



Department of
Job and Family Services

John R. Kasich, Governor
Cynthia C. Dungey, Director

January 30, 2017

Dear Ohio Attorney:

The Ohio Department of Job and Family Services (ODJFS) releases this Request for Applications (RFA) number JFSR1819028129 for the purpose of selecting two (2) Ohio certified Minority Business Enterprise (MBE) attorneys admitted to the practice of law in Ohio (as required by ORC Section 119.09) to serve as Administrative Hearing Examiners. Interested attorneys must be able to demonstrate at least eight (8) years' experience as a licensed attorney and three (3) years' experience with administrative law, particularly with adjudicative hearings. Attorneys with expertise in day care or foster care licensing in Ohio would be preferred. Further requirements, preferences, and instructions for submitting an application are provided in the RFA.

The selected attorneys will be compensated for billable hours at the rate of \$90.00 per hour for not more than five hundred and fifty-five hours (555) per state fiscal year (SFY) over the effective term of the contracts. ODJFS anticipates the contracts will be in effect from approximately July 1, 2017 through June 30, 2019 (SFYs 18 and 19), pending all required approvals, with renewals of up to an additional two (2) SFYs.

If you are interested in submitting an application for this important project, please visit the ODJFS website for procurement opportunities at <http://jfs.ohio.gov/RFP>. If you experience problems opening the above referenced ODJFS URL, please contact the RFP/RLB Unit at (614) 728-5693.

Responses must be prepared and submitted in strict accordance with the requirements and time frames given in the RFA. Thank you for your attention to this request.

Sincerely,

Jay Easterling
Deputy Director
Contracts & Acquisitions

30 East Broad Street
Columbus, Ohio 43215
jfs.ohio.gov

An Equal Opportunity Employer and Service Provider



Department of
Job and Family Services

John R. Kasich, Governor
Cynthia C. Dungey, Director

Ohio Department of Job and Family Services
Request for Applications (RFA)
RFA#: JFSR1819028129
ADMINISTRATIVE HEARING EXAMINER SERVICES
MBE Set-Aside

I. Purpose

The Ohio Department of Job and Family Services (ODJFS) is soliciting applications from Ohio certified Minority Business Enterprise (MBE) attorneys admitted to the practice of law in Ohio (as required by ORC Section 119.09) for the purpose of selecting two (2) qualified attorneys to serve as Administrative Hearing Examiners. Attorneys responding to this Request for Applications (RFA) must have a current and valid license to practice law in Ohio, and must demonstrate both eight (8) years' experience as a licensed attorney and three (3) years' experience with administrative law, particularly with adjudicative hearings. Further requirements, preferences, and instructions for submitting an application are provided in this RFA.

This RFA document is released by ODJFS, and the two (2) subsequent contracts expected to result from this RFA process will be between each selected attorney and ODJFS. The ODJFS Office of Legal and Acquisition Services (OLAS) will administer the contracts, and will be responsible for state level supervision of all activities of the selected attorneys.

ODJFS will evaluate applications submitted in accordance with the instructions provided in this RFA document; selections will be based on applicants' qualifications, as evaluated according to the standards set out in this document. The rate of compensation for the selected attorneys' billable hours will be \$90.00 per hour for not more than five hundred and fifty-five hours (555) per state fiscal year (SFY) over the effective term of the contracts. The contracts expected to result from this RFA will be in effect from approximately July 1, 2017 through June 30, 2019 (SFYs 2018 and 2019), pending all required approvals, with the possibility of a contract renewal up to two (2) additional SFYs.

Throughout this RFA, the terms 'vendors,' 'applicants,' and 'attorneys' may be used interchangeably to refer to individuals who are interested in this opportunity. The terms 'selected attorneys' or 'contractors' refer to qualified attorneys who are selected through this RFA to serve as Administrative Hearing Examiners.

II. Time, Date, and Location of Submission

Vendors who are interested in submitting applications must make their submissions no later than **3:00 p.m. Eastern (local) Time on Monday, March 6, 2017**. Failure to meet this requirement will result in an applicant's disqualification from consideration for award. Faxed or e-mailed responses will **NOT** be accepted. Applications must be addressed to:

**Office of Contracts and Acquisitions (OCA)
Ohio Department of Job and Family Services
30 East Broad Street, 31st Floor
Columbus, Ohio 43215
ATTN: RFP/RLB Unit**

OCA will accept applications at any time during normal ODJFS business hours prior to the posted submission deadline (date and time). For hand delivery on the due date, vendors must allow sufficient time for traffic incidents, downtown parking considerations, and for security procedures in the lobby of the Rhodes State Office Tower (address as stated above) and again on the 31st Floor. All applications must be received no later than the specified deadline, both date and time, by OCA, on the 31st Floor of the Rhodes Tower. ODJFS is not responsible for applications incorrectly addressed or for applications delivered to any ODJFS location other than the address specified above.

All applications must be received, complete, by mail or hand delivery by the above date and time. Materials received separately or received after the submission deadline will not be added to previous submissions, nor be considered. No confirmations of mailed applications received can be provided.

Submission of an application indicates acceptance by the applicant of the conditions contained in this RFA, unless clearly and specifically noted in the application submitted and confirmed in the contract between ODJFS and the attorneys selected.

III. Anticipated Procurement and Project Timetable

January 30, 2017	ODJFS Releases RFA to Vendors on the DAS and ODJFS Websites; Q&A Period Opens - Vendors may submit inquiries for RFA clarification
February 14, 2017	Vendor Q&A Period closes, 8 a.m. for inquiries for RFA clarification - No further inquiries for RFA clarification will accepted
March 6, 2017	Deadline for Vendors to Submit Applications to ODJFS (3:00 P.M., local time)
April 6, 2017	ODJFS Issues Vendor Selection Notification Letter (estimated)
July 1, 2017 (estimated)	Contract effective date/Purchase Order approval – work may not begin until a state Purchase Order has been fully approved by OBM.*

June 30, 2019	All project work must be completed. Contract terminates no later than the end of the fiscal year.
July 1, 2019 – June 30, 2021	Possible renewal period.**

ODJFS reserves the right to revise this schedule in the best interest of ODJFS to comply with the State of Ohio procurement procedures and regulations and after providing reasonable notice.

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

** Subject to approval by OBM, the contract period is expected to run from approximately July 1, 2017 through June 30, 2019, with the possibility for a renewal contract that would be in effect from July 1, 2019 through June 30, 2021, contingent upon satisfactory performance, continued availability of funding, and all required approvals. Renewal may be subject to approval by OBM.

IV. Internet Question & Answer Period: RFA Clarification Opportunity

Vendors may ask clarifying questions regarding this RFA via the Internet during the Q&A Period as outlined in Section III, Anticipated Procurement and Project Timetable. To ask a question, vendors must use the following Internet process:

- * Access the ODJFS Web Page at <http://jfs.ohio.gov>;
- * Select "Doing Business with ODJFS" from the bottom of the page;
- * Select "RFP's" from the left side column;
- * Select RFA Number *JFSR1819028129* from the list of competitive opportunities;
- * Follow the link to the dedicated web page;
- * Select "Submit Inquiry" near the bottom of the web page;
- * Follow instructions there for submitting questions; or, to view posted questions and answers;
- * Select "View Q and A" near the bottom of the web page.

Questions about this RFA must reference the relevant part of this RFA, the heading for the provision under question, and the page number where the provision can be found. The name of a representative of the vendor, the company name, phone number, and e-mail address must be provided to submit an inquiry. ODJFS may, at its option, disregard any questions which do not appropriately reference an RFA provision or location within the RFA, or which do not include identification of the originator of the question. Questions submitted after 8:00 a.m. on the date the Q&A period closes will not be answered.

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

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

Applications in response to this RFA are to take into account any information communicated by ODJFS in the Q&A process for the RFA. It is the responsibility of all vendors to check this site on a regular basis for responses to all questions, as well as for any amendments, alerts, or other pertinent information regarding this RFA.

Requests for copies of any previous RFAs, RLBs, RFPs (or etc.) or for past vendor proposals, score sheets or contracts for this or similar past projects, are Public Records Requests (PRRs), and are not clarification questions regarding the present RFA. ODJFS will only answer those questions submitted within the established time period for the Vendor Q&A process (see Section III, Anticipated Procurement and Project Timetable, above), and which pertain to issues of RFA clarity, and which are not requests for public records. ODJFS is under no obligation to acknowledge questions submitted through the Q&A process if those questions are not in accordance with these instructions.

V. Mandatory Qualifications

Any attorney who is interested in performing Administrative Hearing Examiner services for ODJFS should submit an application packet to ODJFS containing the necessary evidence of the attorney's credentials and qualifications for the work of an ODJFS hearing examiner.

The application packet must be received at the ODJFS location by the deadline as specified in Section II, Time, Date, and Location of Submission, and must contain, at minimum, a resume and any additional supporting information and documentation as available to demonstrate expertise in the areas identified below.

- A. Vendors are required to submit a copy of their current MBE vendor certification as part of their application. Applications submitted from any other entity or individuals will be disqualified;
- B. Vendors must demonstrate at least eight (8) years' experience as a licensed attorney;
- C. Vendors must demonstrate at least three (3) years' experience with administrative law, particularly with adjudicative hearings; and,
- D. Vendors must have a valid and current license to the practice law in the State of Ohio.

A letter containing a brief narrative describing the nature and extent of the attorney's relevant experience is to be included in addition to the mandatory resume. Failure to meet any of the requirements listed above will result in an attorney's disqualification from consideration for award.

VI. Preferred Legal Expertise

Attorneys whose applications demonstrate legal expertise in licensing under Ohio law will be preferred, particularly if that expertise involves day care licensing or foster care licensing. A narrative describing the nature and extent of this expertise may be included as well as the mandatory resume.

VII. Scope of Work and Specifications of Deliverables

- A. The selected attorneys will be responsible for the conduct of such pre-hearing conferences and adjudication hearings necessary to afford appellants full opportunity to assert hearing rights provided by statute and rule. In performing these functions, the Administrative Hearing Examiners will issue written orders and, eventually, findings of fact, conclusions of law, and recommendations. The selected attorneys will also be responsible for typing, filing, and mailing of such writings, for which no additional compensation will be made.
- B. Most adjudicative hearings held before ODJFS are conducted in Columbus, Ohio which will serve as the headquarters for purposes of the contract. There shall be no reimbursement available for expenses incurred in travel to the headquarters. However, if additional travel is required by ODJFS, reimbursement for travel and other related expenses are subject to the limits established pursuant to Ohio Revised Code (ORC) Sections 126.31 and 126.32 and which are set forth in rule 126-1-02 of the Ohio Administrative Code.
- C. The responsibilities ("Deliverables") of the Administrative Hearing Examiners are summarized as follows:
 1. To act as an Administrative Hearing Examiner for hearings conducted pursuant to ORC Chapter 119 and/or for other administrative hearings conducted by ODJFS;
 2. To conduct pre-hearing conferences, issue pre-hearing orders setting forth in detail all discovery and other pre-hearing matters, and establishing a final hearing date;
 3. To conduct other pre-hearing conferences and rule on motions and other matters as necessary;
 4. To conduct final hearings and submit Findings of Fact, Conclusions of Law, and Recommendations to OLAS in accordance with the following timelines:
 - a. Within thirty (30) days from receipt of the transcript or close of the record, whichever is later, for expedited type B family child care home and foster caregiver cases.
 - b. Within sixty (60) days for standard type B family child care home and foster caregiver cases. Within ninety (90) days from receipt of the transcript or close of the record, whichever is later, for cases involving child care centers and agencies certified by the Office of Families and Children.

- c. Request an extension of time from OLAS when circumstances warrant.

Important: Failure to meet these timelines can be cause to terminate the contract.

5. To notify OLAS of any potential conflict of interest for the contractor regarding any ODJFS-assigned activities.

VIII. Contractor Compensation

The rate of compensation for the selected attorneys' billable hours will be \$90.00 per hour for not more than five hundred five and fifty-five (555) hours per SFY over the effective term of the contract and through any executed renewal period(s). Billable hours include presence at pre-hearing proceedings and final hearings, research, and writing time.

There will be no additional compensation for expenses unless travel is required by ODJFS; in the event, reimbursement for travel and other related expenses is subject to limits established pursuant to Sections 126.31 and 126.32 of the ORC and which are set forth in the rule 126-12-02 of the ORC.

IX. Time Frames

ODJFS is seeking to contract with two (2) attorneys to serve as ODJFS Administrative Hearing Examiners from approximately July 1, 2017 through June 30, 2019 (SFYs 18 and 19) with the option to renew the contracts for up to two (2) additional years (SFYs 18 and 19). The decision to renew either or both hearing examiner contracts will be at the discretion of ODJFS and will be contingent upon factors that include satisfactory performance, continued availability of funding, and all required contract and funding approvals.

X. Format of Submission

In order to be accepted and forwarded to the ODJFS Application Review Team (ART), the individual's submission must include a signed original and two (2) copies of the application. The application is to be labeled with the RFA title and identifying number, and with the attorney's name, contact information, and date of submission. The application must include:

- A. A resume and a signed letter (and all additional information and documentation as available) which describes in detail how the applicant is qualified to perform ODJFS Administrative Hearing Examiner duties and how the applicant meets the qualifications as specified in Sections V., VI., and VII. of this RFA;
- B. The required information and certifications as described in Attachment A to this RFA, entitled "Required Vendor Information and Certifications Document." The signed original of this form is to be included in the applicant's original application; photocopies of the completed and signed form must also be included in each of the required copies; and,

- C. As ODJFS disqualifies Administrative Hearing Examiners from participation in cases in which they might have a conflict of interest by virtue of clients they represent and/or other appropriate reasons, applicants are to identify in their application any clients or other grounds which might present such a conflict for them in performing administrative hearing examiner duties.

XI. Selection Process

All applications will be reviewed and evaluated by an Application Review Team (ART) comprised of ODJFS staff. Applicants should not assume that the review team members are familiar with any current or past work activities with ODJFS. ART members are required to sign disclosure forms to establish that they have no personal or financial interest in the outcome of the application review and contractor selection process.

The ART reserves the right to reject any and all applications, in whole or in part, received in response to this request. In the event that no qualified applications are received, or if applications received are found non-responsive to this RFA, ODJFS may, at its discretion, reissue, revise, or cancel this RFA. ODJFS is under no obligation to award any contracts if for any reason ODJFS decides not to proceed with this effort. The ART may waive minor defects that are not material when such defects do not unreasonably obscure the applicant's intent.

ODJFS reserves the right to reject applications from vendors that have performed unsatisfactorily under prior contracts with ODJFS.

XII. RFA Process Information and Other Contractual Requirements:

A. Start Work Date

According to requirements of ORC 126.07, ODJFS contracts are not valid and enforceable until the OBM certifies the availability of appropriate funding, as indicated by the approval of the P.O. The selected attorneys 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. The ODJFS Contract Manager will notify the selected attorneys when the requirements of ORC Section 126.07 have been met. The selected attorneys must be able to begin work no later than seven (7) working days after the time funds are encumbered and approved by OBM. Any work begun by a contractor prior to this notification will not be reimbursable by ODJFS.

B. Confidentiality

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

C. Ethical and Conflict of Interest Requirements

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

D. Applicant Selection Restriction

Any applicant deemed not responsible, or submitting an application deemed not to be responsive to the terms of this RFA, shall not be selected for this project. In addition, pursuant to Section 3517.13 of the ORC, the award of a personal services contract is prohibited under specified circumstances.

E. Waiver of Minor Application Errors

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

F. Contractual Requirements

Any contract resulting from the issuance of this solicitation is subject to the terms and conditions as provided in the model contract, which is provided as Attachment B to this RFA. Applicants are strongly encouraged to read the model contract to be fully aware of all ODJFS contractual requirements.

XII. Communication Prohibitions

From the issuance date of the RFA, until a contract award is announced, there may be no communications concerning the RFA between any interested applicant and any employee of ODJFS in the issuing office, or

any other ODJFS employee, or any other individual regardless of their employment status who is in any way involved in the development of the RFA or the decision with a formal procurement.

The only exceptions to this prohibition are as follows:

- A. As necessary in the case of any pre-existing business relationship between ODJFS and an applicant which could potentially respond to this RFA, in order to conduct that business;
- B. As part of an interview necessary (at the sole discretion of ODJFS) for ODJFS to make an applicant selection decision;
- C. If it becomes necessary to revise any part of this RFA, revisions will be posted on the ODJFS web page established for this RFA; and,
- D. Any Public Records Request (PRR) made through the ODJFS Office of Legal and Acquisition Services.

Requests from applicants for copies of previous RFAs, past applications, score sheets or contracts for this or similar past projects, are PRRs, and are not clarification questions regarding the present RFA.

Important: Amendments to the RFA or to any documents related to it will be accessible to applicants through the original ODJFS website established for the RFA. All applicants are strongly encouraged to refer to the appropriate website regularly for amendments or other announcements. Applications submitted by an applicant who attempts any communication prohibited by this Section may be disqualified by ODJFS from consideration for this project.

XIII. Protests

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

- A. A protest may be filed by a prospective or actual bidder objecting to the award of a contract resulting from this RFA. The protest shall be in writing and shall contain the following information:
 - 1. The name, address, telephone number, and email address of the protestor;
 - 2. The name and number of the RFA being protested;
 - 3. A detailed statement of the legal and factual grounds for the protest, including copies of any relevant documents;
 - 4. A request for a ruling by ODJFS;
 - 5. A statement as to the form of relief requested from ODJFS; 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 ODJFS, if it is received by the ODJFS Office of Contracts and Acquisitions (OCA), within the following periods:

1. A protest based on alleged improprieties in the issuance of the RFA or any other event preceding the closing date for receipt of applications which are apparent or should be apparent prior to the closing date for receipt of applications shall be filed no later than 3:00 p.m. the closing date for receipt of applications, as specified in Section II, Time, Date, and Location of Submission, of this RFA.
 2. If the protest relates to the announced intent to award a contract, the protest shall be filed no later than 3:00 p.m. of the seventh (7th) calendar day after the issuance of formal letters sent to all responding applicants regarding ODJFS' intent to make the award. The date on these ODJFS letters to responding applicants is the date used to determine if a protest regarding the intent to award is submitted by the end of the protest period.
- C. An untimely protest may be considered by ODJFS if ODJFS determines that the protest raises issues significant to the department's procurement system. An untimely protest is one received by OCA after the time periods set forth in Item B. of this section.
- D. All protests must be filed at the following location:
- Deputy Director
ODJFS Office of Contracts and Acquisitions
30 East Broad Street, 31st Floor
Columbus, Ohio 43215
- E. When a timely protest is filed, a contract award shall not proceed until a decision on the protest is issued or the matter is otherwise resolved, unless the Director of ODJFS determines that a delay will severely disadvantage the Department. The applicant who would have been awarded the contract shall be notified of the receipt of the protest.
- F. OCA shall issue written decisions on all timely protests and shall notify any applicant who filed an untimely protest as to whether or not the protest will be considered.

XIV. Attachments

- A. **Attachment A** Required Vendor Information and Certifications Document
- B. **Attachment B** ODJFS Model Contract

Thank you for your interest in this project.

Attachment A

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

Section I – Required Vendor Information

Section II - Location of Business Form

Attachment A—Section I.

REQUIRED VENDOR INFORMATION and CERTIFICATIONS

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

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

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

Vendors must provide all information

1. ODJFS RFP/RLB #:	2. Proposal Due Date:
3. Vendor Name: (legal name of the vendor – person or organization – to whom contract\purchase payments would be made)	
3a. Vendor’s Ohio Administrative Knowledge System (OAKS) ID#: [Vendors may apply for an OAKS vendor ID# at: http://ohiosharedservices.ohio.gov/Vendors.aspx . The necessary forms to be completed and remitted to Ohio Shared Services are the Vendor Information Form (OBM-5657) and the IRS Form W-9. Completion and/or submission of these forms to Ohio Shared Services <u>does not</u> assume a vendor/applicant award of any ODJFS contract/grant.]	
4. Vendor Corporate Address:	5. Vendor Remittance Address: (or “same” if same as Item # 5)
6. Print or type information on the vendor representative/contact person <u>authorized to answer questions on the proposal\bid</u>: Vendor Representative NAME and TITLE: Address: E-Mail Address: Phone #: _____ Fax #: _____	
7. Print or type the name of the vendor representative <u>authorized to address contractual issues, including the authority to execute a contract on behalf of the vendor, and to whom legal notices regarding contract termination or breach, should be sent</u> (if not the same individual as in #7, provide the following information on each such representative and specify their function): Vendor Representative NAME and TITLE: Address: E-Mail Address: Phone #: _____ Fax #: _____	

8. Is this vendor an Ohio certified MBE? Yes No If yes, attach a copy of current certification to proposal/bid. (If ODJFS has specified the RFP\RLB\purchase document as an opportunity open exclusively to Ohio Certified MBEs, then failure to attach a copy of current certification WILL RESULT IN DISQUALIFICATION.)

9. Mandatory Vendor Certifications:

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

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

AND

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

AND

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

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

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

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

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

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

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

Subcontractor Name: _____

Address: _____

Work To Be _____

Performed: _____

(a brief description) _____

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

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

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

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

Total number of contracts: _____

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

State Agency/Educational Institution: _____

Contract Dollar Amount: _____

State Agency/Educational Institution: _____

Contract Dollar Amount: _____

State Agency/Educational Institution: _____

Contract Dollar Amount: _____

Attach additional pages if needed

11. Vendor and Grantee Ethics Certification

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

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

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

Signature of authorized agent

Date

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

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

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

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

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

Attachment A—Section II.

Location of Business Form

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

1. Principal location of business of Contractor:

(Address)

(City, State, Zip)

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

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

2. Location where services will be performed by Contractor:

(Address)

(City, State, Zip)

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

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

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

(Address)

(Address, City, State, Zip)

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

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

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

(Address)

(Address, City, State, Zip)

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

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

By signing below, I hereby certify and affirm that I have reviewed, understand, and will abide by the Governor's Executive Order 2011-12K. I attest that no funds provided by ODJFS 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 ODJFS if there is a change in the location where any of the services relating to this project will be performed. If I am signing this on behalf of a company, business, or organization, I hereby acknowledge that I have the authority to make this certification on behalf of that entity.

Signature

Date

Entity Name

Address (Principal place of business)

Printed name of individual authorized
to sign on behalf of entity

City, State, Zip

**OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
CONTRACT FOR SERVICES**

C-1819-00-0000

RECITALS:

This Contract is entered into between the Ohio Department of Job and Family Services (ODJFS) and **Vendor Name** (CONTRACTOR).

- A. ODJFS issued a Request for Proposals (RFP) titled _____, numbered _____, and dated [DATE], which is hereby incorporated by reference.
- B. The ODJFS proposal review team recommended for award the Application of CONTRACTOR, 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 the dispute in keeping with the objectives of this Contract and the budgetary and statutory constraints of ODJFS.
- D. Key personnel that are identified by the CONTRACTOR as critical to the success of the Contract may not be removed without a reasonable notice to ODJFS, and replacements will not be made without ODJFS approval.

ARTICLE I. PURPOSE; DELIVERABLES

- A. CONTRACTOR will perform its responsibilities (Deliverables) under this Contract as follows: OR CONTRACTOR will perform its responsibilities (Deliverables) under this Contract in accordance with the RFP and the Proposal. The responsibilities are summarized as follows:
- B. The ODJFS Contract Manager is **ODJFS Contract Manager**, or **his/her** successor.
- C. The ODJFS 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 ODJFS within 10 business days after CONTRACTOR's receipt of the requests or instructions. ODJFS and CONTRACTOR expressly understand that any requests or instructions will be strictly to ensure the successful completion of the Deliverables described in this Contract, and are not intended to amend or alter this Contract in any way. If CONTRACTOR believes that any requests or instructions would materially alter the terms and conditions of this Contract or the compensation stated hereunder, CONTRACTOR will immediately notify ODJFS pursuant to the notice provisions of this Contract. CONTRACTOR agrees to consult with the ODJFS 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 ODJFS, 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 ODJFS 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 ODJFS 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. ODJFS 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 ODJFS, CONTRACTOR agrees to, and by executing this Contract does, assign ODJFS all worldwide rights, title, and interest in and to the Deliverables. ODJFS 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 ODJFS and receive express written permission from ODJFS to include any of its own pre-existing, proprietary materials in any of the Deliverables under this Contract. ODJFS's approval of the inclusion of pre-existing, proprietary materials is predicated on CONTRACTOR granting to ODJFS 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, ODJFS 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 ODJFS of or an advertisement for CONTRACTOR.

- D. [UNIVERSITY] The Deliverables produced by CONTRACTOR under this Contract will be copyrighted in the name of CONTRACTOR. CONTRACTOR hereby grants to ODJFS a perpetual, royalty free, non-exclusive, and irrevocable license to use, reproduce, publish, modify, and distribute any Deliverable either in whole or in part, and to produce derivative works. CONTRACTOR will assure that all products contain appropriate copyright attribution and ODJFS will treat Deliverable products as the intellectual property of CONTRACTOR for purposes of ORC 149.43. CONTRACTOR further reserves the right to use the Deliverables produced under this Contract for research and academic purposes, including the right to publish the work in scholarly journals or other academic publications.

ARTICLE II. EFFECTIVE DATE OF THE CONTRACT

- A. This Contract is in effect from _____ or the date of issuance of an approved State of Ohio purchase order, whichever is later, through _____, unless this Contract is suspended or terminated prior to the expiration date. This Contract may be renewed through June 30, 201X, upon satisfactory completion of activities hereunder, appropriation of funds by the Ohio General Assembly, and at the sole discretion of ODJFS. ODJFS will issue a notice to CONTRACTOR if ODJFS 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 ODJFS and CONTRACTOR that this Contract will not be valid and enforceable until the Director of the Ohio Office of Budget and Management, first certifies, pursuant to Section 126.07 of the Ohio Revised Code (ORC), that there is a balance in the appropriation not already allocated to pay existing obligations. The ODJFS Contract Manager will notify CONTRACTOR when this certification is given.

ARTICLE III. COMPENSATION

- A. The total amount payable under this Contract is TOTAL AMT Dollars (\$TOTAL). ODJFS will pay an amount up to SFY1 AMT Dollars (\$SFY 1) for State Fiscal Year (SFY) 2016, and up to SFY2 AMT Dollars (\$SFY2) for SFY 2017, 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.
- B. It is further agreed that reimbursement of travel expenditures shall not exceed [SFY1 Travel Dollar Amount] Dollars (\$SFY1 Travel) for SFY [SFY1] and [SFY2 Travel Dollar Amount] Dollars (\$SFY2) for SFY [SFY2],

which amounts are included in the total compensation figures above. Expense reimbursement authorized by this section is limited to actual and necessary expenses subject to the limits as established pursuant to ORC 126.31, which are set forth in OAC 126-1-02, as well as any other laws, regulations, or Governor's Executive Orders limiting travel expenses. CONTRACTOR expressly agrees not to submit claims for expenses which do not meet the requirements of this Section and further agrees to submit all claims to the ODJFS Contract Manager for approval prior to submitting a claim for reimbursement.

- C. With the exception of travel expenses, line item expenses listed in the budget may be reallocated upon the written approval of the ODJFS Contract Manager as long as the total amounts per SFY and the total overall Contract amount remains unchanged. Any changes to the travel costs will require a written amendment to this Contract.
- D. Compensation will be paid pursuant to CONTRACTOR's **accepted budget [or cost proposal]** as incorporated below **[or as attached]**.
- E. CONTRACTOR will submit detailed invoices on a **one-time, monthly, quarterly, annual** basis to the ODJFS, **Contract Manager, Office, Office Address OR Bureau of Accounts Payable at 30 East Broad Street, 37th Floor, Columbus, Ohio 43215**. CONTRACTOR agrees to use an invoice instrument to be prescribed by ODJFS 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; and
 6. Other documentation requested by the ODJFS Contract Manager.
- F. CONTRACTOR expressly understands that ODJFS will not compensate CONTRACTOR for any work performed prior to CONTRACTOR's receipt of notice from the ODJFS Contract Manager that the provisions of ORC 126.07 have been met as set forth in ARTICLE II, nor for work performed after the ending date of this Contract.
- G. CONTRACTOR expressly understands that ODJFS 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.
- H. 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 ODJFS for the payments due under this Contract, this Contract will be terminated as of the date funding expires without further obligation of ODJFS or the State of Ohio.
- I. CONTRACTOR and ODJFS understand that the terms of this Contract, when combined with any other payments made to or open encumbrances with CONTRACTOR during the same SFY, cannot establish compensation in excess of Fifty Thousand and 00/100 Dollars (\$50,000.00) aggregate without prior approval from the State Controlling Board in accordance with ORC 127.16.

ARTICLE IV. SUSPENSION AND TERMINATION, BREACH AND DEFAULT

- A. This Contract will automatically terminate upon expiration of the time period in ARTICLE II, or upon completion of all Deliverables, or once all compensation has been paid.

- B. Notwithstanding other provisions in this ARTICLE, either party may terminate this Contract at will by giving 30 calendar days written notice to the other party. Upon written notice to CONTRACTOR, ODJFS may immediately suspend this Contract at ODJFS's sole discretion.
- C. Notwithstanding the provisions of Sections A or B, above, ODJFS may suspend or terminate this Contract immediately upon delivery of a written notice to CONTRACTOR if:
1. ODJFS loses funding as described in ARTICLE III;
 2. ODJFS discovers any illegal conduct by CONTRACTOR; or
 3. CONTRACTOR has violated any provision of ARTICLE VIII.

Suspension or termination under this provision shall not entitle CONTRACTOR to any rights or remedies described in Section F of this ARTICLE.

- D. Unless otherwise provided for in this ARTICLE, CONTRACTOR will have 30 calendar days within which to cure any breach that is curable after receipt of written notice from ODJFS 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, ODJFS may immediately suspend or terminate this Contract. ODJFS 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 ODJFS has notified CONTRACTOR 2 times in writing of CONTRACTOR's failure to meet any of its contractual obligations. The 2 notices do not have to relate to the same obligation or type of failure. After the second notice, ODJFS may suspend or terminate this Contract without a cure period if CONTRACTOR again fails to meet any contractual obligation. At the sole discretion of ODJFS, certain instances of breach may require a shorter cure period than the 30 calendar days generally applicable in this Section. In such instances, ODJFS will include in its notice of breach the shorter cure period deemed appropriate. If ODJFS does not give timely notice of a breach to CONTRACTOR, ODJFS has not waived any of its rights or remedies concerning the breach.

- 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 and refusing any additional orders;
 3. Prepare and furnish a report to ODJFS, as of the date the notice of termination or suspension was received, that describes the status and percentage of completion of all Deliverables, including the results accomplished and the conclusions reached through Deliverables;
 4. Deliver all records in their native format relating to cost, work performed, supporting documentation for invoices submitted to ODJFS, and deliver any and all materials or work produced under or pertaining to this Contract whether completed or not; and
 5. Perform any other tasks ODJFS requires.

- F. In the event of suspension or termination under this ARTICLE, ODJFS 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, ODJFS will base its calculations on the payment method described in ARTICLE III and any funds previously paid by or on behalf of ODJFS. ODJFS will not be liable for any further claims submitted by CONTRACTOR.

- G. If ODJFS 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, ODJFS will be entitled to utilize another contractor to complete the Deliverables of this Contract on any commercially reasonable terms as ODJFS and the covering contractor may agree. In this event, CONTRACTOR will be liable to

ODJFS 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 ODJFS would have incurred under this Contract. CONTRACTOR's liability under this Section is in addition to any other remedies available to ODJFS 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, ODJFS reserves the right to exercise any administrative, contractual, equitable, or legal remedies available without limitation. Any waiver by ODJFS of an occurrence of breach or default is not a waiver of subsequent occurrences. If ODJFS 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 ODJFS will not be effective unless it is in writing signed by the ODJFS Director.

ARTICLE V. NOTICES

- A. ODJFS 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 ODJFS Contract Manager.
- B. Notices to ODJFS 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 VIII, and/or any other formal notice regarding this Contract will be sent to the ODJFS Deputy Director of Contracts and Acquisitions at 30 East Broad Street, 31st Floor, Columbus, Ohio 43215.
- C. Notices to CONTRACTOR from ODJFS concerning termination, suspension, option to renew, breach, default, or other formal notices regarding this Contract will be sent to CONTRACTOR's representative at the address appearing on the signature page of this Contract.
- D. All notices will be in writing and will be deemed given when received. All notices must be sent using a delivery method that documents actual delivery to the appropriate address herein indicated (e.g., certified mail).

ARTICLE VI. RECORDS, DOCUMENTS AND INFORMATION

CONTRACTOR agrees that all records, documents, writings, and other information, created or used pursuant to this Contract will be treated according to the following terms, and that the terms will be included in any subcontract agreements 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 ODJFS. This includes all documents, reports, data, photographs (including negatives), and electronic reports and records. ODJFS will maintain the unrestricted right to reproduce, distribute, modify, maintain, and use the media in any way ODJFS 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 ODJFS determines that certain materials are confidential under federal or state law.
- A. [UNIVERSITY] ODJFS agrees that any media (including documents, reports, data, photographs, negatives, electronic reports and records) produced pursuant to this Contract or acquired with Contract funds will become the property of CONTRACTOR; however, CONTRACTOR hereby grants to ODJFS a perpetual, royalty free, non-exclusive, and irrevocable license to use, reproduce, publish, modify, and distribute any such media.
- B. All ODJFS 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, ODJFS will determine whether the information is public or private. CONTRACTOR will restrict the use of any information, systems, or records ODJFS 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 ODJFS 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 ODJFS. Proprietary information is information that would put CONTRACTOR at a competitive disadvantage in CONTRACTOR's market place and trade if it were made public. ODJFS 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. CONTRACTOR will defend such a claim.
- D. For Audit Purposes Only: All records relating to cost, work performed, supporting documentation for invoices submitted to ODJFS, 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, ODJFS, 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 3 years after CONTRACTOR receives the last payment pursuant to this Contract. If an audit, litigation 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. If applicable, CONTRACTOR must meet the requirements of the federal Office of Management and Budget (OMB) Omni-Circular, Title 2 of the Code of Federal Regulations (CFR) Part 200. CONTRACTOR acknowledges, in accordance with ORC 149.43, that financial records related to the performance of services under this Contract are presumptively deemed public records.
- E. All records relating to cost, work performed, supporting documentation for invoices submitted to ODJFS, and copies of all materials produced under or pertaining to this Contract will be retained by CONTRACTOR in accordance to the appropriate records retention schedule. The appropriate records retention schedule for this Contract is **INSERT RECORDS SCHEDULE [Must be minimum of 3 years, 2 CFR 200.333]**. 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 with any litigation holds that are provided to them by ODJFS, 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 ODJFS 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 ODJFS, CONTRACTOR agrees to pay all costs, damages and expenses 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 (42 USC 1320d through 1320d-8) and the implementing regulations found at 45 CFR 164.502(e) and 164.504(e) regarding disclosure of Protected Health Information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). CONTRACTOR further agrees to include the terms of this section in any subcontracts that may be executed pursuant to this Contract.

ARTICLE VII. AMENDMENT AND ASSIGNMENT

- A. This writing constitutes the entire agreement between ODJFS and CONTRACTOR with respect to all matters herein. Only a writing signed by both parties may amend this Contract. However, ODJFS 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. **It is agreed that line item budget modifications may be made in writing by the ODJFS Contract Manager without a written amendment pursuant to ARTICLE III.** 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 ODJFS. CONTRACTOR will submit any requests for approval of assignments and transfers to the ODJFS Contract Manager at least 10 business days prior to the desired

effective date. CONTRACTOR understands that any assignments and transfers will be subject to any conditions ODJFS deems necessary and that no approval by ODJFS will be deemed to provide for any ODJFS obligation that exceeds the Contract amount specified in ARTICLE III of this Contract.

ARTICLE VIII. CONTRACTOR CERTIFICATION OF COMPLIANCE WITH SPECIAL CONDITIONS

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

- A. If at any time, CONTRACTOR is not in compliance with the conditions affirmed in this Section, ODJFS will consider this Contract *void ab initio* and will deliver written notice to CONTRACTOR. Any funds the State of Ohio paid CONTRACTOR for work performed before CONTRACTOR received notice that the Contract is *void ab initio* will be immediately repaid or the State of Ohio may commence an action for recovery against CONTRACTOR.
1. **Federal Debarment Requirements.** CONTRACTOR affirms that neither CONTRACTOR nor any of its principals or subcontractors, is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by any federal agency. CONTRACTOR also affirms that within 3 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 ODJFS 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.
[DELETE IF UNIVERSITY]
- B. If at any time CONTRACTOR is not in compliance with the conditions affirmed in this Section, ODJFS may immediately suspend or terminate this Contract and will deliver written notice to CONTRACTOR. CONTRACTOR will be entitled to compensation, upon submission of a proper invoice per ARTICLE III, only for work performed during the time CONTRACTOR was in compliance with the provisions of this Section. Any funds paid by the State of Ohio for work performed during a period when CONTRACTOR was not in compliance with this Section will be immediately repaid or the State of Ohio may commence an action for recovery against CONTRACTOR.

1. **Americans with Disabilities.** CONTRACTOR, its officers, employees, members, and subcontractors hereby affirm current and ongoing compliance with all statutes and regulations pertaining to The Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973.
2. **Fair Labor Standards and Employment Practices.**
 - a. CONTRACTOR certifies that it is in compliance with all applicable federal and state laws, rules, and regulations governing fair labor and employment practices.
 - b. In carrying out this Contract, CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin, military status, disability, age, genetic information, or sexual orientation, in making any of the following employment decisions: hiring, layoff, termination, transfer, promotion, demotion, rate of compensation, and eligibility for in-service training programs.
 - c. CONTRACTOR agrees to post notices affirming compliance with all applicable federal and state non-discrimination laws in conspicuous places accessible to all employees and applicants for employment.
 - d. If applicable, CONTRACTOR agrees to comply with the provisions of Equal Employment Opportunity Clause (41 CFR Part 60), the Davis-Bacon Act (40 USC 3141-3148), the Copeland Act (40 USC 3145), and the Contract Work Hours and Safety Standards Act (40 USC Chapter 37), regarding labor standards for federally assisted construction contracts.
 - 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 2 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 ODJFS 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 ODJFS 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 ODJFS Chief Legal Counsel at 30 East Broad Street, 31st Floor, Columbus, Ohio 43215. CONTRACTOR further agrees that the person with the conflicting interest will not participate in any Deliverables until ODJFS determines that participation would not be contrary to public interest.

4. **Lobbying Restrictions.**
 - a. CONTRACTOR affirms that no federal funds paid to CONTRACTOR by ODJFS 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, and is in compliance with 45 CFR 2543.87 the Byrd anti-lobbying amendment.
 - b. CONTRACTOR certifies compliance with the Ohio executive agency lobbying restrictions contained in ORC 121.60 to 121.69.
5. **Child Support Enforcement.** CONTRACTOR agrees to cooperate with ODJFS and any child support enforcement agency in ensuring that CONTRACTOR and its employees meet child support obligations established by state and federal law including present and future compliance with any court or valid administrative order for the withholding of support issued pursuant to the applicable sections of ORC Chapters 3119, 3121, 3123, and 3125.
6. **Pro-Child Act.** If any Deliverables call for services to minors, CONTRACTOR agrees to comply with the Pro-Children Act of 1994; Public Law 103-277, Part C – Environment Tobacco Smoke that requires smoking to be banned in any portion of any indoor facility owned, leased, or contracted by an entity that will routinely or regularly use the facility for the provision of health care services, day care, library services, or education to children under the age of 18.
7. **Drug-Free Workplace.** CONTRACTOR, its officers, employees, members, any subcontractors and/or any independent contractors (including all field staff) associated with this Contract agree to comply with all applicable state and federal laws, including, but not limited to, 41 USC Chapter 10, regarding a drug-free workplace. CONTRACTOR will make a good faith effort to ensure that none of CONTRACTOR's officers, employees, members, or subgrantees will purchase, transfer, use, or possess illegal drugs or alcohol or abuse prescription drugs in any way while working or while on public property.
8. **Work Programs.** CONTRACTOR agrees not to discriminate against individuals who have or are participating in any work program administered by any county department of Job and Family Services under ORC Chapter 5101 or 5107.
9. **MBE/EDGE.** Pursuant to the Governor's Executive Order 2008-13S, CONTRACTOR agrees to purchase goods and services under this Contract from certified Minority Business Enterprise (MBE) and Encouraging Diversity, Growth, and Equity (EDGE) vendors whenever possible. CONTRACTOR agrees to encourage any of its subgrantees or subcontractors to purchase goods and services from certified MBE and EDGE vendors. In accordance with 2 CFR 200.321, CONTRACTOR agrees to take affirmative steps to assure that minority businesses, women's business enterprises and labor surplus area firms are used when possible.
9. **[Use when program area is requiring] MBE Requirement.**
 - a. CONTRACTOR is required to seek and set aside at least ___% of the cost of work for qualified Minority Business Enterprises (MBE). In seeking MBE subcontractors, the CONTRACTOR must utilize a competitive process to which only Ohio certified MBEs may respond and require the MBE to maintain their certification through the term of the agreement, including any renewals.
 - b. CONTRACTOR shall indicate on all invoices submitted to ODJFS the dollar amount attributed to the goods or services provided by the MBE subcontractors along with documentation of the MBE subcontractor's activities. CONTRACTOR shall report its monetary payments to the MBE subcontractor under this Contract monthly to the ODJFS Contract Manager.

- c. CONTRACTOR may apply for a modification or waiver of the 15% MBE subcontractor set-aside requirement, however, such modification or waiver request may be submitted no earlier than 6 months from the contract award and no later than 2 months of the completion of the contract, whichever is sooner. CONTRACTOR may apply in writing, on a form prescribed by ODJFS, for a waiver or modification of the MBE set-aside requirement from the ODJFS Contract Manager. CONTRACTOR shall submit evidence acceptable to ODJFS demonstrating that the CONTRACTOR made a good faith effort to seek MBE subcontractors, in order to justify the granting of a waiver or modification. Within 30 days of receipt of the request, ODJFS 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 requirement before the completion of the work. If CONTRACTOR fails to attain the requirement, CONTRACTOR may be found in non-compliance with the terms of the contract.
10. **Expenditure of Public Funds for Offshore Services—Executive Order Requirements.**
[UNIVERSITY] CONTRACTOR, a public university, certifies that by executing this Contract, it has reviewed and understands ODJFS's obligation under Governor's Executive Order 2011-12K, and will perform no services required under this Contract outside of the United States. [delete a-d]
- a. CONTRACTOR certifies that by executing this Contract, it has reviewed, understands, and will abide by the Governor's Executive Order 2011-12K and shall abide by those requirements in the performance of this Contract, and shall perform no services required under this Contract outside of the United States.
- b. Prior to performing any services, and when there is a change in the location of any services provided under this Contract, CONTRACTOR must disclose:
- (1) The location(s) where all services will be performed by CONTRACTOR or any subcontractor;
 - (2) The location(s) where any state data associated with any of the services through this Contract will be accessed, tested, maintained, backed-up, or stored; and
 - (3) The principal location of business for the contractor and all subcontractors.
- c. CONTRACTOR also affirms, understands, and agrees to immediately notify ODJFS 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: ODJFS 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 ODJFS all funds paid for those services.
- In addition, if CONTRACTOR or any of its subcontractors perform any such services outside of the United States, ODJFS may, at any time after the breach, terminate this Contract for such breach, upon written notice to CONTRACTOR. If ODJFS terminates the Contract, ODJFS may buy substitute services from a third party, and may recover the additional costs associated with acquiring the substitute services.
11. **[PRIVATE ENTITY] Combating Trafficking in Persons.**
- a. CONTRACTOR agrees that it is in compliance with the Federal Acquisition Regulation (FAR) for Combating 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. ODJFS has the right to immediately and unilaterally terminate this Contract if any provision in this Section is violated and ODJFS may implement section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 USC 7104), see 2 CFR Part 175.
11. **[UNIVERSITY] Combating Trafficking in Persons.** Pursuant to 22 USC 7104(g), this Contract may be terminated without penalty if CONTRACTOR or any subcontractor paid with Contract funds:
 - a. Engages in severe forms of trafficking in persons or has procured a commercial sex act during the period of time this Contract or any subcontracts or subagreements are in effect; or
 - b. Uses forced labor in the performance of activities under this Contract or under any subcontracts or subagreements.
 - c. CONTRACTOR agrees that it shall notify, and require all of its subcontractors to notify, its employees of the prohibited activities described in the preceding paragraph.
 - d. ODJFS has the right to immediately and unilaterally terminate this Contract if any provision in this Section is violated and ODJFS 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.** The CONTRACTOR hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) and the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.).
13. **Clean Air Act and Federal Water Pollution Control Act.** CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Regional Office of the United States Environmental Protection Agency (USEPA) and ODJFS.
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 U.S.C. 6201. Violations must be reported to the Regional Office of the USEPA and ODJFS.
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 USEPA 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 or the value of the quantity acquired during the preceding federal fiscal year exceeded \$10,000; 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 USEPA guidelines.

16. **Rights to Inventions.** If applicable, if any products or services under this Contract meet the definition of “funding agreement” under 37 CFR 401.2(a), and 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 Contractor 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. **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 IX. BUSINESS CONTINUITY PLAN

- A. CONTRACTOR recognizes that certain services under this Contract are vital to ODJFS and must be continued without interruption. CONTRACTOR shall be prepared to continue providing such services identified by ODJFS, 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 ODJFS 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 X. MISCELLANEOUS PROVISIONS

- A. **Independent Contractor.** CONTRACTOR agrees that no agency, employment, joint venture, or partnership has been or will be created between ODJFS 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, ODJFS is required to provide individuals and business entities with fewer than 5 employees the Independent Contractor Acknowledgment (Form PEDACKN), please see Attachment A. This form requires CONTRACTOR to acknowledge that ODJFS has notified CONTRACTOR that he or she has not been classified as a public employee and no OPERS contributions will be made on his or her behalf for these services. If CONTRACTOR is a business entity with fewer than 5 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 5 employees, please complete page 3 of Attachment A.**
- B. **Limitation of Liability.** To the extent allowable by law, CONTRACTOR agrees to hold ODJFS harmless in any and all claims for personal injury, property damage, infringement resulting, and/or any other claims arising from the performance of the Deliverables. CONTRACTOR's sole and exclusive remedy for any ODJFS 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 ODJFS be liable for any indirect or consequential damages, including loss of profits, even if ODJFS knew or should have known of the possibility of such damages. To the extent that ODJFS 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.

- B. **[UNIVERSITY] Limitation of Liability.** Each party agrees to be responsible for any of its own negligent acts or omissions or those of its agent, employees, or subcontractors. Each party further agrees to be responsible for its own defense and any judgments and costs that may arise from such negligent acts or omissions. Nothing in this Contract will impute or transfer any such liability or responsibility from one party to the other. To the maximum extent permitted by law, the parties' liability for damages, whether in contract or in tort, may not exceed the total amount of compensation payable to CONTRACTOR under ARTICLE III or the actual amount of direct damages incurred by any party whichever is less. CONTRACTOR's sole and exclusive remedy for ODJFS's failure to perform under this Contract is an action in the Ohio Court of Claims, pursuant to ORC Chapter 2743, and subject to the limitations set forth in this ARTICLE. In no event will either party be liable for any indirect or consequential damages, including loss of profits, even if a party knew or should have known of the possibility of such damages.
- C. **Infringement of Patent or Copyright.** To the extent allowable by law and subject to ORC 109.02, CONTRACTOR agrees to defend any suit or proceeding brought against ODJFS, any official or employee of ODJFS 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. ODJFS 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. ODJFS may participate in the defense of any such action. CONTRACTOR agrees to pay all damages and costs awarded against ODJFS, any official or employee of ODJFS 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 ODJFS 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.
- C. **[UNIVERSITY] Infringement of Patent or Copyright.** To the extent permitted by law, if any of the materials, reports, or studies provided by CONTRACTOR are found to be infringing items and the use or publication thereof is enjoined, CONTRACTOR agrees to, at its own expense and at its option, either procure the right to publish or continue use of such infringing materials, reports, or studies; replace them with non-infringing items of equivalent value; or modify them so that they are no longer infringing. The obligations of CONTRACTOR under this Section survive the termination of this Contract, without limitation.
- D. **Liens.** CONTRACTOR will not permit any lien or claim to be filed or prosecuted against ODJFS 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, ODJFS or the State of Ohio may, but is not obligated to, pay those claims and charge the amount of payment against the funds due or to become due to CONTRACTOR under this Contract.
- E. **Delay.** Neither party will be liable for any delay in its performance that arises from causes beyond its control and without its negligence or fault. The delaying party will notify the other promptly of any material delay in performance and will specify in writing the proposed revised performance date as soon as practicable after notice of delay. The delaying party must also describe the cause of the delay and its proposal to remove or mitigate the delay. Notices will be sent pursuant to ARTICLE V. In the event of excusable delay, the date of performance or delivery of products may be extended by amendment, if applicable, for a time period equal to that lost due to the excusable delay. Reliance on a claim of excusable delay may only be asserted if the delaying party has taken commercially reasonable steps to mitigate or avoid the delay. Items that are controllable by CONTRACTOR's subcontractor(s) will be considered controllable by CONTRACTOR, except for third-party manufacturers supplying commercial items and over

whom CONTRACTOR has no legal control. The final determination of whether an instance of delay is excusable lies with ODJFS in its discretion.

- F. **Counterpart.** This Contract may be executed in one, or more than one counterpart and each executed counterpart shall be considered an original, provided that such counterpart is delivered to the other party by facsimile, mail courier or electronic mail, all of which together shall constitute one and the same agreement.

ARTICLE XI. CONSTRUCTION

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

In actual contract, Signature

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