REQUEST FOR SEALED PROPOSAL

DENTAL SERVICES

FOR THE PERIOD

JULY 1, 2011 THROUGH JUNE 30, 2012

AND

JULY 1, 2012 THROUGH JUNE 30, 2013

GALLIPOLIS DEVELOPMENTAL CENTER
2500 OHIO AVENUE
GALLIPOLIS, OHIO 45631
PHONE: 740-446-1642
FAX: 740-446-1341

Contracts subject to appropriation availability and approval of DODD and, if applicable, the Controlling Board, State of Ohio.

1.0 INTRODUCTION

1.1 DODD, State Operated Services and Support intend to select an offeror through this Request for Proposal (RFP) process to provide dental services for individuals who reside at Gallipolis Developmental Center.

1.2 This developmental center is a Medicaid-certified Intermediate Care Facility for the Mentally Retarded (ICF/MR), operated by the Ohio Department of Developmental Disabilities (DODD), serving approximately 190 consumers with a wide range of disabilities.

2.0 SERVICES REQUIRED

2.1 The services consist of all items listed herein for DODD, Gallipolis Developmental Center, including all required labor, materials and equipment (including items not specifically noted or shown as required for complete service, subject to any exclusions listed below). It is the intent of this document that vendors provide a single proposal covering all categories of work for this service.

2.2 Vendor providing services under this RFP will:

2.2.1 Provide for dental services to facility consumers based on a fee schedule for procedures that are non-Medicaid reimbursable procedures not to exceed $6,000.00 per contract year.

2.2.2 Perform under the direction of the Medical Director

2.2.3 Provide services at Gallipolis Developmental Center and may make use of Center's dental equipment if available.

2.2.4 The successful contractor must invoice the developmental center within 30 days of service provision.

The contractor will designate an Administrator to be responsible for the direction of its contract responsibilities under this contract. This designee must be available by phone during reasonable business hours (Monday-Friday, 8:00 am - 4:30 pm) to discuss areas of concern with the developmental center medical director, or the medical director of DODD.

3.0 SPECIAL CONSIDERATIONS

3.1 The offeror shall identify the person(s) providing services under the RFP. Said person(s) must:

3.1.1 Licensed to practice dentistry as issued by the Ohio Dental Board pursuant to Section 4715.09 of Revised Code.

3.1.2 The offeror shall identify ensure that the person(s) providing services shall hold a currently valid, full, and unrestricted license to practice dental services issued by the State Dental Board of Ohio.

3.1.3 Have not been found guilty of, or pleaded guilty to, any offense set forth in Section 5123.081(1), (2), or (3) of the Ohio Revised Code; nor employ any person to provide services under this RFP who has been found guilty of, or pleaded guilty to any offense set forth in Section 5123.081(1), (2), or (3) of the Ohio Revised Code. *The person(s) providing services under this RFP shall be subject to a criminal background check prior to performing any services at Gallipolis Developmental Center.*

3.2 The provisions of the ***Ohio Department of Developmental Disabilities Personal Service Contract*** will become part of the final agreement between the successful offeror and the Center. Therefore, the evaluation process resulting in the final award of a contract rests with the Center and the Ohio Department of Developmental Disabilities. The Center and the Ohio Department of Developmental Disabilities reserve the right to determine that the award of a contract would not be in the best interest of the Center, the Ohio Department of Developmental Disabilities, or the State of Ohio. The Center and the Ohio Department of Developmental Disabilities reserve the right to accept or reject any and all bids, in whole or in part, and may determine that any irregularities or deviations from the specifications do not result in the bid being non-responsive, provided this does not affect the amount of the bid or result in a competitive advantage to the bidder.

3.3 By submitting a signed proposal for this service, the vendor affirms that, as applicable to the vendor, no party listed in Division (I) and (J) of Section 3517.13 of the Revised Code or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of $1,000.00 to the Governor or to his campaign committees.

3.4 All services provided under this RFP shall meet the appropriate standards of the Federal Medicaid program for Intermediate Care Facilities for the Mentally Retarded (ICF/MR).

3.5 R.C. section 9.24 of the prohibits the award of any contract for goods, services, or construction, paid for in whole or in part with State funds, to a person against whom a finding for recovery has been issued by the Auditor of State, if the finding for recovery is unresolved. Paragraph (E) requires that a State agency or political subdivision verify that the person to whom the State agency or political subdivision plans to award the contract does not appear in the database to be maintained by the Auditor of State. In the response review process, the fact that there is a finding for recovery as defined in R.C. 9.24 may be considered in the scoring process, and a response rejected for this reason alone.

3.6 The contractor agrees that it is a separate and independent enterprise from the state and from the Gallipolis Developmental Center and that it has a full opportunity to find other business and has made an investment in its business. Moreover, the contractor will retain sole and absolute discretion in the judgment of the manner and means of carrying out the contractor's activities and responsibilities under the contract. The contract is not to be construed as creating any joint employment relationship between the contractor and the public agency or the state of Ohio.

3.7 Gallipolis Developmental Center reserves the right to reject, in whole or in part, any and all proposals where Gallipolis Developmental Center, taking into consideration factors including but not limited to, price and the results of the evaluation process, has

determined that the award of a contract would not be in the best interests of Gallipolis Developmental Center or the State of Ohio.

4.0 DECLARATION REGUARDING MATERIAL ASSISTANCE/NONASSISTANCE (DMA)

4.1 Prior to entering into any contract to conduct business or provide funding, the state, any instrumentality of the state and any political subdivision of the state must obtain a DMA form pursuant to O.R.C. section 2909.33 (C), which states:

"Prior to entering into a contract to conduct business or receive funding, any person, company, affiliated group, or organization, and any person who holds, owns, or otherwise has a controlling interest in a company, affiliated group, or organization that conducts any business with or receives funding in an aggregate amount greater than one hundred thousand dollars annually from the state, any instrumentality of the state, and any political subdivision of the state, excluding the amount of any personal benefit, shall certify that it does not provide material assistance to any organization on the United States department of state terrorist exclusion list. The certification shall be made by completing the declaration of material assistance/nonassistance..."

Since the State of Ohio cannot determine the amount spent with political subdivisions of the State, we are required to obtain the DMA form from all vendors.

5.0 PROPOSALS

5.1 All proposals shall be in accordance with information provided in this document as well as an interview on site, if requested.

5.2 All proposals shall be in writing and signed by the person providing services (or in the case of companies by an authorized representative on company letterhead).

5.3 All proposals shall be submitted on the basis of a per hour charge. Travel expenses and travel time will not be paid. **A separate quotation shall be submitted for each fiscal year period.**

5.4 All proposals shall be guaranteed.

5.5 SEALED PROPOSALS WILL BE RECEIVIED BY:

Gallipolis Developmental Center
Attn: HR Department
2500 Ohio Avenue
Gallipolis, Ohio 45631

Envelopes to be marked in lower left corner: **DENTAL SERVICES.**

5.6 Deadline for Proposal:

Proposals will be received at the above address until **April 14, 2011, 5:00** pm and opened immediately thereafter. Proposals not received at Gallipolis Developmental Center by the deadline will be returned to sender unopened.

6.0 SITE INTERVIEW

6.1 As a representative of State Operated Services and Supports/DODD, Gallipolis Developmental Center reserves the right to interview all persons providing services under the provisions of this RFP to determine the best responsive vendor. Interviews will be after the proposal deadline and conducted on the premises of Gallipolis Developmental Center.

7.0 SUBMISSIONS REQUIRED

7.1 Complete and submit with your proposal a "Contractor Information" form (attached),

7.2 Complete and submit with your proposal a "Price/Compensation" form (attached),

7.3 Complete and submit with your proposal a IRS W-9 form (attached),

7.4 Complete and submit with your proposal a DMA form (attached),

7.5 Complete and submit with your proposal a statement of the ability to meet the minimum requirement qualifications,

7.6 Complete and submit with your proposal a statement of ability to perform the responsibilities listed above,

7.7 A copy of all pertinent current licenses,

7.8 List of previous services performed to include facility name, complete address, telephone number, contact person, and dates service was performed.

7.9 Any accommodation or special needs of any person providing services under the provisions of this RFP.

8.0 SCHEDULE

8.1 July 1, 2011 – June 30, 2012 (Fiscal Year 2012)

8.2 July 1, 2012 – June 30, 2013 (Fiscal Year 2013)

9.0 PAYMENTS

9.1 Payments for services are made thirty (30) days from the receipt of a proper invoice. A **proper itemized invoice** must be provided in accordance with the ORC section 125.01(B), which defines a proper invoice as being free from defects, errors, discrepancies, or other improprieties. It must include but may not be limited to:

9.1.1 Delivery of the commodity or performance of the service described in the order.

9.1.2 Date of the purchase or rendering of the service.

9.1.3 Itemization of the things done, material supplied, or labor furnished.

9.1.4 Sum due pursuant to the contract or obligation.

9.1.5 Vendor/provider name and address.

9.1.6 Buying agency name.

9.1.7 Proper invoice signed by the vendor.

10.0 EVALUATION CRITERIA

10.1 Scores will be given for each of the following items. The highest possible score is noted with each line item. The award will be given to the vendor with the highest score.

10.1.1 Person(s) to provide services are licensed to practice dentistry as issued by the Ohio Dental Board pursuant to Section 4715.09 of Revised Code, (Yes = continue to next criteria; No = proposal is rejected).

10.1.2 Experience serving person with mental retardation (<6 years = 0; 6-9 years = 5 points; 10+ years = 10 points).

10.1.3 Experience providing service under ICF/MR standards (<3 years = 0; 3-5 years = 2; 6-9 years = 5; 10 + years = 10 points)

10.1.4 Experience serving Developmental Center residents
10.1.4.1 (Yes = 20, No = 0)

10.1.5 Price. Rank highest to lowest order when compared to all proposals and multiplied: (1=5, 2=10, 3=15, 4=20, 5=25, etc.).

10.1.6 In the event of a tie, the award will be determined through the vendor interview process

11.0 ATTACHMENTS

11.1 Contractor Information form

11.2 Pricing/Compensation form

11.3 IRS Form W-9

11.4 DMA Direct Material Assistance form

11.5 Personal Services Contract form (*provided as information, please note forthcoming revisions*)

11.6 HIPAA Compliance Provisions (Business Associate Addendum)

CONTRACTOR INFORMATION

THIS FORM MUST BE SUBMITTED WITH YOUR PROPOSAL
(The pricing/Compensation form must be in a separately sealed envelope)

Vendor Name: _____

Street Address: _____

City: _____ **State:** _____ **Zip Code:** _____

Phone Number: _____ **Fax Number:** _____

1. Number of contracts with the State of Ohio (including DODD). Specifically,

State Agency: _____

Contracted Services: _____

Duration of Contract: _____

Amount/Rate: _____

(Attach additional sheets if necessary.)

2. Provide the following current information on both a corporate-wide basis (including Ohio) and, if a multi-state corporation, the corporation's Ohio-based operations:

	Ohio Offices	**Nationwide (incl. Ohio Offices)**
Total Employees:	_____	_____
% Women:	_____	_____
% Minorities:	_____	_____

3. What is your **TAX IDENTIFICATION** number? _____

4. If your billing address is different from your mailing address please list below:

Vendor Name: _____

Street Address: _____

City: _____ **State:** _____ **Zip Code:** _____

Phone Number: _____ **Fax Number:** _____

_____ _____
Authorized Signature Date

Contracts subject to appropriation availability and approval of DODD and, if applicable, the Controlling Board, State of Ohio.

PRICING/COMPENSATION

Vendor Name: _____

Street Address: _____

City: _____ **State:** _____ **Zip Code:** _____

Service Provided: _____

Please complete Hourly Rate or Fee Schedule, as applicable:

FY 2012 $_____ X _____ hours = $_____ **(Total FY 2012)**
(Hourly Rate)

FY 2013 $_____ X _____ hours = $_____ **(Total FY 2013)**
(Hourly Rate)

TOTAL FY'S 2012 & 2013: $_____

OR

Fee Schedule:

Procedure:	FY' 12 Fee	FY' 13 Fee
_____	$_____	$_____
_____	$_____	$_____
_____	$_____	$_____
_____	$_____	$_____
_____	$_____	$_____
_____	$_____	$_____
_____	$_____	$_____
_____	$_____	$_____
_____	$_____	$_____
_____	$_____	$_____

Please use an attachment if additional lines are necessary.

_____ Authorized Signature

_____ Date

Form **W-9**
(Rev. November 2005)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give form to the requester. Do not send to the IRS.

Print or type See **Specific Instructions** on page 2.

Name (as shown on your income tax return)

Business name, if different from above

Check appropriate box: ☐ Individual/ Sole proprietor ☐ Corporation ☐ Partnership ☐ Other ▶ ☐ Exempt from backup withholding

Address (number, street, and apt. or suite no.) | Requester's name and address (optional)

City, state, and ZIP code

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

or

Employer identification number

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

Sign Here **Signature of U.S. person ▶** **Date ▶**

Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

U.S. person. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

In 3 above, if applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

For federal tax purposes, you are considered a person if you are:

- An individual who is a citizen or resident of the United States,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or
- Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

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OHIO PUBLIC SAFETY
EDUCATION • SERVICE • PROTECTION

Ohio Department of Public Safety
Division of Homeland Security
http://www.homelandsecurity.ohio.gov

REQUEST FOR A REVIEW OF THE DENIAL OF GOVERNMENT FUNDING OR BUSINESS CONTRACT DUE TO THE PROVISION OF MATERIAL ASSISTANCE TO A TERRORIST ORGANIZATION

In accordance with section 2909.33 of the Ohio Revised Code

This form serves as an official request for a review of the denial of a government funding or business contract due to the provision of material assistance to an organization on the U.S. Department of State Terrorist Exclusion List.

The Ohio Department of Public Safety, upon the request of any person, company or organization who has been denied a government funding or business contract due to the provision of material assistance to an organization on the U.S. Department of State Terrorist Exclusion List, shall review the request within thirty days to determine if the denial should be voided.

This form must be sent via certified mail to the Ohio Department of Public Safety's Division of Homeland Security.

Ohio Department of Public Safety
Division of Homeland Security
1970 West Broad Street Rm.422
Columbus, Ohio
43218-2081

LAST NAME	FIRST NAME	MIDDLE INITIAL
HOME ADDRESS		

CITY	STATE	ZIP	COUNTY

HOME PHONE	WORK PHONE

COMPLETE THIS SECTION ONLY IF YOU ARE A COMPANY, BUSINESS OR ORGANIZATION

BUSINESS/ORGANIZATION NAME
BUSINESS ADDRESS

CITY	STATE	ZIP	COUNTY

PHONE NUMBER
( )

COMPLETE ALL APPLICABLE SECTIONS BELOW

1. On what date (day, month and year) was material assistance provided?

2. To which organization on the Terrorist Exclusion List was material assistance provided?

3. Describe the material assistance that was provided.

HLS 0040 2/06

GOVERNMENT FUNDING OR BUSINESS CONTRACT – CONTINUED

4.	For what reason was material assistance provided?
5.	Did you know of the organization's terrorism-related activities at the time material assistance was provided?
6.	Why do you feel the denial of government funding or business contract due to the provision of material assistance is inappropriate or unjust?

X _____ Signature

_____ Date

Fund	Account	ALI	Department	Program	Grant	PO Number	CB and/or R&P Number (i applicable)

Ohio Department Developmental Disabilities

PERSONAL SERVICE CONTRACT

SECTION A. CONTRACT PARTIES

This contract is entered into between the Ohio Department Developmental Disabilities (Agency), on behalf of the following:

Name of Developmental Center, Office, or other Contracting Entity	Address (Street, City, State, Zip)

and

Contractor's Name	Address (Street, City, State, Zip)	OAKS Vendor Number

Type of Service Provided:

_____

SECTION B. EFFECTIVE DATES

This contract is effective _____ through _____ unless terminated prior thereto pursuant to Section G. Services shall not begin until Agency receives OBM approved Purchase Order.

SECTION C. COMPENSATION

1. The Contractor will be paid for the term of this contract as follows (check option a or b):

a. ☐ Fee Schedule. Attach Fee Schedule to Contract or include Fee Schedule in Section D.1.a.

b. ☐ Hourly Rate. Complete the information below

Fiscal Year	Rate per Hour	Maximum Hours Worked	Maximum Fiscal Year Contract Amount
2010			
2011			

Maximum Contract Amount for Biennium

_____

2. Contractor shall not be reimbursed for travel, lodging or any other expenses incurred in the performance of this Contract.

3. Contractor shall submit a valid invoice on letterhead for the compensation incurred consistent with this Section, within twenty (20) days of the end of each month. Each invoice shall contain the following information:

   a. a description of the services performed;
   b. date of the services rendered;
   c. a total for the invoice;
   d. vendor's name and address;
   e. Department's name; and
   f. an attestation that the information contained in the invoice is accurate and true;

4. Agency shall pay Contractor within thirty (30) days of receipt and approval of the invoice.

5. This Contract does not guarantee a minimum amount of service. Services shall be performed on an as needed basis as directed by Agency.

SECTION D. DUTIES OF CONTRACTOR

1. Contractor shall:

   a. (Either list duties and associated fees OR type "See Request for Proposal and Response to Request")

   b. Contractor shall maintain all necessary licenses or registrations. Contractor shall perform all services with reasonable care, skill and diligence as would normally be provided by an experienced consultant and in accordance with industry standards.

   OR

   Contractor shall maintain all necessary licenses and registrations. All services shall be performed in accordance with: (1) generally accepted standards of care in the community and the quality criteria adopted by the Agency; (2) policies of the Agency; and (3) applicable rules and standards for the certification of an intermediate care facility for the mentally retarded.

   c. The contractor reports directly to (name and title of supervisor) _____who will verify the contract's time and service charged to this contract.

SECTION E. NATURE OF CONTRACT

1. Agency enters into this Contract in reliance upon Contractor's representations that it has the necessary expertise and experience to perform its obligations hereunder, and Contractor warrants that it does possess the necessary expertise and experience. It is specifically understood that the nature of the services to be rendered under this Contract are of such a personal nature that Agency is the sole judge of the adequacy of such services. Agency thus reserves the right to terminate this Contract should Agency at any time be dissatisfied with Contractor's performance of its duties under this Contract.

2. In the event of a termination of this Contract by Agency, Contractor shall be reimbursed in accordance with Section G., Termination of Contractor's Services.

3. Agency may, from time to time, communicate specific instructions and requests to Contractor concerning the performance of the work described in this Contract. Upon such notice, Contractor shall comply with such instructions and fulfill such requests to Agency's satisfaction. It is expressly understood by the parties that these instructions and requests are for the sole purpose of performing the specific tasks requested to ensure satisfactory completion of the work described in this Contract. The management of the work, including the exclusive right to control or direct the manner or means by which the work is performed, remains with the Contractor. Agency retains the right to ensure that Contractor's work is in conformity with the terms and conditions of this Contract.

SECTION F. CERTIFICATION OF FUNDS

1. It is expressly understood and agreed by the parties that none of the rights, duties, and obligations described in this Contract shall be binding on either party until all relevant statutory provisions of the Ohio Revised Code, including, but not limited to, O.R.C. Section 126.07, have been complied with, and until such time as all necessary funds are available or encumbered and, when required, such expenditure of funds is approved by the Controlling Board of the State of Ohio, or in the event that grant funds are used, until such time that Agency gives Contractor written notice that such funds have been made available to Agency by Agency's funding source.

SECTION G. TERMINATION OF CONTRACT

1. Agency may, at any time prior to the completion of services by Contractor under this Contract, suspend or terminate this Contract with or without cause by giving five (5) days written notice to Contractor.

2. Contractor, upon receipt of notice of suspension or termination, shall cease work on the suspended or terminated activities under this Contract, take all necessary or appropriate steps to limit disbursements and minimize costs, and, if requested by Agency, furnish a report, as of the date of receipt of notice of suspension or termination, describing the status of all work under this Contract, including, without limitation, results, conclusions resulting therefrom, and any other matters Agency requires.

3. Contractor shall be paid for services rendered up to the date Contractor received notice of suspension or termination, less any payments previously made, provided Contractor has supported such payments with invoices as required under Section C. In the event of suspension or termination, any payments made by Agency for which Contractor has not rendered services shall be refunded.

4. In the event this Contract is terminated prior to its completion, Contractor, upon payment as specified, shall deliver to Agency all work products and documents which have been prepared by Contractor in the course of providing services under this Contract. All such materials shall become and remain the property of Agency, to be used in such manner and for such purpose as Agency may choose.

5. Contractor agrees to waive any right to, and shall make no claim for, additional compensation against Agency by reason of such suspension or termination.

6. Contractor may terminate this Contract with or without cause upon thirty (30) days prior written notice to Agency.

SECTION H. INDEPENDENT CONTRACTOR

1. No relationship of employer and employee is created by this contract. Contractor will act hereunder as an independent contractor with no claim under this Contract or otherwise against Agency or the State of Ohio for business expenses, travel expenses, vacation pay, sick pay, retirement benefits, workers compensation, or disability or unemployment insurance benefits or employee benefits of any kind. Contractor is not eligible to participate in any employee benefit or retirement plans offered by Agency or the State or Ohio. Agency shall withhold no payroll or employment taxes of any kind.

2. Contractor is solely responsible for all of Contractor's business expenses, including the payment or withholding of all federal, state and local income taxes, workers compensation insurance, social security and unemployment insurance, and the payment of wages and salaries, travel expenses, insurance of every kind, and health and retirement plans. Contractor shall indemnify and hold Agency harmless from and against any and all claims, demands, liabilities, losses, damages and expenses resulting in any manner from any act or omission of Contractor or its employees related to its obligation to pay and withhold income tax, social security, unemployment insurance and to maintain worker's compensation insurance.

3. Nothing herein shall be construed to imply, by reason of Contractor's engagement hereunder on an independent contractor basis, that Agency shall have or may exercise any right of control over Contractor with regard to the manner or method of Contractor's performance of services hereunder.

4. Except as expressly provided herein, neither party shall have the right to bind or obligate the other party in any manner without the other party's prior written consent.

5. Contractor shall submit to a BCI (Ohio residents for more than five (5) years) and/or FBI (Ohio residents less than five (5) years) electronic background check. Contractor's Personal Services Contract is contingent upon successful completion of that criminal records check.

SECTION I. RECORD KEEPING

1. Until the expiration of six (6) years after the termination of this Contract, Contractor will, upon proper request, allow the Comptroller General of the United States, the U.S. Department of Health and Human Services, the State of Ohio, the Ohio Medicaid Fraud Control Unit and the Ohio Department of Job and Family Services and their duly-authorized representatives access to Contractor's books, documents and records necessary to certify the nature and extent of costs of reimbursable services provided under this Contract. For each subcontract in excess of $2,500, the Contractor shall require the subcontractor to agree to these record keeping provisions. If Contractor is requested to disclose any books, documents or records relevant to their Contract for the purpose of an audit or investigation by any government agency, Contractor shall immediately notify Agency of the nature and scope of the request and shall make available to Agency all books, documents and records relevant to the request.

2. All provisions under this section survive the expiration or termination of this Contract.

SECTION J. CONFLICTS OF INTEREST AND ETHICS AND LEGAL COMPLIANCE

1. No personnel of Contractor or member of the governing body of any locality or other public official or employee of any such locality in which, or relating to which, the work under this Contract is being carried out, and who exercise any functions or responsibilities in connection with the review or approval of this Contract or carrying out of any such work, shall, prior to the completion of said work, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of said work.

2. Any such person who acquires an incompatible or conflicting personal interest, on or after the effective date of this Contract, or who involuntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his or her interest to Agency in writing. Thereafter, he or she shall not participate in any action affecting the work under this Contract, unless Agency shall determine in its sole discretion that, in the light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

3. Contractor represents, warrants, and certifies that it and its employees engaged in the administration or performance of this Contract are knowledgeable of and understand the Ohio Ethics and Conflicts of Interest laws and Executive Order No. 2007-01S. Contractor further represents, warrants, and certifies that neither Contractor nor any of its employees will do any act that is inconsistent with such laws and Executive Order. The Governor's Executive Orders may be found by accessing the following website: http://governor.ohio.gov/Default.aspx?tabid=1495

4. Contractor represents and warrants that all applicable parties listed in Division (I)(3) or (J)(3) of O.R.C. Section 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of O.R.C. Section 3517.13.

5. Contractor represents and warrants that it is not subject to an "unresolved" finding for recovery under O.R.C. Section 9.24. If this warranty is found to be false, this Contract is void *ab initio* and Contractor shall immediately repay to Agency any funds paid under this Contract.

6. Contractor represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either O.R.C. Section 153.02 or O.R.C. Section 125.25. If this representation and warranty is found to be false, this Contract is void *ab initio* and Contractor shall immediately repay to Agency any funds paid under this Contract.

7. Contractor hereby represents and warrants to Agency that it has not provided any material assistance, as that term is defined in O.R.C. Section 2909.33(C), to any organization identified by and included on the United States Department of State Terrorist Exclusion List and that it has truthfully answered "no" to every question on the "Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization." Contractor further represents and warrants that it

has provided or will provide such Declaration to Agency prior to execution of this Contract. If these representations and warranties are found to be false, this Contract is void *ab initio* and Contractor shall immediately repay to Agency any funds paid under this Contract.

8. Contractor represents and warrants that neither it nor any of its employees or agents are excluded from participation under any Federal health care program, as defined under 42 U.S.C. Section 1320a-7b(D), for the provision of items or services for which payment may be made under a Federal health care program; Contractor has not arranged or contracted (by employment or otherwise) with any employee, contractor or agent that Contractor knows is excluded from participation in any Federal health care program, and no final adverse action, as defined under 42 USC Section 1320a-7e(g) has occurred or is pending against Contractor or to its knowledge against any employee contractor or agent engaged to provide items or services under this Contract (collectively, "Exclusions/Adverse Actions"). Contractor shall notify Agency of any Exclusions/Adverse Actions within five (5) business days of its learning of such Exclusions/Adverse Actions.

9. Contractor shall comply with all applicable federal, state and local laws regarding smoke-free and drug-free work places and shall make a good faith effort to ensure that none of its employees or permitted subcontractors engaged in the work being performed hereunder purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs in any way.

10. Contractor warrants that it has not entered into, nor shall it enter into, other Contracts, without prior written approval of Agency, to perform substantially identical work for the State of Ohio such that the product contemplated hereunder duplicates the work called for by the other Contracts.

11. Contractor represents and warrants that neither it nor any of its employees or agents has been convicted of any offense set forth in Section 5123.081(E) of the Ohio Revised Code.

12. Contractor affirms that neither it nor any of its employees or agents is presently holding a civil service position with the State of Ohio. The Contractor (if an individual) declines a civil service position for the reason(s) identified below.

☐ contractor is not an individual
☐ not interested in benefits
☐ not interested in civil service appointment
☐ compensation and benefits is inadequate
☐ other

SECTION K. NONDISCRIMINATION

1. Pursuant to O.R.C. Section 125.111, Contractor agrees that Contractor, any subcontractor, and any person acting on behalf of Contractor or a subcontractor, shall not discriminate, by reason of race, color, religion, sex, age, national origin, veteran status, or disability against any citizen of this state in the employment of any person qualified and available to perform the work under this Contract.

2. Contractor further agrees that Contractor, any subcontractor, and any person acting on behalf of Contractor or a subcontractor shall not, in any manner,

discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Contract on account of race, color, religion, sex, age, national origin, veteran status or disability.

3. Pursuant to Ohio Revised Code Section 125.111, Contractor shall maintain a written affirmative action program for the employment and effective utilization of economically disadvantaged persons and shall file a description of the affirmative action program and a progress report on its implementation with the equal employment opportunity office of the Department of Administrative Services.

4. Contractor shall not discriminate in the provision of services on account of race, color, religion, sex, age, natural origin, veteran status or disability.

SECTION L. LIABILITY

1. Contractor agrees to indemnify and to hold Agency and the State of Ohio harmless and immune from any and all claims, costs and liabilities for injury or damages arising from this Contract which are attributable to Contractor's own actions or omissions or those of its trustees, officers, employees, subcontractors, suppliers, third parties utilized by Contractor, or joint venturers while acting under this Contract. Such claims shall include any claims made under the Fair Labor Standards Act or under any other federal or state law involving wages, overtime, or employment matters and any claims involving patents, copyrights, and trademarks.

2. In no event shall either party be liable to the other party for indirect, consequential, incidental, special, or punitive damages, or lost profits.

3. Contractor shall purchase and maintain comprehensive general and professional liability insurance each in the minimum amount of $1,000,000 per occurrence. Upon request, Contractor shall furnish Agency with a certificate of coverage.

SECTION M. COMPLIANCE WITH LAWS

1. Contractor, in the execution of duties and obligations under this Contract, agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances.

2. a. The Contractor affirms to have read and understands Executive Order 2010-09S issued by Ohio Governor Ted Strickland and shall abide by those requirements in the performance of this Contract, and shall perform no services required under this Contract outside of the United States. The Executive Order is provided as an attachment.

   b. The Contractor also affirms, understands, and agrees to immediately notify Agency of any change or shift in the location(s) of services performed by the Contractor or its subcontractors under this Contract, and no services shall be changed or shifted to a location(s) that are outside of the United States.

   c. The Agency is not obligated and shall not pay for any services provided under this Contract that the Contractor or any of its subcontractors performed outside of the United States. If services are performed outside of the United States, this will be treated as a material breach of the Contract, and

Contractor shall immediately return to the Agency all funds paid for those services. In addition, if the Contractor or any of its subcontractors perform any such services outside of the United States, the Agency may, at any time after the breach, terminate this Contract for such breach, upon written notice to the Contractor. If the Agency terminates the Contract, the Agency may buy substitute services from a third party, and the Agency may recover the additional costs associated with acquiring the substitute services.

d. If the Contractor or any of its subcontractors prepares to perform services, changes or shifts the location(s) of services performed by the Contractor or its subcontractors under this Contract to a location(s) outside of the United States, but no services are actually performed, the Contractor has 30 days to change or shift the location(s) of services performed to location(s) within the United States. The Agency may recover liquidated damages in the amount of 5% of the value of the contract for every day past the time permitted to change or shift the location(s).

SECTION N. CONFIDENTIALITY

1. Contractor agrees that all data, reports and information received from Agency shall be used only for the services to be provided under this Contract. Contractor agrees that all discussions with Agency personnel and all reports prepared by Contractor are confidential. Contractor agrees to maintain the confidentiality of all such information and will not release such information without the prior written authorization of Agency.

2. Contractor ☐ IS or ☐ IS NOT a "business associate" pursuant to the definition under the Health Insurance Portability and Accountability Act (HIPAA) and the regulations promulgated thereunder specifically 45CFR160.03. If Contractor is a business associate then Contractor shall comply with Addendum A.

3. All provisions under this section survive the expiration or termination of this Contract.

SECTION O. ENTIRE CONTRACT/WAIVER

1. This Contract contains the entire Contract between the parties hereto and shall not be modified, amended or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto.

2. This Contract supersedes any and all previous Contracts, whether written or oral, between the parties.

3. A waiver by any party of any breach or default by the other party under this Contract shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

SECTION P. NOTICES

1. All notices, consents, and communications hereunder shall be given in writing, shall be deemed to be given upon mailing and shall be sent to the addresses set forth below:

[Name]
DODD
[Title]
[Address]

[Name]
[Contractor Name]
[Title]
[Address]

SECTION Q. SEVERABILITY

1. The provisions of this Contract are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.

SECTION R. CONTROLLING LAW

1. This Contract and the rights of the parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio and only Ohio courts shall have jurisdiction over any action or proceeding concerning the Contract and/or performance thereunder.

SECTION S. SUCCESSORS AND ASSIGNS

1. Neither this Contract nor any rights, duties or obligations hereunder may be assigned or transferred in whole or in part by Contractor, without the prior written consent of Agency.

SECTION T. ACCESS TO PREMISES

1. Contractor acknowledges that all packages and bags brought into or taken from Agency premises may be subject to inspection by security, supervisory and management personnel. Video surveillance may also be used to assist in the protection of individuals, staff and property.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly authorized officers, as of the day and year first written above.

[Name]
Ohio Department of Developmental Disabilities
Director

By:_____

Date:_____

[Name]
[Contractor Name]
[Title]

By:_____

Date:_____

[Name]
Ohio Department of Developmental Disabilities
Disabilities
Deputy Director

By:_____

Date:_____

[Name]
Ohio Department of Developmental

Superintendent (if applicable)

By:_____

Date:_____

TED STRICKLAND
GOVERNOR
STATE OF OHIO

Executive Order 2010-09S

Banning the Expenditure of Public Funds for Offshore Services

1. **Ohio's Economic Vitality Necessitates Constant Vigilance in State Job Creation Efforts.** State officials and employees must at all times remain passionately focused on initiatives that will create and retain jobs in the United States in general and in Ohio, in particular, and must do so especially during Ohio's continuing efforts to recover from the recent global recession.

2. **No Public Funds Should be Spent on Services Provided Offshore.** Allowing public funds to pay for offshore services undermines economic development objectives and any such offshore services carry unacceptable quality and security risks.

   a. **The Purchase of Offshore Services with Public Funds Undermines Economic Development and Other Job Creation and Retention Objectives.** The expenditure of public funds for services provided offshore deprives Ohioans and other Americans critical employment opportunities. It also undermines efforts to attract businesses to Ohio and retain them in Ohio, initiatives in which the State has invested heavily.

   b. **The Purchase of Offshore Services Has Unacceptable Business Consequences.** The use of offshore service providers could pose unacceptable data security, and thus privacy and identity theft risks. There are pervasive service delivery problems with offshore providers, including dissatisfaction with the quality of their services and with the fact that services are being provided offshore. It is difficult and expensive to detect illegal activity and contract violations and to pursue legal recourse for poor performance or data security

Contracts subject to appropriation availability and approval of DODD and, if applicable, the Controlling Board, State of Ohio.

violations. The State's use of offshore service providers ill-serves the people of Ohio who are the primary consumers of the services provided by the State.

3. **Ohio's Policy Has Been – and Must Continue To Be – That Public Funds Should Not Be Spent on Services Provided Offshore.** Throughout my Administration, procurement procedures have been in place that restrict the purchase of offshore services. Despite these requirements, federal stimulus funds were recently used to purchase services from a domestic company which ultimately provided some of those services offshore. This incident was unacceptable and has caused me, through this Order, to redouble my commitment to ensure that public funds are not expended for offshore services.

4. **Additional Steps Will Ensure that Public Funds Are Not Spent on Services Provided Offshore.** In order to ensure that the State of Ohio makes no expenditures for services provided offshore, I hereby order the following:

   a. No Cabinet Agency, Board or Commission (Executive Agency) shall enter into any contract which uses any funds within its control to purchase services which will be provided outside the United States. This Order applies to all funds in the custody of an Executive Agency, be they from state, federal, philanthropic or private sources. It applies to all purchases of service made directly by an Executive Agency and services provided by sub-contractors of those providing services purchased by an Executive Agency.

   b. This Executive Order will be personally provided, by the Director, Chair or other chief executive official of each Executive Agency, to the Chief Procurement Officer or other individual at that entity responsible for contracts for services.

   c. The Department of Administrative Services, through Ohio's Chief Procurement Officer (OCPO), shall have in place, by August 31, 2010, procedures to ensure all of the following:

      i. All agency procurement officers, or the person with equivalent duties at each Executive Agency (APOs), have standard language in all Executive Agency contracts which:

         (a) Reflect this Order's prohibition on the purchase of offshore services.

         (b) Require service providers or prospective service providers to:

Contracts subject to appropriation availability and approval of
DODD and, if applicable, the Controlling Board, State of Ohio.

(i) Affirm that they understand and will abide by the requirements of this Order.

(ii) Disclose the location(s) where all services will be performed by any contractor or subcontractor.

(iii) Disclose the locations(s) where any state data associated with any of the services they are providing, or seek to provide, will be accessed, tested, maintained, backed-up or stored.

(iv) Disclose any shift in the location of any services being provided by the contractor or any subcontractor.

(v) Disclose the principal location of business for the contractor and all subcontractors who are supplying services to the state under the proposed contract.

ii. All APOs are ensuring that all quotations, statements of work, and other such proposals for services affirm this Order's prohibition on the purchase of offshore services and include all of this Order's disclosure requirements.

(a) Any such proposal for services lacking the affirmation and disclosure requirements of this Order will not be considered.

(b) Any such proposal where the performance of services is proposed to be provided at a location outside the United States by the contractor or any sub-contractor, will not be considered.

iii. All procurement manuals, directives, policies, and procedures reflect the requirements of this Order.

iv. All APOs have adequate training which addresses the terms of this Order.

5. **Exceptions.** Nothing in this Order is intended to contradict any state or federal law. In addition, this Order does not apply to:

a. Services necessary to support the efforts of the Department of Development Global Markets Division to attract jobs and business to the State of Ohio, including incidental services for the support of trade missions, payment of international staff, and services necessary for the operation of international offices.

b. Academic, instructional, educational, research or other services necessary to support the international missions of Ohio's public colleges and universities.

6. **I signed this Executive Order on August 6, 2010 in Columbus, Ohio and it will not expire unless rescinded.**

Ted Strickland

Ted Strickland, Governor

ATTEST:

Jennifer Brunner, Secretary of State

Contracts subject to appropriation availability and approval of DODD and, if applicable, the Controlling Board, State of Ohio.

DEPARTMENT OF ADMINISTRATIVE SERVICES

STANDARD AFFIRMATION AND DISCLOSURE FORM

EXECUTIVE ORDER 2010-09S

Banning the Expenditure of Public Funds on Offshore Services

All of the following provisions must be included in all invitations to bid, requests for proposals, state term schedules, multiple award contracts, requests for quotations, informal quotations and statements of work. This information is to be submitted as part of the response to any of the procurement methods listed.

CONTRACTOR/SUBCONTRACTOR AFFIRMATION AND DISCLOSURE:

By the signature affixed to this response, the Bidder/Offeror affirms, understands and will abide by the requirements of Executive Order 2010-09S issued by Ohio Governor Ted Strickland. If awarded a contract, the Bidder/Offeror becomes the Contractor and affirms that both the Contractor and any of its subcontractors shall perform no services requested under this Contract outside of the United States. The Executive Order is attached and is available at the following website: (http://www.governor.ohio.gov/Default.aspx?tabid=1495).

The Bidder/Offeror shall provide all the name(s) and location(s) where services under this Contract will be performed in the spaces provided below or by attachment. Failure to provide this information as part of the response will deem the Bidder/Offeror not responsive and no further consideration will be given to the response. Bidder/Offeror's offering will not be considered. If the Bidder/Offeror will not be using subcontractors, indicate "Not Applicable" in the appropriate spaces.

1. Principal location of business of Contractor:

   _____ _____
   (Address) (City, State, Zip)

   Name/Principal location of business of subcontractor(s):

   _____ _____
   (Name) (Address, City, State, Zip)

   _____ _____
   (Name) (Address, City, State, Zip)

2. Location where services will be performed by Contractor:

   _____ _____
   (Address) (City, State, Zip)

   Name/Location where services will be performed by subcontractor(s):

   _____ _____
   (Name) (Address, City, State, Zip)

(Name)	(Address, City, State, Zip)

3. Location where state data will be stored, accessed, tested, maintained or backed-up, by Contractor:

(Address)	(Address, City, State, Zip)

Name/Location(s) where state data will be stored, accessed, tested, maintained or backed-up by subcontractor(s):

(Name)	(Address, City, State, Zip)
(Name)	(Address, City, State, Zip)
(Name)	(Address, City, State, Zip)
(Name)	(Address, City, State, Zip)
(Name)	(Address, City, State, Zip)

4. Location where services to be performed will be changed or shifted by Contractor:

(Address)	(Address, City, State, Zip)

Name/Location(s) where services will be changed or shifted to be performed by subcontractor(s):

(Name)	(Address, City, State, Zip)
(Name)	(Address, City, State, Zip)
(Name)	(Address, City, State, Zip)
(Name)	(Address, City, State, Zip)
(Name)	(Address, City, State, Zip)

ADDENDUM A
Business Associate Addendum

This Business Associate Addendum (the "Addendum") is entered into by and between the Ohio Department of Developmental Disabilities ("Agency") and Contractor.

Whereas, Agency and Contractor are parties to an agreement entered into contemporaneously herewith ("Underlying Agreement"); and

Whereas, Agency, pursuant to the Underlying Agreement, provides Contractor with certain individually identifiable protected health information that is necessary for Contractor to perform the services called for in the Underlying Agreement and is subject to protection under the Health Insurance Portability and Accountability Act of 1996("HIPAA") and the Standards for Privacy of Individually Identifiable Health Information and Security Standards for the Protection of Electronic Protected Health Information, 45 C.F.R. Part 160 and Part 164 ("Rules"); and

Whereas, the parties purpose for entering into this Addendum is to comply with the requirements of applicable laws and regulations, including but not limited to HIPAA and the Rules.

NOW, THEREFORE, in consideration of the forgoing and the promises and mutual covenants contained herein, the parties agree as follows:

1. Definitions. Unless otherwise provided in this Addendum, capitalized terms shall have the same meaning as set forth in the Rules.

2. Duties and Responsibilities of Contractor:

   A. Contractor acknowledges and agrees that all protected health information (the "PHI"), as defined by the Rules, provided to Contractor by Agency is confidential and the property of Agency without regard to medium of storage or method of transmission of such information. Contractor agrees to keep all PHI confidential.

   B. Except as otherwise limited in this Addendum, Contractor may use or disclose PHI necessary to perform functions, activities, or services for, or on behalf of, Agency as specified in the Underlying Agreement or for the proper management and administration of Contractor, provided that such use or disclosure would not violate the Rules if done by Agency.

   C. Contractor agrees to take reasonable steps necessary to protect the security and confidentiality of PHI so as to enable Agency to comply with HIPAA, the Rules and other laws relating to the privacy and security of PHI, which are now in force or which may hereafter be in force, including, without limitation, the following actions:

      (1.) use or disclose PHI only as permitted or required by the Underlying Agreement and this Addendum, or as Required by Law; and

      (2.) use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by the Underlying Agreement and this Addendum; and

(3.) to the extent practicable, mitigate any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of the requirements of the Underlying Agreement or this Addendum; and

(4.) promptly report in writing to Agency any use or disclosure of the PHI not provided for by the Underlying Agreement or this Addendum, of which Contractor becomes aware; and

(5.) require any contractors or agents, including subcontractors, to whom Contractor provides PHI received from, or created or received by Contractor on behalf of Agency, to agree to the same restrictions and conditions that apply to Contractor pursuant to this Addendum; and

(6.) make its internal practices (including policies and procedures), books, and records relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of Agency, available to the Secretary of the Department of Health and Human Services (the "Secretary") for purposes of determining Covered Entities compliance with the Rules. Contractor shall provide Agency with a copy of any PHI that Contractor provides to the Secretary concurrently with providing such PHI to the Secretary; and

(7.) within fifteen (15) days of receiving a written request from Agency, provide to Agency the information necessary for the Agency to make an accounting of disclosures of PHI about an Individual as necessary for Agency to comply with 45 C.F.R. 164.528; and

(8.) make available information necessary for Agency to respond to an Individual's request for access to PHI about them as is necessary for Agency to comply with 45 C.F.R. 164.524. Such information shall be made available within ten (10) ten days of receiving a written request from Agency for such information. In the event an Individual contacts Contractor, or its agents or subcontractors, directly requesting access to PHI, Contractor will not grant access to PHI but will notify Agency in writing within five (5) business days of such contact; and

(9.) within fifteen (15) days of receiving a written request from Agency, incorporate any amendments or corrections to PHI as necessary for Agency to comply with 45 C.F.R. 164.526. In the event an Individual contacts Contractor, or its agents or subcontractors, directly about making amendment to PHI, Contractor will not make any amendments to PHI but will notify Agency in writing within five (5) business days of such contact.

3. Security Rule Provisions. Contractor agrees to the following additional obligations in order that Agency may meet its obligations under HIPAA Security Rule, 45 C.F.R. Part 164, Subpart C, with respect to electronic PHI:

A. Contractor will employ appropriate administrative, technical, and physical safe guards to protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of Agency.

B. Contractor will Report to Agency any Security Incident of which it becomes aware.

C. Contractor will ensure that any agent, including a subcontractor, to whom it provides such electronic PHI agrees to implement reasonable and appropriate safeguards to protect it.

4. Termination. Agency may immediately terminate the Underlying Agreement, including this Addendum, by giving Contractor written notice of termination, if Agency determines that Contractor has violated a material term of this Addendum. Alternatively, Agency may in its sole discretion provide an opportunity for Contractor to cure the breach and end the violation. If Contractor fails to cure the breach to the satisfaction of Agency, the Agency may immediately thereafter terminate the Underlying Agreement. Termination of the Underlying Agreement shall result in the termination of this Addendum.

   Contractor agrees that upon termination of the Underlying Agreement, it will return or destroy all PHI received from, or created or received on behalf of Agency, that Contractor still maintains in any form and retain no copies of such information. This provision shall apply to PHI that is in the possession of Contractor and any subcontractors or agents of Contractor. In the event that returning or destroying the PHI is infeasible, as determined by Agency, Contractor agrees to extend the protections of the Underlying Agreement and this Addendum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such PHI.

5. Amendment. It is the intent of the parties that the Underlying Agreement and this Addendum comply with the requirements of HIPAA and the Rules. Any ambiguity in the Underlying Agreement or this Addendum shall be resolved to permit Agency to comply with HIPAA and the Rules. If necessary, the parties agree to use good faith efforts to amend the Underlying Agreement and this Addendum from time to time as is necessary for Agency to be in compliance with HIPAA and regulations promulgated thereunder.

6. Survival. The obligations of the Contractor under this Addendum shall survive the expiration or termination of the Underlying Agreement and this Addendum.

7. No Third Party Beneficiaries. Nothing express or implied in this Addendum is intended to confer, nor shall confer, upon any person other than the parties, and their permitted successors and assigns if any, rights, remedies, obligations or liabilities whatsoever.

8. Miscellaneous: As amended by this Addendum, the Underlying Agreement and all its terms and conditions shall remain in full force and effect.