



## Department of Medicaid

**John R. Kasich**, Governor

**John B. McCarthy**, Director

### **Ohio Department of Medicaid Request for Applications RFA: ODMR-1617-9003**

#### **I. Purpose**

The Ohio Department of Medicaid (ODM) is soliciting bids to identify up to two attorneys admitted to the practice of law in Ohio (as required by ORC Section 119.09) who will serve as hearing examiners. The rate of compensation will be \$90.00 per hour for up to 400 hours [per attorney per year] from approximately July 25, 2015 through June 30, 2017. Billable hours include the attorney's presence at pre-hearing proceedings and final hearings, research, and writing time. This Request for Applications (RFA) document is released by ODM, if ODM issues an award as a result of this RFA, the contract will be between the Vendor and ODM.

ODM will designate a staff member as the ODM Contract Manager to provide on-going supervision of the Contractor selected through this RFA. The contract period for this project is expected to run from approximately July 25, 2015 through June 30, 2017. Any contract renewal options are at the sole discretion of ODM.

ODM will only accept bids from Vendors that demonstrate the capability of providing services as described in this RFA. For the purpose of this RFA, the term "Vendor" shall be defined as an organization interested in this opportunity. The term "Contractor" is used in reference to the successful Vendor selected through this RFA.

ODM is under no obligation to enter into a contract with any Vendor as a result of this solicitation. Changes in this RFA of a material nature will be provided on the agency website. All Vendors are responsible for obtaining any such changes and will not receive notice of any changes from ODM.

#### **II. Time/Date and Format of Submission**

Organizations, companies, firms, or individuals who are interested in submitting letterhead bids must make their submission no later than **11:59 p.m. Eastern (local) Time March 24, 2015**. Vendor bids for RFAs must be submitted by email to the following address: [ODM\\_Bid-Request@medicaid.ohio.gov](mailto:ODM_Bid-Request@medicaid.ohio.gov).

All completed submissions must be received by ODM by the above date and time. Materials received after the submission deadline date will not be added to previous submissions, nor be considered responsive to this RFA. Delivery confirmation will be provided for received bids via email by the close of business the next business day. ODM is not responsible for bids not received due to technical issues that prevent delays in the receipt of bids.

Vendors must convert electronic submissions into one .pdf document. If the submission's size necessitates more than a single .pdf document to contain the entire bid, please use the fewest separate .pdf documents possible. The Vendor's total bid submission must be received by the Office of Contracts and Procurement (OCP) in accordance with this Section. All bids must contain the Vendor's name, the RFA number, and the submission date.

Submission of a bid indicates acceptance by the Vendor of the conditions contained in this RFA, unless clearly and specifically noted in the bid submitted and confirmed in the contract between ODM and the Vendor selected.

### **III. Anticipated Procurement and Project Timetable**

March 2, 2015	ODM releases RFA on ODM and DAS Web Sites; Q&A period opens. Vendors may submit inquiries for RFA clarification.
March 19, 2015	Vendor Q & A Period closes, 8 a.m. for inquiries for RFA clarification - No further inquiries for RFA clarification will be accepted.
April 2, 2015	<b>Deadline for Vendors to Submit Bids to ODM (11:59 p.m. Eastern (local) Time).</b>
April 9, 2015	ODM Issues Contractor Selection Notification Letter (estimated)
<b>July 1, 2015</b>	<b>Contract effective date/Purchase Order approval – work may not begin until a state Purchase Order has been fully approved by OBM. (ESTIMATED DATE)</b>
June 30, 2017	Contract terminates no later than the end of the State Fiscal Year, or June 30, 2017 This contract may be renewed until June 30, 2019.

ODM reserves the right to revise the above schedule in the best interest of the State of Ohio and/or to comply with the State of Ohio procurement procedures and regulations.

\* In accordance with Ohio Revised Code (ORC) 126.07, ODM contracts are not valid and enforceable until the Office of Budget and Management (OBM) certifies the availability of appropriate funding, which is provided by the dispatching of the State of Ohio Purchase Order (PO). The selected Contractor may neither perform work nor submit an invoice for payment for work performed for this project for any time period prior to the issuance of a PO. ODM will notify the Contractor when the requirements of ORC Section 126.07 have been met.

### **IV. Internet Question and Answer Period; RFA Clarification Opportunity**

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

1. Access the ODM Web Page at <http://medicaid.ohio.gov>;
2. Go to the "Resources" tab and select "Legal and Contracts";
3. Select "RFPs", under "Current Solicitation", select the appropriate RFA;
4. Select the "Submit Inquiry" option button; and
5. Provide requested information and submit question.

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 (or other interested party), the company name, phone number, and e-mail address must be provided to submit an inquiry. ODM may, at its option, disregard any questions which do not appropriately reference an 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.

ODM will not provide answers directly to any party that submitted questions. ODM's responses to all questions will be posted on the Internet website dedicated to this RFA, for public reference by any interested party ODM will not answer questions received in any other manner than that which is described in this RFA.

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

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

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

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

## V. Qualifications

In order to be considered for this RFA, ODM requires that interested Vendors address all the following minimum qualifications as well as experience and capabilities as described in this Section:

### A. **Mandatory Vendor Qualifications and Capabilities**

In order to be considered for the project described in this RFA, ODM requires that interested Vendors **must** meet, at minimum, **all** the following qualification requirements and provide **all** requested documentation:

1. Submission of application on or before the specified deadline as stated in Section II., of this RFA. **Failure to meet this requirement will be disqualification from consideration for award;**
2. A valid and current license to the practice law in the State of Ohio. **Failure to meet this requirement will be disqualification from consideration for award;**
3. At least five (5) years as a licensed attorney. **Failure to meet this requirement will be disqualified from consideration for award; and**
4. At least two (2) years' experience in Ohio administrative law, preferably either in administrative or judicial proceedings regarding Ohio state agencies, or as a hearing examiner conducting Ohio Revised Code Chapter 119 adjudication hearings. **Failure to meet this requirement will be disqualified from consideration for award.**

5. Submission of one 4-6 page writing sample as an example of the applicant's work product. The writing sample should include, at minimum, issue, relevant law, application of the law, and legal conclusion. Each writing sample will be graded on a scale of 1-10 based on grammar, clarity, knowledge of law, and appropriate legal conclusions.

**Sensitive Personal Information:** It is the responsibility of the Vendor submitting a bid to remove all personal confidential information (such as home addresses and social security numbers) from any other part of the application package. Following submission to ODM, all bids submitted become part of the public record. Any Vendor who provides this information shall be disqualified.

## **VI. Scope of Work**

The selected hearing examiners will be responsible for conducting pre-hearing conferences and adjudication hearings necessary to afford appellants the full opportunity to assert hearing rights provided by statute and rule. In performing these functions, the hearing examiner will issue written orders and, eventually, findings of fact, conclusions of law, and recommendations. The selected hearing examiner(s) will also be responsible for typing, filing and mailing of such writings, for which there can be no additional compensation.

Most adjudicative hearings held before ODM are conducted in Columbus, Ohio which will serve as the headquarters for purposes of the contract. Therefore, there shall be no reimbursement available for expenses incurred in travel to the headquarters. However, if additional travel is required by ODM, reimbursement for travel and other related expenses are subject to the limits established pursuant to ORC Sections 126.31 and 126.32 and which are set forth in rule 126-1-02 of the Ohio Administrative Code.

## **VII. Specifications of Deliverables**

The contracted services shall include, but may not be limited to, the following areas:

1. Act as an Administrative Hearing Examiner for hearings conducted pursuant to ORC Chapter 119 and/or for other administrative hearings conducted by ODM.
2. Conduct pre-hearing conferences and issue pre-hearing orders setting forth, in detail, all discovery and other pre-hearing matters and establishing a final hearing date;
3. Conduct other pre-hearing conferences and rule on motions and other matters as necessary;
4. Conduct final hearings and submit Findings of Fact, Conclusions of Law, and Recommendations to ODM; and,
5. Notify ODM of any conflict of interest.

## **VIII. Evaluation Process**

Bids will be collectively reviewed and evaluated by a Bid Review Team appointed by ODM. The evaluation process will be based upon whether the Vendor meets the requirements for Qualifications (Section V), Scope of Work (Section VI), and Specifications of Deliverables (Section VII), Acceptable criteria exceeding the minimum qualifications within the scope of Section V, Quality of writing and appropriate conclusions of law as exhibited in the applicant's writing sample, and an optional in-person interview.

**IX. Health Insurance Portability & Accessibility Act (HIPAA) Requirements**

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

**X. Protests**

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

- A. A protest may be filed by a prospective or actual responder objecting to the award of a contract resulting from this RFA. The protest shall be in writing and shall contain the following information:
  1. The name, address, and telephone number of the protestor;
  2. The name and number of the RFA being protested;
  3. A detailed statement of the legal and factual grounds for the protest, including copies of any relevant documents;
  4. A request for a ruling by ODM;
  5. A statement as to the form of relief requested from ODM; and
  6. Any other information the protestor believes to be essential to the determination of the factual and legal questions at issue in the written protest.
- B. A timely protest shall be considered by ODM, if it is received by ODM's Contracts and Procurement, 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 responses which are apparent or should be apparent prior to the closing date for receipt of responses shall be filed no later than 11:59 p.m. the closing date for receipt of responses, as specified in Section III, Anticipated Procurement Timetable, 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 seventh (7th) calendar day after the issuance of formal letters sent to all responding vendors regarding the State's intent to make the award. The date on these ODM letters to responding vendors 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 ODM if ODM determines that the protest raises issues significant to the department's procurement system. An untimely protest is one received by

ODM's Office of Contracts and Procurement after the time periods set forth in Item B. of this section.

- D. All protests must be filed at the following location:

Deputy Director  
Office of Contracts and Procurement  
Ohio Department of Medicaid  
50 West Town Street  
Columbus, Ohio 43215

- E. When a timely protest is filed, a contract award shall not proceed until a decision on the protest is issued or the matter is otherwise resolved, unless the Director of ODM determines that a delay will severely disadvantage the Department. The vendor(s) who would have been awarded the contract shall be notified of the receipt of the protest.
- F. ODM's Office of Contracts and Procurement shall issue written decisions on all timely protests and shall notify any vendor who filed an untimely protest as to whether or not the protest will be considered.

**X. State Contracts**

Bids must list any current contracts the Vendor has with State of Ohio agencies and universities/colleges. The list must indicate the purpose of the contract, the amount of the contract, the time period covered by the contract, and the percent of the project completed. Vendors must provide this information, and all other requested information listed in the "**Required Vendor Information and Certifications**" provided as **Attachment A**.

Thank you for your interest in this project. Attachment A follows this page.

# **Attachment A**

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

**Section I – Required Vendor Information**

**Section II - Location of Business Form**

**Attachment A—Section I.**

**REQUIRED VENDOR INFORMATION and CERTIFICATIONS**

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

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

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

**Vendors must provide all information**

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

**9. Mandatory Vendor Certifications:**

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

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

AND

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

AND

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

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

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

	Nationwide:	Ohio Offices:
<b>Total Number of Employees:</b>	_____	_____
<b>% of those who are Women:</b>	_____	_____
<b>% of those who are Minorities:</b>	_____	_____

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:
<b>Total Number of Employees:</b>	_____	_____
<b>% of those who are Women:</b>	_____	_____
<b>% of those who are Minorities:</b>	_____	_____

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

Total number of contracts: \_\_\_\_\_

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

State Agency/Educational Institution: \_\_\_\_\_  
Contract Dollar Amount: \_\_\_\_\_

State Agency/Educational Institution: \_\_\_\_\_  
Contract Dollar Amount: \_\_\_\_\_

State Agency/Educational Institution: \_\_\_\_\_  
Contract Dollar Amount: \_\_\_\_\_

Attach additional pages if needed

### 11. Vendor and Grantee Ethics Certification

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

- (1) I have reviewed and understand Ohio ethics and conflict of interests laws, as found in Chapter 102. and Sections 2921.42 and 2921.43 of the Ohio Revised Code.
- (2) I acknowledge that failure to comply with this certification, is, by itself, grounds for termination of this contract or grant with the State of Ohio.

\_\_\_\_\_  
Signature of authorized agent

\_\_\_\_\_  
Date

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

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

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

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

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

**Attachment A—Section II.**

**Location of Business Form**

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

1. Principal location of business of Contractor:

\_\_\_\_\_  
(Address) (City, State, Zip)

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

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

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

2. Location where services will be performed by Contractor:

\_\_\_\_\_  
(Address) (City, State, Zip)

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

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

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

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

\_\_\_\_\_  
(Address) (Address, City, State, Zip)

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

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

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

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

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

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address, City, State, Zip)

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

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Entity Name

\_\_\_\_\_  
Address (Principal place of business)

\_\_\_\_\_  
Printed name of individual authorized  
to sign on behalf of entity

\_\_\_\_\_  
City, State, Zip

**OHIO DEPARTMENT OF MEDICAID  
CONTRACT FOR SERVICES**

**C-1617-00-0000**

**RECITALS:**

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

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

**ARTICLE I. PURPOSE; DELIVERABLES**

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

**INSERT DELIVERABLES**

- B. The ODM Contract Manager is **ODM Contract Manager**, or **his/her** successor.
- C. The ODM Contract Manager may periodically communicate specific requests and instructions to CONTRACTOR concerning the performance of the Deliverables described in this Contract. CONTRACTOR agrees to comply with any requests or instructions to the satisfaction of ODM within ten business days after CONTRACTOR's receipt of the requests or instructions. ODM and CONTRACTOR expressly understand that any requests or instructions will be strictly construed to ensure the successful completion of the Deliverables described in this Contract, and are not intended to amend or alter this Contract in any way. If CONTRACTOR believes that any requests or instructions would materially alter the terms and conditions of this Contract or the compensation stated hereunder, CONTRACTOR will immediately notify ODM pursuant to the notice provision of this Contract. CONTRACTOR agrees to consult with the ODM Contract Manager as necessary to ensure understanding of the Deliverables and the successful completion thereof.
- D. **Ownership of Deliverables.**
  - 1. All Deliverables provided by CONTRACTOR under this Contract or with funds hereunder, including any documents, data, photographs and negatives, electronic reports/records, or other media, are the property of ODM, which has an unrestricted right to reproduce, distribute, modify, maintain, and use the Deliverables. CONTRACTOR will not obtain copyright, patent, or other proprietary protection for the Deliverables. CONTRACTOR will not include in any Deliverable any copyrighted matter, unless the copyright owner gives prior written approval for ODM and CONTRACTOR to use such copyrighted matter in the manner provided herein. CONTRACTOR agrees that all Deliverables will be made freely available to the public unless ODM determines that, pursuant to state or federal law, such materials are confidential or otherwise exempted from disclosure.
  - 2. All Deliverables provided or produced pursuant to this Contract will be considered "works made for hire" within the meaning of copyright laws of the United States and the State of Ohio. ODM is and will be deemed sole author of the Deliverables and sole owner of all rights therein. If any portion of the Deliverables is deemed not a "work made for hire," or if there are any rights in the Deliverables not conveyed to ODM, CONTRACTOR agrees to, and by executing this Contract does, assign ODM all worldwide rights, title, and interest in and to the Deliverables. ODM acknowledges that its sole

ownership of the Deliverables under this Contract does not affect CONTRACTOR's right to use general concepts, algorithms, programming techniques, methodologies, or technology that CONTRACTOR developed prior to or as a result of this Contract or that are generally known and available.

3. CONTRACTOR understands that it must submit a written request to ODM and receive express written permission from ODM to include any of its own pre-existing, proprietary materials in any of the Deliverables under this Contract. ODM's approval of the inclusion of pre-existing, proprietary materials is predicated on CONTRACTOR granting to ODM and the State of Ohio a worldwide, non-exclusive, perpetual, royalty-free license to use, modify, sell, and otherwise distribute all such materials that are included in the Deliverables under this Contract. Upon request by CONTRACTOR, ODM will incorporate into any future copies of the Deliverables under this Contract any proprietary notice(s) CONTRACTOR may reasonably require for any pre-existing, proprietary materials included in the Deliverables of this Contract. Any proprietary notices will be the minimum required by law so as not to be seen as an endorsement by ODM of or advertisement for CONTRACTOR.

- D. [UNIVERSITY RESEARCH] The Deliverables produced by CONTRACTOR under this Contract will be copyrighted in the name of CONTRACTOR. However, CONTRACTOR is required to obtain prior approval from ODM for release of any results, including preliminary and/or final results, related to funded projects or funded data under this Contract, and any documents, reports, data, photographs (including negatives), electronic reports and records, and other media under this Contract. CONTRACTOR hereby grants to ODM 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 ODM 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 **Start Date** or upon issuance of an approved State of Ohio purchase order, whichever is later, through **End Date**, unless this Contract is suspended or terminated prior to the expiration date. This Contract may be renewed through June 30, 20XX, upon satisfactory completion of activities hereunder, appropriation of funds by the Ohio General Assembly, and at the sole discretion of ODM. ODM will issue a notice to CONTRACTOR if ODM decides to renew this Contract. CONTRACTOR will not obligate resources in anticipation of a renewal until notice is provided.
- B. It is expressly understood by both ODM and CONTRACTOR that this Contract will not be valid and enforceable until the Director of the Ohio Office of Budget and Management, first certifies, pursuant to Section 126.07 of the Ohio Revised Code (ORC), that there is a balance in the appropriation not already allocated to pay existing obligations. The ODM Contract Manager will notify CONTRACTOR when this certification is given.

## ARTICLE III. COMPENSATION

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

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

- B. Compensation will be paid pursuant to CONTRACTOR's **accepted budget [or cost proposal] as incorporated below [or as attached]**.
- C. CONTRACTOR will submit detailed invoices **on a \_\_\_\_\_ basis** in one of the following manners with a copy to the Contract Manager:

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

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

**Fax:** 614.485.1039

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

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

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

- A. This Contract will automatically terminate upon expiration of the time period in ARTICLE II, or upon completion of all Deliverables, or once all of the compensation has been paid.
- B. Notwithstanding other provisions in this Article, either party may terminate this Contract at will by giving 90 calendar days written notice to the other party. Upon a 30 calendar day written notice to CONTRACTOR, ODM may suspend this Contract at ODM's sole discretion.
- C. Notwithstanding the provision of Section A, above, ODM may suspend or terminate this Contract immediately upon delivery of a written notice to CONTRACTOR if:
1. ODM loses funding as described in ARTICLE III;
  2. ODM discovers any illegal conduct by CONTRACTOR; or
  3. CONTRACTOR has violated any provision of ARTICLE IX.
- D. Unless provided for in Sections A, B and C of this Article, CONTRACTOR will have 30 calendar days within which to cure any breach that is curable after receipt of written notice from ODM that CONTRACTOR is in breach of any of its obligations under this Contract. If CONTRACTOR fails to cure the breach within the 30 calendar days after written notice or if the breach is not curable, ODM may immediately suspend or terminate this Contract. ODM may also suspend or terminate this Contract when breaches are persistent, regardless of whether they are cured within 30 calendar days. For purposes of this Section, "persistent" means that ODM has notified CONTRACTOR three times in writing of CONTRACTOR's failure to meet any of its contractual obligations. The three notices do not have to relate to the same obligation or type of failure. After the third notice, ODM may suspend or terminate this Contract without a cure period if CONTRACTOR again fails to meet any contractual obligation. At the sole discretion of ODM, certain instances of breach may require a shorter cure period than the 30 calendar days generally applicable in this Section. In such instances, ODM will include in its notice of breach the shorter cure period deemed appropriate.
- E. CONTRACTOR, upon receiving notice of suspension or termination, will:
1. Cease performance of the suspended or terminated Deliverables;
  2. Take all necessary steps to limit disbursements and minimize costs including, but not limited to, suspending or terminating all contracts and subgrants related to suspended or terminated Deliverables;
  3. Prepare and furnish a report to ODM, as of the date the notice of termination or suspension was received, that describes the status of all Deliverables and includes the results accomplished and the conclusions reached through Deliverables;
  4. Return all records in their native format relating to cost, work performed, supporting documentation for invoices submitted to ODM, and copies of all materials produced under or pertaining to this Contract; and
  5. Perform any other tasks ODM requires.
- F. In the event of suspension or termination under this Article, ODM will, upon receipt of a proper invoice from CONTRACTOR, determine the amount of any unpaid Contract funds due to CONTRACTOR for Deliverables performed before CONTRACTOR received notice of termination or suspension. In order to determine the amount due to CONTRACTOR, ODM will base its calculations on the payment method described in ARTICLE III and any funds previously paid by or on behalf of ODM. ODM will not be liable for any further claims submitted by CONTRACTOR.
- G. If ODM terminates this Contract for any reason provided in this Article, except for termination at will pursuant to Section B or termination for loss of funding pursuant to Section C, ODM will be entitled to utilize another contractor to complete the Deliverables of this Contract on any commercially reasonable terms as ODM and the covering contractor may agree. In this event, CONTRACTOR will be liable to ODM for all costs related to covering the project to the extent that such costs, when combined with payments already made to CONTRACTOR prior to termination, exceed the costs that ODM would have incurred under this Contract.

CONTRACTOR's liability under this Section is in addition to any other remedies available to ODM pursuant to this Contract.

- H. Upon CONTRACTOR's breach or default of provisions, obligations, or duties embodied in this Contract or any term of an award, a federal statute or regulation, an assurance, a State plan or application, a notice of award, or other applicable rule, ODM reserves the right to exercise any administrative, contractual, equitable, or legal remedies available without limitation. Any waiver by ODM of an occurrence of breach or default is not a waiver of subsequent occurrences. If ODM or CONTRACTOR fails to perform any obligation under this Contract and the other party subsequently waives the failure, the waiver will be limited to that particular occurrence of a failure and will not be deemed to waive other failures that may occur. Waiver by ODM will not be effective unless it is in writing signed by the ODM Director.

#### ARTICLE V. NOTICES

- A. ODM and CONTRACTOR agree that communication regarding Deliverables, scope of work, invoice or billing questions, or other routine instructions will be between CONTRACTOR and the identified ODM Contract Manager.
- B. Notices to ODM from CONTRACTOR that concern changes to CONTRACTOR's principal place of operation, billing address, legal name, federal tax identification number, mergers or acquisitions, corporate form, excusable delay, termination, bankruptcy, assignment, any notice pursuant to ARTICLE IX, and/or any other formal notice regarding this Contract will be sent to the ODM Chief Legal Counsel, Office of Chief Legal, 50 West Town Street, 5th floor, Columbus, Ohio 43215.
- C. Notices to CONTRACTOR from ODM concerning termination, suspension, option to renew, breach, default, or other formal notices regarding this Contract will be sent to CONTRACTOR's representative at the address appearing on the signature page of this Contract.
- D. All notices will be in writing and will be deemed given when received. All notices must be sent using a delivery method that documents actual delivery to the appropriate address herein indicated (e.g., certified mail).

#### ARTICLE VI. RECORDS, DOCUMENTS AND INFORMATION

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

- A. CONTRACTOR agrees that any media produced pursuant to this Contract or acquired with Contract funds will become the property of ODM. This includes all documents, reports, data, photographs (including negatives), and electronic reports and records. ODM will maintain the unrestricted right to reproduce, distribute, modify, maintain, and use the media in any way ODM deems appropriate. CONTRACTOR further agrees not to seek or obtain copyright, patent or other proprietary protection for any materials or items produced under this Contract. CONTRACTOR understands that all materials and items produced under this Contract will be made freely available to the public unless ODM determines that certain materials are confidential under federal or state law.
- A. [UNIVERSITY RESEARCH] ODM agrees that any media (including documents, reports, data, photographs, and electronic reports and records) produced pursuant to this Contract or acquired with Contract funds will become the property of CONTRACTOR. However, CONTRACTOR is required to obtain prior approval from ODM for release of any results, including preliminary and/or final results, related to funded projects or funded data under this Contract, and any documents, reports, data, photographs (including negatives), electronic reports and records, and other media under this Contract. Additionally, CONTRACTOR hereby grants to ODM a perpetual, royalty free, non-exclusive, and irrevocable license to use, reproduce, publish, modify, and distribute any such media.
- B. All ODM information that is classified as public or private under Ohio law will be treated as such by CONTRACTOR. Should the nature of any information be in question, ODM will determine whether the information is public or private. CONTRACTOR will restrict the use of any information, systems, or records ODM provides to the specific Deliverables of this Contract. CONTRACTOR and its employees agree to be bound by the same standards and rules of confidentiality that apply to employees of ODM and the State of

Ohio. CONTRACTOR agrees that the terms of this section will be included in any subcontract executed by CONTRACTOR for work under this Contract.

- C. CONTRACTOR information that is proprietary and has been specifically identified by CONTRACTOR as proprietary will be held as confidential by ODM. Proprietary information is information that would put CONTRACTOR at a competitive disadvantage in CONTRACTOR's market place and trade if it were made public. ODM reserves the right to require reasonable evidence of CONTRACTOR's assertion of the proprietary nature of any information. The provisions of this Article are not self-executing. CONTRACTOR must demonstrate that any information claimed as proprietary meets the definition of "trade secrets" found at ORC 1333.61.
- D. For audit purposes only, all records relating to cost, work performed, supporting documentation for invoices submitted to ODM, and copies of all materials produced under or pertaining to this Contract will be retained by CONTRACTOR and will be made available for audit by state and federal government entities that include, but are not limited to, ODM, the Ohio Auditor of State, the Ohio Inspector General and all duly authorized law enforcement officials. The records and materials will be retained and made available for a minimum of three years after CONTRACTOR receives the last payment pursuant to this Contract. If an audit or similar action is initiated during this time period, CONTRACTOR will retain the records until the action is concluded and all issues are resolved, or until the end of the three-year period if the action is resolved prior to the end of the three-year period, unless otherwise directed below in Section E. If applicable, CONTRACTOR must meet the requirements of the federal Office of Management and Budget (OMB) Omni-Circular, 2 CFR Part 200.104. CONTRACTOR acknowledges, in accordance with ORC 149.43, that financial records related to the performance of services under this Contract are presumptively deemed public records.
- E. All records relating to cost, work performed, supporting documentation for invoices submitted to ODM, and copies of all materials produced under or pertaining to this Contract will be retained by CONTRACTOR in accordance to the appropriate records retention schedule. The appropriate records retention schedule for this Contract is [INSERT RECORDS SCHEDULE], [STATE SCHEDULE NUMBER AND TIME PERIOD]. If any records are destroyed prior to the date as determined by the appropriate records retention schedule, CONTRACTOR agrees to pay all costs associated with any cause, action or litigation arising from such destruction.
- F. CONTRACTOR agrees to retain all records in accordance to any litigation holds that are provided to them by ODM, and actively participate in the discovery process if required to do so, at no additional charge. Litigation holds may require CONTRACTOR to keep the records longer than the approved records retention schedule. CONTRACTOR will be notified by ODM when the litigation hold ends and retention can resume based on the approved records retention schedule. If CONTRACTOR fails to retain the pertinent records after receiving a litigation hold from ODM, CONTRACTOR agrees to pay all costs associated with any cause, action or litigation arising from such destruction.
- G. CONTRACTOR hereby agrees to current and ongoing compliance with Title 42, Sections 1320d through 1320d-8 of the United States Code (USC) and the implementing regulations found at Title 45, Parts 164.502(e) and 164.504(e) of the Code of Federal Regulations (CFR) regarding disclosure of Protected Health Information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). CONTRACTOR further agrees to include the terms of this section in any subcontracts that may be executed pursuant to this Contract.

#### **ARTICLE VII. AMENDMENT AND ASSIGNMENT**

- A. This writing constitutes the entire Contract between ODM and CONTRACTOR with respect to all matters herein. Only a writing signed by both parties may amend this Contract. However, ODM and CONTRACTOR agree that any amendments to any laws or regulations cited herein will result in the correlative modification of this Contract without the necessity for executing written amendments. Any written amendment to this Contract will be prospective in nature.
- B. CONTRACTOR agrees not to assign any interest in this Contract nor transfer any interest in the Contract without the prior written approval of ODM. CONTRACTOR will submit any requests for approval of assignments and transfers to the ODM Contract Manager at least ten business days prior to the desired effective date. CONTRACTOR understands that any assignments and transfers will be subject to any

conditions ODM deems necessary and that no approval by ODM will be deemed to provide for any ODM obligation that exceeds the Contract amount specified in ARTICLE III of this Contract.

#### **ARTICLE VIII. BUSINESS ASSOCIATE REQUIREMENTS UNDER HIPAA**

- A. The definitions contained in this section are derived from federal law. Should there be any conflict between the meanings assigned in this Contract and the meanings defined in applicable federal law (even in the event of future amendments to law that create such conflict), the definitions found in federal law will prevail.
1. **General Definitions.** The following terms used in this Contract shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information and Use.
  2. **Specific Definitions.**
    - a. HIPAA means the Health Insurance Portability and Accountability Act of 1996, the American Recovery and Reinvestment Act of 2009 (ARRA) and any other applicable federal statute or regulation.
    - b. HIPAA Rules shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
    - c. Covered Entity means a health plan, a health care clearinghouse, or health care provider under 45 CFR 160.103.
    - d. Business Associate means a person or entity that, on behalf of the Covered Entity, maintains, performs, or assists in the performance of a function or activity that involves the use or disclosure of "Protected Health Information" under 45 CFR 160.103.
    - e. Protected Health Information (PHI) means individually identifiable information including but not limited to the past, present or future physical or mental health or condition of an individual, provision of health care to an individual, or the past, present or future payment for health care provided to an individual, as more fully defined under 45 CFR 164.501 and any amendments thereto, received or sent on behalf of the Department.
- B. CONTRACTOR acknowledges that ODM is a Covered Entity under HIPAA. CONTRACTOR further acknowledges that it is a Business Associate of ODM, and, in carrying out the work described in this Contract, agrees to comply with all of the following provisions:
1. **Permitted Uses and Disclosures.** CONTRACTOR will not use or disclose PHI except as provided in this Contract or as otherwise required under HIPAA regulations or other applicable law.
  2. **Safeguards.** CONTRACTOR will implement sufficient safeguards, and comply with Subpart C of 45 CFR Part 164 pertaining to electronic PHI to prevent the use or disclosure of PHI other than as provided for under this Contract. Safeguards will be implemented for all paper and electronic PHI created, received, maintained, or transmitted on behalf of ODM.
  3. **Reporting of Disclosures.** CONTRACTOR agrees to promptly report to ODM any inappropriate use or disclosure of PHI that is not in accordance with this Contract or applicable law, including breaches of unsecured protected health information as required at 45 CFR 164.410 and any security incident the CONTRACTOR has knowledge of or reasonably should have knowledge of under the circumstances.
  4. **Mitigation Procedures.** CONTRACTOR agrees to coordinate with ODM to determine specific actions that will be required of the Business Associates for mitigation, to the extent practical, of the breach. These actions will include notification to the appropriate individuals, entities, or other authorities. Notification or communication to any media outlet must be approved, in writing, by ODM prior to any such communication being released. CONTRACTOR will report all of its mitigation activity to ODM and shall preserve all relevant records and evidence.

5. **Incidental Costs.** CONTRACTOR shall bear the sole expense of all costs to mitigate any harmful effect, of any breaches or security incidents of which CONTRACTOR has knowledge which are directly caused by the use or disclosure of protected health information by CONTRACTOR in violation of the terms of this Contract. These costs will include, but are not limited to, the cost of investigation, remediation and assistance to the affected individuals, entities or other authorities.
6. **Agents and Subcontractors.** CONTRACTOR, in compliance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2) as applicable, will ensure that all its agents and subcontractors that create, receive, maintain, or transmit PHI from or on behalf of CONTRACTOR and/or ODM agree to have, in a written agreement, the same restrictions, conditions, and requirements that apply to CONTRACTOR with respect to the use or disclosure of PHI.
7. **Accessibility of Information.** CONTRACTOR will make available to ODM such information as ODM may require to fulfill its obligations to provide access to, provide a copy of any information or documents with respect to PHI pursuant to HIPAA and regulations promulgated by the United States Department of Health and Human Services, including, but not limited to, 45 CFR 164.524 and 164.528 and any amendments thereto.
8. **Amendment of Information.** CONTRACTOR shall make any amendment(s) to PHI as directed by, or agreed to, by ODM pursuant to 45 CFR 164.526, or take other steps as necessary to satisfy ODM's obligations under 45 CFR 164.526. In the event that CONTRACTOR receives a request for amendment directly from the individual, agent, or subcontractor CONTRACTOR will notify ODM prior to making any such amendment(s). CONTRACTOR's authority to amend information is explicitly limited to information created by CONTRACTOR.
9. **Accounting for Disclosure.** CONTRACTOR shall maintain and make available to ODM or individuals requesting the information as appropriate, records of all disclosures of PHI in a Designated Record Set as necessary to satisfy ODM's obligations under 45 CFR 164.528. For every disclosure the record will include, at a minimum, the name of the individual who is the subject of the disclosure, the date of the disclosure, reason for the disclosure if any, and the name and address of the recipient to which the protected health information was disclosed.
10. **Obligations of Department.** When CONTRACTOR is to carry out an obligation of ODM under Subpart E of 45 CFR 164, CONTRACTOR agrees to comply with all applicable requirements of Subpart E that would apply to ODM in the performance of such obligation.
11. **Access to Books and Records.** CONTRACTOR shall make available to ODM and to the Secretary of the U.S. Department of Health and Human Services any and all internal practices, documentation, books, and records related to the use and disclosure of PHI received from ODM, or created or received on behalf of ODM. Such access is for the purposes of determining compliance with the HIPAA Rules.
12. **Material Breach.** In the event of material breach of CONTRACTOR's obligations under this Article, ODM may immediately terminate this Contract as set forth in ARTICLE IV, Section B. Termination of this Contract will not affect any provision of this Contract, which, by its wording or its nature, is intended to remain effective and to continue to operate after termination.
13. **Return or Destruction of Information.** Upon termination of this Contract and at the request of ODM, CONTRACTOR will return to ODM or destroy all PHI in CONTRACTOR's possession stemming from this Contract as soon as possible but no later than 90 days, and will not keep copies of the PHI except as may be requested by ODM or required by law, or as otherwise allowed for under this Contract. If CONTRACTOR, its agent(s), or subcontractor(s) destroy any PHI, then CONTRACTOR will provide to ODM documentation evidencing such destruction. Any PHI retained by CONTRACTOR will continue to be extended the same protections set forth in this Section, HIPAA regulations and this Contract for as long as it is maintained.
14. **Survival.** These provisions shall survive the termination of this Contract.

**ARTICLE IX. CONTRACTOR CERTIFICATION OF COMPLIANCE WITH SPECIAL CONDITIONS**

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

- A. If at any time, CONTRACTOR is not in compliance with the conditions affirmed in this Section, ODM will consider this Contract *void ab initio* and will deliver written notice to CONTRACTOR. Any funds the State of Ohio paid CONTRACTOR for work performed before CONTRACTOR received notice that the Contract is *void ab initio* will be immediately repaid or the State of Ohio may commence an action for recovery against CONTRACTOR.
1. **Federal Debarment Requirements.** CONTRACTOR affirms that neither CONTRACTOR nor any of its principals or subcontractors, is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by any federal agency. CONTRACTOR also affirms that within three years preceding this Contract neither CONTRACTOR nor any of its principals:
    - a. Have been convicted of, or had a civil judgment rendered against them for commission of fraud or other criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local public transaction or contract under a public transaction; for violation of federal or state antitrust statutes; for commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements; or for receiving stolen property; or
    - b. Are presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State, or local) for the commission of any of the offenses listed in this paragraph and have not had any federal, state, or local, public transactions terminated for cause or default.
  2. **Qualifications to Conduct Business.** CONTRACTOR affirms that it has all of the approvals, licenses, or other qualifications needed to conduct business in Ohio and all are current. If at any time during the Contract period CONTRACTOR, for any reason, becomes disqualified from conducting business in the State of Ohio, CONTRACTOR will immediately notify ODM in writing and will immediately cease performance of all Deliverables.
  3. **Unfair Labor Practices.** CONTRACTOR affirms that neither CONTRACTOR nor its principals are on the most recent list established by the Ohio Secretary of State, pursuant to ORC 121.23, which would identify CONTRACTOR as having more than one unfair labor practice contempt of court finding.
  4. **[DELETE IF PUBLIC ENTITY] Finding for Recovery.** CONTRACTOR affirms that neither CONTRACTOR nor its principals or subcontractors, is subject to a finding for recovery under ORC 9.24, or it has taken the appropriate remedial steps required, or otherwise qualifies under ORC 9.24 to contract with the State of Ohio.
- B. If at any time CONTRACTOR is not in compliance with the conditions affirmed in this Section, ODM may immediately suspend or terminate this Contract and will deliver written notice to CONTRACTOR. CONTRACTOR will be entitled to compensation, upon submission of a proper invoice per ARTICLE III, only for work performed during the time CONTRACTOR was in compliance with the provisions of this Section. Any funds paid by the State of Ohio for work performed during a period when CONTRACTOR was not in compliance with this Section will be immediately repaid or the State of Ohio may commence an action for recovery against CONTRACTOR.
1. **Americans with Disabilities.** CONTRACTOR, its officers, employees, members, and subcontractors hereby affirm current and ongoing compliance with all statutes and regulations pertaining to The Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973.
  2. **Fair Labor Standards and Employment Practices.**

- a. CONTRACTOR certifies that it is in compliance with all applicable federal and state laws, rules, and regulations governing fair labor and employment practices.
- b. In carrying out this Contract, CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin, military status, disability, age, genetic information, or sexual orientation, in making any of the following employment decisions: hiring, layoff, termination, transfer, promotion, demotion, rate of compensation, and eligibility for in-service training programs.
- c. CONTRACTOR agrees to post notices affirming compliance with all applicable federal and state non-discrimination laws in conspicuous places accessible to all employees and applicants for employment.
- d. CONTRACTOR will incorporate the foregoing requirements of this Paragraph 2 in all of its subgrants or subcontracts for any of the work prescribed herein.

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

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

**4. Lobbying Restrictions.**

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

- c. CONTRACTOR, if a recipient of a federal award in excess of One Hundred Thousand and 00/100 Dollars (\$100,000.00), certifies compliance with the Byrd Anti-Lobbying Amendment, which at a minimum, attests CONTRACTOR will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 USC Chapter 1352.
5. **Child Support Enforcement.** CONTRACTOR agrees to cooperate with ODM and any child support enforcement agency in ensuring that CONTRACTOR and its employees meet child support obligations established by state and federal law including present and future compliance with any court or valid administrative order for the withholding of support issued pursuant to the applicable sections of ORC Chapters 3119, 3121, 3123, and 3125.
6. **Pro-Child Act.** If any Deliverables call for services to minors, CONTRACTOR agrees to comply with the Pro-Children Act of 1994; Public Law 103-277, Part C – Environment Tobacco Smoke that requires smoking to be banned in any portion of any indoor facility owned, leased, or contracted by an entity that will routinely or regularly use the facility for the provision of health care services, day care, library services, or education to children under the age of 18.
7. **Drug-Free Workplace.** CONTRACTOR, its officers, employees, members, any subcontractors and/or any independent contractors (including all field staff) associated with this Contract agree to comply with all applicable state and federal laws, including, but not limited to, 41 USC Chapter 10, regarding a drug-free workplace. CONTRACTOR will make a good faith effort to ensure that none of CONTRACTOR's officers, employees, members, or subgrantees will purchase, transfer, use, or possess illegal drugs or alcohol or abuse prescription drugs in any way while working or while on public property.
8. **Work Programs.** CONTRACTOR agrees not to discriminate against individuals who have or are participating in any work program administered by any county department of Job and Family Services under ORC Chapter 5101 or 5107.
9. **MBE/EDGE.** Pursuant to the Governor's Executive Order 2008-13S, CONTRACTOR agrees to purchase goods and services under this Contract from certified Minority Business Enterprise (MBE) and Encouraging Diversity, Growth, and Equity (EDGE) vendors whenever possible. Likewise, CONTRACTOR agrees to require any of its subgrantees or subcontractors to purchase goods and services from certified MBE and EDGE vendors whenever possible.
11. **[INSERT IF 1617 RFP] MBE Subcontracting Requirements.** The State of Ohio is committed to making more State contracts and opportunities available to MBEs certified by the Ohio Department of Administrative Services pursuant to ORC 123.151 and OAC 123:2-15-01. In order to fulfill this commitment, CONTRACTOR is required to seek and set aside at least 15 percent of the cost of the work for this Contract for qualified MBE businesses. In seeking MBE subcontractors, CONTRACTOR must:
- a. Utilize a competitive process to which only Ohio certified MBEs may respond;
  - b. Require the MBE to maintain its certification throughout the term of the Contract, including any renewals.
- CONTRACTOR shall indicate on all invoices submitted to ODM 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 ODM Agreement Manager.
12. **MBE Modification or Waiver of 15 Percent Requirement.** CONTRACTOR may apply for a modification or waiver of the 15 percent MBE subcontractor set-aside requirement; however, such modification or waiver request may be submitted no earlier than six months from the contract award and no later than two months prior to the completion of the Contract, whichever is sooner. CONTRACTOR may apply in writing, on a form prescribed by ODM, for a waiver or modification of

the MBE set-aside requirement from the ODM Contract Manager. CONTRACTOR shall submit evidence acceptable to ODM demonstrating that 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, ODM will determine whether CONTRACTOR's good faith efforts and submitted documentation justify the granting of a waiver or modification. If a waiver or modification is denied, CONTRACTOR will have an opportunity to attain the 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 this Contract.]

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

- a. CONTRACTOR certifies that by executing this Contract, it has reviewed, understands, and will abide by the Governor's Executive Order 2011-12K and shall abide by those requirements in the performance of this Contract, and shall perform no services required under this Contract outside of the United States.
- b. Prior to performing any services, and when there is a change in the location of any services provided under this Contract, CONTRACTOR must disclose:
  - (1) The location(s) where all services will be performed by CONTRACTOR or any subcontractor;
  - (2) The location(s) where any state data associated with any of the services through this Contract will be accessed, tested, maintained, backed-up, or stored; and
  - (3) The principal location of business for the contractor and all subcontractors.
- c. CONTRACTOR also affirms, understands, and agrees to immediately notify ODM of any change or shift in the location(s) of services performed by CONTRACTOR or its subcontractors under this Contract, and no services shall be changed or shifted to a location outside of the United States.
- d. Termination, Sanction, Damages: ODM is not obligated and shall not pay for any services provided under this Contract that CONTRACTOR or any of its subcontractors performed outside of the United States. If services are performed outside of the United States, this will be treated as a material breach of the Contract, and CONTRACTOR shall immediately return to ODM all funds paid for those services.

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

**10. [UNIVERSITY] Expenditure of Public Funds for Offshore Services—Executive Order Requirements.** CONTRACTOR, a public university, certifies that by executing this Contract, it has reviewed and understands ODM's obligation under Governor's Executive Order 2011-12K, and will perform no services required under this Contract outside of the United States.

**11. Combatting Trafficking in Persons.**

- a. CONTRACTOR agrees that it is in compliance with the Federal Acquisition Regulation (FAR) for Combatting Trafficking in Persons, 48 CFR Subpart 22.17, in which "the United States Government has adopted a zero tolerance policy regarding trafficking in persons." The provisions found in 48 CFR Subpart 52.2, specifically Subpart 52.222-50 are hereby incorporated into this CONTRACT by reference.
- b. CONTRACTOR, its employees, its subcontractors, or subcontractor's employees are prohibited from the following activities:

- (1) Engaging in severe forms of trafficking in persons during the period of performance of the Contract;
  - (2) Procuring commercial sex acts during the period of performance of the Contract; or
  - (3) Using forced labor in the performance of the Contract.
- c. CONTRACTOR agrees that it shall notify its employees, and require all of its subcontractors to notify their employees, of the prohibited activities described in the preceding paragraph.
- d. ODM has the right to immediately and unilaterally terminate this Contract if any provision in this Section is violated and ODM may implement section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 USC 7104), see 2 CFR Part 175.
- 12. Civil Rights Assurance.** CONTRACTOR hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) and the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.).
- 13. Clean Air Act.** CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 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 ODM.
- 14. Energy Policy and Conservation Act.** CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act in accordance with 42 U.S.C. 6201. Violations must be reported to the Regional Office of the USEPA and ODM.
- 15. Solid Waste Disposal.** CONTRACTOR agrees to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the 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 by 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. Experimental, Developmental, or Research Work.** If applicable, if CONTRACTOR enters into a subcontract or subgrant with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that funding agreement, the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any applicable federal and state regulations.
- 17. Certification of Compliance.** CONTRACTOR certifies that it is in compliance with all other applicable federal and state laws, regulations, and rules and will require the same certification from its subgrantees or subcontractors.

#### ARTICLE X. BUSINESS CONTINUITY PLAN

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

2. Ensure the continuity for identified vital services and supporting facilities.
- B. For purposes of this Article, the term “disaster” means an unanticipated incident or event, including, but not limited to, force majeure events, technological accidents or human-caused events that may cause a material service or critical application to be unavailable without any reasonable prediction for resumption; or causes data loss, property damage or other business interruption without any prediction for recovery within a commercially reasonable time period.

## ARTICLE XI. MISCELLANEOUS PROVISIONS

- A. **Independent Contractor.** CONTRACTOR agrees that no agency, employment, joint venture, or partnership has been or will be created between ODM and CONTRACTOR. CONTRACTOR further agrees that as an independent contractor, it assumes all responsibility for any federal, state, municipal or other tax liabilities along with workers compensation, unemployment compensation and insurance premiums that may accrue as a result of funds received pursuant to this Contract. CONTRACTOR agrees that it is an independent contractor for all purposes including, but not limited to, the application of the Fair Labor Standards Act, the Social Security Act, the Federal Unemployment Tax Act, the Federal Insurance Contribution Act, provisions of the Internal Revenue Code, Ohio tax law, Workers Compensation law, and Unemployment Insurance law. CONTRACTOR acknowledges and agrees any individual providing personal services under this Contract is not a public employee for the purposes of Chapter 145 of the Revised Code. Pursuant to ORC 145.038, ODM is required to provide individuals and business entities with fewer than five employees the Independent Contractor Acknowledgment (Form PEDACKN), please see Attachment A. This form requires CONTRACTOR to acknowledge that ODM has notified CONTRACTOR that he or she has not been classified as a public employee and no OPERS contributions will be made on his or her behalf for these services. If CONTRACTOR is a business entity with fewer than five employees, please have each employee complete the PEDACKN form, the first two pages of Attachment A. If CONTRACTOR is not an individual or a business entity with fewer than five employees, please complete page 3 of Attachment A.
- B. **Limitation of Liability.** To the extent allowable by law, CONTRACTOR agrees to defend, indemnify and hold ODM, its officials, employees and agents harmless from and against any and all liability, loss and expense (including reasonable attorneys’ fees) or claims for personal injury, property damage, patent and copyright infringement, or for any liability or claims under ARTICLE VIII above (“Business Associate Requirements Under HIPAA”), and/or any other type of claim that arises from the performance of the Deliverables under this Contract. CONTRACTOR’s sole and exclusive remedy for any ODM failure to perform under this Contract will be an action in the Ohio Court of Claims pursuant to ORC Chapter 2743 that will be subject to the limitations set forth in this Article. In no event will ODM be liable for any indirect or consequential damages, including loss of profits, even if ODM knew or should have known of the possibility of such damages. To the extent that ODM is a party to any litigation arising out of or relating in any way to this Contract or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio. Subject to ORC 109.02, CONTRACTOR agrees to defend ODM against any such claims or legal actions if called upon by ODM to do so.
- B. **[PUBLIC ENTITY] 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. 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 ODM, any official or employee of ODM acting in his or her official capacity, or the State of Ohio due to any alleged infringement of patent or copyright arising out of the performance of this Contract, including all work, services, materials, reports, studies, and computer programs provided by CONTRACTOR. ODM will provide prompt notification in writing of such suit or proceeding; full right, authorization, and opportunity to conduct the defense thereof; and full disclosure of information along with all reasonable cooperation for the defense of the suit. ODM may

participate in the defense of any such action. CONTRACTOR agrees to pay all damages and costs awarded against ODM, any official or employee of ODM in his or her official capacity, or the State of Ohio as a result of any suit or proceeding referred to in this Section C. If any information and/or assistance is furnished by ODM at CONTRACTOR's written request, it is at CONTRACTOR's expense. If any of the materials, reports, or studies provided by CONTRACTOR are found to be infringing items and the use or publication thereof is enjoined, CONTRACTOR agrees to, at its own expense and at its option, either procure the right to publish or continue use of such infringing materials, reports, or studies; replace them with non-infringing items of equivalent value; or modify them so that they are no longer infringing. The obligations of CONTRACTOR under this Section survive the termination of this Contract, without limitation.

- D. **Liens.** CONTRACTOR will not permit any lien or claim to be filed or prosecuted against ODM or the State of Ohio because of any labor, services, or materials furnished. If CONTRACTOR fails, neglects, or refuses to make prompt payment of any claims for labor, services, or materials furnished to CONTRACTOR in connection with this Contract, ODM or the State of Ohio may, but is not obligated to, pay those claims and charge the amount of payment against the funds due or to become due to CONTRACTOR under this Contract.
- E. **Delay.** Neither party will be liable for any delay in its performance that arises from causes beyond its control and without its negligence or fault. The delaying party will notify the other promptly of any material delay in performance and will specify in writing the proposed revised performance date as soon as practicable after notice of delay. The delaying party must also describe the cause of the delay and its proposal to remove or mitigate the delay. Notices will be sent pursuant to ARTICLE V. In the event of excusable delay, the date of performance or delivery of products may be extended by amendment, if applicable, for a time period equal to that lost due to the excusable delay. Reliance on a claim of excusable delay may only be asserted if the delaying party has taken commercially reasonable steps to mitigate or avoid the delay. Items that are controllable by CONTRACTOR's subcontractor(s) will be considered controllable by CONTRACTOR, except for third-party manufacturers supplying commercial items and over whom CONTRACTOR has no legal control. The final determination of whether an instance of delay is excusable lies with ODM in its discretion.
- F. **Counterpart.** This Contract may be executed in one, or more than one counterpart, and each executed counterpart shall be considered an original, provided that such counterpart is delivered to the other party by facsimile, mail courier or electronic mail, all of which together shall constitute one and the same contract.

## ARTICLE XII. CONSTRUCTION

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

Signature Page Follows:

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**OHIO DEPARTMENT OF MEDICAID  
CONTRACT FOR SERVICES**

**SIGNATURE PAGE**

**C-1617-00-0000**

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

Vendor Name

Ohio Department of Medicaid

\_\_\_\_\_  
Authorized Signature (Blue Ink Please)

\_\_\_\_\_  
John B. McCarthy, Director

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

50 West Town Street  
Columbus, Ohio 43215

\_\_\_\_\_  
Date

Address

\_\_\_\_\_  
Address

City, State, Zip

\_\_\_\_\_  
City, State, Zip