jefferson County Metro Government's option, actual copies of policies.

The only individuals authorized to perform work under this agreement are those scheduled in Attachment B . U of L agrees to notify Metro Risk Management Department before any additional individuals are permitted to perform work under this agreement. All individuals must provide Metro with certificates of insurance evidencing that they meet the following requirements:

1. U of L shall purchase and maintain at their own expense a **PROFESSIONAL LIABILITY (Medical Malpractice)** insurance policy, which includes a minimum limit of liability of **\$1,000,000** for each Wrongful Act and **\$2,000,000 Aggregate**, covering each specific provider listed in Attachment C. In the event that this coverage is written on a "Claims Made" Form, U of L shall, after work has been completed, furnish evidence that the liability coverage has been maintained for at least two years 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 U of L has purchased an Extended Reporting Period Endorsement that will apply to any and all claims arising from work performed under this contract.

2. WORKERS' COMPENSATION insuring the employers' obligations under Kentucky Revised Statutes Chapter 342 at Statutory Limits, and **EMPLOYERS' LIABILITY - \$100,000** Each Accident/**\$500,000** Disease - Policy Limit/**\$100,000** Disease - Each Employee.

ACCEPTABILITY OF INSURERS

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 Metro's Risk Management Division.

MISCELLANEOUS

A. U of L 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).

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

Louisville/Jefferson County Metro Government
Office of Management and Budget
YOUTH DETENTION – BUSINESS OFFICE
611 West Jefferson Street
Louisville, Kentucky 40202

C. **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

D. **CANCELLATION OR MATERIAL CHANGE OF COVERAGE: Contractor shall notify Metro's Risk Management Division of any policy cancellation within two (2) 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, Contractor shall notify Metro's Risk Management Division within two (2) business days. If Contractor fails to notify Metro as required by this Agreement, Contractor 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.**

E. Approval of the insurance by Metro shall not in any way relieve or decrease the liability of Contractor 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 Contractor.

ATTACHMENT B

LIST OF APPROVED DOCTORS

1. Dr. Elaine Martin MD – Medical Director
2. Dr. John Light – Psychiatrist
3. Dr. Schikler MD
4. Dr. Shulties MD

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BA Agreement”), effective _____ (“Effective Date”), is entered into by and between _____ with an address at _____ (the “Business Associate”) and _____ with an address at _____ (the “Covered Entity”) (each a “Party” and collectively the “Parties”).

The Parties have an agreement dated _____ (the “Agreement”) under which the Business Associate may use and/or disclose Protected Health Information (PHI) to perform the following service(s): _____. Both Parties are committed to complying with the Standards for Privacy and Security of Individually Identifiable Health Information (the “Privacy & Security Regulations”) promulgated under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and as it is updated, amended, or revised. This BA Agreement sets forth the terms and conditions pursuant to which PHI that is created, received, maintained, or transmitted by the Business Associate from or on behalf of the Covered Entity, will be handled between the Business Associate and the Covered Entity and with third parties during the term of their Agreement and after its termination. The Parties agree as follows:

1. PERMITTED USES AND DISCLOSURES OF PHI

1.1 Services. Pursuant to the Agreement, Business Associate provides services (“Services”) for the Covered Entity that involve the use and/or disclosure of PHI. Except as otherwise specified herein, the Business Associate may make any and all uses of PHI necessary to perform its obligations under the Agreement, provided that such use would not violate the Privacy and Security Regulations if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity. All other uses not authorized by this BA Agreement are prohibited. Moreover, Business Associate may disclose PHI for the purposes authorized by this BA Agreement only to its employees, subcontractors, and agents, in accordance with Section 2.1(i), or as otherwise permitted by the terms of this BA Agreement including, but not limited to, Section 1.2(b) below.

1.2 Business Activities of the Business Associate. Unless otherwise limited herein, the Business Associate may:

- a. Use the PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of the Business Associate provided that such uses are permitted under state and federal confidentiality laws.
- b. Disclose the PHI in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of the Business Associate, provided that the Business Associate represents to the Covered Entity, in writing, that (i) the disclosures are Required by Law, as that phrase is defined in 45 CFR §164.103 or (ii) the Business Associate has received from the third party written assurances regarding its confidential handling of such PHI as required under 45 CFR §164.504(e)(4), and the third party

agrees in writing to notify Business Associate of any instances of which it becomes aware that the confidentiality of the information has been breached.

2. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI

2.1 Responsibilities of the Business Associate. With regard to its use and/or disclosure of PHI, the Business Associate hereby agrees to do the following:

- a. Use and/or disclose the PHI only as permitted or required by this BA Agreement or as otherwise required by law.
- b. To the extent the business associate is to carry out one or more of covered entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s).
- c. Use appropriate safeguards to protect the privacy and security of PHI, and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information (EPI), to prevent use or disclosure of PHI other than as provided for by this BA Agreement.
- d. Business Associate acknowledges its obligations under HIPAA and agrees to comply with any and all privacy and security provisions not otherwise specifically addressed in the Agreement made applicable to Business Associate by HIPAA on the applicable effective date and any subsequent regulations promulgated under HIPAA and/or guidance thereto.
- e. Business Associate acknowledges that, effective the later of the Effective Date of this BA Agreement or September 23, 2013, (i) the foregoing requirements shall apply to Business Associate in the same manner that such requirements apply to Covered Entity, and (ii) Business Associate shall be subject to the civil and criminal enforcement provisions set forth at 42 USC 1320d-5 and 1320d-6, as amended from time to time, for failure to comply with the requirements and any applicable guidance subsequently issued by the Secretary of the Department of Health and Human Services ("Secretary") with respect to such requirements.
- f. Disclose to its subcontractors, agents, or other third parties, and request from the Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.
- g. Business Associate agrees that any EPHI it creates, receives, maintains, or transmits will be maintained or transmitted in a manner that is rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of Public Law 111-5.
- h. Establish procedures for mitigating, to the greatest extent possible, any deleterious effects from any improper use and/or disclosure of Covered Entity's PHI.
- i. Require all of its subcontractors and agents that receive, use, or have access to PHI under this BA Agreement to agree, in a written Business Associate Agreement, to adhere to the same or more stringent restrictions and conditions on the use and/or disclosure of PHI that apply to the Business Associate pursuant to this BA Agreement.

- j. Make available all records, books, agreements, policies, and procedures relating to the use and/or disclosure of PHI to the Secretary for purposes of investigating or determining compliance with HIPAA.
- k. Upon prior written request, make available to the Covered Entity during normal business hours at Business Associate's offices all records, books, agreements, policies, and procedures relating to the use and/or disclosure of Covered Entity's PHI to determine the Business Associate's compliance with the terms of this BA Agreement.
- l. Business Associate agrees to document any and all disclosures of PHI that require an accounting of disclosures as would be required under 45 CFR §164.528. Business Associate further agrees, within 30 days of receiving a written request from the Covered Entity, to provide to the Covered Entity such information as is requested by the Covered Entity to permit the Covered Entity to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with 45 CFR §164.528.
- m. The Business Associate agrees to notify the Covered Entity within seventy-two (72) hours of discovery of:
 - (i) any use or disclosure of PHI not provided for by the BA Agreement of which it becomes aware,
 - (ii) any suspected breach of unsecured PHI as defined at 45 CFR 164.402, and
 - (iii) any Security Incident of which it becomes aware.
 Notification under this section shall include the identification of each individual whose PHI has been, or is suspected to have been, accessed, acquired, or disclosed. Business Associate further agrees to make available in a reasonable time and manner any information needed by Covered Entity to respond to individual and governmental inquiries regarding any of the notifications received from Business Associate.
- n. Business Associate agrees to indemnify the Covered Entity for the reasonable cost to notify the individuals whose information was the subject of a breach and for any cost or damages, including attorney fees or fines, incurred by Covered Entity as a result of the breach by Business Associate, including but not limited to any identity theft related prevention or monitoring costs.
- o. To the extent Business Associate receives Personal Information¹ as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931-934 (the "Act"), Business Associate shall secure and protect the Personal Information, by, without limitation:

¹ "Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

- a) An account, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
- b) A Social Security number;
- c) A taxpayer identification number that incorporates a Social Security number;
- d) A driver's license number, state identification card number or other individual identification number issued by an agency;
- e) A passport number or other identification number issued by the United States government; or
- f) Individually Identifiable Information as defined in 45 C.F.R. sec. 160.103 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g."

- (i) complying with all requirements applicable to nonaffiliated third parties² set forth in the Act;
- (ii) utilizing security and breach investigation procedures that are:
 - a) appropriate to the nature of the Personal Information disclosed,
 - b) at least as stringent as the Covered Entity's, and
 - c) reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction, or that meet industry standard practices for protecting Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction;
- (iii) notifying University of a security breach as specified at <http://louisville.edu/security/incident-reporting-and-response/vendor-external-party-incident-reporting/> relating to Personal Information in the possession of Business Associate or its agents or subcontractors within seventy-two (72) hours of discovery of an actual or suspected breach unless the exception set forth in KRS 61.932(2)(b)2 applies and Business Associate abides by the requirements set forth in that exception;
- (iv) paying all costs of notification, investigation, and mitigation in the event of a security breach of Personal Information caused by the actions or inactions of Business Associate ("NIM Costs");
- (v) cooperating with University in complying with the response, mitigation, correction, investigation, and notification requirements of the Act including undertaking a prompt and reasonable investigation of any security breach; and
- (vi) at Covered Entity's discretion, handling all administrative functions associated with notification, investigation, and mitigation, in accordance with the Act's requirements. The Business Associate hereby agrees that the Covered Entity may withhold payment(s) owed to the Business Associate for any violation of these identity theft prevention reporting requirements or failure to pay NIM Costs.

2.2 Responsibilities of the Covered Entity. With regard to the use and/or disclosure of PHI by the Business Associate, the Covered Entity hereby agrees:

- a. To inform the Business Associate of any changes in the notice of privacy practices ("Notice") that the Covered Entity provides to individuals pursuant to 45 CFR §164.520 that affect Business Associate's use or disclosure of PHI, and provide to the Business Associate, upon request, a copy of the Notice currently in use.
- b. To inform the Business Associate of any changes in, or revocation of, the authorization provided to the Covered Entity by individuals pursuant to 45 CFR §164.508, to the extent relevant to the Services being provided under the Agreement.
- c. To inform the Business Associate of any opt-outs exercised by any individual from fundraising activities of the Covered Entity pursuant to 45 CFR §164.514(f), to the extent relevant to the Services being provided under the Agreement.
- d. To notify the Business Associate, in writing and in a timely manner, of any arrangements permitted or required of the Covered Entity under 45 CFR § part 160

² Per KRS 61.931(5), a "non-affiliated third party" means "any person or entity that has a contract or agreement with the Commonwealth and receives (accesses, collects or maintains) personal information from the Commonwealth pursuant to the contract or agreement."

and 164 that may impact in any manner the use and/or disclosure of PHI required by the Business Associate under this BA Agreement, including, but not limited to, agreed upon restrictions regarding the use and/or disclosure of PHI as provided for in 45 CFR §164.522.

2.3 Additional Responsibilities of the Business Associate with Respect to Handling of Designated Record Set. To the extent the Business Associate creates, receives, maintains, or transmits PHI in a Designated Record Set on behalf of Covered Entity, the Business Associate hereby agrees to do the following:

- a. Within fifteen (15) days of request of the Covered Entity, provide Covered Entity access to the PHI so that Covered Entity can respond to a request for access or request for copies of PHI by an individual who is the subject of the PHI, or his/her personal representative in accordance with 45 CFR §164.524.
- b. Within thirty (30) days of request of the Covered Entity, provide Covered Entity with access to PHI in the custody of Business Associate so that Covered Entity can make any amendment(s) to the PHI in accordance with 45 CFR §164.526.

3. REPRESENTATIONS AND CERTIFICATIONS

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

4. TERM AND TERMINATION

4.1 Term. This BA Agreement shall become effective on the Effective Date and shall continue in effect until all obligations of the Parties have been met, unless terminated as provided in this Section 4. In addition, certain provisions and requirements of this BA Agreement shall survive its expiration or other termination in accordance with Section 6.3 herein.

4.2 Termination by the Covered Entity. As provided for under 45 C.F.R. §164.504(e)(2)(iii), the Covered Entity may immediately terminate this BA Agreement and any related agreements if the Covered Entity makes the determination that the Business Associate has breached a material term of this BA Agreement. Alternatively, the Covered Entity may choose to: (i) provide the Business Associate with thirty (30) days written notice of the existence of an alleged material breach; and (ii) afford the Business Associate an opportunity to cure said alleged material breach upon mutually agreeable terms. Nonetheless, in the event that mutually agreeable terms cannot be achieved within thirty (30) days, Business Associate must cure said breach to the satisfaction of the Covered Entity within thirty (30) days. Failure to cure in the manner set forth in this paragraph is grounds for the immediate termination of this BA Agreement.

- 4.3 Termination by Business Associate. If the Business Associate makes the determination that a material condition of performance has changed under the Agreement or this BA Agreement, or that the Covered Entity has breached a material term of this BA Agreement, Business Associate may provide thirty (30) days notice of its intention to terminate this BA Agreement. Business Associate agrees, however, to cooperate with Covered Entity to find a mutually satisfactory resolution to the matter prior to terminating and further agrees that, notwithstanding this provision, it shall not terminate this BA Agreement so long as the Agreement is in effect.
- 4.4 Automatic Termination. This BA Agreement will automatically terminate without any further action of the Parties upon the termination or expiration of the Agreement between the Parties.
- 4.5 Effect of Termination. Upon the event of termination pursuant to this Section 4, Business Associate agrees to return or destroy all PHI pursuant to 45 C.F.R. §164.504(e)(2)(J) and retain no copies (which for purposes of this BA Agreement shall mean, without limitation, the destruction of all backup media). Prior to doing so, the Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents, and upon request agrees to provide a certificate of destruction for all PHI stored or otherwise backed up by Business Associate or agents, subcontractors, or third parties providing storage or back up services on behalf of Business Associate. If the Business Associate determines that it is not feasible to return or destroy said PHI, the Business Associate will notify the Covered Entity in writing. Upon mutual agreement of the Parties that the return or destruction is not feasible, Business Associate further agrees, and will require its subcontractors and agents to agree, to extend any and all protections, limitations, and restrictions contained in this BA Agreement to the use and/or disclosure of any PHI retained after the termination of this BA Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

5. CONFIDENTIALITY

- 5.1 Confidentiality Obligations. In the course of performing under this BA Agreement, each Party may receive, be exposed to, or acquire Confidential Information including but not limited to, all information, data, reports, records, summaries, tables, and studies, whether written or oral, fixed in hard copy, or contained in any computer database or computer readable form, as well as any information identified as confidential ("Confidential Information") of the other Party. For purposes of this BA Agreement, "Confidential Information" shall not include PHI, the security of which is the subject of this BA Agreement and is provided for elsewhere. The Parties, including their employees, agents, or representatives, (i) shall not disclose to any third party the Confidential Information of the other Party except as otherwise permitted by this BA Agreement, (ii) only permit use of such Confidential Information by employees, agents, and representatives having a need to know in connection with performance under this BA Agreement, and (iii) advise each of their

employees, agents, and representatives of their obligations to keep such Confidential Information confidential. This provision shall not apply to Confidential Information: (a) after it becomes publicly available through no fault of either Party, (b) which is later publicly released by either Party in writing, (c) which is lawfully obtained from third parties without restriction, or (d) which can be shown to be previously known or developed by either Party independently of the other Party.

6. MISCELLANEOUS

6.1 Covered Entity. For purposes of this BA Agreement, Covered Entity shall include all entities covered by the notice of privacy practices (or privacy notice).

6.2 Business Associate. For purposes of this BA Agreement, Business Associate shall include the named Business Associate herein. However, in the event that the Business Associate is otherwise a hybrid entity under the Privacy Regulation, that entity may appropriately designate a health care component of the entity, pursuant to 45 C.F.R. §164.105(a), as the Business Associate for purposes of this BA Agreement.

6.3 Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 4.5, and Section 2.1 solely with respect to PHI Business Associate retains in accordance with Sections 2.1 and 4.5 because it is not feasible to return or destroy such PHI, shall survive termination of this BA Agreement.

6.4 Amendments; Waiver. This BA Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

6.5 No Third Party Beneficiaries. Nothing expressed or implied in this BA Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

6.6 Notices. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or (other than for the delivery of fees) via electronic transmission or facsimile to the contacts listed below.

If to Business Associate, to:

Attention: _____
Fax: _____
Email: _____

With a copy (which shall not constitute notice) to:

Attention: _____
Fax: _____
Email: _____

If to Covered Entity, to:

Privacy Officer
University of Louisville
Med Center One, Suite 110
501 E. Broadway
Louisville, KY 40202
Fax: 502-852-3855
Email: privacy@louisville.edu

With a copy (which shall not constitute notice) to:

Attention: _____
Fax: _____
Email: _____

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided.

6.7 Counterparts; Facsimiles and Electronic Copies. This BA Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile and electronic copies hereof shall be deemed to be originals.

6.8 Disputes. If any controversy, dispute, or claim arises between the Parties with respect to this BA Agreement, the Parties shall make good faith efforts to resolve such matters informally.

7. DEFINITIONS

7.1 Designated Record Set. Designated Record Set shall have the meaning set out in its definition at 45 CFR §164.501, as such provision is currently drafted and as it is subsequently updated, amended, or revised.

7.2 Health Care Operations. Health Care Operations shall have the meaning set out in its definition at 45 CFR §164.501, as such provision is currently drafted and as it is subsequently updated, amended, or revised.

7.3 Privacy Officer. Privacy Officer shall mean the privacy official referred to in 45 CFR §164.530(a)(1) as such provision is currently drafted and as it is subsequently updated, amended, or revised.

7.4 Protected Health Information ("PHI"). Protected Health Information shall have the meaning as set out in its definition at 45 CFR §160.103, as such provision is currently drafted and as it is subsequently updated, amended, or revised.

7.5 Security Incident. Security Incident shall have the meaning set out in its definition at 45 CFR §164.304, as it is subsequently updated, amended, or revised. For purposes of notification to the Covered Entity, an attempted unauthorized access means any attempted unauthorized access that prompts Business Associate to investigate the attempt, or review or change its current security measures.

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

COVERED ENTITY

By: _____

Printed Name

Printed Title

Date

Recommended by Covered Entity Privacy Officer:

By: _____

Printed Name

Date

BUSINESS ASSOCIATE

By: _____

Printed Name

Printed Title

Date