

**Ohio Department of Medicaid  
Nursing Facility Rate Development**

**Request for Proposals**

**ODMR20210004**

**Due Date**

*October 22, 2019*

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**OHIO DEPARTMENT OF MEDICAID REQUEST FOR PROPOSALS (RFP):  
Nursing Facility Rate Development  
ODMR-2021-0004**

**SECTION I. PURPOSE**

**1.1 General Overview**

The Ohio Department of Medicaid (ODM) releases this Request for Proposals (RFP) for the purpose of securing a supplier to provide expertise in the area of Nursing Facility (NF) Medicaid rate development processes under new methodologies, including, but not limited to, new grouper logic such as the Patient Driven Payment Model (PDPM), Resource Utilization Group IV (RUGs IV), and innovative alternatives. ODM is seeking suppliers who have the expertise in the following areas:

- Extensive knowledge base of NF Medicaid rate development techniques;
- Fiscal analysis and modeling;
- Federal and state regulatory analyses;
- Minimum Data Set (MDS) programming experience; and
- Proven performance in the field of NF rate setting.

Demonstration of this kind of specialty health care business and consultative expertise to support ODM work activities will be critical in the supplier selection process.

Supplier proposals must clearly demonstrate the supplier's capability of providing services as described in this RFP. Additionally, it is critical that the suppliers do **not** provide the same or similar services to NF providers and are independent from the nursing facility provider industry.

**1.2 Background**

Recently, Centers for Medicare and Medicaid Services (CMS) informed State Medicaid agencies of the new grouper methodology, PDPM, to replace RUGs IV. The PDPM will be implemented by CMS on 10/1/19. The current grouper that ODM uses is RUGs IV and CMS has notified State Medicaid agencies that CMS will no longer support RUGs IV after 9/30/20. ODM requires fiscal and clinical expertise to make a smooth transition from RUGs IV to PDPM or an alternative methodology that meets the needs of the Medicaid NF resident population and is acceptable to CMS.

**1.3 Objectives**

Objectives include but are not limited to the following:

1. Providing detailed analyses, fiscal impacts and budgetary impacts as it relates to:
  - a. RUGs IV versus PDPM versus State defined alternative;
  - b. Research of other states NF payment reimbursement methodologies;
  - c. Review of ODM's proposals (resident versus provider level, % of Medicare, etc.); and
  - d. Innovative NF reimbursement model alternatives to PDPM.

2. Programmatic guidance and assistance with:
  - a. Programming changes;
  - b. Parallel testing;
  - c. Roll out and communication with stakeholders;
  - d. Provider assurance on methodology; and
  - e. Development of wage recalibration and frequency to align with rebasing.
3. Review of rebasing estimates currently in process:
  - a. Assist with combination of MDS and rebasing fiscal/budget impacts; and
  - b. Assist in framing strategy to legislature and provider community.
4. Statute and rule recommendations, as needed:
  - a. Different peer groupings, ceilings, etc.; and
  - b. Alternative cost containment measures, stop/loss thresholds, bed size, occupancy, recommendations for changes in statute, recalibration of wages, etc.
5. Value based purchasing, providing detailed guidance with:
  - a. How to tie quality measures to current rate setting measures;
  - b. Other states' methodology; and
  - c. Cost containment measures to align with quality initiatives.
6. Provide clinical proficiency and judgement, to assure that:
  - a. The acuity tool appropriately captures resident's needs;
  - b. Methodology chosen is clinically valid; and
  - c. Categorizes residents in a clinically sound manner.
7. Advise ODM on PDPM and alternative analyses and fiscal impact, including but not limited to:
  - a. Phase in strategies;
  - b. Budget neutral measures;
  - c. Review ODM estimates (RUGs IV versus PDPM versus alternative groupings);
  - d. Run independent analysis;
  - e. Other states' and CMS experience; and
  - f. Review for proper implementation of grouper from a clinical perspective.
8. Review of MDS assessments:
  - a. Clinical and Fiscal review of OAC rules for case mix.
9. Provide guidance on cost containment strategies/risk mitigation (including but not limited to):
  - a. Short term versus long term stays;
  - b. MDS growth versus actual, how to gauge differences.

#### 1.4 **Program Resource Library**

ODM recognizes that interested applicants may not be familiar with some of the documents referenced in this RFP, and has therefore created a Resource Library which may be accessed on the ODM website at: [Program Resource Library](#).

#### 1.5 **Glossary**

CMS – Centers for Medicare and Medicaid Services

LTC – Long Term Care

MDS – Minimum Data Set 3.0

NF – Nursing facilities

NF Provider Community – Provider Associations, Provider Consulting firms, NF providers/owners

OAC – Ohio Administrative Code

ODA- Ohio Department of Aging

ODH- Ohio Department of Health  
 ODM – Ohio Department of Medicaid  
 ORC – Ohio Revised Code  
 PDPM – Patient Driven Payment Model  
 RUGs – Resource Utilization Groups

## 1.6 Statutory Authority

ORC 5165.01-5165.41

## SECTION II. PROCUREMENT PROCESS INFORMATION

### 2.1 Anticipated Procurement Timetable

DATE	EVENT/ACTIVITY
September 18, 2019	ODM releases RFP on ODM and DAS websites; Question & Answer (Q&A) period opens. - RFP becomes active; suppliers may submit inquiries for RFP clarification.
September 24, 2019	Q&A period for supplier questions closes at 8 a.m. on this date. - <b>No further inquiries for RFP clarification will be accepted.</b>
<b>4:00 p.m.</b> October 22, 2019	<b>Deadline for suppliers to submit proposals to ODM (4 p.m.).</b> - This begins the ODM process of proposal review. <b>LATE BIDS WILL NOT BE CONSIDERED. NO EXCEPTIONS WILL BE MADE.</b>
October 29, 2019	ODM issues contract award notification letter (estimated). - <b>Suppliers that submitted proposals in response to this RFP will be sent letters stating whether their proposal was selected for award of the contract.</b>
November 18, 2019	Controlling Board review of contract ( <i>estimated—if applicable</i> ). - <b>Contract with the selected supplier may require review and approval.</b>
December 9, 2019	Implementation ( <i>estimated - following notification of all contractual and funding approvals</i> ). - <b>ODM contracts are not valid and effective until the Ohio Office of Budget and Management approves the purchase order.</b>
Three biennial periods ending June 30, 2025	Initial contract and 2 potential renewal period(s).

ODM reserves the right to revise this schedule if needed and/or to comply with the State of Ohio procurement procedures and regulations.

In accordance with 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 (PO). The selected supplier may neither perform work nor submit an invoice for payment for work performed for this project for any time period prior to the PO approval date. ODM will notify the selected supplier when the requirements of ORC § 126.07 have been met and send a copy of the PO.

Subject to Controlling Board approval, the contract period is expected to run from approximately December 9, 2019 through June 30, 2021, with the possibility for two renewal contracts that would be in effect from July 1, 2021 through June 30, 2023, and July 1, 2023 through June 30, 2025, contingent upon satisfactory performance, continued availability of funding, and all required approvals. Renewal may be subject to approval by the Controlling Board.

## **2.2 Internet Question and Answer Period; RFP Clarification Opportunity**

Potential suppliers or other interested parties may submit clarifying questions regarding this RFP during the Q&A Period as outlined in Section II, Anticipated Procurement Timetable, by using the following Internet process:

1. Access the ODM Web Page at <http://medicaid.ohio.gov>;
2. Go to the "Resources" tab and select "Legal and Contracts";
3. Select "RFPs", then under "Current Solicitation" select the appropriate posting;
4. Provides access to the posting on the Department of Administrative Services (DAS) website;
5. Select the "Submit Inquiry" option button; and
6. Provide requested information and submit question.

Questions about this RFP must reference the relevant part of the RFP, 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 supplier (or other interested party), the company name, phone number, and e-mail address must be provided to submit an inquiry. ODM may, at its option, disregard any questions which do not appropriately reference an RFP provision or location within the RFP, or which do not include identification of the originator of the question. Questions submitted after **8:00 a.m.** on the date the Q&A period closes will not be answered.

ODM's responses to all questions asked via the Internet will be posted on the DAS website dedicated to this RFP for public reference by any interested party. ODM will not provide answers directly to the suppliers (or any interested party) that submitted questions. ODM is under no obligation to acknowledge questions submitted through the Q&A process if those questions are not in accordance with these instructions.

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. ODM's answers may be accessed by following the instructions above, but rather than selecting "Submit Inquiry," suppliers and others should select "View Q and A." ODM strongly encourages suppliers to ask questions early in the Q&A period so that answers can be posted with sufficient time for follow-up questions.

Supplier proposals in response to this RFP are to take into account any information communicated by ODM in the Q&A process for the RFP. It is the responsibility of all potential suppliers to check this site on a regular basis for responses to questions, as well as for any addenda, alerts, or other pertinent information regarding this RFP. Once submitted questions have been answered, responses are clearly identified on the website dedicated to this RFP.

Requests for copies of any previous RFPs, Request for Letterhead Bids (RLBs), etc. or for past supplier proposals, score sheets or contracts for this or similar past projects are not clarification questions regarding the present RFP, but are Public Records Requests (PRRs), and should be submitted to: [mcdlegal@medicaid.ohio.gov](mailto:mcdlegal@medicaid.ohio.gov).

If suppliers experience technical difficulties accessing the DAS website where the RFP and its related documents are published, they may contact the ODM Office of Contracts and Procurement (OCP), RFP/RLB Unit, at (614) 502-7117 for guidance.

### **2.3 Communication Prohibitions**

From the date this RFP is issued until a contract is awarded, there may be no communications concerning the RFP between any supplier and any employee, contractor, or subcontractor of ODM, who is in any way involved in the development of the RFP or the selection of the contractor.

The only exceptions to this prohibition are as follows:

1. Communications conducted pursuant to Section 2.2, Internet Q&A Period; RFP Clarification Opportunity;
2. As necessary in any pre-existing or on-going business relationship between ODM and any supplier that could submit a proposal in response to this RFP; and
3. As part of any supplier interview process or proposal clarification process initiated by ODM, which ODM deems necessary in order to make a final selection.

ODM is not responsible for the accuracy of any information regarding this RFP that is obtained or gathered through a source other than the Q&A process described in this RFP. Any attempts at prohibited communications by suppliers may result in the disqualification of those suppliers' proposals.

If interested suppliers need to communicate regarding this RFP, they must contact ODM using one of the mechanisms above. Suppliers are cautioned that communication attempts which do not comply with these instructions will not be answered, and that ODM will not consider any proposals submitted to any address other than the one provided in this RFP. Any communication considered prohibited, or proposals not submitted to the proper address, may disqualify suppliers from participation in this RFP.

### **2.4 Addenda to the RFP**

If it becomes necessary to revise any part of this RFP, ODM will post those revisions, addenda, etc., to the website dedicated to this RFP. All interested suppliers must refer to that website regularly for addenda or other announcements. ODM will not specifically notify suppliers of changes or announcements related to

this RFP except through the website posting. It is the sole responsibility of suppliers to be aware of, and to fully respond to, all updated information posted on the original website.

### **SECTION III. SUPPLIER QUALIFICATIONS AND EXPERIENCE**

#### **3.1 Mandatory Requirements**

ODM requires that interested suppliers **MUST** meet, at minimum, **ALL** the following qualification requirements as this contract requires a supplier that brings a unique blend of broad Medicaid long term care experience, specifically NF reimbursement expertise and knowledge.

- A. The supplier has a minimum of seven (7) years' experience in the design, development and implementation of all of the following:
1. Financial analysis, modeling and reimbursement strategies – including activities such as reimbursement methodologies, program financing, funding, and payment innovations.
  2. MDS program application, construction, modification and implementation, as well as negotiating with CMS on MDS-related issues.
  3. Regulatory analysis policy and process simplification and innovation.
  4. Federal and stakeholder facilitation and negotiation processes – such as working with federal/state/local stakeholders on Medicaid issues, consensus building, and engagement.
  5. Program and policy development and modeling – tracking national best practices and trends, innovations in acuity tools, for post-acute LTC NF Medicaid populations.
  6. Specialized services such as provision of technical assistance, programmatic changes to MDS, analytic and evaluation capabilities, policy and rule development for both fee for service and managed care populations.
- B. The supplier must demonstrate that it has the experience needed to meet the RFP's mandatory experience and qualifications. Experience should be demonstrated by providing a summary of relevant work or projects, including the project name, the agency or company for which the work was performed, the beginning and ending dates of work, and key samples or excerpts representative of the quality of the work.
- C. The supplier must include a minimum of three (3) references from representatives of agencies or companies for which the supplier has successfully provided services/projects comparable in scope to the requirements in this RFP. These references must relate to work that was completed within the past seven (7) years with at least one of the projects having occurred within the last three (3) years.

Each reference and work experience must include the following information:

1. Contact Information. The supplier must provide a client contact name; job title and company or agency at the time the work was performed; current job title and company or agency; and current phone number, email address, and mailing address. The supplier also must include the same information for an alternate client contact. The contact information given must be for a person within the client's organization, not within the supplier's organization, subsidiaries, partnerships, etc. Failure to provide this information or provision of information

that is inaccurate or out of date may result in ODM not including the reference or work experience in the evaluation process or rejecting the supplier's Proposal.

2. Work Name. The supplier must provide the name or title for the work, such as a project name, from which it obtained the mandatory experience.
3. Dates of Experience. The supplier must provide a beginning month and year and an ending month and year, not just the length of time the supplier was engaged by the reference.
4. Description of the Related Service Provided. The supplier must state the experience demonstrated by this project, including the capacity in which the work was performed, the role of the supplier on the work, and an approximate number of hours of work performed by the supplier on this project. It is the supplier's responsibility to customize the description to clearly substantiate the qualifications and its specific relevance to the work described by this RFP.
5. Description of how the related service fulfills, helps to fulfill, or is relevant to the experience required above and shows the supplier's experience, capability, and capacity to fulfill the requirements of any contract awarded resulting from this RFP.

If any of the above qualifications are met through the experience and qualifications of subcontracted personnel, the supplier must identify each subcontracted person, the company (if applicable) for which the subcontracted person works, and the position (identified in section 3.3 of this RFP) for which the supplier is proposing this person.

D. Meet the requirements in Attachment A2, Supplier and Grantee Ethics Certification, by affirming the following:

1. The review and understanding of Ohio ethics and conflict of interest laws, as found in Chapter 102 and §§ 2921.42 and 2921.43 of the ORC;
2. Confirmation of not being excluded from entering into a contract with ODM due to restrictions related to the federal debarment list, unresolved findings under ORC § 9.24 and unfair labor findings pursuant to ORC § 121.23;
3. Compliance with the requirement to maintain a complete affirmative action plan, or accept the State's plan, and be in compliance with ORC § 125.111 prior to being awarded a contract. Suppliers should review these requirements at the following DAS website: <http://das.ohio.gov/Divisions/EqualOpportunity/AffirmativeActionEqualEmploymentOppportunity.aspx>.
4. Acknowledgement that, pursuant to ORC 9.76, a state agency may not enter into or renew a contract for supplies, equipment or services with a company that operates to earn a profit unless that company certifies that it is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade. Supplier agrees to notify ODM immediately if it boycotts a jurisdiction with whom the State of Ohio can enjoy open trade.
5. Complete and return all Attachment A forms upon submission of proposal.
6. Submission with proposal of a selected Ohio certified Minority Business Enterprise (MBE) subcontractor assigned, at a minimum, job duties that will equate to a minimum of 15 percent

of the total dollar amount of the contract per state fiscal year (SFY). This requirement is further described in Section IX.

If the submitting organization is a State of Ohio Minority Business Enterprise (MBE), Encouraging Diversity, Growth and Equity (EDGE) supplier, or Veteran Business Enterprise (VBE), provide a copy of current certification from DAS.

Suppliers which do not meet ALL the above mandatory qualifications and experience will be disqualified from further consideration for contract award. Additionally, the Technical Proposal Score Sheet identifies other mandatory criteria, all of which must be met in Phase I of the scoring process for the proposal to be accepted for full detailed scoring.

### **3.2 Organizational Experience and Capabilities**

Proposals should demonstrate significant organizational expertise of the prime contractor. Proposals must include an organizational chart detailing, at a minimum, the following experience as specified below. As part of the evaluation process, suppliers are to provide the following information to be scored by ODM:

- A. Demonstrated experience relevant to the work identified in the Scope of Work and Specifications of Deliverables Sections of this RFP. Include information on the background of the supplier, including any subcontractors who would perform work under any contract resulting from this RFP.
- B. Samples (excerpts and/or Executive Summaries are acceptable) of at least two, but no more than four, similar sized projects completed or begun in the past seven (7) years, with at least one of the projects having occurred within the past three (3) years, that demonstrate expertise and experience in providing expert assistance in the strategies and objectives listed in section 1.3 and 3.1(A).
- C. Demonstrated knowledge of and experience in Medicaid and familiarity with and experience in the practical application of the laws and regulations impacting its operations, including relevant portions of the Social Security Act. Include Ohio-specific knowledge and experience and/or experience working with comparable sized states in areas of NF reimbursement methodologies.
- D. The supplier information provided for all the above topics should include summary descriptions of all successfully completed projects, any notable accomplishments and outcomes, and contact information for supplier customers that received the services provided—if not already included as a reference. Supplier experience and knowledge should be demonstrated by providing key samples, excerpts, or copies representative of the quality of relevant work.
- E. Supplier proposals must clearly demonstrate the supplier's capability of providing services as described in this RFP. Additionally, it is critical that the suppliers do **not** provide the same or similar services to NF providers and are independent from the nursing facility provider industry.

### **3.3 Staff Experience and Capabilities**

Proposals must demonstrate significant expertise by assigning staff with relevant capabilities to key leadership roles for this project. Key positions will require profiles and resumes with all personal sensitive

information removed or redacted for staff proposed for these key positions (Key Personnel). The supplier must, at minimum:

- A. Describe the operational management and staffing plans, including identification of principal senior management and supervisory staff, project partners and specialists who will be assigned to address various components of the deliverables and related workplan. The supplier shall provide information on the experience and expertise of each person, including information on relevant continuing professional education for the past three (3) years and membership in professional organizations relevant to the performance of work activities identified in this proposal.
- B. Provide as much information as possible regarding the number, qualifications, experience and training, including applicable continuing professional education of the specific staff to be assigned to work on various components of this proposal, as well as resumes and profiles for key personnel. The supplier should also indicate how performance quality standards for staff over the term of the contract will be assured.
- C. Indicate the extent of on-site supervision which will be provided by staff.
- D. Proposals must include, at a minimum, the following key staff positions with demonstrated experience as detailed below:
  1. Project Director: The Project Director will have eight to ten (8-10) years of direct experience in advising and supporting state Medicaid agencies on NF rate development with internal and external stakeholders including, but not limited to, NF provider associations, legislators, etc. The Project Director will serve as the point of contact for all contract work and requires a post graduate degree and/or professional certification in accounting, finance and/or healthcare management. Must be a full-time staff position and available to ODM as needed.
  2. Project Manager: The Project Manager will have five to seven (5-7) years of direct experience related to NF rate development. Responsibilities will also include day-to-day project management and coordination, technical directions, and supervision of the supporting staff. The Project Manager will direct the development of procedures and systems necessary to successfully perform the various services requested under this RFP. Must be a full-time staff position and available to ODM as needed.
  3. Data Manager: The Data Manager will have five to seven (5-7) years of direct experience related to NF rate analytics including MDS. Responsibilities will also include day-to-day project management and coordination, technical directions and supervision of the support staff as it relates to NF analytics. Must be a full-time staff position and available to ODM as needed.
  4. Staff Members will have at least three (3) years of direct experience in financial modeling and data analytics and must be well-versed in NF rate setting methodologies and development. Staff positions include but are not limited to operational support, data analysis, and administrative support.
  5. Clinical Staff Member who is licensed to provide clinical proficiency and judgement to ensure that methodology chosen is clinically valid. The Clinical Staff Members will have five to seven

(5-7) years of direct experience in the evaluation of NF resident's acuity, familiarity with MDS and other innovative techniques to identify the NF residents morbidity.

**If the supplier seeks to meet any of the key positions through a subcontractor, the supplier must identify the subcontractor by name as part of the Personnel Profile Summary for each key position. Suppliers which do not meet ALL the above experience and qualifications will be disqualified from further consideration for contract award.**

### **3.4 Replacement of Key Personnel**

- A. Upon execution of a Contract, ODM must approve the replacement of any key personnel. ODM reserves the right to disapprove a key staff member's replacement if it determines the minimum education and experience requirements are not met. The Contractor must use all commercially reasonable efforts to ensure the continued availability of those Key Personnel. Also, the Contractor may not remove those personnel from the project without the prior written consent of ODM, except if doing so is necessary for legal or disciplinary reasons. However, the Contractor must make a reasonable effort to give ODM 30 calendar days' prior, written notice of the removal. Contractor's notice to ODM to remove or replace key personnel must include two qualified replacement candidates' resumes with detailed documentation of the proposed candidate's experience with projects of similar size and scope to the subject of this RFP.
- B. If the Contractor removes key personnel from this project for any reason other than those specified above, ODM may assess liquidated damages in the amount of \$1,500.00 for every day between the date on which the individual was removed and the date that the Contract is terminated, or the individual's qualified replacement, selected in accordance with the process identified in this Section, starts performing on the project. ODM also may provide the Contractor with written notice of its default under this section, which the Contractor must cure within 30 days. Should the Contractor fail to cure its default within the 30-day cure period, the Contract may be terminated immediately for cause, and ODM will be entitled to damages in accordance with the Suspension and Termination Section of the executed Contract due to the termination. Should ODM assess liquidated damages, or otherwise be entitled to damages under this provision, it may offset these damages from any fees due under the Contract.
- C. ODM has an interest in ensuring that its operations are carried out in an efficient, professional, legal, and secure manner. Therefore, ODM will have the right to require the Contractor to remove any individual involved in the Project, if ODM determines that any such individual has or may interfere with the State's interests identified above. In such a case, the request for removal will be treated as a case in which an individual providing services under the Contract has become unavailable, and the Contractor must follow the procedures identified above for replacing unavailable Key Personnel. This provision also applies to people that the Contractor's subcontractors engage, if they are listed by name as Key Personnel in the proposal.

### **3.5 Subcontractor Identification and Participation Information**

Suppliers must clearly identify the subcontractor(s) and their tasks in their proposals. The proposal must include a letter from the proposed subcontractor(s), signed by a person authorized to legally bind the subcontractor, indicating the following:

- A. Subcontractor's legal status, federal tax ID number, and principal business address;
- B. Name, phone number, and email address of a person who is authorized to legally bind the subcontractor to contractual obligations;
- C. A complete description of the work the subcontractor will do;
- D. A commitment to do the work, if the supplier is selected;
- E. A statement that the subcontractor has read and understands the RFP, the nature of the work, and the requirements of the RFP; and
- F. The MBE certification number, if applicable, a copy of their current MBE Certification letter must be included.

### **3.6 Financial Capability Dun & Bradstreet (D&B) Rating**

Suppliers must provide industry standard Dun & Bradstreet (D&B) Ratings indicating the firm's financial strength and creditworthiness, assigned to most US and Canadian firms by the US firm Dun & Bradstreet (D&B). These ratings are based on a firm's worth and composite credit appraisal. Additional information is given in credit reports (published by D&B) that contain the firm's financial statements and credit payment history. If the supplier is submitting a bid with a subcontractor – do not submit a consolidated D&B report but individual reports.

### **3.7 Sensitive Personal Information**

It is the sole responsibility of the Supplier submitting a proposal to remove all sensitive personal information (such as home addresses and social security numbers) of supplier staff and/or of any subcontractor and subcontractor staff from resumes or any other part of the proposal package.

Following submission to ODM, all proposals submitted may become part of the public record. **ODM reserves the right to disqualify any supplier whose proposal is found to contain such prohibited sensitive personal information.**

## **SECTION IV. SCOPE OF WORK and SPECIFICATIONS OF DELIVERABLES**

### **4.1 Scope of Work**

The following scope of work outlines specific duties and responsibilities of the selected contractor for this RFP. All requirements described in this section must be fully addressed in the supplier's proposal and reflect an understanding of, and commitment to, perform this work fully. The selected supplier will also be responsible for addressing all deliverables as described in the Specifications of Deliverables section and developing a corresponding work plan, including all preparatory and intervening steps, whether ODM has explicitly specified or delineated them within this RFP. In developing their proposals, all applicants must

fully and appropriately plan and cost out their proposed projects, including all necessary preparatory and intervening steps.

The selected supplier for this project will assist ODM with all aspects of designing, developing, and implementing a variety of new and current Medicaid LTC NF rate setting methods as identified in Section I, Purpose. The type and amount of work being performed at any given time is expected to vary considerably, depending on the timelines of specific initiatives. The selected supplier will assist ODM in determining how to optimize state and federal resources.

A. The selected supplier shall provide, at a minimum, the following services:

1. Provide detailed analyses, fiscal impact and budgetary impacts as it relates to:
  - a. RUGs IV. v. PDPM v. State defined alternative.
  - b. Research of other states methodologies.
  - c. Review ODM's proposals (resident v. provider level, % of Medicare, etc.).
  - d. Provide innovative proposals as alternatives to PDPM.
  - e. Align with federal and state regulatory requirements and recommended changes.
2. Provide ODM with programmatic assistance and guidance for MDS, including, but not limited to:
  - a. MDS programming changes.
  - b. Parallel testing.
  - c. Roll out and communication with stakeholders.
  - d. Financial and clinical assurance on methodology.
  - e. Development of wage recalibration and frequency to align with rebasing.
3. Review of rebasing estimates currently in process:
  - a. Assist with combination of MDS and rebasing fiscal/budget impacts.
  - b. Assist in framing strategy to the legislature and provider community.
4. Assist with state statute and rule changes as needed:
  - a. Different peer groupings, different ceilings, etc.
  - b. Alternative cost containment measures, stop /loss thresholds, bed size, occupancy, recommendations for changes in statute and rule; recalibration of wages.
5. Value based purchasing, providing detailed guidance on:
  - a. How to tie quality measures to current rate setting measures.
  - b. Other states methodology.
  - c. Cost containment measures to align with quality initiatives.

**Important Note:** The work anticipated under the resulting contract is dynamic in nature and may change over the term of the contract to comply with changes in federal and/or state laws, regulations or policies. The selected supplier will be required to regularly provide updates on all work activities for the project on a regular basis to ODM and upon request. Updates should include:

1. Time frames for completion of tasks and outcomes;
2. Estimates of contract hours expected to be used;
3. Resource needs; and

4. Risk assessments and budget forecasts.

B. Applicants must describe in this section how they will perform the following work requirements/activities:

1. Describe the supplier's project management processes and methods for the following:
  - a. Research and analysis;
  - b. Presenting ideas for ODM consideration;
  - c. Assigning work to staff, overseeing the work, and delivering the results to ODM;
  - d. Providing status reports and analyses at least monthly, and upon request;
  - e. Determining and reporting that work has been completed;
  - f. Resolution of unanticipated problems; and
  - g. Invoicing ODM, resolving billing disputes and providing quarterly budget expenditure reports.
2. Describe a process for submitting an "impact analysis" to ODM for approval before beginning work on any specific initiative and submitting an amended impact analysis for any initiative in progress upon request by ODM. Include in the proposal a draft sample of an impact analysis, which needs to include:
  - a. A proposed timeline for completing all project tasks with:
    - i. Target completion dates for any required activities;
    - ii. Hours of work that will be necessary for each of the required activities, broken down into:
      1. Assigned supplier staff;
      2. Assigned state staff (Rate setting, IT, Policy, etc.); and
      3. Any additional personnel required to complete the activity on time.
  - b. An estimate of the total cost of the initiative, broken down into:
    - i. Labor costs, allocated between services provided under a contract resulting from this RFP, and other additional personnel; and
    - ii. Other costs as appropriate.
  - c. Any assumptions underlying the proposed work plan, timeline, and costs.
3. Describe how the supplier will provide a monthly report of work completed and resolution of unanticipated problems.

#### **4.2 Specifications of Deliverables**

The proposal should address how the following deliverables will be completed, including what will be done, the responsible party, timeline for completion and the methodology to be used for achieving each one. A corresponding work plan that concisely charts out all the work should also be a part of the proposal and cover specific key activities, responsible person(s), start and end dates and anticipated outcome for each deliverable. The selected supplier will work with ODM to review each deliverable, identify optimal outcomes, scope the work to be done, and areas where additional resources may be needed to perform the work. The deliverables are categorized by the objectives identified in Section I Purpose:

- A. Review and recommend changes to NF reimbursement policies as needed to comply with new grouper methodology in compliance with federal and state regulations as well as billing guidance. Develop fiscal and budget modeling to identify acuity tool from cost report impacts.
  - 1. Provide detailed analyses, fiscal impact and budgetary impacts as it relates to:
    - a. RUGS IV v. PDPM v. state defined Alternative.
    - b. Research of other states methodologies.
    - c. Review ODM's proposals (resident v. provider level, % of Medicare, etc.).
  - 2. Provide innovative proposals as alternatives to PDPM.
  - 3. Align with federal and state regulatory requirements and recommended changes.
  - 4. Assist with combination of MDS or Alternative and rebasing fiscal/budget impacts.
- B. Modernize reimbursement through potential alternatives to MDS or PDPM timing and alignment strategies and phase out of RUGs IV. Emphasis on Post-Acute NF resident population and recommendations for value-based purchasing concepts and best practices for quality metrics. Develop budget neutral and quality-based reimbursement strategies.
  - 1. Cost containment measures to align with quality initiatives.
  - 2. How to tie quality measures to current rate setting measures.
- C. Provide Information Technology (IT) operational guidance and programming changes relative to the new grouper strategies identified.
  - 1. Assist with MDS programming changes.
  - 2. Provide parallel testing.
  - 3. Assist with roll out & communication with stakeholders.
  - 4. Provide assurance on methodology.
  - 5. Develop wage recalibration and frequency to align with rebasing.
- D. Provide clinical perspective of grouper methodology as it relates to groupings by diagnostic categories for post-acute care grouper.
  - 1. Insure that recommendations align with Post-Acute Medicaid resident population.
  - 2. Devise a grouper to prevent NF reimbursement to the detriment of NF resident care and quality of life.
- E. Actively engage external stakeholders in the development and implementation process.
  - 1. Assist in framing strategy to state of Ohio legislature & NF provider community.
  - 2. Develop communications to CMS & other agencies (i.e. ODH, ODA, etc.).

## **SECTION V. BUSINESS CONTINUITY PLAN**

- A. Supplier recognizes that certain services covered in this RFP are vital to ODM and must be continued without interruption. Supplier shall be prepared to continue providing such services identified by ODM, during periods of disaster, crisis, or other unexpected break in services based upon a Business Continuity Plan (Plan). Supplier is required to implement and maintain a sustainable Plan throughout the term of the Contract resulting from this RFP and provide a summary of the Plan to ODM upon request. The Plan will, at a minimum address the following:

1. How the Supplier will enable continued performance under this Contract in the event of a disaster or other unexpected break in services;
  2. How the Supplier will ensure the continuity for identified vital services and supporting facilities;
  3. Disaster recovery plans for critical technology and systems infrastructure; and
  4. Proper risk controls (collectively, the "Contingency Plans") to enable continued performance under the Contract in the event of a disaster or other unexpected break in services.
- B. For purposes of this Section, the term "Disaster" means an unanticipated incident or event, including, without limitation, force majeure events, technological accidents or human-caused events that (i) may cause a material service or critical application to be unavailable without any reasonable prediction for resumption, or (ii) causes data loss, property damage or other business interruption without any reasonable prediction for recovery within a commercially reasonable time period.
- C. The awarded supplier will update and test the operability of any applicable Plan at least annually and will implement such Plan upon the occurrence of a Disaster.

## **SECTION VI. PROPOSAL FORMAT AND STRUCTURE**

### **6.1 Complete Proposal Content Requirements**

The supplier's proposal package will consist of the following items in subsequent order:

- A. Technical Proposal, including any supplier appendices;
- B. Attachment A completed and signed by supplier; and
- C. Signed Cost Proposal Form/Attachment C.

### **6.2 Organizational Structure of the Proposal**

- A. The supplier must provide **Five (5)** paper copies (one signed original and four (4) copies) and one electronic copy (CD-ROM) of the proposal. Completed Technical Proposals must be clearly presented without extraneous information unrelated to material covered in RFP. Completed Technical Proposals may be organized by separating sections to correspond with the score sheet, but at minimum, must include the following:
  1. Mandatory Supplier Requirements;
  2. Staff Experience and Capabilities;
  3. Organizational Experience and Capabilities;

4. Scope of Work;
  5. Deliverables and Proposed Work Plan;
  6. Business Continuity Plan; and
  7. MBE Documentation.
- B. Suppliers are prohibited from including project cost information (any dollar amounts which might be deemed indicative of the relative cost of the project), proprietary, personal, or confidential information in the technical proposals. Any supplier including such information may be disqualified from consideration.

### **6.3 Attachment A Requirements**

Attachment A documents must be completed, signed, and returned by the supplier with their technical proposal, which must include Required Supplier Information Form, Supplier and Grantee Ethics Certification Form, and Location of Business and Offshore Declaration, Affidavit of Non-Collusion, and Certifications and Assurances.

### **6.4 Cost Proposal (Attachment C) Requirements**

The Cost Proposal must contain one original and one electronic copy (CD-ROM) provided in a sealed, separate envelope labeled: "DO NOT OPEN. COST PROPOSAL ENCLOSED FOR THE NURSING FACILITY RATE DEVELOPMENT, RFP#: ODMR20210004 SUBMITTED BY [SUPPLIER'S NAME]."

Suppliers are to complete the Cost Proposal Form, provided as Attachment C to this RFP according to instructions, sign it, and submit it fully completed as the separate sealed cost proposal. The Cost Proposal Form requires interested suppliers to price those services defined in the Specifications of Deliverables, and to offer ODM its flat, all-inclusive fee. The price offered in the supplier's cost proposal will be the price in effect throughout the contract period, and renewals.

Suppliers are to use the format in Attachment C, Cost Proposal Form, to submit their proposed fee for the entire project. At the supplier's discretion, additional documentation may also be included with the completed Attachment C as explanatory information, but when making the supplier selections and when executing the contract, ODM will consider only the dollar amount displayed on the Cost Proposal Form.

In calculating their total proposed fee, suppliers must consider costs resulting from each Deliverable listed, as well as all program, preparatory, primary and incidental costs necessary to complete all program activities (whether explicitly identified by ODM in this RFP or not).

### **6.5 Proposal Submission**

The supplier's original technical and cost proposals must contain all the information and documents specified in this Section. The supplier's total complete proposal submission (the original technical and cost proposals, all required copies, and CD-ROMs must be received by OCP no later than **4:00 p.m. EST on October 22, 2019.** Faxed or e-mailed submissions will not be accepted. Proposals must be addressed, for hand delivery or delivery by a private delivery company, as described below:

**Office of Contracts and Procurement, RFP/RLB Unit  
Ohio Department of Medicaid  
50 West Town Street  
Columbus, Ohio 43215**

Suppliers are 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 these types of companies 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 United States Postal Service (USPS) is an option, it can add several days to the delivery process and could result in a supplier's proposal being late and removed from consideration. All proposals must be received by OCP by the posted submission deadline, date and time. No exceptions will be made.

The address for USPS deliveries is:

**Ohio Department of Medicaid  
Office of Contracts and Procurement  
PO Box 182709  
Columbus, Ohio 43218-2709**

The entire technical proposal must be converted into one single .pdf document. If the proposal's size necessitates more than a single .pdf document to contain the entire technical proposal, suppliers must still send the electronic copy of the proposal, but use the fewest separate .pdf documents possible. The electronic copy of the cost proposal must include all cost proposal components, including any required or voluntary attachments. The CD-ROM containing the cost proposal must be submitted in the sealed envelope containing the original hardcopy cost proposal, and the two photocopies.

Both CD-ROMs must be labeled with the supplier's name, the RFP number, and the proposal submission date. The CD-ROMs may be used in the formal ODM proposal review process, and will be used by ODM for archiving purposes and for fulfillment of Public Records Requests. Failure to include or to properly label the CD-ROMs may, at ODM discretion, result in the rejection of the supplier from any consideration.

It is the supplier's responsibility to ensure that all copies and all formats of the proposal are identical. Any pages or documents omitted from any or all copies can negatively affect the supplier's score and possibly result in disqualification. In the event of any discrepancies or variations between copies, ODM is under no obligation to resolve the inconsistencies and may make its scoring and supplier selection decisions accordingly, including the decision to disqualify the supplier.

ODM reserves the right not to review submitted appendices which include information or materials not required in the RFP. **Failure by any supplier to complete, sign, and return the Attachments A and C documents with their proposal may result in rejection of the proposal as being non-responsive and disqualified from further consideration.**

## **SECTION VII. CRITERIA FOR PROPOSAL EVALUATION and SELECTION**

### **7.1 Scoring of Proposals**

Suppliers submitting a response will be evaluated based on the capacity and experience demonstrated in their technical and cost proposal. All qualifying proposals will be reviewed and scored by a Proposal Review Team (PRT), comprised of staff from ODM. Suppliers should not assume that the review team members are familiar with any current or past work activities with ODM. PRT members will be required to sign disclosure forms to establish that they have no personal or financial interest in the outcome of the proposal review and supplier selection process.

Selection of the supplier will be based upon the criteria described in this RFP. The PRT reserves the right to reject any and all proposals, in whole or in part, received in response to this request. The review team may waive minor defects that are not material when the intent is not unreasonably obscured. In scoring the proposals, ODM will score in five phases:

1. Phase I. Review—Initial Qualifying Criteria
2. Phase II. Review—Technical Proposal
3. Phase III. Review—Cost Proposal
4. Phase IV. Review—Calculation of MBE Points
5. Phase V. Review—Selection Criteria

#### **A. Phase I. Review—Initial Qualifying Criteria:**

Proposals must pass Phase I. Review as required in the Technical Proposal Score Sheet provided as Attachment B to be considered for further scoring and possible award. Phase I criteria consist of, at a minimum, the Mandatory Requirements, stipulated in this RFP. Any “no” for the listed Phase I criteria will eliminate a proposal from further consideration. Please refer to Attachment B for a complete listing of initial disqualifiers.

#### **B. Phase II. Review—Criteria for Scoring the Completed Technical Proposal:**

The PRT will then score those qualifying technical proposals not eliminated in Phase I. Review, by assessing how well the supplier meets the requirements as specified in the RFP. Using the score sheet for Phase II scoring (see Attachment B), the PRT will read, review, discuss and reach consensus on the final technical score for each qualifying completed technical proposal.

Any proposal that does not meet the minimum required technical proposal score as defined in Attachment B will be disqualified from any further consideration and not be considered for award of the contract. The accompanying Cost Proposal will neither be evaluated nor considered a public record and will be destroyed. The total points of the Technical Proposal Score will be 80% of the final score. The Cost Proposal will comprise 15% of the final score. Any MBE set-aside percentage over 15%, will comprise 5% of the final score.

Refer to Attachment B for maximum and minimum allowable scoring thresholds and definitions of scoring values.

Before submitting a proposal to ODM in response to this RFP, suppliers are strongly encouraged to use Attachment B to review their proposals for completeness, compliance and quality.

**C. Phase III. Review—Criteria for Considering the Cost Proposal**

ODM may, at its sole discretion, negotiate with all technically qualified suppliers for a revised cost proposal. Suppliers may then: 1) submit one last and best offer; 2) request that ODM view its original cost proposal as its last and best offer; or 3) formally withdraw from further consideration. The supplier shall formally indicate its choice according to directions provided by ODM at that time. Upon receipt of all last and best offers, ODM will then use those suppliers’ revised cost proposals to compute the suppliers revised cost points as detailed in Attachment F, Cost Point Calculation.

Travel Reimbursement

Travel costs should be included in the overhead, per diem, or the hourly rates which are built into the cost of the Deliverables. Travel is not to be listed separately unless otherwise specified in this document.

**D. Phase IV. Calculation of MBE Points**

Higher MBE participation will correspond with increased MBE points being rewarded to the proposal. The breakdown of MBE points is detailed on Attachment E, MBE Scoresheet.

**E Phase V. Selection Criteria**

The total point value of the Technical Application Score will be 80% of the maximum score. The Cost Proposal will comprise 15% of the maximum score. Any MBE set-aside percentage over 15%, if applicable, will comprise 5% of the maximum score. The point totals in the table are whole numbers having been rounded by generally accepted rounding methodology.

<b>Criteria</b>	<b>Maximum Available Points</b>
Proposal Technical Requirements	801
Cost Proposal	150
MBE Participation	51
Maximum Available Points	1,002

The applicant with the overall highest point total will be recommended for selection.

**7.2 Veteran-Friendly Business Enterprise Program**

A “Veteran-friendly business enterprise” (VBE) means a sole proprietorship, association, partnership, corporation, limited liability company, or joint venture that meets veteran employment standards as defined in rule 123:5-1-01(JJ) of the Ohio Administrative Code (OAC). OAC rule 123:5-1-16(B)(3) provides

procedures for applying preference for VBE submissions. ODM will follow these procedures for any certified VBE proposal submissions.

The Veteran-Friendly Business Enterprise Program (VBE) applies to all state agencies' purchases made by bid or proposal under chapter 125 of the Ohio Revised Code (ORC). Essentially, the Program allows for:

1. Prices on bids submitted by veteran-friendly businesses to exceed those prices on bids submitted by businesses not certified as veteran-friendly by up to **five percent** and still be eligible for winning the award.
2. Scores on proposals submitted by veteran-friendly businesses to be up to five percent lower than the proposal scores submitted by businesses not certified as veteran-friendly and still be eligible for winning the award.
3. The enabling statute for the VBE program is ORC 9.318. The regulations that govern the program are found in OAC Chapter 123:5-1-01 and 123:5-1-16.

### **7.3 Review Process Exceptions**

ODM reserves the right to request clarifications from suppliers regarding any information in their Technical and/or Cost Proposals or related forms as it deems necessary at any point in the proposal review process. Any such requests initiated by ODM, and suppliers' verbal or written response, shall not be considered a violation of the communication prohibitions contained in Section 2.3 of this RFP.

ODM reserves the right to negotiate with suppliers for adjustments to their proposals should ODM determine, for any reason, to adjust the scope of the project for which this RFP is released. Such communications are not violations of any communications prohibition, and are expressly permitted when initiated by ODM, but are at the sole discretion of ODM.

### **7.4 Final Supplier Recommendation**

The PRT will provide its recommendation to the Director of ODM (or the Director's designee) for review and award of the contract. If two or more of the proposals have the same final score after calculation of the overall proposal scores, the proposal with the higher technical score will prevail.

## **SECTION VIII. PROTEST PROCEDURE**

### **8.1 Protests**

A supplier objecting to any matter relating to this RFP may file a protest using the following guidelines:

- A. Protests may be filed by a prospective or actual bidder in writing, with an electronic copy submitted and saved on a CD-ROM, and shall contain the following information:
  1. The name, address, and telephone number of the protestor;

2. The name and number of the RFP 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 OCP as delineated below:
1. A protest based on alleged improprieties in the issuance of the RFP or any other event preceding the closing date for receipt of proposals, shall be filed no later than 3:00 p.m. on the closing date for receipt of proposals, as specified in Section 2.1, Anticipated Procurement Timetable, of this RFP.
  2. A protest based upon the award selection shall be filed no later than 3:00 p.m. on the seventh (7th) business day after issuance of the award and denial letters. The date on these letters will be used to determine the timeliness of the protest.
- C. An untimely protest may be considered by ODM if ODM determines that the protest raises issues significant to ODM's procurement system. An untimely protest is one received by OCP after the time periods set forth in Item B of this Section.
- D. All protests must be filed at the following location:
- Deputy Legal Counsel, Office of Contracts and Procurement  
Ohio Department of Medicaid  
50 West Town Street  
Columbus, Ohio 43215
- E. When a timely protest is filed, the selection or contract process may be suspended 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 ODM. The supplier(s) who would have been awarded the contract shall be notified of the receipt of the protest.
- F. ODM shall issue written decisions on all timely protests and shall notify any supplier who filed an untimely protest as to whether or not the protest will be considered.

## **8.2 No Obligation to Award**

**ODM is under no obligation to issue a contract as a result of this or any solicitation if none of the proposals are responsive to the objectives and the needs of ODM. ODM reserves the right to not select any supplier as a result of this solicitation.**

## **SECTION IX. CONDITIONS AND OTHER REQUIREMENTS**

This Section notifies suppliers seeking award of a contract of certain conditions and requirements which may affect their eligibility or willingness to participate in any procurement (RFP, RLB, etc.) process, their eligibility to be awarded a contract, and of requirements that would be in effect should they be awarded a contract.

### **9.1 Interview/Demonstration**

Suppliers submitting proposals may be required to participate in an in-depth interview or demonstration as part of the evaluation process. ODM will determine which suppliers, if any, will participate in the interview/demonstration process. Suppliers shall bear all costs of any scheduled interview or demonstration.

If an interview or demonstration occurs, ODM will develop scoring criteria to be used for all participating suppliers. These scores may be added to those suppliers' proposal scores, or will replace certain criteria scores, at the discretion of ODM.

### **9.2 Start Work Date**

The selected supplier must be able to begin work no later than seven (7) working days after the issuance of a purchase order, or as directed by OCP. The selected supplier will be notified by ODM when work may begin. **Any work begun by the supplier prior to notification by OCP will NOT be compensated.**

### **9.3 Trade Secrets Prohibition; Public Information Disclaimer**

Suppliers are prohibited from including any trade secret information, as defined in ORC § 1333.61, in their proposals. Any proposals submitted in response to an ODM procurement effort which make claims of trade secret information may be disqualified from consideration immediately upon the discovery of such unallowable claim. ODM shall consider all submissions to be free of trade secrets and shall treat them accordingly. These submissions shall become the property of ODM.

Proposals received are deemed to be public records pursuant to ORC § 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 submitted by suppliers/applicants and any attachments, addenda, appendices, or sample products. However, any cost proposals that are not reviewed at the conclusion of the procurement are not considered public record and will be destroyed.

### **9.4 Contractual Requirements**

- A. Any contract resulting from the issuance of this RFP is subject to the terms and conditions as provided in the model contract, which is included as Attachment D of this RFP. The supplier must review and sign Attachment A5, Certifications and Assurances, agreeing to the Terms and Conditions of the model contract as part of their proposal submission.
- B. The supplier, 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

RFP. The supplier, 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.

- C. The selected supplier is expected to execute a contract within five (5) business days of its receipt of the final contract from ODM. If the selected supplier fails to sign the contract within the allotted timeframe, ODM may elect to cancel the award, and award the contract to the next ranked Supplier, or cancel, or reissue this solicitation.

## **9.5 Public Release of Evaluations and/or Reports**

Any release of data, evaluations and/or reports or data sharing shall be role-based and project specific, and in accordance with state and federal regulations. Any requests for access to data will be directed by ODM and decisions about providing data to any parties will be at the sole discretion of ODM.

## **9.6 Ethical and Conflict of Interest Requirements**

- A. No supplier 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;
- B. No supplier or individual, company or organization seeking a contract shall solicit any ODM employee to violate any of the conduct requirements for employees;
- C. Any supplier acting on behalf of ODM shall refrain from activities which could result in violations of ethics and/or conflicts of interest. Any supplier or potential supplier who violates the requirements and prohibitions defined here or of ORC § 102.04 is subject to termination of the contract or refusal by ODM to enter into a contract; and
- D. ODM employees and suppliers who violate ORC §§ 102.03, 102.04 2921.42 or 2921.43 may be prosecuted for criminal violations.

## **9.7 Americans with Disabilities Act (ADA)**

The selected supplier, its officers, employees, members, and subcontractors will be required to meet the standards of 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.

## **9.8 Confidentiality and Health Insurance Portability and Accessibility Act (HIPAA) Requirements**

The selected supplier must maintain the confidentiality of information and records in accordance with state and federal laws, rules, and regulations. As a condition of receiving a contract from ODM, the supplier, and any subcontractor(s), will be required to comply with Title 42 of the United States Code (USC) § 1320-d, and the implementing regulations found at 45 CFR § 160 and § 164 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 supplier from or on behalf of ODM 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 CFR 164.501 and any amendments thereto.

### **9.9 Unresolved Findings for Recovery (ORC 9.24), Labor Practices, and Debarments**

ORC § 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 supplier warrants that it is not now, and will not become, subject to an “unresolved” finding for recovery under ORC § 9.24 prior to the award of any contract arising out of this RFP, without notifying ODM of such finding. ODM will review the Auditor of State’s website prior to completion of evaluations of proposals submitted pursuant to this RFP. ODM will not evaluate a proposal from any supplier whose name, or the name of any of the subcontractors proposed by the supplier, appears on the website of the Auditor of the State of Ohio as having an “unresolved” finding for recovery.

**Unfair Labor Practices.** Each response must affirm that neither the supplier nor its principals are on the most recent list established by the Ohio Secretary of State, pursuant to ORC § 121.23, which would identify the supplier as having more than one unfair labor practice contempt of court finding.

**Debarment Requirements.** Each response must affirm that neither the supplier nor any of its principals or subcontractors, are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by any governmental agency. Proposals also must affirm that within three years preceding their submission that neither the supplier 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; nor
- 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.

### **9.10 Mandatory Contract Performance Disclosure**

Each response must disclose whether the supplier or any proposed subcontractor has received a formal claim for breach of contract. 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, supplier 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 supplier from consideration, at the sole discretion of ODM, such claims and a review of the background details may result in a rejection of the supplier’s proposal. ODM will make

this decision based on its determination of the seriousness of the claims, the potential impact that the behavior that led to the claims could have on the supplier's performance of the work, and the best interests of ODM.

### **9.11 Mandatory Disclosures of Governmental Investigations**

Each response must indicate whether the supplier and any of the proposed subcontractor(s) have been the subject of any adverse regulatory or administrative governmental action (federal, state, or local) with respect to supplier's performance. If any such instances are disclosed, supplier 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 supplier by the governmental agency. While disclosure of any governmental action in response to this Section will not automatically disqualify a supplier from consideration, such governmental action and a review of the background details may result in a rejection of the supplier's proposal at the sole discretion of ODM.

### **9.12 MBE Subcontracting Requirements**

This RFP contains a sheltered solicitation requirement which requires the supplier to seek and set aside at least 15 percent of the cost of the work to be exclusively performed by Ohio certified MBE businesses each fiscal year. For more information regarding Ohio MBE certification requirements, including a list of Ohio certified MBE businesses, please visit the DAS Equal Opportunity Division web site at: <http://das.ohio.gov/Divisions/EqualOpportunity/MBEEDGECertification/tabid/134/default.aspx>.

**A. Sheltered Solicitation.** In seeking solicitations from Ohio certified MBE subcontractors, the supplier must:

1. Utilize a competitive process to which only Ohio certified MBEs may respond;
2. Have established criteria by which prospective Ohio MBEs will be evaluated including business ability and specific experience related to the work requirements of this RFP; and
3. Require the Ohio certified MBE maintain a valid certification throughout the term of the contract, including any renewals.

**B. MBE Subcontractor Percentage**

The supplier's submitted proposal must include a pre-selected Ohio certified MBE subcontractor supplier, or suppliers, that will be paid, at a minimum, 15 percent of the cost of the contract per state fiscal year. The proposal must provide the MBE supplier(s) name, DAS-MBE certification number, and a stated specific percentage of the cost of the work that it will set-aside for Ohio certified MBE subcontractors only. The proposal also must include a letter from the Ohio certified MBE subcontractors, on company letterhead, agreeing to the performance of work requested by the prime supplier.

Tracking. Supplier's shall indicate on all invoices submitted for payment, the dollar amount attributed to the work provided by the selected Ohio certified MBE subcontractors. Compliance with Supplier's proposed cost set-aside percentage is a term of the awarded contract and failure to attain the proposed percentage each fiscal year may result in the supplier being found in breach of contract.

Fee at Risk. Compliance with Supplier's cost MBE set-aside percentage or fifteen percent (15%) is a term of this contract. Supplier agrees to place ten percent (10%) of its payment at risk for failure to attain the MBE set-aside percentage by the expiration of the contract.

**SECTION X.            ATTACHMENTS**

- A.     Required Supplier Information and Certifications**
- B.     Technical Proposal Score Sheet**
- C.     Cost Proposal Form**
- D.     ODM Model Contract**
- E.     MBE Scoresheet**
- F.     Cost Point Calculation**

Thank you for your interest in this project.

**Attachment A1**  
**REQUIRED SUPPLIER INFORMATION**

**Purpose:** ODM requires the following information from suppliers 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 supplier. ODM reserves the right to reject your proposal if you fail to provide this information fully, accurately, and by the deadline set by ODM. **Failure to provide such required supplier information may result in immediate disqualification of your proposal.**

**Instructions:** Provide the following information regarding the supplier submitting the proposal or bid. Suppliers may either print this attachment, complete and sign, 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 supplier. Suppliers 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 supplier 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.

1. ODM RFP/RLB# and TITLE: \_\_\_\_\_

2. Proposal Due Date: \_\_\_\_\_

3. Supplier Name: (legal name of supplier to whom contract/purchase payments will be made):  
\_\_\_\_\_

4. Supplier Corporate Address: \_\_\_\_\_

5. Supplier Remittance Address: (or "same" if same as number 4. above): \_\_\_\_\_  
\_\_\_\_\_

6. Print or type the following information for the supplier's representative/contact person authorized to answer questions on the proposal/bid:

Supplier's Representative Name and Title: \_\_\_\_\_

Supplier's Representative Phone # and Email Address: \_\_\_\_\_

7. Is this supplier an Ohio certified MBE? Yes \_\_\_ No \_\_\_. If yes, attach a copy of current certification to proposal/bid. If ODM has specified the RFP/RLB is an opportunity exclusively for MBEs, failure to attach a copy of current certification may result in disqualification.

8. Supplier agrees to comply with the requirements to maintain a complete affirmative action plan and affirm they will be in compliance with ORC § 125.111 prior to be awarded a contract.

9. Supplier Employee Information:  
Total Number of Employees Nationwide: \_\_\_\_\_ % of Women Employees in Ohio: \_\_\_\_\_  
Total Number of Employees in Ohio: \_\_\_\_\_ % of Minority Employees Nationwide: \_\_\_\_\_  
% of Women Employees Nationwide: \_\_\_\_\_ % of Minority Employees in Ohio: \_\_\_\_\_



**Attachment A3 – Location of Business and Offshore Declaration Form**

**Location of Business Declaration:** suppliers responding to any ODM RFP/RLB (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 MAY RESULT IN DISQUALIFICATION OF THE SUPPLIER FROM CONSIDERATION FOR AWARD OF THIS ODM CONTRACT.**

Pursuant to Governor’s Executive Order 2019-12D ([www.governor.ohio.gov](http://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 Medicaid:

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 2019-12D. 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

**ATTACHMENT A4 - AFFIDAVIT OF NON-COLLUSION**

I state that I am \_\_\_\_\_ (title) of \_\_\_\_\_  
(name of firm) and that I am authorized to make this affidavit on behalf of my firm, and its owners, directors, and officers. I am the person responsible in my firm for the price(s) and the amount of this Proposal.

I state that:

- (1) The price(s) and amount of this Proposal have been arrived at independently and without consultation, communication or agreement with any other Proposer or potential Proposer, except as necessary to satisfy the requirement to subcontract a portion of the work under this contract with Minority Business Enterprise suppliers.
- (2) That neither the price(s) nor the amount of this Proposal, and neither the approximate price(s) nor approximate amount of this Proposal, have been disclosed to any other firm or person who is a Proposer or potential Proposer, with the exception of Minority Business Enterprise suppliers that are serving as subcontractors or partners for the specific work that is being solicited, and they will not be disclosed before Solicitation opening.
- (3) No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit a Cost Proposal higher than this Cost Proposal, or to submit any intentionally high or noncompetitive Proposal or other form of complementary Proposal.
- (4) The Proposal of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive Proposal.
- (5) \_\_\_\_\_ (name of firm), its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted of or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as described in the attached appendix.

I state that \_\_\_\_\_ (name of firm) understands and acknowledges that the above representations are material and important, and will be relied on by the ODM in awarding the contract(s) for which this Proposal is submitted. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from the ODM of the true facts relating to the submission of Proposals for this contract.

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Name of Company/Position)

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public for State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

## Attachment A5 – Certifications and Assurances

### ODM Contract Model Provisions

The Terms and Conditions located in Attachment D – ODM Contract Model shall be included in any contract(s) resulting from this RFP.

#### **Attachment D: Contract Template Language, including HIPAA Business Associate:**

1. ODM’s Contract Model has been included as Appendix D. To be responsive, Suppliers must indicate a willingness to enter into a Contract substantially similar to *Appendix D: ODM Contract Model* by signing this Certifications and Assurances (Attachment A5). Any specific areas of dispute with the terms and conditions of Attachment D must be identified in Supplier’s Response and may, at the sole discretion of ODM, be grounds for disqualification from further consideration in the award of a Contract.
  
2. Suppliers are expected to closely read the Terms and Conditions of the Contract Model outlined in Attachment D. Suppliers shall note any exception to the Terms and Conditions. Any exception must include an explanation for the Supplier’s inability to comply with such term or condition and, if applicable, alternative language the Supplier would find acceptable. Rejection of the Terms and Conditions, in whole or in part, may be cause for ODM’s rejection of a Supplier’s proposal. If an exception concerning the Terms and Conditions is not noted, but is raised during contract negotiations, ODM reserves the right to cancel the negotiation, at its sole discretion.
  
3. Please list and clearly explain any exceptions to ODM Terms and Conditions located in Attachment D. If no proposed changes are listed, the Supplier is indicating that no changes to the Attachment D-ODM Model Contract are proposed, and that the Supplier intends to accept it as written if the Supplier’s Proposal is selected for award of a contract. **Under no circumstances is a Supplier to submit its own standard contract terms and conditions in response to this solicitation.** Instead, Supplier must review and identify the language in the *ODM Contract Model* that Supplier finds problematic, state the issue, and propose the language or contract modification Supplier is requesting. All of Supplier’s exceptions to the proposed contract terms and conditions must be submitted within their Response, attached to Appendix A5, *Certifications and Assurances*. ODM expects the final Contract signed by the Selected Supplier to be substantially the same as the *ODM Contract Model*.
  - The Supplier may add rows as appropriate.
  - ODM has no obligation to accept any exception(s).

ITEM #	SECTION	SUPPLIER PROPOSED CHANGES	EXPLANATION OF EXCEPTION
	Section in which exception is taken.	Proposed language to ODM Contract Template Provisions.	Description of exception being made and rationale.
1.			
2.			
3.			

4. A Supplier may be more favorably evaluated based on the degree of acceptance of the *ODM Model Contract* specified terms and conditions without exception, reservation, or limitation. Suppliers may, however, propose revisions to the proposed Contract terminology for clarification and procedural purposes, or revisions based upon specific elements of their offering.

5. The Selected Supplier is expected to execute the Contract within **five (5) Business Days** of its receipt of the final Contract. If the selected Supplier fails to sign the Contract within the allotted time frame, ODM may elect to cancel the award, and award the Contract to the next ranked Supplier, or cancel or reissue this solicitation. Supplier's submission of a Response to this solicitation constitutes acceptance of these contract requirements.

SIGNATURE PAGE FOLLOWS

Remainder of page intentionally left blank

## Attachment A5 – Certifications and Assurances

### Signature page

*Please provide a signature stipulating the Supplier's acknowledgement of the requirements for Attachment D-ODM Contract Model.*

<b>Print Name of Authorized Personnel</b>	<b>Title</b>
<b>Signature of Authorized Personnel</b>	<b>Date</b>

**Technical Proposal Evaluation Process**

**1. Initial Qualifying Criteria**

Supplier must demonstrate that they can meet all the Mandatory Requirements as detailed in Section 3, if supplier does not meet the Mandatory Requirements the remainder of their technical proposal will not be scored.

**2. Technical Criteria Scoring**

Each question will be rated using the guidelines below multiplied by its assigned weighting value.  
 EXAMPLE: meets (5points) multiplied by a weighting of 3 would be 15 (5\*3).  
 The total technical score will be the summation of the scores from the questions.

**DOES NOT MEET (0 pts.):** Response does not comply substantially with requirements or is not provided.

**WEAK (1 pt.):** Response was poor related to meeting the objectives.

**WEAK TO MEETS (3 pts.):** Response indicates the objectives will not be completely met or at a level that will be below average.

**MEETS (5 pts.):** Response generally meets the objectives (or expectations).

**MEETS TO STRONG (7 pts.):** Response indicates the objectives will be exceeded.

**STRONG (9 pts.):** Response significantly exceeds objectives (or expectations) in ways that provide tangible benefits or meets objectives (or expectations) and contains at least one enhancing feature that provides significant benefits.

The total maximum score for this RFP is: 801

The minimum required technical proposal score is: 334

Any proposal that does not meet the minimum required technical proposal score will be disqualified from further consideration and not be considered for award of the contract, and its Cost Proposal will neither be opened nor considered.

Item	Proposal Acceptance Criteria	RFP Section	Yes	No
1	Was the supplier's proposal received by the deadline as specified in the RFP?	2.1,6.5		
2	Did the supplier submit a proposal comprised of a Technical Proposal and, in a separate, appropriately labeled, sealed envelope, a Cost Proposal?	6.1, 6.2, 6.4		
3	Does the supplier's proposal include all required affirmative statements and certifications, signed (in all required parts) by the supplier's responsible representative, as described in Attachment A to the RFP?	3.1.D, 6.1, 6.3		
4	Is the supplier free from being prohibited to enter into a contract with ODM, due to restrictions related to the federal debarment list, unfair labor findings, or as established in ORC 9.24?	9.9		
5	Has the organization provided three (3) projects of similar size and scope within the past 7 years for ODM's review, including one within the past 3 years?	3.2.B		
6	Does the supplier have at least seven (7) years' of prior experience in design, development and implementation of NF reimbursement financial models to other state Medicaid programs?	3.1.A		
7	Has the supplier provided references demonstrating their ability to provide ODM with expertise in NF reimbursement models?	3.1.C		
8	Does the supplier's key or lead staff possess the minimum experience as noted in this RFP?	3.3.A, 3.3D		
9	Does the supplier provide consulting services to the NF industry or NF providers? If this answer is yes, the provider is disqualified from this RFP.	3.2.E		
10	Has the supplier identified at least one qualified MBE business, as outlined in section 9.12, to set aside at least 15% of the cost of the work outlined in this RFP, to include details of the goods/services to be provided by the MBE, amount to be paid to the MBE, and letter of intent from the MBE?	3.1.D.6		

11	Does the supplier include in its proposal the ability to address clinical considerations of the RFP as it relates to the long-term care (i.e. post-acute care) population either through staff experience or sub-contracting?	3.1, 4.2		
12	Did the review team (in its initial/cursory review of the supplier's proposal) determine that the proposal was free of trade secret/proprietary information as specified/restricted in the RFP?	9.3		
13	Did the supplier remove all sensitive personal information (such as home addresses and social security numbers) of supplier staff and/or of any subcontractor and subcontractor staff from resumes or any other part of the proposal package? As stated in the RFP, "ODM reserves the right to disqualify any supplier whose proposal is found to contain such prohibited personal information."	3.7		
14	If response to the above criterion is "no", has ODM exercised its right to allow prohibited personal information in suppliers' proposals for this RFP project? a) If "yes" to this question, the supplier's proposal shall advance to Phase II scoring contingent upon supplier's proposal receiving a "yes" response to all other Phase I criteria. b) If "no" to this question, the supplier's proposal shall be disqualified and not receive further consideration.			
	Has the supplier met all of the above Mandatory Supplier Qualifications in Phase I and can proceed to Phase II of the scoring criteria of the Technical Proposal?	Yes/No		

Question	Section	Criterion	Weight	Rating (0-9)	Score
<b>General</b>					
1	6	RFP Submittal Format. supplier followed the RFP instructions and submitted response in such a way that information was easy to locate and interpret.	2		
2	6.2	RFP Submittal Content. Response content was clearly presented without extraneous information unrelated to material covered in RFP.	2		
3	3.2.A.	The supplier has provided a narrative description of the organization, including background information on the supplier and subcontractors, if appropriate, indicating sufficient organizational experience and staffing to perform the required functions.	2		
4	1.3, 3.2.B	The supplier has provided samples of two, similarly sized projects completed in the past seven years, with one within the past three years, that demonstrate expertise in: 1)NF reimbursement financial modeling of state Medicaid agencies 2) Engagement of stakeholders including federal, state and industry 3) Clinical analysis of post-acute care population either through qualified staff or sub-contractor. The samples must clearly illustrate how they meet the objectives defined in section 1.3.	5		
5	3.2.C	The supplier has demonstrated knowledge of and experience in Medicaid and familiarity with and experience in the practical application of the laws and regulations impacting its operations. Include Ohio-specific knowledge and experience and/or experience working with comparable size states in areas of NF reimbursement methodologies.	5		
6	3.2.D	The supplier should include summary descriptions of successfully completed projects, any notable accomplishments and outcomes, and contact information for supplier customers if not already included as a reference. Supplier experience and knowledge should be demonstrated by provided samples of relevant work.	5		

<b>Staff Experience and Capabilities</b>					
Question	Section #	Criterion	Weight	Rating (0-9)	Score
7	3.3.A	The supplier has described the operational management and staffing plans, including identification of principal senior management and supervisory staff, project partners and specialists who will be assigned to address various components of the deliverables and related workplan. The supplier shall provide information on the experience and expertise of each person, including information on relevant continuing professional education for the past three (3) years and membership in professional organizations relevant to the performance of work activities identified in this proposal.	1		
8	3.3.B	The supplier has provided as much information as possible regarding the number, qualifications, experience and training, including applicable continuing professional education of the specific staff to be assigned to work on various components of this proposal, as well as resumes and profiles for key personnel. The supplier should also indicate how performance quality standards for staff over the term of the contract will be assured.	1		
9	3.3.C	The supplier has indicated the extent of on-site supervision which will be provided by staff.	1		
10	3.3.D.1	The supplier has identified a Project Director with eight to ten (8-10) years of direct experience in advising and supporting state Medicaid agencies on NF rate development with internal and external stakeholders including, but not limited to, NF provider associations, legislators, etc. The Project Director will serve as the point of contact for all contract work and requires a post graduate degree and/or professional certification in accounting, finance and/or healthcare management. Must be a full-time staff position and available to ODM as needed.	5		
11	3.3.D.2	The supplier has identified a Project Manager with five to seven (5-7) years of direct experience related to NF rate development. Responsibilities will also include day-to-day project management and coordination, technical directions, and supervision of the supporting staff. The Project Manager will direct the development of procedures and systems necessary to successfully perform the various services requested under this RFP. Must be a full-time staff position and available to ODM as needed.	5		
12	3.3.D.3	The supplier has identified a Data Manager with five to seven (5-7) years of direct experience related to NF rate analytics including MDS. Responsibilities will also include day-to-day project management and coordination, technical directions and supervision of the support staff as it relates to NF analytics. Must be a full-time staff position and available to ODM as needed.	5		

13	3.3.D.4	The supplier has identified Staff Members with at least three (3) years of direct experience in financial modeling and data analytics and must be well-versed in NF rate setting methodologies and development. Staff positions include but are not limited to operational support, data analysis, and administrative support.	3		
14	3.3.D.5	The supplier has identified a Clinical Staff Member or sub-contractor who is licensed to provide clinical proficiency and judgement to ensure that methodology chosen is clinically valid. The Clinical Staff Members will have five to seven (5-7) years of direct experience in the evaluation of NF resident's acuity, familiarity with MDS and other innovative techniques to identify the NF residents morbidity.	5		
15	3.4	The supplier acknowledged and agreed to all the terms of the Replacement of Key Personnel Section.	1		

**Question Section # Criterion Weight Rating (0-9)**

16	4.1.A1	As part of this RFP, the supplier's proposed work plan clearly shows how the supplier will assist ODM with analyses, fiscal impact and budgetary impacts as it relates to: a. RUGS IV. v. PDPM v. State defined alternative b. Research of other states methodologies c. Review ODM's proposals (resident v. provider level, % of Medicare, etc.) d. Provide innovative proposals as alternatives to PDPM e. Align with federal and state regulatory requirements and recommended changes.	5		
17	4.1.A2	As part of this RFP, the supplier clearly indicates how the supplier will assist ODM with programmatic assistance for MDS; a. Assist with MDS programming changes. b. Assist with parallel testing c. Assist with roll out & communication with stakeholders d. Provide financial and clinical assurance on methodology. d. Assist in framing strategy to legislature & provider community. f. Assist with development of wage recalibration and frequency to align with rebasing.	3		
18	4.1.A3	The supplier's proposed work plan indicates how the supplier will assist ODM with the Review of rebasing estimates currently in process: a. Assist with combination of MDS and rebasing fiscal/budget impacts. b. Assist in framing strategy to legislature & provider community.	5		
19	4.1.A4	The supplier's proposed work plan clearly shows how the supplier will assist ODM with state statute & rule changes as needed: a. Different peer groupings, different ceilings, etc. b. Alternative cost containment measures, stop/loss thresholds, bed size, occupancy, recommendations for changes in statute; recalibration of wages	3		
20	4.1.A5	The suppliers proposed work plan clearly shows how the supplier will assist ODM with Value Based Purchasing: a. How to tie quality measures to current rate setting measures. b. Other states methodology. c. Cost containment measures to align with quality initiative	3		

**Question Section # Criterion Weight Rating (0-9)**

21	4.2.A	The supplier's proposed work plan clearly indicates how the supplier intends to develop a grouper methodology in compliance with federal and state regulations as well as billing guidance. Develop fiscal and budget modeling to identify fiscal impacts of new acuity tool or alternative	5		
22	4.2.B	The supplier's proposed work plan clearly indicates how the supplier intends to modernize reimbursement through potential alternatives to MDS or PDPM timing and phase out of RUGs IV. The supplier shows how the supplier intends to develop greater emphasis on Post-acute NF resident population's acuity & needs, value-based purchasing and best practices for quality metrics	5		
23	4.2.C	The supplier's proposed work plan clearly indicates how the supplier intends to provide IT operational guidance and programming changes relative to the new grouper.	5		
24	4.2.D	The supplier's proposed work plan clearly indicates how the supplier will provide clinical perspective of a grouper methodology. ODM is looking for clinical assurance that the grouper methodology is sound and not detrimental to residents quality of life.	3		
25	4.2.E	The supplier's proposed work plan explains how the supplier will actively engage external stakeholders in the development and implementation process.	3		
26	5 A-C	The supplier has provided a proposed Business Continuity Plan.	1		
<b>Total</b>					

## Cost Proposal Form

### Instructions:

Suppliers are to complete the Cost Proposal Form, sign it, and submit it as their separate, sealed Cost Proposal as instructed in the RFP. The Cost Proposal Form requires suppliers to provide, based on their understanding of the services required in this RFP, the deliverables specified in section 4.2, an hourly rate for each key staff listed in section 3.3. Suppliers are to use their professional comprehension of the efforts required to perform the services and complete the specification and any associated deliverables stated within the RFP. Suppliers are to use their business expertise in pricing the work described and to offer their rates accordingly. ODM encourages suppliers to provide rates that are reasonable and necessary to complete the objectives of the contract.

As stated in the RFP, ODM is seeking to contract with a supplier to provide expert assistance and consultation, operational assistance, and liaison support activities for Nursing Facility Rate Development for State Fiscal Years (SFYs) 2020-2021, with the option to renew for up to two additional biennia (SFYs 2022-2025).

### Supplier Cost Proposal

The supplier's Cost Proposal must include, for each position listed in section 3.3, an hourly rate and an estimated total annual cost.

Rates must be shown in the form of whole dollars. The quoted rates must encompass all administrative and overhead costs. Once the selected supplier's Cost Proposal is accepted, the hourly billable rates identified therein will be considered firm and all-inclusive.

### In-House

In-House, otherwise known as direct staff, are individuals who are employed by the supplier.

### Subcontracted Services

Identify the names of any individuals or firms the supplier has pre-selected to provide subcontracted services. The pre-selected subcontractor must be either under a current contract with the supplier that will remain in effect through the effective dates of the contract that will result from this RFP process, or must have issued a letter of commitment to subcontract with the supplier for work under the resulting contract. The subcontractor(s) can be hired to accomplish a portion of the work required; however, the supplier must indicate such when submitting project proposals.

When the ODM Contract Manager identifies a need that requires specialized knowledge or customization and the selected supplier does not have the capability to satisfactorily perform the needed service, the ODM Contract Manager may ask the selected supplier to subcontract for those services from a third party provider. The selected supplier must have a process in place to quickly and effectively subcontract with providers to deliver services when requested by the ODM Contract Manager. The process will include methods to confirm the specific need(s), the time frame for service delivery, cost parameters, provider identification, screening, selection, management, and evaluation.

### Supplier Administrative Costs

Suppliers are to include all administrative expenses and other costs into their stated hourly rate for each position. Supplier's administrative expenses include, but are not limited to, all costs related to the administrative activities of the project including personal salaries, fringe benefits, vacation, holiday pay, sick leave, other paid leave, pension plan, group insurance, compensation insurance, payroll taxes, repair and maintenance, employee-related expenses, supplies, communications, leases, depreciation, sales taxes, facilities, travel, etc. This contract does not provide for any additional general or administrative cost related to doing business that are not included in the quoted hourly rate. This applies to the supplier direct cost and the cost of obtaining and managing subcontracted services

### Supplier Indirect Costs

All costs should be factored into the hourly rate for each position.

### Contract Value

The actual value of the contract will be determined by ODM based on the selected supplier's proposed and accepted prices for the supplier's direct staff and the best estimation possible by ODM for the level or volume of each of those services likely to be utilized, and the amount of funds available. Once the blanket purchase order is established, the selected supplier will need an approved written project proposal (work order) before any costs can be incurred.

#### **Position Cost Breakdown Table Explanation of Columns**

##### **Staff Titles (Column A)**

The Staff Titles are identified as key personnel positions that are directly related to the deliverables specified in section 3.3 of the RFP. Suppliers are required to have access to or have available individuals with the knowledge, experience and proven capabilities to carry out each function as identified within the RFP and Cost Proposal. Suppliers may choose to subcontract services to third party organizations or individuals.

##### **Estimated Hours (Column B)**

Estimated number of Hours –The number of hours shown on this cost proposal form is an estimation, by the supplier, of the number of hours needed for contract to be successful. The hours listed will be used for the purposes of supplier selection and establishing an aggregate cost. Once work commences, actual hours will be determined and agreed upon by the selected supplier and ODM through a process determined by ODM.

##### **Hourly Rate (Column C)**

Hourly Rate –Suppliers must submit an hourly rate for each position listed on the "Staff Title" column of the Cost Proposal Form. Cost Proposals that do not have hourly rates for each position will not be considered.

##### **Total (Column D)**

Total – The total amount is the mathematical sum of multiplying the estimated number of hours by the supplier's hourly rate (Column C entry multiplied by Column B entry). The aggregate amount totals in Column D for the three biennia will be added and averaged, and that number will be used ONLY in the supplier selection process described in the RFP Section VI. See also the explanation for Column B, above.

##### **In-House (Column E)**

In-House – Place a check mark in this column for each position that will be filled by an In-House employee. If the individual is not In-House, leave the space blank. Suppliers may choose to assign more than one individual to a position and may choose to have both In-House and subcontracted employees in each role.

##### **Subcontracted (Column F)**

Subcontracted – Place a check mark in this column for each position that will be subcontracted. If the individual is not a subcontractor, leave the space blank.

Using the information above, complete the Cost Proposal that follows:

Position Cost Breakdown Table

2019 Aggregate Hourly Rate Calculation					
Staff Title (A)	Est. Hours (B)	Hourly Rate (C)	Total (D)	In-House (E)	Subcontracted (F)
Project Director					
Project Manager(s)					
Data Manager(s)					
Support Staff and Subcontracted Services.					
Staff Title	Est. Hours	Hourly Rate	Total	In-House	Subcontracted
Staff members					
Operational Support					
Clinical Support					
Data Analysis					
Admin Support					
Subcontractor(s)					
Blended Rate Calculation					
<b>Aggregate Hours</b>					
<b>Aggregate Total</b>					
<b>Blended Rate</b>					

**Blended Rate Calculation**

Aggregate Hours- The sum of the all the hours in the Estimated Hours Column

Aggregate Total- The sum of the figures in the Total Column

Blended Rate- Calculated by dividing the Aggregate Total amount by the Aggregate Hours

Complete the following state fiscal year tables using the estimated total number of hours needed to complete the deliverables detailed in the RFP and the blended rate calculation above.

Supplier Name: \_\_\_\_\_

State Fiscal Year 2020

Estimated number of Hours	Total Amount	(Insert an "x" where applicable)	
		(E) In-House	(F) Subcontracted Services

State Fiscal Year 2021

Estimated number of Hours	Total Amount	(Insert an "x" where applicable)	
		(E) In-House	(F) Subcontracted Services

State Fiscal Year 2022

Estimated number of Hours	Total Amount	(Insert an "x" where applicable)	
		(E) In-House	(F) Subcontracted Services

State Fiscal Year 2023

Estimated number of Hours	Total Amount	(Insert an "x" where applicable)	
		(E) In-House	(F) Subcontracted Services

State Fiscal Year 2024

Estimated number of Hours	Total Amount	(Insert an "x" where applicable)	
		(E) In-House	(F) Subcontracted Services

State Fiscal Year 2025

Estimated number of Hours	Total Amount	(Insert an "x" where applicable)	
		(E) In-House	(F) Subcontracted Services

Three biennia averaged aggregate amount: \_\_\_\_\_ (This number is used for supplier selection purposes ONLY.)

**Signed:** \_\_\_\_\_ I affirm that the above rates per hour as quoted are firm and all-inclusive *(to be signed by the supplier's representative authorized to address contractual issues, including the authority to execute a contract on behalf of the supplier, and to whom legal notices regarding contract termination or breach, should be sent.)*.

\_\_\_\_\_  
**Name / Title**

\_\_\_\_\_  
**Company / Organization Name**

\_\_\_\_\_  
**Date**

**OHIO DEPARTMENT OF MEDICAID  
CONTRACT FOR SERVICES**

**C-2021-00-0000**

**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 PURPOSE AND LEGAL AUTHORITY. CONTRACTOR will perform its responsibilities under this Contract [in accordance with the RFP and the Proposal] (Deliverables) as follows:

INSERT DELIVERABLES

- B. The ODM Contract Manager is ODM Contract Manager or successor.
- 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 construed 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.
  - 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. CONFIDENTIALITY OF INFORMATION

- A. CONTRACTOR agrees that it shall not use any information, systems, or records made available to it for any purpose other than to fulfill the obligations specified herein. CONTRACTOR specifically agrees to comply with state and federal confidentiality and information disclosure laws, rules, and regulations applicable to programs under which this Contract exists, including, but not limited to:
  1. United States Code, 42 USC 1320d through 1320d-8 (HIPAA);
  2. Code of Federal Regulations, 42 CFR 431.300, 431.302, 431.305, 431.306, 435.945, 45 CFR 164.502(e), 164.504(e), and 162.100;
  3. Ohio Revised Code, ORC 173.20, 173.22, 1333.61, 2305.24, 2305.251, 2305.252, 3701.243, 3701.028, 4123.27, 5101.26, 5101.27, 5160.39, 5160.45, 5168.13, and 5165.88; and
  4. Corresponding Ohio Administrative Code rules
  5. [If Federal Tax Information is shared] Internal Revenue Code 6103 and IRS Publication 1075.
- B. CONTRACTOR agrees that any data created, received, maintained or transmitted on behalf of ODM by CONTRACTOR shall be returned to ODM not later than 90 calendar days following termination of this Contract and shall certify that no copies of source data were retained by CONTRACTOR, unless as may be otherwise provided for in this Contract or by law.
- C. CONTRACTOR shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the paper and/or electronic protected personal data and health information that it creates, receives, maintains, or transmits on behalf of ODM against use or disclosure not provided for by this Contract.
- D. CONTRACTOR agrees that access to the records and data provided by ODM for purposes of this Contract will be restricted to only those authorized employees, officials, subcontractors, and other persons who need it to perform duties related to this Contract. CONTRACTOR agrees to provide the ODM Contract Manager with a complete listing of any and all such persons who shall have access to the above referenced records and/or data.
- E. CONTRACTOR agrees that the above records and/or data and any records, reports, databases, and/or other derivative documents created from the information provided under this Contract shall be stored in an area that is physically safe from access from unauthorized persons during duty and non-duty hours. Information provided under this Contract shall be protected electronically to prevent unauthorized access by computer, remote access, or any other means. CONTRACTOR expressly agrees that no records will be accessed, tested, maintained, backed up or stored outside of the United States.
- F. CONTRACTOR shall assure that all persons who have access to the above referenced information shall be fully apprised as to the confidential nature of the information, the safeguards required to protect the information, and the applicable civil and criminal sanctions and penalties associated with any intentional or non-intentional disclosure. No subcontractor shall receive any information without a written agreement with CONTRACTOR incorporating these assurances.

- G. CONTRACTOR agrees that any information provided under this agreement that is proprietary shall be held to be strictly confidential by CONTRACTOR.
- H. CONTRACTOR shall not share or otherwise disclose any of the above referenced information to any third party without the express written authorization of the Director of ODM. If there is an incident of unauthorized disclosure of information, ODM must be notified in an acceptable timeframe to support regulatory requirements for breach notifications.
- I. CONTRACTOR shall permit onsite inspection by the State of Ohio (including but not limited to ODM, the Auditor of the State of Ohio, the Inspector General of Ohio, the Ohio Attorney General or any duly authorized law enforcement officials) and by agencies of the United States government.
- J. ODM will prepare data pursuant to the security and encryption standards found in Ohio IT Standard ITS-SEC-01, Data Encryption and Cryptography; and NIST Special Publication 800-53. CONTRACTOR shall prepare, store, and transmit all sensitive data relating to the state of Ohio in accordance with Ohio IT Standard ITS-SEC-01, Data Encryption and Cryptography; State of Ohio Administrative Policy IT-14, Data Encryption and Securing Sensitive Data; and NIST Special Publication 800-53.
- K. CONTRACTOR shall comply with Ohio Administrative Policy IT-04 Use of Internet, E-mail and Other IT Resources, as well as any associated agency policies prior to gaining access to statewide and ODM IT resources.
- L. The express terms and conditions of this Article shall be included in all subcontracts executed by CONTRACTOR for any and all work under this Contract.

### ARTICLE III. EFFECTIVE DATE OF THE CONTRACT

- A. This Contract is in effect from December 9, 2019 or upon issuance of an approved State of Ohio purchase order, whichever is later, through June 30, 2020, unless this Contract is suspended or terminated prior to the expiration date. This Contract may be renewed through June 30, \_\_\_\_\_, 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. ODM will notify CONTRACTOR when this certification is given.

### ARTICLE IV. COMPENSATION

- A. The total amount payable under this Contract is TOTAL AMT Dollars (\$TOTAL). ODM will pay an amount up to \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for State Fiscal Year 2020 and up to \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for State Fiscal Year 2021 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 \_\_\_\_\_ Dollars (\$\_\_\_\_ Travel) for SFY 2020 and \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for SFY 2021, 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 Section 126-1-02 of the Ohio Administrative Code (OAC), 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 shall only bill ODM for 85% of moneys due on each invoice, and the other 15% shall be designated as a holdback. The 15% holdback funds are payable to CONTRACTOR at the end of each fiscal year upon satisfying the 15% Minority Business Enterprise set-aside prescribed by Section 8.24 of the RFP and ARTICLE IV.I. and ARTICLE X.B.9 of this Agreement.
- D. CONTRACTOR will submit detailed invoices on a \_\_\_\_\_ basis in one of the following manners with a copy to the Contract Manager:

**E-Mail:** [invoices@ohio.gov](mailto: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;
  5. Description of Deliverables performed during the billing period;
  6. Receipt of other proof of cost; and
  7. Other documentation requested by ODM.
- E. CONTRACTOR expressly understands that ODM will not compensate CONTRACTOR for any work performed prior to CONTRACTOR's receipt of notice from ODM that the provisions of ORC 126.07 have been met as set forth in ARTICLE III, nor for work performed after the ending date of this Contract.
- F. 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.
- G. 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.
- H. [DELETE IF PUBLIC ENTITY] 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.
- I. **Minority Business Enterprise Set-Aside Percentage:** Contractors doing business with all state-level agencies, including ODM, are required to identify and set aside a specific percentage of contract-related Work to be exclusively performed by Ohio-certified Minority Business Enterprise (MBE) businesses, and to

actively seek and subcontract for these businesses' services. MBE set-aside required percentages for SFY 2020 and SFY 2021 are established pursuant to ARTICLE X.B.9. of this Contract, while related determinations regarding payments shall be managed pursuant to this Section.

1. On invoices submitted to ODM, for each Deliverable, CONTRACTOR shall indicate the dollar amount attributed to Ohio certified MBE subcontractors, along with documentation demonstrating the MBE subcontractor activities.
2. If CONTRACTOR does not attain the MBE set-aside percentage prescribed by either ARTICLE X.B.9. or the percentage determined by ODM pursuant to an approved waiver or modification in accordance with ARTICLE X.B.9., CONTRACTOR shall forfeit any performance holdback in full.
3. In addition to any withholding due to CONTRACTOR for not meeting the MBE set-aside required percentages, ODM shall determine the difference between the required percentage and the attained percentage to determine the *deficient percentage*. CONTRACTOR shall reimburse ODM an amount equal to the total fiscal year payments paid by ODM multiplied by the deficient percentage. Payment shall be submitted by CONTRACTOR to ODM within 90 days of ODM notifying CONTRACTOR of the deficiency and the total amount due.

For example, if VENDOR A has a contract with ODM for \$120,000.00 and is required to subcontract 10% (\$12,000.00) of the cost of the contract with an MBE, and VENDOR A performs \$10,000.00 worth of services each month, VENDOR A would invoice ODM \$9,000.00 per month, holding back \$1,000.00 from each invoice. If VENDOR A meets the 10% requirement and subcontracts at least \$12,000.00 with MBE businesses, at the end of the fiscal year VENDOR A will receive the \$12,000.00 in full. If VENDOR A only subcontracts \$6,000.00 to MBE vendors, VENDOR A forfeits the \$12,000.00 hold back and owes ODM \$6,000.00 as the difference between the required set-aside and the actual set-aside.

If a modification or waiver request is submitted and approved, ODM may waive or modify the forfeiture and/or deficiency payment.

4. **Determination of Final Holdback Payment.** ODM shall consider CONTRACTOR's ability to meet the MBE set-aside in determining the total MBE holdback amount that will be retained from CONTRACTOR's final SFY 2020 and SFY 2021 invoices. At any time, if ODM determines to retain a portion the MBE holdback, ODM shall advise CONTRACTOR verbally and in writing (via email) of the reason(s) for the withholding, the total amount, and the condition(s) upon which it is based.

#### **ARTICLE V. SUSPENSION AND TERMINATION, BREACH AND DEFAULT**

- A. This Contract will automatically terminate upon expiration of the time period in ARTICLE III, 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 a 30 calendar day 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 IV;
  2. ODM discovers any illegal conduct by CONTRACTOR; or
  3. CONTRACTOR has violated any provision of ARTICLE X.
- 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 IV 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 VI. 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 X, and/or any other formal notice regarding this Contract will be sent to the ODM Chief Legal Counsel, Office of Chief Legal, 50 West Town Street, 5th 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 VII. 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 Section E. If applicable, CONTRACTOR must meet the requirements of the federal Office of Management and Budget (OMB) Omni-Circular, 2 CFR Part 200.104. 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.

CONTRACTOR must, for each subcontract in excess of \$2,500.00, require its subcontractors to agree to the same provisions of this Section. CONTRACTOR may not artificially divide contracts with its subcontractors to avoid requiring subcontractors to agree to this provision. This provision does not apply to contracts where federal funds are used and the federal government requires audits of all subcontracts regardless of the amount of the contract.

- 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 # of years, no less than 3 year] years. 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 VIII. 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 IV of this Contract.

#### ARTICLE IX. 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 Contract 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 Contract 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 Contract, 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 Contract 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 Contract. 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 inappropriate use or disclosure of PHI that is not in accordance with this Contract or applicable law, including breaches of unsecured protected health information, as required at 45 CFR 164.410, and any security incident CONTRACTOR has knowledge of or reasonably should have knowledge of under the circumstances.

Further, CONTRACTOR shall report to ODM the following:

- a. Any use or disclosure of PHI which is not in compliance with the terms of this Agreement or applicable law of which it becomes aware; and
- b. Any security incident of which it becomes aware. For purposes of this Agreement, "security incident" means the unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

AS soon as is practical following of discovery of a reportable security incident, CONTRACTOR shall notify ODM of the existence and nature of the incident as understood at that time. CONTRACTOR shall immediately investigate the incident and within 24 hours of discovery shall provide ODM, in writing, a report describing the status and any results of CONTRACTOR's investigation.

Reporting and other communications made to ODM under this section must be made to ODM's HIPAA privacy officer and Office of Legal Counsel at: [PrivacyOffice@medicaid.ohio.gov](mailto:PrivacyOffice@medicaid.ohio.gov) and [Mcdlegal@medicaid.ohio.gov](mailto:Mcdlegal@medicaid.ohio.gov)

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 Contract. 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 an 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 Contract as set forth in ARTICLE V, Section B. Termination of this Contract will not affect any provision of this Contract, 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 Contract and at the request of ODM, CONTRACTOR will return to ODM or destroy all PHI in CONTRACTOR's possession stemming from this Contract 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 Contract. 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 Contract for as long as it is maintained.
14. **Survival.** These provisions shall survive the termination of this Contract.

#### **ARTICLE X. CONTRACTOR CERTIFICATION OF COMPLIANCE WITH SPECIAL CONDITIONS**

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. **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 governmental 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 IV, 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. **Fair Labor Standards and Employment Practices.** CONTRACTOR certifies that it is in compliance with all applicable federal and state laws, rules, and regulations governing fair labor and employment practices.
2. **Civil Rights Laws.**
  - a. CONTRACTOR, its officers, employees, members, and subcontractors hereby affirm current and ongoing compliance with all federal civil rights laws including:
    - (1) Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352);
    - (2) Title VI of the Civil Rights Act of 1964 (42 USC 2000d, et seq.);
    - (3) The Americans with Disabilities Act of 1990 (42 USC 12101, et seq.) and Section 504 of the Rehabilitation Act of 1973; and
    - (4) The Age Discrimination Act of 1975 (42 USC 6101, et seq.).

- 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 that it will not participate in, condone or tolerate any form of sexual harassment against any employee, subcontractor, or other person or entity with which it is associated in performance of this Agreement, which is considered a form of sex discrimination prohibited by Title VII of the Civil Rights Act of 1964, the Ohio Revised Code 4112.02, Ohio Administrative Code 123:1-49, the Anti-Discrimination Policy in State Government Executive Order 2019-05D, or state agency policy.
- d. 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.
- e. 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.
  - c. CONTRACTOR, if a recipient of a federal award in excess of One Hundred Thousand and 00/100 Dollars (\$100,000.00), certifies compliance with the Byrd Anti-Lobbying Amendment, which at a minimum, attests CONTRACTOR will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 USC Chapter 1352.
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 Subcontracting Requirement.** ODM is committed to making more contracts and opportunities available to MBEs certified by the Ohio Department of Administrative Services pursuant to Section 123.151 of the Ohio Revised Code and Rule 123:2-15-01 of the Ohio Administrative Code. This Contract is awarded pursuant to a RFP containing a sheltered solicitation requirement which requires CONTRACTOR to seek and set aside a portion of the Work to be exclusively performed by Ohio certified MBE businesses.

In seeking solicitations from Ohio certified MBE subcontractors, CONTRACTOR certifies that it:

- a. Utilized a competitive process to which only Ohio certified MBEs may have responded;
- b. Established criteria by which prospective Ohio MBEs would be evaluated including business ability and specific experience related to the Work requirements; and
- c. Required that the Ohio certified MBE maintain a valid certification throughout the term of this Contract, including any renewals.

**MBE Subcontractor Plan.** CONTRACTOR certifies that it implemented an Ohio certified MBE subcontractor plan (Plan) as required by the RFP. The Plan (a) set aside for Ohio certified MBE subcontractors a minimum of 15% of the cost of this Contract; (b) used a competitive process for the selection of Ohio certified MBE subcontractors to which only Ohio certified MBEs were permitted to respond; and (c) identified proposed portions of Deliverables to be performed by Ohio certified MBE subcontractors. As a result of this process, CONTRACTOR selects \_\_\_\_\_ to perform services under this Contract.

**Tracking.** CONTRACTOR acknowledges that it must indicate on all invoices submitted to ODM the dollar amount attributed to the Deliverables provided by any selected Ohio certified MBE subcontractor to which CONTRACTOR subcontracts a portion of the Work under this Contract, along with documentation of its activities, and shall report such payments monthly to ODM. Compliance with CONTRACTOR's proposed cost set-aside percentage is a term of this Contract and failure to attain the proposed percentage each fiscal year may result in CONTRACTOR being found in breach of contract.

**Remedies.** CONTRACTOR may apply in writing to ODM for a waiver or modification of its proposed MBE set-aside cost percentage. However, no modification or waiver request may be submitted before at least 30% of the Deliverables are completed or after 80% of the Deliverables are completed. CONTRACTOR shall submit evidence acceptable to ODM demonstrating that CONTRACTOR made a good faith effort to seek Ohio certified MBE subcontractors in order to justify the granting of a waiver or modification. Within 30 days of receipt of the request, ODM will determine whether CONTRACTOR's good faith efforts and submitted documentation justify the granting of a waiver or modification. If a waiver or modification is denied, CONTRACTOR will have an opportunity to attain the percentage before the completion of the Deliverables. Compliance with any modified cost set-aside percentage is a term of this Contract and failure to attain the percentage may result in CONTRACTOR being found in breach of contract.

**Fee at Risk.** Compliance with the minimum cost MBE set-aside percentage is a term of this Contract. CONTRACTOR agrees to place 15% of its payment at risk for failure to attain the MBE set-aside percentage each fiscal year, in accordance with ARTICLE IV.

10. **Expenditure of Public Funds for Offshore Services—Executive Order Requirements.**

- a. CONTRACTOR certifies that by executing this Contract and by completing the Affirmation and Disclosure form, it has reviewed, understands, and will abide by the Governor's Executive Order 2019-12D 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. **Combatting Trafficking in Persons.**
- a. CONTRACTOR agrees that it is in compliance with the Federal Acquisition Regulation (FAR) for Combatting Trafficking in Persons, 48 CFR Subpart 22.17, in which "the United States Government has adopted a zero tolerance policy regarding trafficking in persons." The provisions found in 48 CFR Subpart 52.2, specifically Subpart 52.222-50 are hereby incorporated into this CONTRACT by reference.
  - b. CONTRACTOR, its employees, its subcontractors, or subcontractor's employees are prohibited from the following activities:
    - (1) Engaging in severe forms of trafficking in persons during the period of performance of the Contract;
    - (2) Procuring commercial sex acts during the period of performance of the Contract; or
    - (3) Using forced labor in the performance of the Contract.
  - c. CONTRACTOR agrees that it shall notify its employees and require all of its subcontractors to notify their employees, of the prohibited activities described in the preceding paragraph.
  - d. ODM has the right to immediately and unilaterally terminate this Contract if any provision in this Section is violated and ODM may implement section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 USC 7104), see 2 CFR Part 175.
12. **Civil Rights Assurance.** CONTRACTOR hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d, et seq.) and the Age Discrimination Act of 1975 (42 USC 6101, et seq.).
13. **Clean Air Act.** CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401, et seq.) and the Federal Water Pollution Control Act as amended (33 USC 1251, et seq.). Violations must be reported to the Regional Office of the United States Environmental Protection Agency (US EPA) and ODM.
14. **Energy Policy and Conservation Act.** CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act in accordance with 42 USC 6201. Violations must be reported to the Regional Office of the US EPA and ODM.
15. **Solid Waste Disposal.** CONTRACTOR agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the US EPA at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000.00 or the value of the quantity acquired by the preceding federal fiscal year exceeded \$10,000.00; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the US EPA guidelines.
16. **Experimental, Developmental, or Research Work.** When applicable, if CONTRACTOR enters into a subcontract or subgrant with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that funding agreement, the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any applicable federal and state regulations.
17. **Boycott.** CONTRACTOR acknowledges that, pursuant to ORC 9.76, a state agency may not enter into or renew a contract for supplies, equipment or services with a company that operates to earn a profit unless CONTRACTOR provides the following declaration. If applicable, CONTRACTOR

certifies that it is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade and will not do so during the Contract period. CONTRACTOR will notify ODM immediately if it boycotts a jurisdiction with whom the State of Ohio can enjoy open trade. ODM reserves the right to terminate this Agreement immediately upon discovery of such a boycott.

18. **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 XI. BUSINESS CONTINUITY PLAN

- A. CONTRACTOR recognizes that certain services under this Contract are vital to ODM and must be continued without interruption. CONTRACTOR shall be prepared to continue providing such services identified by ODM, during periods of disaster, crisis, or other unexpected break in services based upon a Business Continuity Plan (Plan). CONTRACTOR is required to implement and maintain a sustainable Plan throughout the term of this Contract, and provide the Plan to ODM upon request. The Plan will, at a minimum:
1. Enable continued performance under this Contract in the event of a disaster or other unexpected break in services; and
  2. Ensure the continuity for identified vital services and supporting facilities.
- B. For purposes of this Article, the term "disaster" means an unanticipated incident or event, including, but not limited to, force majeure events, technological accidents or human-caused events that may cause a material service or critical application to be unavailable without any reasonable prediction for resumption; or causes data loss, property damage or other business interruption without any prediction for recovery within a commercially reasonable time period.

#### ARTICLE XII. 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, 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 contributions to the Ohio Public Employees Retirement System 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. **Subcontracting.** All subcontracts will be at the sole expense of CONTRACTOR and CONTRACTOR will be solely responsible for payments of its subcontractors. CONTRACTOR assumes responsibility for all subcontracting and third-party work performed under this Contract. In addition, all subcontractors agree to be bound by the terms and conditions of this Contract. CONTRACTOR will be the sole point of contact with regard to all contractual matters.
- C. **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 IX above ("Business Associate Requirements Under HIPAA"), and/or any other type of claim that arises from the performance of the Deliverables under this Contract. 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 Contract 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.

- D. **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.
- E. **General Representations and Warranties.** CONTRACTOR warrants that:
1. The recommendations, guidance, and performance of CONTRACTOR under this Contract will be in accordance with the industry's professional standards, the requirements of this Contract and without material defect.
  2. The Deliverables are merchantable and fit for the particular purpose described in this Contract and will perform substantially in accordance with its user manuals, technical materials, and related writings.
  3. The Deliverables comply with all governmental, environmental and safety standards.
  4. CONTRACTOR has the right to enter into this Contract.
  5. CONTRACTOR has not entered into any other contracts or employment relationships that restrict CONTRACTOR's ability to perform under this Contract.
- F. **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.
- G. **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 VI. 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.

- H. **Severability.** If any provision of this Contract or the application of any provision is held by a court to be contrary to law, the remaining provisions of this Contract will remain in full force and effect.
- I. **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 contract.

**ARTICLE XIII. 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

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DRAFT

# **ATTACHMENT E**

## **MBE SCORE SHEET**

The total maximum MBE points for this RFP is 51. If an applicant proposes a MBE subcontracting percentage greater than 15%, the following points will be added to the applicant's total score:

**PHASE IV – MBE SCORING CRITERIA:**

**CALCULATION OF MBE POINTS:**

- Over 35.1% MBE set-aside- 100% available points=51 MBE Points
- Between 25.1- 35% MBE set-aside- 50% available points =26 MBE Points
- Between 15.1- 25% MBE set-aside- 25% available points = 13 MBE Points

Applicant MBE Plan Proposed subcontracting Percentage: \_\_\_\_\_

Applicant MBE Points: \_\_\_\_\_

# ATTACHMENT F COST POINT CALCULATION

The total maximum cost points for this RFP are 150. The applicant with the lowest cost proposal will receive the maximum point allotment. The remainder of the proposals shall receive points on a prorated basis as follows:

$$\text{Cost points} = (\text{lowest Offeror's cost} / \text{Offeror's cost}) \times \text{Maximum Available Cost Points} = \text{Offeror's points}$$

Calculation example:

Maximum cost points= 60.  
Offeror X proposed cost = \$100.00  
Offeror Y proposed cost = \$120.00

Offeror X has the lowest cost and would receive the maximum of 60 points.  
Offeror Y's cost points are determined by dividing Offeror X's cost by Offeror Y's cost and multiplying by 60 (100/120 X 60) = 50 points

Lowest cost proposal: \_\_\_\_\_

Applicant cost proposal: \_\_\_\_\_

$$(\text{_____} / \text{_____}) \times 150 = \text{_____}$$

Lowest Cost                      Offeror's Cost                      Total Cost Points

Applicant Total Cost Points: \_\_\_\_\_