

The Ohio Department of Medicaid

Request for Applications

Minority Business Enterprise

For Medical Technical Advisors

RFA #: ODM16171006

Released June, 2015 valid through June 30, 2017

I. Purpose:

The Ohio Department of Medicaid (ODM) releases this open-ended Request for Applications (RFA) to **only receive responses from qualified medical professionals that are also Ohio Certified Minority Business Enterprise (MBE)**, who are interested in serving as Medical Technical Advisors (MTAs) to ODM. MTAs provide the clinical expertise necessary in the administration of Ohio's Medicaid Program by performing prior authorization reviews for healthcare services, drug utilization reviews, disability determinations, utilization management, and determinations of medical necessity. ODM is seeking these professional services from currently licensed and credentialed professionals, including but not limited to:

- Internal Medicine (MD/DO)
- General Medicine (MD/DO)
- Pain Management (MD/DO)
- Orthopedics (MD/DO)
- Neurology (MD/DO)
- Psychiatry/Psychology (MD/DO) (Psy.D/Psy.D/Ed.D.)
- General Surgery/Plastic Surgery (MD/DO)
- Podiatry (DPM)
- Pharmacists (R.Ph. and/or Pharm.D.)
- Dental/Orthodontics/Oral Surgery (DDS)
- Optometry (OD)
- Ophthalmology (MD/DO)
- Respiratory Therapy (RRT)
- Physical Therapist (PT)

All interested applicants must possess appropriate medical credentials and sufficient basic computing skills to perform clinical reviews in an electronic format. ODM plans to offer contracts for MTA services to qualified licensed/credentialed medical professionals in sufficient numbers for the efficient and effective operation of the Medicaid program. Interested medical professionals are to follow the instructions and guidelines provided in this RFA document to demonstrate to ODM their qualifications to perform the services that will be required of selected MTAs under contract. ODM is under no obligation to consider or respond in any way to any medical professionals' applications that are not prepared and submitted in accordance with this RFA.

Within this RFA, use of the terms, 'the State' and 'ODM' may be used interchangeably for purposes of selecting and contracting with vendors for the work described in this RFA. For the purpose of this RFA, the terms "applicant," "vendor," "or "medical professional" may be used interchangeably to refer to an individual or organization interested in this opportunity. The terms "contractor," "selected medical professional," or "MTA" may be used interchangeably in reference to the successful applicants selected

through this RFA for contract award. The terms “applications,” “proposals,” and “bids” may be used interchangeably to refer to applicants’ responses to this RFA.

The State is under no obligation to enter into a contract with any applicant as a result of this solicitation, if, in its opinion, none of the proposals received are responsive to the objectives and needs of ODM. The State reserves the right not to select any vendor should ODM decide for any reason not to proceed. Changes in this RFA of a material nature will be provided on the procurement web page dedicated to this opportunity. All applicants are responsible for obtaining any such changes without further notice by the State.

II. Issuing Office

This RFA document is released by, and the subsequent contracts will be with ODM. The Ohio Department of Medicaid (ODM), Clinical Quality and Research and the Bureau of Long Term Care Services and Support will be responsible for daily contract management. Multiple contracts are expected to result from this RFA process, and each will be an agreement between ODM and the selected medical professional.

Applications must be submitted to ODM in strict accordance with proposal submission instructions provided in **Section X, Application Submission Instructions**.

III. Anticipated Procurement Timetable

This RFA is effective and applications will be accepted at any time from its date of release to June 30, 2017, which is the close of the current state fiscal biennium, unless rescinded or cancelled by ODM or ODM prior to that date. This RFA could be rescinded or cancelled at any time due to factors such as programmatic changes, work volume, or funding decisions, among others. The “Opening Date” identified on the Procurement Opportunity website (*i.e.*, m 30, 2015) is to ensure that the RFA remains available to qualified medical professionals and active for the duration of the State fiscal biennium, but each application may, at the State’s discretion, be “opened” (that is, be reviewed for contract award purposes) at any time while this RFA remains effective.

This is an open-ended RFA. ODM has an on-going need for the contracted services of Medical Technical Advisors. The level of that need, the volume of work to be performed, and the medical specialties most needed, will vary over time making it impossible to be more definitive in this RFA, therefore ODM will accept applications from medical professionals at any time while this RFA is still valid.

Applications are generally reviewed within a month of their receipt, and applicants then will be notified of the State’s decision. If a qualified medical professional (*i.e.*, one whose application has been reviewed and has passed all selection criteria and standards) fulfills an existing program need, ODM may offer that professional a contract at that time. If an applicant passes all selection criteria but there is insufficient program need for that professional at that time, that application will be held by ODM for a period of not more than six months from the date of the application; the applicant will be notified of that decision. Should a programmatic need for that applicant arise during that period, ODM may, at its sole discretion, offer that medical professional a contract. However, to ensure the continuing qualifications of the applicant, ODM reserves the right to request, review, and evaluate updated information before issuing a contract.

If a qualified applicant is not offered a contract within six-months of the date of the application, that medical professional must submit a new application with current information in order to be considered further.

IV. Contract Effective Term and Renewal Period

State law prohibits ODM from making financial commitments beyond the state fiscal biennium. Depending upon the date an application is submitted, and upon ODM programmatic needs, accepted applicants may be offered contracts for the remainder of the 2014-2015 biennium and/or for the 2016-2017 biennium, with the possibility of one further renewal for state fiscal year (SFY) 2018, which begins July 1, 2017 and ends June 30, 2018.

All contracts are subject to all required contract and funding approvals (including review and approval by the Controlling Board when applicable), and all contract renewals are contingent upon all contractual and funding approvals, continuation of the project need, and satisfactory performance by the contractor, as determined by ODM. MTAs will be notified by ODM prior to their contract expiration date of whether their contracts will be renewed. ODM reserves the right not to renew MTA contracts resulting from this RFA for any reason, administrative or programmatic.

According to requirements of Ohio Revised Code (ORC) 126.07, ODM contracts are not valid and enforceable until the Office of Budget and Management (OBM) certifies the availability of appropriate funding, as indicated by the approval of the Purchase Order (P.O.). A selected applicant may neither perform work nor submit an invoice for payment for MTA work performed for any time period prior to the P.O. approval date. The ODM Contract Manager will notify the selected applicant when the requirements of ORC Section 126.07 have been met.

V. Background

ODM is the single state agency responsible for the operation and management of Ohio's Medicaid program, and is responsible for the adjudication and payment of claims for covered services. As part of this adjudication and payment process, the Bureau of Clinical Quality and Research and the Bureau of Long Term Care Services and Support, actively undertake the review of clinical/medical cases when determination of medical necessity (per OAC and other relevant rules) is required for the purposes of prior authorization of health services, plan of care review, utilization review, and medical coverage. These highly specialized clinical reviews are services typically performed by MTAs under contract with ODM. These contractors' services provide ODM with a breadth and depth of professional expertise, which in turn, enhances ODM's ability to operate the Medicaid program effectively.

The majority of MTA contractors will work with the following functional sections of ODM:

- The Bureau of Clinical Quality and Research and the Bureau of Long Term Care Services and Support utilize the services of MTAs to assist in medical necessity reviews for prior authorization of Medicaid services, and in disability determination reviews in accordance with Ohio Administrative Code (OAC) Chapter 5101:3-1 and other relevant rules.
- The Bureau of Clinical Quality and Research and the Bureau of Long Term Care Services and Support assist with the department's decisions in appeal proceedings; provide consultation and feedback on policy and procedures pertaining to service authorization, plans of care, and/or payment decisions based upon medical review; and provide technical assistance in their area of expertise when appropriate.

- The Bureau of Clinical Quality and Research utilizes the services of MTAs to perform drug utilization review as required by OBRA-90 and OAC rule 5101:3-9-04.

All work will be performed on-site at the Ohio Department of Medicaid, 50 West Town Street, Columbus, Ohio, 43215. Work must be conducted during building access hours of 6:00 a.m. to 6:00 p.m., Monday through Friday, or as specified.

VI. Scope of MTA Work:

A. Work Required by Discipline:

The following is a synopsis of the scope of work that may be required of MTAs selected through the RFA process.

For Physician/Surgeon, Psychology/psychiatry, Ophthalmologic/optometry, Podiatry, Dental, Pharmacy, and Therapy Services:

Physician and other professional medical services are needed for: 1) utilization reviews; and 2) prior authorization reviews. ODM seeks applicants who have training and expertise in the allopathic and osteopathic medicine. Physicians and professionals responding to this RFA may express their preference for one or more of these functions, but final work assignments for the selected physicians and professionals will be at the sole discretion of ODM, and will be based primarily upon vendor qualifications and coverage of ODM need. In all cases, selected physician/professional MTAs may be required to assist in the development of documents for, and participate in, the fair hearings process. In addition, MTAs may be asked to provide technical expertise in the development of health plan policy, and staff/provider/consumer outreach and education. Primary components of the work are in electronic format, using computer systems, software, and internet. **Basic computer skills are required.**

Prior Authorization of Medical Services and Medical Necessity Reviews
Medicaid providers submit plans of care, medical records and related documents and any additional clinical documentation to ODM. MTAs evaluate all submitted information against prior authorization criteria. MTAs are required to review medical records and any related documentation to help determine medical necessity and/or medical appropriateness of medical services. This may include participation on a Special Committee to review requests for non-covered medical services. The MTA may also be required to assist in the fair hearing process from the worksite via telephone with the consumer and his/her legal representative and a hearing officer.

B. Professional Expertise Needed and Hourly Reimbursement:

Through this RFA process, ODM seeks to fulfill specific programmatic needs for medical technical expertise through contracts with properly qualified professionals. All MTAs must be available to work a minimum of 16 hours per month. The maximum hourly rate that would be in effect throughout the term of the contract, including any renewal period, for each medical specialty is indicated below.

<u>MTA Expertise</u>	<u>Hourly Rate</u>
Internal Medicine (MD/DO)	\$70.00
General Medicine (MD/DO)	\$70.00
Pain Management (MD/DO)	\$70.00
Orthopedics (MD/DO)	\$70.00
Neurology (MD/DO)	\$70.00
Psychiatry (MD/DO)	\$70.00
General Surgery/Plastic Surgery (MD/DO)	\$70.00
Ophthalmology (MD/DO)	\$70.00
Psychology (PhD./Psy.D/Ed.D)	\$56.00
Podiatry (DPM)	\$56.00
Pharmacists (R.Ph. and/or Pharm.D.)	\$46.00
Dental/Orthodontics/Oral Surgery (DDS)	\$56.00
Optometry (OD)	\$56.00
Respiratory Therapy (RRT)	\$42.00
Physical Therapist (PT)	\$42.00

Number of MTAs sought: In its contractor selection process, ODM will consider various factors, including the current need for the services of a given specialty, and the number of hours each qualified applicant offers to make available to ODM per month. ODM prefers to meet its coverage needs by offering the fewest contracts possible, but as work volume may vary and MTA availability may also change over time, ODM may offer contracts to qualified applicants at any time during the effective period of this RFA. The decision of the number of contracts to be offered, and when to offer them, will be based on ODM work volume, the quality of responses submitted by applicants, the available number of hours offered by those applicants, and is at the sole discretion of ODM.

Anticipated Assignment Volume: Regardless of the number of hours offered by the selected MTAs, ODM does not guarantee the volume of work that will be assigned to any MTA under contract. The actual work volume assigned to any MTA for a given period of time will be based on total ODM work volume, operational need, the number of qualified MTA contractors available, may vary periodically, and is at the sole discretion of ODM. In making work assignments, ODM will make reasonable attempts to consider MTA scheduling preferences.

Compensation rate: Upon proper bi-weekly invoicing, the selected MTAs will be compensated for the number of hours actually spent performing MTA services, at the rate of pay indicated above for their medical specialty. The stated hourly rate for each medical specialty indicated would be in effect throughout the term of the contract, including any renewal periods.

Peer Review:

MTAs will agree to participate in a peer review process. Random samples of five (5) clinical decisions; disability determinations; client charts; prior authorization requests; and/or state hearing summaries will be conducted on a quarterly basis. MTAs may review or be reviewed by other MTAs. MTAs may be reviewed by outside sources with equal or superior licensure.

Production Standards:

MTAs will issue a minimum of two to three reviews per hour, depending upon case complexity. The Contract Manager may adjust these production standards based on operational need.

VII. Qualifications

Only those applicants who are appropriately licensed and/or credentialed professionals may submit proposals in response to this RFA. Applicants must describe how they are qualified to conduct the work described above. **Proposals must indicate how the applicant meets all professional qualifications listed in Section XII, Scoring of Applications, in order to receive appropriate consideration.** References from professional organizations and associations are to be included, and other supporting documents may also be submitted. Any interested Ohio Licensed Medical Professional may submit a response to this RFA.

VIII. Internet Question and Answer Period; RFA Clarification Opportunity

Potential vendors or other interested parties may ask clarifying questions regarding this RFA via the Internet during the Q&A Period. To ask a question, potential vendors must use the following Internet process:

- * **Access the Ohio Department of Medicaid Web Page at: www.medicaid.ohio.gov**
- * **Under the Resources tab**
- * **Go Down to Legal and Contracts**
- * **Select RFPs in the pop-up menu**
- * **Click the Link to the actual RFP**
- * **Select "Submit Inquiry" near the bottom of the web page**
- * **Follow instructions for submitting questions; or, to view posted questions and answers, select "View Q and A" near the bottom of the Web Page.**

Questions about this RFA must reference the relevant part of this RFA, the heading for the provision under question, and the page number where the provision can be found. The name of a representative of the potential vendor (or other interested party), the company name, phone number, and e-mail address must be provided to submit an inquiry. The State may, at its option, disregard any questions which do not appropriately reference an RFA provision or location within the RFA, or which do not include identification of the originator of the question.

The State's responses to all questions asked via the Internet will be posted on the Internet website dedicated to this RFA, for public reference by any interested party. The State will not provide answers directly to the vendors (or any interested party) that submitted the question. All questions about this RFA that are submitted in accordance with these instructions will be answered on the RFA's dedicated web page.

Questions submitted may be no more than 4,000 characters in length, but there is no limit on the number of questions that may be submitted. The State's answers may be accessed by following the instructions above, but rather than selecting "Submit Inquiry," vendors and others should select "View Q and A." The State strongly encourages vendors to ask questions early in the Q&A period so that answers can be posted with sufficient time for any possible follow-up questions.

Vendor proposals in response to this RFA are to take into account any information communicated by ODM in the Q&A process for the RFA. **It is the responsibility of all potential vendors to check this site on a regular basis for responses to all questions, as well as for any amendments, alerts, or other pertinent information regarding this RFA.** Accessibility to questions and answers are clearly identified on the website dedicated to this RFA **once submitted questions have been answered.**

Requests for copies of any previous RFAs or for past Vendor bids, score sheets or contracts for this or similar past projects, are Public Records Requests (PRRs) and should be submitted to: legal@medicaid.ohio.gov.

Please Note: PRRs are not a part of the RFA Q&A process and OCP cannot dictate the timeline for a response of these requests.

IX. Communications Prohibition:

There may be no communications concerning the RFA between any interested applicant and any employee of ODM in the issuing office, or any other ODM employee, or any other individual regardless of their employment status, who is in any way involved in the development of the RFA or the selection of the contractor(s).

The **only** exceptions to this prohibition are as follows:

1. Communications conducted pursuant to Section VIII, Internet Question and Answer Period;
2. As necessary in any pre-existing or on-going business relationship between ODM and any vendor which could submit a proposal in response to this RFA;
3. As part of an interview or proposal clarification process initiated by ODM as necessary to make applicant selections;
4. If it becomes necessary to revise any part of this RFA, ODM will post those revisions, amendments, etc., to the website dedicated to this RFA;*
5. Any Public Records Request (PRR) made through the ODM Office of Legal Counsel.

*** Important Note:** Amendments to the RFA or to any documents related to it will be accessible to interested vendors through the original web page established for the RFA. All interested vendors must refer to that web page regularly for amendments or other announcements. ODM will not specifically notify any vendor of changes or announcements related to this RFA except through the website posting. It is the affirmative responsibility of interested vendors to be aware of and to fully respond to all updated information posted on this web page.

ODM is not responsible for the accuracy of any information regarding this RFA that was obtained or gathered through a source other than the Question and Answer process described in this RFA. Any attempts at prohibited communications by vendors may result in the disqualification of those vendors' proposals.

X. Application Submission Instructions:

Organizations or individuals who are interested in submitting applications (also called ‘responses’) must make their submission in accordance with these instructions. Interested medical professionals must submit three paper copies (one signed original and two copies) and one electronic version on a CD of the proposal in an envelope or package labeled as follows:

Proposals must be addressed, for hand delivery or delivery by a private delivery company, as described below:

**Office of Contracts and Procurement
Ohio Department of Medicaid
ODM-1617-1006
50 West Town Street
Columbus, Ohio 43215
ATTN: RFP/RLB Unit**

Vendors are **STRONGLY** encouraged to use a private delivery company (e.g., FedEx, UPS, etc.) to deliver their proposals, or to hand deliver them, to the above address, as companies like that are capable of delivering directly to ODM’s security desk in the building, where it will be received and date and time stamped. While using the Postal Service is an option it can add several days to the delivery process and could result in a vendor’s proposal being late and removed from consideration. **All proposals must be received by Contracts and Procurement by the posted submission deadline, date and time. No exceptions will be made.**

The address for postal deliveries is:

**Ohio Department of Medicaid
Office of Contracts and Procurement
ODM-1617-1006
PO Box 182709
Columbus, Ohio 43218-2709
ATTN: RFP/RLB Unit**

The entire vendor technical proposal should be converted into **one single .pdf document** saved to the technical proposal CD-ROM submitted to ODM. If the proposal’s size necessitates more than a single .pdf document to contain the entire technical proposal, vendors must still send the CD-ROM copy of the proposal, but use the fewest separate .pdf documents possible.

XI. Instructions for Format of Applications:

The application must be prepared in accordance with instructions given in this section of the RFA, and be submitted in accordance with instructions found in Section X, Application Submission Instructions. Applicants must submit, at minimum, the following requirements, in the following order:

1. Completed Required Vendor Information and Certifications.* See Attachment A;

Attachment A—Section I. --In this section, the vendor is required to provide required information and certifications of eligibility for state contract awards, as described in **Attachment A—Section I.** to this RFA, entitled “Required Vendor Information & Certifications Document.” Vendors may, at their discretion, either print **Attachment A—Section I.**, complete and sign it, and return it as the content of their Proposal Tab 1; or they may provide all the required information and certifications (each fully re-stated from **Attachment A.**) on their own letterhead, properly signed, and use that document as the content of their Proposal Tab 1. Vendors who fail to provide all information and certifications as described in **Attachment A—Section I.** in their Proposal Tab 1 risk disqualification.

Attachment A—Section II. -- Vendors are required to complete and sign the **Location of Business Form**, and return it as part of their Proposal Tab 1. *Vendors who fail to provide a signed and completed form risk disqualification.*

The signed originals of the above referenced forms (**RFA Attachment A., Sections I, II.**) are to be provided in the vendor’s original proposal; photocopies of the completed and signed forms must also be provided with each of the required copies.

2. Application letter containing, at minimum:
 - a. A statement identifying the vendor’s discipline;
 - b. Description of qualifications to demonstrate ability to do the job;
 - c. Ability to work a minimum of 16 hours per month, and a statement of any expected availability beyond that minimum;
 - d. A statement on whether the applicant’s performance under contracts for the provision of services that are the same or similar to those described in this RFA, has resulted in any formal claims for breach of those contracts; and
 - e. A statement on whether the applicant has been the subject of any adverse regulatory or adverse administrative governmental action (federal, state, or local) with respect to vendor’s performance of services similar to those described in this RFA;
3. Four (4) references from professional organizations and associations;
4. A copy of Curriculum Vitae, and;
5. Photocopy of current license/credentials.

Vendors are strongly encouraged to review the Application Score Criteria, as found in Section XII of this RFA, to evaluate their proposals for compliance, completeness, and quality, before submitting them to ODM.

XII. Scoring of Applications:

ODM staff will initially review each application for inclusion of completed and signed Attachment A, and

will determine whether any of those documents or information is missing; if so, the applicant will be notified and provided an opportunity to make the appropriate completions. If, however, the initial review establishes any reason why ODM would be prohibited from entering into a contract with that applicant (e.g., as described in Section XIII, item L of this RFA, the applicant fails to meet standards set in Ohio Revised Code Section 9.24), that applicant will be notified of the disqualification.

A Proposal Review Team (PRT) consisting of ODM staff will read any such initially qualified responses, sorted by discipline, and score them according to the Application Score Criteria, below. The frequency of ODM application reviews will vary according to programmatic need and availability of applications to be considered. With sufficient programmatic need, ODM may, at its sole discretion, consider a single application in the absence of any competing applications from other medical professionals of the same category. Selection recommendations will be made by the PRT separately for each discipline. Reviewers will read each proposal individually, and through team discussion, the PRT will evaluate and score each based on scoring criteria provided below. Through consensus, the PRT will determine a final score for each, and then make recommendations to the Director of ODM for award of the contracts. Those recommendations may be made based on the combined factors of applicants' scores, ODM expectations of work volume, and the available number of hours offered by qualified applicants.

Applicants responding to this RFA will have their responses evaluated and scored based upon the following Application Score Criteria:

1. ODM will consider Bids from Vendors currently certified by DAS as a MBE. A copy of the Ohio MBE certificate must be submitted. **(Yes or No, if no application is disqualified.)**
2. Board Certification **(No points - Fail.** Where applicable, interested professionals may be disqualified without further review if required certification is not documented in the application.)
– **10 points (for Pass)**
3. References from four (4) professionals in their field- **10 points**
4. Participation in any kind of independent medical review - **10 points total (as distributed below)**
 - a. Identification of medical issues that require medical advice or clarification to ensure that all medical issues identified have been adequately addressed - 4 points
 - b. Providing confirmation or rebuttal statements of other medical assessments - 4 points
 - c. Expert witness testimony at hearings and trials - 2 points
5. Participation in peer review activities - **10 points total (as distributed below)**
 - a. Previously assessed through peer review (include peer assessment) - 4 points
 - b. Participation in the peer review process as a reviewer - 4 points
 - c. Establishment of policy and quality assurance procedures for peer review -2 points
6. Experience with basic computer systems - **10 points total (as distributed below)**
 - a. Microsoft Office Suite: Word, Excel, etc - 5 points
 - b. Internet functions - 5 points
7. Experience in the clinical assessment of individuals with mental retardation and developmental disabilities and their medical and behavior support needs. - **10 points**
8. Experience reviewing electronic patient clinical records and making medical determinations relative to requests for coverage of services under any public or private health insurance program. - **10 points total (as distributed below)**
 - a. Experience reviewing electronic patient clinical records and making recommendations about the clinical evidence. - 5 points
 - b. Experience reviewing electronic health care claims prior to payment processing to determine medical necessity. - 5 points
9. Experience with the Medicaid program and/or Public Assistance Programs - **10 points**

The maximum possible points are **80**. ODM may reject any applications not earning a minimum of 60 points. Should ODM have multiple qualifying applications for a given specialty and insufficient need to offer contracts to all, contracts will be offered first to the highest scoring applicant, then the next highest applicant, etc., until the ODM operational need is met.

Applications from qualified professionals who are not offered contracts due to insufficient need at the time the applications were received and reviewed may be held by ODM for up to six months. Should operational needs increase or develop for any reason, ODM may then consider those applicants (after requesting and reviewing any updated information to determine continuing qualifications), and offer contracts as needed based on the highest scoring applications then in ODM possession.

ODM reserves the right to reject any and all applications, in whole or in part, received in response to this request. ODM may waive minor defects that are not material when no prejudice will result to the rights of any applicant or to the public, and ODM reserves the right to seek clarifications from applicants regarding information contained in their proposals, and/or to require interviews with applicants.

XIII. RFA Process Information and Other Contractual Requirements:

A. State Contracts

Applications must list any current contracts the vendor has with State of Ohio agencies. The list must indicate the purpose of the contract, the amount of the contract, the time period covered by the contract, and the percent of the project completed. Vendors must complete a copy of the Required Vendor Information and Certifications Document (provided as **Attachment A**) to report this information, and include the completed document in the vendor's proposal as specified in **Section XI, Instructions for Format of Applications**, of this RFA.

B. Interview

Vendors submitting proposals may be requested to participate in an in-depth interview as part of the evaluation process. The interview, if necessary, may include participants from ODM and any representatives it may appoint. ODM reserves the right to select from responding vendors for interviews and may not interview all vendors submitting proposals. The vendor shall bear all costs of any scheduled interview.

C. Start Work Date

The selected vendor must be able to begin work no later than seven (7) working days after the time funds are encumbered and approved by the Office of Budget & Management. The selected vendor will be notified by the ODM contract manager when work may begin. **Any work begun by a contractor prior to this notification will NOT be reimbursable by ODM.**

D. Proposal Costs

Costs incurred in the preparation of this proposal are to be borne by the vendor, and ODM will not contribute in any way to the costs of the preparation. Any costs associated with interviews will be borne by the vendor and will not be ODMs' responsibility (see Section XIII, B.).

E. Trade Secrets Prohibition; Public Information Disclaimer

Vendors are prohibited from including any trade secret information as defined in Ohio Revised Code (ORC) 1333.61 in their proposals in response to any ODM Requests for Application (RFA), Requests for Letterhead Bids (RLB) or other procurement efforts. ODM shall consider all proposals or similar responses voluntarily submitted in response to any ODM RFA, RFP, RLB, or other procurement document, to be free of trade secrets and such proposals shall, in their entirety, be made a part of the public record.

All proposals and any other documents submitted to ODM in response to any RFP, RFA, etc., shall become the property of ODM. This RFA and, after the selection of an applicant for contract award, any proposals submitted in response to an RFA, RFP, or RLB are deemed to be public records pursuant to R.C. 149.43. For purposes of this section, the term “proposal” shall mean both the technical proposal (or application or other response documentation) and the cost proposal, if opened, submitted by the selected vendor/applicant, and any attachments, addenda, appendices, or sample products.

Any proposals submitted in response to any ODM RFP, RFA, etc. which make claims of trade secret information shall be disqualified from consideration immediately upon the discovery of such unallowable claim.

F. Contractual Requirements

1. Any contract resulting from the issuance of this RFA is subject to the terms and conditions as provided in the model contract, which is included as **Attachment B** of this RFA;
2. Many of the terms and conditions contained in the model contract (**See Attachment B**) are required by state and federal law; however, the vendor may propose changes to the model contract by annotating the model, and returning it with the vendor’s proposal submission. Any such proposed changes are subject to ODM review and approval;
3. Payments for any and all services provided pursuant to the contract are contingent upon the availability of state and federal funds;
4. All aspects of the contract apply equally to work performed by any and all subcontractors;
5. The contractor, and any subcontractor(s), will not use or disclose any information made available to them for any purpose other than to fulfill the contractual duties specified in the RFA. The contractor, and any subcontractor(s), agrees to be bound by the same standards of confidentiality that apply to the employees of ODM and the State of Ohio. Any violation of confidentiality will result in an immediate termination of the contract, and may result in legal action;
6. As a condition of receiving a contract from ODM, the contractor, and any subcontractor(s), shall certify compliance with any court order for the withholding of child support which is issued pursuant to Section 3113.217 of the ORC. The contractor, and any subcontractor(s), must also agree to cooperate with ODM and any Ohio Child Support Enforcement Agency in ensuring that the contractor or employees of the contractor meet child support obligations established under state law; and

7. By signing a contract with ODM, a vendor agrees that all necessary insurance is in effect.

G. Travel and Parking Expense Reimbursement

No travel or parking expenses will be covered.

H. Public Release of Records

Public release of any evaluation or monitoring reports funded under this agreement will be made only by ODM. Prior to public release of such reports, ODM must have at least a 30-day period for review and comment.

I. Confidentiality

All contracts will require that the contractor maintain the confidentiality of information and records which state and federal laws, rules, and regulations require to be kept confidential.

J. Ethical & Conflict of Interest Requirements

1. No contractor or individual, company or organization seeking a contract shall promise or give to any ODM employee anything of value that is of such character as to manifest a substantial and improper influence upon the employee with respect to his or her duties;
2. No contractor or individual, company or organization seeking a contract shall solicit any ODM employee to violate any of the conduct requirements for employees;
3. Any contractor acting on behalf of ODM shall refrain from activities which could result in violations of ethics and/or in conflicts of interest. Any contractor or potential contractor who violates the requirements and prohibitions defined here or of Section 102.04 of the ORC is subject to termination of the contract or refusal by ODM to enter into a contract; and
4. ODM employees and contractors who violate Sections 102.03, 102.04, 2921.42 or 2921.43 of the ORC may be prosecuted for criminal violations.

K. Health Insurance Portability & Accessibility Act (HIPAA) Requirements

As a condition of doing business with the State, the contractor, and any subcontractor(s), will be required to comply with 42 U.S.C. Sections 1320d through 1320d-8, and the implementing regulations at 45 C.F.R. Section 164.502 (e) and Sections 164.504 (e) regarding disclosure of protected health information under the Health Insurance Portability and Accountability Act (HIPAA) of 1996. Protected Health Information (PHI) is information received by the contractor from or on behalf of the State that meets the definition of PHI as defined by HIPAA and the regulations promulgated by the United States Department of Health & Human Services, specifically 45 CFR164.501 and any amendments thereto.

In the event of a material breach of vendor obligations under this section, the State may at its option terminate the contract.

L. Unresolved Findings for Recovery (R.C. 9.24)

Ohio Revised Code Section 9.24 prohibits ODM from awarding a contract to any entity against whom the Auditor of State has issued a finding for recovery if the finding for recovery is “unresolved” at the time of award. By submitting a proposal, the vendor warrants that it is not now, and will not become, subject to an “unresolved” finding for recovery under R.C. 9.24 prior to the award of any contract arising out of this RFA, without notifying ODM of such finding. ODM will review the Auditor of State’s website prior to the evaluations of any proposal submitted pursuant to this RFA. ODM will not evaluate a proposal from any vendor whose name, or the name of any of the subcontractors proposed by the vendor, appears on the website of the Auditor of the State of Ohio as having an “unresolved” finding for recovery.

M. Mandatory Contract Performance Disclosure

Each proposal must disclose whether the vendor’s performance, or the performance of any of the proposed subcontractor(s), under contracts for the provision of services that are the same or similar to those described in this RFA, has resulted in any “formal claims” for breach of those contracts. For purposes of this disclosure, “formal claims” means any claims for breach that have been filed as a lawsuit in any court, submitted for arbitration (whether voluntary or involuntary, binding or not), or assigned to mediation. If any such claims are disclosed, vendor shall fully explain the details of those claims, including the allegations regarding all alleged breaches, any written or legal action resulting from those allegations, and the results of any litigation, arbitration or mediation regarding those claims, including terms of any settlement. While disclosure of any formal claims in response to this section will not automatically disqualify a vendor from consideration, at the sole discretion of ODM, such claims and a review of the background details may result in a rejection of the vendor’s proposal. ODM will make this decision based on its determination of the seriousness of the claims, the potential that the behavior that led to the claims could negatively impact vendor’s performance of the work, and the best interests of ODM.

N. Mandatory Disclosures of Governmental Investigations

Each proposal must indicate whether the vendor and any of the proposed subcontractor(s) has been the subject of any adverse regulatory or adverse administrative governmental action (federal, state, or local) with respect to vendor’s performance of services similar to those described in this RFA. If any such instances are disclosed, vendor must fully explain, in detail, the nature of the governmental action, the allegations that led to the governmental action, and the results of the governmental action including any legal action that was taken against vendor by the governmental agency. While disclosure of any governmental action in response to this section will not automatically disqualify a vendor from consideration, such governmental action and a review of the background details may result in a rejection of the vendor’s proposal at the discretion of the State. The decision on this issue will be based on a determination of the seriousness of the matter, the matter’s potential impact on the vendor’s performance of the work, and the best interests of the State.

O. Vendor Selection Restriction

Any applicant deemed not responsible, or submitting a proposal deemed not to be responsive to the terms of this RFA, shall not be offered a contract.

P. Waiver of Minor Proposal Errors

ODM may, at its sole discretion, waive minor errors or omissions in applications and/or forms when those errors do not unreasonably obscure the meaning of the content. Additionally, ODM reserves the right to request clarifications or completions from applicants to any information in their applications and/or forms, and may request such clarification as it deems necessary at any point in the application review process.

XIV. Final Selection:

The PRT will recommend for selection the highest-scoring technically qualified applicant or applicants sufficient to meet programmatic need. Results from any interview (if appropriate) will be considered in reevaluating the applicant's score.

At its sole discretion, ODM may choose to conduct interviews prior to final selection. Interview question responses will then be considered according to a process comparable to the Technical Proposal Scoring described in Section XII, Scoring of Vendor Applications.

XV. Tie Breaker:

In the event that two or more of the proposals have a score which is tied, ODM reserves the right to make selections based on current operational needs.

XVI. Protest Procedure:

Any potential, or actual, vendor objecting to the award of a contract resulting from the issuance of this RFA may file a protest of the award of the contract, or any other matter relating to the process of soliciting the applications. Such a protest must comply with the following guidelines:

- A. A protest may be filed by a prospective or actual bidder objecting to the award of a contract resulting from this RFA. The protest shall be in writing and shall contain the following information:
 - 1. The name, address, and telephone number of the protestor;
 - 2. The name and number of the RFA being protested;
 - 3. A detailed statement of the legal and factual grounds for the protest, including copies of any relevant documents;
 - 4. A request for a ruling by ODM;
 - 5. A statement as to the form of relief requested from ODM; and
 - 6. Any other information the protestor believes to be essential to the determination of the factual and legal questions at issue in the written protest.

- B. A timely protest shall be considered by ODM, if it is received by the ODM, Office of Contracts and Procurement, within the following periods:
 - 1. A protest may be related to the announced intent to award a contract or to reject an applicant's proposal. Such a protest will be deemed timely and shall be considered by ODM if it is received by the Office of Contracts and Procurement no later than 3:00 p.m.

of the tenth (10th) calendar day after the issuance of the ODM letter announcing the ODM decision regarding an applicant's proposal.

2. A protest may be based on alleged improprieties in the issuance of the RFA; the RFA requirements or any other information written into, or attached to, the RFA; any procurement processes described in the RFA such as the vendor selection process; or any other procurement-related event, other than an announcement by ODM of its decision regarding award of a contract to an applicant. A protest such as this shall be filed by the party identifying the possible impropriety as soon as practicable. However if the party protesting the alleged impropriety has already submitted an application in response to the RFA prior to filing the protest with the ODM Office of Contracts and Procurement, that protest will not be deemed timely and will not be considered.
- C. An untimely protest may be considered if ODM determines that the protest raises issues significant to the department's procurement system. An untimely protest is one received by the ODM Office of Contracts and Procurement after the time periods set forth in Items B. 1 and B. 2 of this section.
- D. All protests must be filed at the following location:
- Deputy Director
ODM Office of Contracts and Procurement
50 West Town Street, Suite 400
Columbus, Ohio 43215
- E. When a timely protest is filed, a contract award shall not proceed until a decision on the protest is issued or the matter is otherwise resolved, unless the Director of ODM determines that a delay will severely disadvantage the Department. The vendor(s) who would have been awarded the contract shall be notified of the receipt of the protest.
- F. The ODM Office of Contracts and Procurement shall issue written decisions on all timely protests and shall notify any vendor who filed an untimely protest as to whether or not the protest will be considered.

XVII. Caveats:

The State is under no obligation to issue any contract as a result of this solicitation if, in the opinion of the State and the proposal review team, none of the applications are responsive to the objectives and needs of ODM. ODM reserves the right to select no applicants should the State decide not to proceed. Changes in this RFA of a material nature will be provided via the agency website. All vendors are responsible for obtaining any such changes without further notice.

XVIII. Attachments to this RFA:

- A. **Required Vendor Information and Certifications** *(Both sections to be completed & included in vendor proposal packet as specified in Section XI.)*
- B. **ODM Model Contract** *(Provided for applicant reference, only - do NOT return in application packet.)*

Thank you for your interest in this project.

Attachment A

Attachment A consists of 2 distinct and different sections. Both sections must be completed and included in Tab 1 of the proposal.

Section I – Required Vendor Information

Section II - Location of Business Form

Attachment A—Section I.

REQUIRED VENDOR INFORMATION and CERTIFICATIONS

Purpose: ODM requires the following information on vendors who submit proposals or bids in response to any ODM Requests for Proposals (RFPs) or Requests for Letterhead Bids (RLBs), in order to facilitate the development of the contract (or finalization of a purchase) with the selected vendor. ODM reserves the right to reject your proposal if you fail to provide this information fully, accurately, and by the deadline set by ODM. Further, some of this information (as identified below) **must** be provided in order for ODM to accept and consider your proposal\bid. **Failure to provide such required information will result in your proposal’s immediate disqualification.**

Instructions: Provide the following information regarding the vendor submitting the proposal or bid. Vendors may either print this attachment, complete and sign it, or may provide the required information and certifications (each fully re-stated from this attachment) on their letterhead as the opening pages of their proposals. It is mandatory that the information provided is certified with an original signature (in blue ink, please) from a person with authority to represent the vendor. Vendors are to provide the completed and signed information and certifications as the cover pages of their original proposal submitted to ODM.

IMPORTANT: If the RFP\RLB specified a maximum page limit for vendor proposals\bids, the attachment of any required certifications, other documents, or additional pages needed to fully provide the information requested here will **NOT** be counted against that page limit.

Vendors must provide all information

1. ODM RFP/RLB #:	2. Proposal Due Date:
3. Vendor Name: (legal name of the vendor – person or organization – to whom contract\purchase payments would be made)	
3a. Vendor’s Ohio Administrative Knowledge System (OAKS) ID#: [Vendors may apply for an OAKS vendor ID# at: http://ohiosharedservices.ohio.gov/Vendors.aspx . The necessary forms to be completed and remitted to Ohio Shared Services are the Vendor Information Form (OBM-5657) and the IRS Form W-9. Completion and/or submission of these forms to Ohio Shared Services <u>does not</u> assume a vendor/applicant award of any ODM contract\grant.]	
4. Vendor Corporate Address:	5. Vendor Remittance Address: (or “same” if same as Item # 5)
<p>6. Print or type information on the vendor representative/contact person <u>authorized to answer questions on the proposal\bid:</u></p> <p>Vendor Representative NAME and TITLE: Address: _____ E-Mail Address: _____ Phone #: _____ Fax #: _____</p>	
<p>7. Print or type the name of the vendor representative <u>authorized to address contractual issues, including the authority to execute a contract on behalf of the vendor, and to whom legal notices regarding contract termination or breach, should be sent</u> (if not the same individual as in #7, provide the following information on each such representative and specify their function):</p> <p>Vendor Representative NAME and TITLE: Address: _____ E-Mail Address: _____ Phone #: _____ Fax #: _____</p>	
<p>8. Is this vendor an Ohio certified MBE? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, attach a copy of current certification to proposal\bid. (IF ODM has specified the RFP\RLB\purchase document as an opportunity open exclusively to Ohio Certified MBEs, then failure to attach a copy of current certification WILL RESULT IN DISQUALIFICATION.)</p>	

9. Mandatory Vendor Certifications:

ODM may not enter into contracts with/make purchases from any vendors who have been found to be ineligible for state contracts under specific federal or Ohio statutes or regulations. Vendors responding to any ODM RFP\RLB or other purchase opportunity MUST certify that they are NOT INELIGIBLE by signing each of the three statements below. **Failure to provide proper affirming signature on any of these statements will result in the disqualification of your proposal\bid.**

I _____ (signature of representative shown in Item # 7, above) hereby certify and affirm that _____ (name of the vendor shown in Item # 3, above), has not been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by the United States Department of Labor, the United States Department of Health and Human Services, or any other federal department or agency as set forth in 29 CFR Part 98, or 45 CFR Part 76, or other applicable statutes.

AND

I _____ (signature of representative shown in Item #7, above) hereby certify and affirm that _____ (name of the vendor shown in Item # 3, above), is not on the list established by the Ohio Secretary of State, pursuant to ORC Section 121.23, which identifies persons and businesses with more than one unfair labor practice contempt of court finding against them.

AND

I _____ (signature of representative shown in Item #7, above) hereby certify and affirm that _____ (name of the vendor shown in Item # 3, above), either is not subject to a finding for recovery under ORC Section 9.24, or has taken appropriate remedial steps required under that statute, or otherwise qualifies under that section to enter into contracts with the State of Ohio.

10. Equal Employment Opportunity Information on the Vendor and any Subcontractor(s)

A. Provide vendor employee data both nationwide (including Ohio staff), and Ohio office employees separately:

	Nationwide:	Ohio Offices:
Total Number of Employees:	_____	_____
% of those who are Women:	_____	_____
% of those who are Minorities:	_____	_____

B. If you are the selected vendor, will you subcontract any part of the work?

NO -or- YES, but for less than 50% of the work -or- YES, for 50% or more of the work

If yes, provide the following information on each subcontractor (additional pages may be added as needed):

Subcontractor Name: _____

Address: _____

Work To Be _____

Performed: _____

(a brief description) _____

Subcontractor's Estimated Percentage of Total Project (in % of work, not % of dollars): _____

If 50% or more of the work will be subcontracted, then ALSO provide the following information on ALL proposed subcontractors:

	Nationwide:	Ohio Offices:
Total Number of Employees:	_____	_____
% of those who are Women:	_____	_____
% of those who are Minorities:	_____	_____

C. Identify all state contracts which the vendor has had approved by the Controlling Board since the beginning of the last fiscal year (i.e., since July 01, 2011) through this fiscal year to date. Also include contracts approved for ODM or institutions of higher education:

Total number of contracts: _____

For each state contract, list the state agency and provide the following information:

State Agency/Educational Institution: _____

Contract Dollar Amount: _____

State Agency/Educational Institution: _____

Contract Dollar Amount: _____

State Agency/Educational Institution: _____

Contract Dollar Amount: _____

Attach additional pages if needed

11. Vendor and Grantee Ethics Certification

As a vendor or grantee doing business with* or receiving grants from the State of Ohio, I certify on behalf of _____ (name of vendor or grantee):

(1) I have reviewed and understand Ohio ethics and conflict of interests laws, as found in Chapter 102. and Sections 2921.42 and 2921.43 of the Ohio Revised Code.

(2) I acknowledge that failure to comply with this certification, is, by itself, grounds for termination of this contract or grant with the State of Ohio.

Signature of authorized agent

Date

*"Doing business with" includes all contracts for goods and services, excluding purchases made using the State of Ohio's Payment Card Program that cost less than \$1,000.

12. I have read the ODM Model Contract attached to the RFP/RLB, and if awarded a contract, I will not ____ (or) I will ____ request changes to the standard language, and have marked the requested changes and returned the model document with this proposal for consideration by ODM. (If so, ODM will review those requested changes if you are the selected vendor. All requested changes to model contract language are subject to ODM approval.) (NOTE: Item 13 is not applicable and not required when the subject ODM procurement opportunity is offered only to State Term Schedule Vendors.)

13. I _____, (vendor representative in Item # 7) hereby affirm that this proposal accurately represents the capabilities and qualifications of _____ (vendor's name), and I hereby affirm that the cost(s) bid to ODM for the performance of services and/or provision of goods covered in this proposal in response to the ODM RFP/RLB/other purchase opportunity is a firm fixed price, inclusive of all incidental as well as primary costs. (Failure to provide the proper affirming signature on this item may result in the disqualification of your proposal\bid.)

14. Location of Business Declaration: Vendors responding to any ODM RFP/RLB/RFGA (etc.) must certify that no public funds shall be spent on services provided/performed offshore by completing, signing, and returning the "Location of Business Form," which is the final section of this attachment. **FAILURE TO PROPERLY COMPLETE, SIGN AND RETURN THIS FORM, INCLUDING THE "LOCATION OF BUSINESS FORM," WILL RESULT IN DISQUALIFICATION OF THE VENDOR FROM CONSIDERATION FOR AWARD OF AN ODM CONTRACT.**

15. I _____, (vendor representative in Item # 7) hereby attest that I understand that any and all information included in this proposal is not confidential and/or trade secret information (as defined in Sections 3.3, 5.2, D., 8.5, and 8.25 of the RFP or where found in an RLB document) and that the proposal submission may be posted in its entirety on the Internet for public viewing. Following submission to ODM, all proposals submitted may become part of the public record. ODM reserves the right to disqualify any vendor whose proposal is found to contain such prohibited personal information. **The vendor affirms that they shall be solely responsible for any and all information disclosed in the proposal submission and any or all information released by ODM in a public records request(s).**

Attachment A—Section II.

Location of Business Form

Pursuant to Governor’s Executive Order 2011-12K (www.governor.ohio.gov), no public funds shall be spent on services provided offshore. This form serves as a certification of compliance with this policy and required disclosures. Please answer the following questions about the project or service you are seeking to perform for or the funding for which you are applying from the Ohio Department of Job and Family Services:

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)

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)

By signing below, I hereby certify and affirm that I have reviewed, understand, and will abide by the Governor's Executive Order 2011-12K. I attest that no funds provided by ODM for this project or any other agreement will be used to purchase services provided outside the United States or to contract with a subcontractor who will use the funds to purchase services provided outside the United States. I will promptly notify ODM if there is a change in the location where any of the services relating to this project will be performed. If I am signing this on behalf of a company, business, or organization, I hereby acknowledge that I have the authority to make this certification on behalf of that entity.

Signature

Date

Entity Name

Address (Principal place of business)

Printed name of individual authorized
to sign on behalf of entity

City, State, Zip

**OHIO DEPARTMENT OF MEDICAID
CONTRACT FOR SERVICES**

C-1415-07-0000

RECITALS:

This Contract is entered into between the Ohio Department of Medicaid (ODM) and **Vendor Name** (CONTRACTOR).

- A. ODM issued a Request for Proposal (RFP) titled _____, numbered _____, and dated _____, which is hereby incorporated by reference.
- B. The ODM proposal review team recommended for award the Proposal submitted by CONTRACTOR on [DATE] which is hereby incorporated by reference.
- C. In the event of any inconsistency or ambiguity between the provisions of the RFP, the Proposal, or this Contract, the provisions of this Contract will determine the obligations of the parties. In the event that this Contract fails to clarify any inconsistency or ambiguity between the RFP and the Proposal, the RFP will determine the obligations of the parties. In the event of a disputed issue that is not addressed in any of the aforementioned documents, the parties hereby agree to make every reasonable effort to resolve this dispute in keeping with the objectives of this Contract and the budgetary and statutory constraints of ODM.

ARTICLE I. PURPOSE; DELIVERABLES

- A. **INSERT LEGAL AUTHORITY IF AVAILABLE. CONTRACTOR will perform its responsibilities under this Contract in accordance with the RFP and the Proposal.** The responsibilities (Deliverables) are summarized as follows:

INSERT DELIVERABLES

- B. The ODM Contract Manager is **ODM Contract Manager**.
- C. The ODM Contract Manager may periodically communicate specific requests and instructions to CONTRACTOR concerning the performance of the Deliverables described in this Contract. CONTRACTOR agrees to comply with any requests or instructions to the satisfaction of ODM within ten business days after CONTRACTOR's receipt of the requests or instructions. ODM and CONTRACTOR expressly understand that any requests or instructions will be strictly to ensure the successful completion of the Deliverables described in this Contract, and are not intended to amend or alter this Contract in any way. If CONTRACTOR believes that any requests or instructions would materially alter the terms and conditions of this Contract or the compensation stated hereunder, CONTRACTOR will immediately notify ODM pursuant to the notice provision of this Contract. CONTRACTOR agrees to consult with the ODM Contract Manager as necessary to ensure understanding of the Deliverables and the successful completion thereof.
- D. **Ownership of Deliverables.**
 - 1. All Deliverables provided by CONTRACTOR under this Contract or with funds hereunder, including any documents, data, photographs and negatives, electronic reports/records, or other media, are the property of ODM, which has an unrestricted right to reproduce, distribute, modify, maintain, and use the Deliverables. CONTRACTOR will not obtain copyright, patent, or other proprietary protection for the Deliverables. CONTRACTOR will not include in any Deliverable any copyrighted matter, unless the copyright owner gives prior written approval for ODM and CONTRACTOR to use such copyrighted matter in the manner provided herein. CONTRACTOR agrees that all Deliverables will be made freely available to the public unless ODM determines that, pursuant to state or federal law, such materials are confidential or otherwise exempted from disclosure. **IF THIS SECTION IS MODIFIED ALSO MODIFY ART. VI(A)**

2. All Deliverables provided or produced pursuant to this Contract will be considered "works made for hire" within the meaning of copyright laws of the United States and the State of Ohio. ODM is and will be deemed sole author of the Deliverables and sole owner of all rights therein. If any portion of the Deliverables is deemed not a "work made for hire," or if there are any rights in the Deliverables not conveyed to ODM, CONTRACTOR agrees to, and by executing this Contract does, assign ODM all worldwide rights, title, and interest in and to the Deliverables. ODM acknowledges that its sole ownership of the Deliverables under this Contract does not affect CONTRACTOR's right to use general concepts, algorithms, programming techniques, methodologies, or technology that CONTRACTOR developed prior to or as a result of this Contract or that are generally known and available.
3. CONTRACTOR understands that it must submit a written request to ODM and receive express written permission from ODM to include any of its own pre-existing, proprietary materials in any of the Deliverables under this Contract. ODM's approval of the inclusion of pre-existing, proprietary materials is predicated on CONTRACTOR granting to ODM and the State of Ohio a worldwide, non-exclusive, perpetual, royalty-free license to use, modify, sell, and otherwise distribute all such materials that are included in the Deliverables under this Contract. Upon request by CONTRACTOR, ODM will incorporate into any future copies of the Deliverables under this Contract any proprietary notice(s) CONTRACTOR may reasonably require for any pre-existing, proprietary materials included in the Deliverables of this Contract. Any proprietary notices will be the minimum required by law so as not to be seen as an endorsement by ODM of or advertisement for CONTRACTOR.

ARTICLE II. EFFECTIVE DATE OF THE CONTRACT

- A. This Contract is in effect from **Start Date** or upon issuance of an approved State of Ohio purchase order, whichever is later, through **End Date**, unless this Contract is suspended or terminated prior to the expiration date. **This Contract may be renewed through June 30, 2017, upon satisfactory completion of activities hereunder, appropriation of funds by the Ohio General Assembly, and at the sole discretion of ODM. ODM will issue a notice to CONTRACTOR if ODM decides to renew this Contract. CONTRACTOR will not obligate resources in anticipation of a renewal until notice is provided.**
- B. It is expressly understood by both ODM and CONTRACTOR that this Contract will not be valid and enforceable until the Director of the Ohio Office of Budget and Management, first certifies, pursuant to Section 126.07 of the Ohio Revised Code (ORC), that there is a balance in the appropriation not already allocated to pay existing obligations. The ODM Contract Manager will notify CONTRACTOR when this certification is given.

ARTICLE III. COMPENSATION

- A. The total amount payable under this Contract is **TOTAL AMT** Dollars (**\$TOTAL**). ODM will pay an amount up to **SFY1 AMT** Dollars (**\$SFY 1**) for State Fiscal Year **SFY1** and up to **SFY2 AMT** Dollars (**\$SFY2**) for State Fiscal Year **SFY2** expressly for the completion of the Deliverables. CONTRACTOR understands that the terms of this Contract do not provide for compensation in excess of the total amount listed in this section. CONTRACTOR hereby waives the interest provisions of ORC 126.30.

It is further agreed that reimbursement of travel expenditures shall not exceed [SFY1 Travel Dollar Amount] Dollars (\$SFY1 Travel) for SFY [SFY1] and [SFY2 Travel Dollar Amount] Dollars (\$SFY2) for SFY [SFY2], which amounts are included in the total compensation figures above. Expense reimbursement authorized by this section is limited to actual and necessary expenses subject to the limits as established pursuant to ORC 126.31, which are set forth in OAC 126-1-02, as well as any other laws, regulations, or Governor's Executive Orders limiting travel expenses. CONTRACTOR expressly agrees not to submit claims for expenses which do not meet the requirements of this section and further agrees to submit all claims to the ODM Contract Manager for approval prior to submitting a claim for reimbursement.

- B. Compensation will be paid pursuant to CONTRACTOR's **accepted budget [or cost proposal] as incorporated below [or as attached].**

- C. CONTRACTOR will submit detailed invoices on a _____ basis to one of the following with a copy to the Contract Manager:

E-Mail: invoices@ohio.gov (the preferred file type for email attachments is .pdf.).

Mail: Ohio Shared Services
P.O. Box 182880
Columbus, Ohio 43218-2880

Fax: 614.485.1039

CONTRACTOR agrees to use an invoice instrument to be prescribed by ODM and will include in each invoice:

1. CONTRACTOR's name, complete address, and federal tax identification number;
 2. Contract number and dates;
 3. Purchase order number;
 4. Amount and purpose of the invoice, including such detail as required per the compensation section of this Contract, deliverables completed, description of services rendered, hourly rates and numbers of hours (if applicable), amount of monthly fee (if applicable), and itemized travel and other expenses if permitted by this Contract; and
 5. Description of Deliverables performed during the billing period.
- D. CONTRACTOR expressly understands that ODM will not compensate CONTRACTOR for any work performed prior to CONTRACTOR's receipt of notice from the ODM Contract Manager that the provisions of ORC 126.07 have been met as set forth in ARTICLE II, nor for work performed after the ending date of this Contract.
- E. CONTRACTOR expressly understands that ODM does not have the ability to compensate CONTRACTOR for invoices submitted after the State of Ohio purchase order has been closed. CONTRACTOR must submit final invoices for payment no later than 90 calendar days after the ending date of this Contract. Failure to do so will be deemed a forfeiture of the remaining compensation due hereunder.
- F. CONTRACTOR understands that availability of funds is contingent on appropriations made by the Ohio General Assembly or by funding sources external to the State of Ohio, such as federal funding. If the Ohio General Assembly or the external funding source fails at any time to continue funding ODM for the payments due under this Contract, this Contract will be terminated as of the date funding expires without further obligation of ODM or the State of Ohio.
- G. CONTRACTOR and ODM understand that the terms of this Contract, when combined with any other payments made to or open encumbrances with CONTRACTOR during the same State Biennium, cannot establish compensation in excess of Fifty Thousand and 00/100 Dollars (\$50,000.00) aggregate without prior approval from the State Controlling Board in accordance with ORC 127.16.

ARTICLE IV. SUSPENSION AND TERMINATION, BREACH AND DEFAULT

- A. This Contract will automatically terminate upon expiration of the time period in ARTICLE II, or upon completion of all Deliverables, or once all of the compensation has been paid.
- B. Notwithstanding other provisions in this Article, either party may terminate this Contract at will by giving 90 calendar days written notice to the other party. Upon 30 calendar days written notice to CONTRACTOR, ODM may suspend this Contract at ODM's sole discretion.
- C. Notwithstanding the provision of Section A, above, ODM may suspend or terminate this Contract immediately upon delivery of a written notice to CONTRACTOR if:

1. ODM loses funding as described in ARTICLE III;
 2. ODM discovers any illegal conduct by CONTRACTOR; or
 3. CONTRACTOR has violated any provision of ARTICLE IX.
- D. Unless provided for in Sections A, B and C of this ARTICLE, CONTRACTOR will have 30 calendar days within which to cure any breach that is curable after receipt of written notice from ODM that CONTRACTOR is in breach of any of its obligations under this Contract. If CONTRACTOR fails to cure the breach within the 30 calendar days after written notice or if the breach is not curable, ODM may immediately suspend or terminate this Contract. ODM may also suspend or terminate this Contract when breaches are persistent, regardless of whether they are cured within 30 calendar days. For purposes of this Section, "persistent" means that ODM has notified CONTRACTOR three times in writing of CONTRACTOR's failure to meet any of its contractual obligations. The three notices do not have to relate to the same obligation or type of failure. After the third notice, ODM may suspend or terminate this Contract without a cure period if CONTRACTOR again fails to meet any contractual obligation. At the sole discretion of ODM, certain instances of breach may require a shorter cure period than the 30 calendar days generally applicable in this Section. In such instances, ODM will include in its notice of breach the shorter cure period deemed appropriate.
- E. CONTRACTOR, upon receiving notice of suspension or termination, will:
1. Cease performance of the suspended or terminated Deliverables;
 2. Take all necessary steps to limit disbursements and minimize costs including, but not limited to, suspending or terminating all contracts and subgrants related to suspended or terminated Deliverables;
 3. Prepare and furnish a report to ODM, as of the date the notice of termination or suspension was received, that describes the status of all Deliverables and includes the results accomplished and the conclusions reached through Deliverables;
 4. Return all records in their native format relating to cost, work performed, supporting documentation for invoices submitted to ODM, and copies of all materials produced under or pertaining to this Contract; and
 5. Perform any other tasks ODM requires.
- F. In the event of suspension or termination under this Article, ODM will, upon receipt of a proper invoice from CONTRACTOR, determine the amount of any unpaid Contract funds due to CONTRACTOR for Deliverables performed before CONTRACTOR received notice of termination or suspension. In order to determine the amount due to CONTRACTOR, ODM will base its calculations on the payment method described in ARTICLE III and any funds previously paid by or on behalf of ODM. ODM will not be liable for any further claims submitted by CONTRACTOR.
- G. If ODM terminates this Contract for any reason provided in this Article, except for termination at will pursuant to Section B or termination for loss of funding pursuant to Section C, ODM will be entitled to utilize another contractor to complete the Deliverables of this Contract on any commercially reasonable terms as ODM and the covering contractor may agree. In this event, CONTRACTOR will be liable to ODM for all costs related to covering the project to the extent that such costs, when combined with payments already made to CONTRACTOR prior to termination, exceed the costs that ODM would have incurred under this Contract. CONTRACTOR's liability under this Section is in addition to any other remedies available to ODM pursuant to this Contract.
- H. Upon CONTRACTOR's breach or default of provisions, obligations, or duties embodied in this Contract or any term of an award, a federal statute or regulation, an assurance, a State plan or application, a notice of award, or other applicable rule, ODM reserves the right to exercise any administrative, contractual, equitable, or legal remedies available without limitation. Any waiver by ODM of an occurrence of breach or default is not a waiver of subsequent occurrences. If ODM or CONTRACTOR fails to perform any obligation

under this Contract and the other party subsequently waives the failure, the waiver will be limited to that particular occurrence of a failure and will not be deemed to waive other failures that may occur. Waiver by ODM will not be effective unless it is in writing signed by the ODM Director.

ARTICLE V. NOTICES

- A. ODM and CONTRACTOR agree that communication regarding Deliverables, scope of work, invoice or billing questions, or other routine instructions will be between CONTRACTOR and the identified ODM Contract Manager.
- B. Notices to ODM from CONTRACTOR that concern changes to CONTRACTOR's principal place of operation, billing address, legal name, federal tax identification number, mergers or acquisitions, corporate form, excusable delay, termination, bankruptcy, assignment, any notice pursuant to ARTICLE IX, and/or any other formal notice regarding this Contract will be sent to the ODM Chief Legal Counsel, Office of Chief Legal, 50 W. Town Street, 4th Floor, Columbus, Ohio 43215.
- C. Notices to CONTRACTOR from ODM concerning termination, suspension, option to renew, breach, default, or other formal notices regarding this Contract will be sent to CONTRACTOR's representative at the address appearing on the signature page of this Contract.
- D. All notices will be in writing and will be deemed given when received. All notices must be sent using a delivery method that documents actual delivery to the appropriate address herein indicated (e.g., certified mail).

ARTICLE VI. RECORDS, DOCUMENTS AND INFORMATION

CONTRACTOR agrees that all records, documents, writings, and other information, created or used pursuant to this Contract will be treated according to the following terms, and that the terms will be included in any subcontracts executed for the performance of the Deliverables under this Contract:

- A. CONTRACTOR agrees that any media produced pursuant to this Contract or acquired with Contract funds will become the property of ODM. This includes all documents, reports, data, photographs (including negatives), and electronic reports and records. ODM will maintain the unrestricted right to reproduce, distribute, modify, maintain, and use the media in any way ODM deems appropriate. CONTRACTOR further agrees not to seek or obtain copyright, patent or other proprietary protection for any materials or items produced under this Contract. CONTRACTOR understands that all materials and items produced under this Contract will be made freely available to the public unless ODM determines that certain materials are confidential under federal or state law.
- B. All ODM information that is classified as public or private under Ohio law will be treated as such by CONTRACTOR. Should the nature of any information be in question, ODM will determine whether the information is public or private. CONTRACTOR will restrict the use of any information, systems, or records ODM provides to the specific Deliverables of this Contract. CONTRACTOR and its employees agree to be bound by the same standards and rules of confidentiality that apply to employees of ODM and the State of Ohio. CONTRACTOR agrees that the terms of this section will be included in any subcontract executed by CONTRACTOR for work under this Contract.
- C. CONTRACTOR information that is proprietary and has been specifically identified by CONTRACTOR as proprietary will be held as confidential by ODM. Proprietary information is information that would put CONTRACTOR at a competitive disadvantage in CONTRACTOR's market place and trade if it were made public. ODM reserves the right to require reasonable evidence of CONTRACTOR's assertion of the proprietary nature of any information. The provisions of this ARTICLE are not self-executing. CONTRACTOR must demonstrate that any information claimed as proprietary meets the definition of "trade secrets" found at ORC 1333.61.
- D. For audit purposes only, all records relating to cost, work performed, supporting documentation for invoices submitted to ODM, and copies of all materials produced under or pertaining to this Contract will be retained by CONTRACTOR and will be made available for audit by state and federal government entities that include but are not limited to, ODM, the Ohio Auditor of State, the Ohio Inspector General and all duly authorized law enforcement officials. The records and materials will be retained and made available for a

minimum of three years after CONTRACTOR receives the last payment pursuant to this Contract. If an audit or similar action is initiated during this time period, CONTRACTOR will retain the records until the action is concluded and all issues are resolved, or until the end of the three-year period if the action is resolved prior to the end of the three-year period, unless otherwise directed below in ARTICLE VII, Section E. If applicable, CONTRACTOR must meet the requirements of the federal Office of Management and Budget (OMB) Circulars A-110, A-122, and A-133. CONTRACTOR acknowledges, in accordance with ORC 149.43, that financial records related to the performance of services under this Contract are presumptively deemed public records.

- E. All records relating to cost, work performed, supporting documentation for invoices submitted to ODM, and copies of all materials produced under or pertaining to this Contract will be retained by CONTRACTOR in accordance to the appropriate records retention schedule. The appropriate records retention schedule for this Contract is **[INSERT RECORDS SCHEDULE], [STATE SCHEDULE NUMBER AND TIME PERIOD]**. If any records are destroyed prior to the date as determined by the appropriate records retention schedule, CONTRACTOR agrees to pay all costs associated with any cause, action or litigation arising from such destruction.
- F. CONTRACTOR agrees to retain all records in accordance to any litigation holds that are provided to them by ODM, and actively participate in the discovery process if required to do so, at no additional charge. Litigation holds may require CONTRACTOR to keep the records longer than the approved records retention schedule. CONTRACTOR will be notified by ODM when the litigation hold ends and retention can resume based on the approved records retention schedule. If CONTRACTOR fails to retain the pertinent records after receiving a litigation hold from ODM, CONTRACTOR agrees to pay all costs associated with any cause, action or litigation arising from such destruction.
- G. CONTRACTOR hereby agrees to current and ongoing compliance with Title 42, Sections 1320d through 1320d-8 of the United States Code (USC) and the implementing regulations found at Title 45, Parts 164.502(e) and 164.504(e) of the Code of Federal Regulations (CFR) regarding disclosure of Protected Health Information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). CONTRACTOR further agrees to include the terms of this section in any subcontracts that may be executed pursuant to this Contract.

ARTICLE VII. AMENDMENT AND ASSIGNMENT

- A. This writing constitutes the entire agreement between ODM and CONTRACTOR with respect to all matters herein. Only a writing signed by both parties may amend this Contract. However, ODM and CONTRACTOR agree that any amendments to any laws or regulations cited herein will result in the correlative modification of this Contract without the necessity for executing written amendments. Any written amendment to this Contract will be prospective in nature.
- B. CONTRACTOR agrees not to assign any interest in this Contract nor transfer any interest in the Contract without the prior written approval of ODM. CONTRACTOR will submit any requests for approval of assignments and transfers to the ODM Contract Manager at least ten business days prior to the desired effective date. CONTRACTOR understands that any assignments and transfers will be subject to any conditions ODM deems necessary and that no approval by ODM will be deemed to provide for any ODM obligation that exceeds the Contract amount specified in ARTICLE III of this Contract.

ARTICLE VIII. BUSINESS ASSOCIATE REQUIREMENTS UNDER HIPAA

- A. The definitions contained in this section are derived from federal law. Should there be any conflict between the meanings assigned in this Agreement and the meanings defined in applicable federal law (even in the event of future amendments to law that create such conflict), the definitions found in federal law will prevail.
 - 1. **General Definitions.** The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information and Use.

2. Specific Definitions.

- a. HIPAA means the Health Insurance Portability and Accountability Act of 1996, the American Recovery and Reinvestment Act of 2009 (ARRA) and any other applicable federal statute or regulation.
- b. HIPAA Rules shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- c. Covered Entity means a health plan, a health care clearinghouse, or health care provider under 45 CFR 160.103.
- d. Business Associate means a person or entity that, on behalf of the Covered Entity, maintains, performs, or assists in the performance of a function or activity that involves the use or disclosure of "Protected Health Information" under 45 CFR 160.103.
- e. Protected Health Information (PHI) means individually identifiable information including but not limited to the past, present or future physical or mental health or condition of an individual, provision of health care to an individual, or the past, present or future payment for health care provided to an individual, as more fully defined under 45 CFR 164.501 and any amendments thereto, received or sent on behalf of the Department.

B. CONTRACTOR acknowledges that ODM is a Covered Entity under HIPAA. CONTRACTOR further acknowledges that it is a Business Associate of ODM, and, in carrying out the work described in this Agreement, agrees to comply with all of the following provisions:

1. **Permitted Uses and Disclosures.** CONTRACTOR will not use or disclose PHI except as provided in this Agreement or as otherwise required under HIPAA regulations or other applicable law.
2. **Safeguards.** CONTRACTOR will implement sufficient safeguards, and comply with Subpart C of 45 CFR Part 164 pertaining to electronic PHI to prevent the use or disclosure of PHI other than as provided for under this Agreement. Safeguards will be implemented for all paper and electronic PHI created, received, maintained, or transmitted on behalf of ODM.
3. **Reporting of Disclosures.** CONTRACTOR agrees to promptly report to ODM any any inappropriate use or disclosure of PHI that is not in accordance with this Agreement or applicable law. , including breaches of unsecured protected health information as required at 45 CFR 164.410 and any security incident the CONTRACTOR has knowledge of or reasonably should have knowledge of under the circumstances.
4. **Mitigation Procedures.** CONTRACTOR agrees to coordinate with ODM to determine specific actions that will be required of the Business Associates for mitigation, to the extent practical, of the breach. These actions will include notification to the appropriate individuals, entities, or other authorities. Notification or communication to any media outlet must be approved, in writing, by ODM prior to any such communication being released. CONTRACTOR will report all of its mitigation activity to ODM and shall preserve all relevant records and evidence.
5. **Incidental Costs.** CONTRACTOR shall bear the sole expense of all costs to mitigate any harmful effect, of any breaches or security incidents of which CONTRACTOR has knowledge which are directly caused by the use or disclosure of protected health information by CONTRACTOR in violation of the terms of this Agreement. These costs will include, but are not limited to, the cost of investigation, remediation and assistance to the affected individuals, entities or other authorities.
6. **Agents and Subcontractors.** CONTRACTOR, in compliance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2) as applicable, will ensure that all its agents and subcontractors that create, receive, maintain, or transmit PHI from or on behalf of CONTRACTOR and/or ODM agree to have, in a written agreement, the same restrictions, conditions, and requirements that apply to CONTRACTOR with respect to the use or disclosure of PHI.

7. **Accessibility of Information.** CONTRACTOR will make available to ODM such information as ODM may require to fulfill its obligations to provide access to, provide a copy of any information or documents with respect to PHI pursuant to HIPAA and regulations promulgated by the United States Department of Health and Human Services, including, but not limited to, 45 CFR 164.524 and 164.528 and any amendments thereto.
8. **Amendment of Information.** CONTRACTOR shall make any amendment(s) to PHI as directed by, or agreed to, by ODM pursuant to 45 CFR 164.526, or take other steps as necessary to satisfy ODM's obligations under 45 CFR 164.526. In the event that CONTRACTOR receives a request for amendment directly from the individual, agent, or subcontractor CONTRACTOR will notify ODM prior to making any such amendment(s). CONTRACTOR's authority to amend information is explicitly limited to information created by CONTRACTOR.
9. **Accounting for Disclosure.** CONTRACTOR shall maintain and make available to ODM or individuals requesting the information as appropriate, records of all disclosures of PHI in a Designated Record Set as necessary to satisfy ODM's obligations under 45 CFR 164.528. For every disclosure the record will include, at a minimum, the name of the individual who is the subject of the disclosure, the date of the disclosure, reason for the disclosure if any, and the name and address of the recipient to which the protected health information was disclosed.
10. **Obligations of Department.** When CONTRACTOR is to carry out an obligation of ODM under Subpart E of 45 CFR 164, CONTRACTOR agrees to comply with all applicable requirements of Subpart E that would apply to ODM in the performance of such obligation.
11. **Access to Books and Records.** CONTRACTOR shall make available to ODM and to the Secretary of the U.S. Department of Health and Human Services any and all internal practices, documentation, books, and records related to the use and disclosure of PHI received from ODM, or created or received on behalf of ODM. Such access is for the purposes of determining compliance with the HIPAA Rules.
12. **Material Breach.** In the event of material breach of CONTRACTOR's obligations under this Article, ODM may immediately terminate this Agreement as set forth in ARTICLE VI, Section B. Termination of this Agreement will not affect any provision of this Agreement, which, by its wording or its nature, is intended to remain effective and to continue to operate after termination.
13. **Return or Destruction of Information.** Upon termination of this Agreement and at the request of ODM, CONTRACTOR will return to ODM or destroy all PHI in CONTRACTOR's possession stemming from this Agreement as soon as possible but no later than 90 days, and will not keep copies of the PHI except as may be requested by ODM or required by law, or as otherwise allowed for under this Agreement. If CONTRACTOR, its agent(s), or subcontractor(s) destroy any PHI, then CONTRACTOR will provide to ODM documentation evidencing such destruction. Any PHI retained by CONTRACTOR will continue to be extended the same protections set forth in this Section, HIPAA regulations and this Agreement for as long as it is maintained.
14. **Survival.** These provisions shall survive the termination of this Agreement.

ARTICLE IX. CONTRACTOR CERTIFICATION OF COMPLIANCE WITH SPECIAL CONDITIONS

By accepting this Contract and by executing this Contract, CONTRACTOR hereby affirms current and continued compliance with each condition listed in this ARTICLE. CONTRACTOR's certification of compliance with each of these conditions is considered a material representation of fact upon which ODM relied in entering into this Contract:

- A. If at any time, CONTRACTOR is not in compliance with the conditions affirmed in this Section, ODM will consider this Contract *void ab initio* and will deliver written notice to CONTRACTOR. Any funds the State of Ohio paid CONTRACTOR for work performed before CONTRACTOR received notice that the Contract is *void ab initio* will be immediately repaid or the State of Ohio may commence an action for recovery against CONTRACTOR.

1. **Federal Debarment Requirements.** CONTRACTOR affirms that neither CONTRACTOR nor any of its principals or subcontractors, is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by any federal agency. CONTRACTOR also affirms that within three years preceding this Contract neither CONTRACTOR nor any of its principals:
 - a. Have been convicted of, or had a civil judgment rendered against them for commission of fraud or other criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local public transaction or contract under a public transaction; for violation of federal or state antitrust statutes; for commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements; or for receiving stolen property; or
 - b. Are presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State, or local) for the commission of any of the offenses listed in this paragraph and have not had any federal, state, or local, public transactions terminated for cause or default.
 2. **Qualifications to Conduct Business.** CONTRACTOR affirms that it has all of the approvals, licenses, or other qualifications needed to conduct business in Ohio and all are current. If at any time during the Contract period CONTRACTOR, for any reason, becomes disqualified from conducting business in the State of Ohio, CONTRACTOR will immediately notify ODM in writing and will immediately cease performance of all Deliverables.
 3. **Unfair Labor Practices.** CONTRACTOR affirms that neither CONTRACTOR nor its principals are on the most recent list established by the Ohio Secretary of State, pursuant to ORC 121.23, which would identify CONTRACTOR as having more than one unfair labor practice contempt of court finding.
 4. **Finding for Recovery.** CONTRACTOR affirms that neither CONTRACTOR nor its principals or subcontractors, is subject to a finding for recovery under ORC 9.24, or it has taken the appropriate remedial steps required, or otherwise qualifies under ORC 9.24 to contract with the State of Ohio.
- B. If at any time CONTRACTOR is not in compliance with the conditions affirmed in this Section, ODM may immediately suspend or terminate this Contract and will deliver written notice to CONTRACTOR. CONTRACTOR will be entitled to compensation, upon submission of a proper invoice per ARTICLE III, only for work performed during the time CONTRACTOR was in compliance with the provisions of this Section. Any funds paid by the State of Ohio for work performed during a period when CONTRACTOR was not in compliance with this Section will be immediately repaid or the State of Ohio may commence an action for recovery against CONTRACTOR.
1. **Americans with Disabilities.** CONTRACTOR, its officers, employees, members, and subcontractors hereby affirm current and ongoing compliance with all statutes and regulations pertaining to The Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973.
 2. **Fair Labor Standards and Employment Practices.**
 - a. CONTRACTOR certifies that it is in compliance with all applicable federal and state laws, rules, and regulations governing fair labor and employment practices.
 - b. In carrying out this Contract, CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin, military status, disability, age, genetic information, or sexual orientation, in making any of the following employment decisions: hiring, layoff, termination, transfer, promotion, demotion, rate of compensation, and eligibility for in-service training programs.
 - c. CONTRACTOR agrees to post notices affirming compliance with all applicable federal and state non-discrimination laws in conspicuous places accessible to all employees and applicants for employment.

- d. CONTRACTOR will incorporate the foregoing requirements of this Paragraph 2 in all of its subgrants or subcontracts for any of the work prescribed herein.

3. **Ethics and Conflicts of Interest Laws.**

- a. CONTRACTOR certifies that by executing this Contract, it has reviewed, knows and understands the State of Ohio's ethics and conflict of interest laws. CONTRACTOR further agrees that it will not engage in any action(s) inconsistent with Ohio ethics laws or any Executive Orders.
- b. CONTRACTOR certifies, by executing this Contract, that no party who holds a position listed or described in ORC 3517.13 (I) or (J), has made, while in his/her current position, one or more personal monetary contributions in excess of One Thousand and 00/100 Dollars (\$1,000.00) to the current Governor or to the Governor's campaign committee when he was a candidate for office within the previous two calendar years. ORC 3517.13 does not apply to professional associations organized under ORC Chapter 1785.
- c. CONTRACTOR agrees to refrain from promising or giving to any ODM employee anything of value that could be construed as having a substantial and improper influence upon the employee with respect to the employee's duties. CONTRACTOR further agrees that it will not solicit any ODM employee to violate ORC 102.03, 2921.42, or 2921.43.
- d. CONTRACTOR agrees that CONTRACTOR, its officers, employees, and members have not nor will they acquire any interest, whether personal, business, direct or indirect, that is incompatible, in conflict with, or would compromise the discharge and fulfillment of CONTRACTOR's functions and responsibilities under this Contract. If CONTRACTOR, its officers, employees, or members acquire any incompatible, conflicting, or compromising interest, CONTRACTOR agrees it will immediately disclose the interest in writing to the ODM Chief Legal Counsel at 50 West Town Street, Columbus, Ohio 43215-3414. CONTRACTOR further agrees that the person with the conflicting interest will not participate in any Deliverables until ODM determines that participation would not be contrary to public interest.

4. **Lobbying Restrictions.**

- a. CONTRACTOR affirms that no federal funds paid to CONTRACTOR by ODM through this Contract or any other agreement have been or will be used to lobby Congress or any federal agency in connection with a particular contract, grant, cooperative agreement or loan. CONTRACTOR further affirms compliance with all federal lobbying restrictions, including 31 USC 1352. If this Contract exceeds One Hundred Thousand and 00/100 Dollars (\$100,000.00), CONTRACTOR affirms that it has executed and filed the Disclosure of Lobbying Activities standard form LLL, if required by federal regulations.
- b. CONTRACTOR certifies compliance with the Ohio executive agency lobbying restrictions contained in ORC 121.60 to 121.69.

5. **Child Support Enforcement.** CONTRACTOR agrees to cooperate with ODM and any child support enforcement agency in ensuring that CONTRACTOR and its employees meet child support obligations established by state and federal law including present and future compliance with any court or valid administrative order for the withholding of support issued pursuant to the applicable sections of ORC Chapters 3119, 3121, 3123, and 3125.

6. **Pro-Child Act.** If any Deliverables call for services to minors, CONTRACTOR agrees to comply with the Pro-Children Act of 1994; Public Law 103-277, Part C – Environment Tobacco Smoke that requires smoking to be banned in any portion of any indoor facility owned, leased, or contracted by an entity that will routinely or regularly use the facility for the provision of health care services, day care, library services, or education to children under the age of 18.

7. **Drug-Free Workplace.** CONTRACTOR, its officers, employees, members, any subcontractors and/or any independent contractors (including all field staff) associated with this Contract agree to comply with all applicable state and federal laws, including, but not limited to, 41 USC Chapter 10, regarding a drug-free workplace. CONTRACTOR will make a good faith effort to ensure that none of CONTRACTOR's officers, employees, members, or subgrantees will purchase, transfer, use, or possess illegal drugs or alcohol or abuse prescription drugs in any way while working or while on public property.
8. **Work Programs.** CONTRACTOR agrees not to discriminate against individuals who have or are participating in any work program administered by any county department of Job and Family Services under ORC Chapter 5101 or 5107.
9. **MBE/EDGE.** Pursuant to the Governor's Executive Order 2008-13S, **CONTRACTOR** agrees to purchase goods and services under this Contract from certified Minority Business Enterprise (MBE) and Encouraging Diversity, Growth, and Equity (EDGE) vendors whenever possible. Likewise, **CONTRACTOR** agrees to require any of its subgrantees or subcontractors to purchase goods and services from certified MBE and EDGE vendors whenever possible.
- [9. **MBE/EDGE.** Pursuant to ORC 125.081, ODM is required to set aside opportunities for Minority Business Enterprise (MBE) vendors. In furtherance of this requirement, **CONTRACTOR** agrees to purchase at least ____% of goods and services under this Contract from Ohio certified MBE vendors as a set aside opportunity for MBE vendors. **CONTRACTOR** will provide monthly reports to ODM and to the Ohio Department of Administrative Services verifying expenditures to MBE vendors.]
10. **Expenditure of Public Funds for Offshore Services—Executive Order Requirements.**
 - a. CONTRACTOR certifies that by executing this Contract, it has reviewed, understands, and will abide by the Governor's Executive Order 2011-12K 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.
 - b. Prior to performing any services, and when there is a change in the location of any services provided under this Contract, CONTRACTOR must disclose:
 - (1) The location(s) where all services will be performed by CONTRACTOR or any subcontractor;
 - (2) The location(s) where any state data associated with any of the services through this Contract will be accessed, tested, maintained, backed-up, or stored; and
 - (3) The principal location of business for the contractor and all subcontractors.
 - c. CONTRACTOR also affirms, understands, and agrees to immediately notify ODM of any change or shift in the location(s) of services performed by CONTRACTOR or its subcontractors under this Contract, and no services shall be changed or shifted to a location outside of the United States.
 - d. **Termination, Sanction, Damages:** ODM is not obligated and shall not pay for any services provided under this Contract that 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 ODM all funds paid for those services.

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

11. **Certification of Compliance.** CONTRACTOR certifies that it is in compliance with all other applicable federal and state laws, regulations, and rules and will require the same certification from its subgrantees or subcontractors.

ARTICLE X. MISCELLANEOUS PROVISIONS

- A. **Independent Contractor.** CONTRACTOR agrees that no agency, employment, joint venture, or partnership has been or will be created between ODM and CONTRACTOR. CONTRACTOR further agrees that as an independent contractor, it assumes all responsibility for any federal, state, municipal or other tax liabilities along with workers compensation, unemployment compensation and insurance premiums that may accrue as a result of funds received pursuant to this Contract. CONTRACTOR agrees that it is an independent contractor for all purposes including, but not limited to, the application of the Fair Labor Standards Act, the Social Security Act, the Federal Unemployment Tax Act, the Federal Insurance Contribution Act, provisions of the Internal Revenue Code, Ohio tax law, Workers Compensation law, and Unemployment Insurance law. CONTRACTOR acknowledges and agrees any individual providing personal services under this Contract is not a public employee for the purposes of Chapter 145 of the Revised Code. Pursuant to ORC 145.038, ODM is required to provide individuals and business entities with fewer than five employees the Independent Contractor Acknowledgment (Form PEDACKN), please see Attachment A. This form requires CONTRACTOR to acknowledge that ODM has notified CONTRACTOR that he or she has not been classified as a public employee and no OPERS contributions will be made on his or her behalf for these services. If CONTRACTOR is a business entity with fewer than five employees, please have each employee complete the PEDACKN form, the first two pages of Attachment A. If CONTRACTOR is not an individual or a business entity with fewer than five employees, please complete page 3 of Attachment A.
- B. **Limitation of Liability.** To the extent allowable by law, CONTRACTOR agrees to defend, indemnify and hold ODM, its officials, employees and agents harmless from and against any and all liability, loss and expense (including reasonable attorneys' fees) or claims for personal injury, property damage, patent and copyright infringement, or for any liability or claims under Article VIII above ("Business Associate Requirements Under HIPAA"), and/or any other type of claim that arises from the performance of the Deliverables under this Agreement. CONTRACTOR's sole and exclusive remedy for any ODM failure to perform under this Contract will be an action in the Ohio Court of Claims pursuant to ORC Chapter 2743 that will be subject to the limitations set forth in this ARTICLE. In no event will ODM be liable for any indirect or consequential damages, including loss of profits, even if ODM knew or should have known of the possibility of such damages. To the extent that ODM is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio. Subject to ORC 109.02, CONTRACTOR agrees to defend ODM against any such claims or legal actions if called upon by ODM to do so.
- C. **Infringement of Patent or Copyright.** To the extent allowable by law and subject to ORC 109.02, CONTRACTOR agrees to defend any suit or proceeding brought against ODM, any official or employee of ODM acting in his or her official capacity, or the State of Ohio due to any alleged infringement of patent or copyright arising out of the performance of this Contract, including all work, services, materials, reports, studies, and computer programs provided by CONTRACTOR. ODM will provide prompt notification in writing of such suit or proceeding; full right, authorization, and opportunity to conduct the defense thereof; and full disclosure of information along with all reasonable cooperation for the defense of the suit. ODM may participate in the defense of any such action. CONTRACTOR agrees to pay all damages and costs awarded against ODM, any official or employee of ODM in his or her official capacity, or the State of Ohio as a result of any suit or proceeding referred to in this Section C. If any information and/or assistance is furnished by ODM at CONTRACTOR's written request, it is at CONTRACTOR's expense. If any of the materials, reports, or studies provided by CONTRACTOR are found to be infringing items and the use or publication thereof is enjoined, CONTRACTOR agrees to, at its own expense and at its option, either procure the right to publish or continue use of such infringing materials, reports, or studies; replace them with non-infringing items of equivalent value; or modify them so that they are no longer infringing. The obligations of CONTRACTOR under this Section survive the termination of this Contract, without limitation.
- D. **Liens.** CONTRACTOR will not permit any lien or claim to be filed or prosecuted against ODM or the State of Ohio because of any labor, services, or materials furnished. If CONTRACTOR fails, neglects, or refuses to make prompt payment of any claims for labor, services, or materials furnished to CONTRACTOR in connection with this Contract, ODM or the State of Ohio may, but is not obligated to, pay those claims and

charge the amount of payment against the funds due or to become due to CONTRACTOR under this Contract.

- E. **Delay.** Neither party will be liable for any delay in its performance that arises from causes beyond its control and without its negligence or fault. The delaying party will notify the other promptly of any material delay in performance and will specify in writing the proposed revised performance date as soon as practicable after notice of delay. The delaying party must also describe the cause of the delay and its proposal to remove or mitigate the delay. Notices will be sent pursuant to ARTICLE V. In the event of excusable delay, the date of performance or delivery of products may be extended by amendment, if applicable, for a time period equal to that lost due to the excusable delay. Reliance on a claim of excusable delay may only be asserted if the delaying party has taken commercially reasonable steps to mitigate or avoid the delay. Items that are controllable by CONTRACTOR's subcontractor(s) will be considered controllable by CONTRACTOR, except for third-party manufacturers supplying commercial items and over whom CONTRACTOR has no legal control. The final determination of whether an instance of delay is excusable lies with ODM in its discretion.
- F. **Counterpart.** This Contract may be executed in one, or more than one counterpart, and each executed counterpart shall be considered an original, provided that such counterpart is delivered to the other party by facsimile, mail courier or electronic mail, all of which together shall constitute one and the same agreement.

ARTICLE XI. CONSTRUCTION

This Contract will be governed, construed, and enforced in accordance with the laws of the State of Ohio. Should any portion of this Contract be found unenforceable by operation of statute or by administrative or judicial decision, the remaining portions of this Contract will not be affected as long as the absence of the illegal or unenforceable provision does not render the performance of the remainder of the Contract impossible.

Signature Page Follows:

Remainder of page intentionally left blank

**OHIO DEPARTMENT OF MEDICAID
CONTRACT FOR SERVICES**

SIGNATURE PAGE

C-1415-07-0000

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS CONTRACT AGREEMENT AS OF THE DATE OF THE SIGNATURE OF THE DIRECTOR OF THE OHIO DEPARTMENT OF MEDICAID.

Vendor Name

Ohio Department of Medicaid

Authorized Signature (Blue Ink Please)

John B. McCarthy, Director

Printed Name

Date

50 West Town Street
Columbus, Ohio 43215

Date

Address

Address

City, State, Zip

City, State, Zip