REQUEST FOR APPLICATIONS
MBE SUPPLIER FOR STENOGRAPHIC COURT REPORTING SERVICES

RFA Number ODMR-2021-0006

The Ohio Department of Medicaid
MBE Supplier for Stenographic Court Reporting Services

RFA ODMR-2021-0006

TABLE OF CONTENTS:

SECTION I. **GENERAL PURPOSE**

SECTION II. **TIME/DATE AND FORMAT OF APPLICATION**

SECTION III. **ANTICIPATED PROCUREMENT AND PROJECT TIMETABLE**

SECTION IV. **INTERNET QUESTION AND ANSWER PERIOD; RFA CLARIFICATION OPPORTUNITY**

SECTION V. **QUALIFICATIONS**
- A. Mandatory Supplier Qualifications
- B. Organizational Experience and Capabilities
- C. Staff Experience and Capabilities

SECTION VI. **SCOPE OF WORK**

SECTION VII. **SPECIFICATIONS OF DELIVERABLES**

SECTION VIII. **SUPPLIER COMPENSATION**

SECTION IX. **CONDITIONS AND OTHER REQUIREMENTS**

SECTION IX. **EVALUATION PROCESS**

SECTION X. **HEALTH INSURANCE PORTABILITY & ACCESSIBILITY ACT (HIPAA) REQUIREMENTS**

SECTION XI. **PROTESTS**

SECTION XII. **TRADE SECRETS PROHIBITION; PUBLIC INFORMATION DISCLAIMER**

SECTION XIII. **ATTACHMENTS**
- Attachment A – Required Applicant Information
- Attachment B – Application Score Sheet
- Attachment C – ODM Contract Model

Ohio Department of Medicaid
Request for Applications
RFA: ODMR-2021-0006

I. Purpose

The Ohio Department of Medicaid (ODM) releases this Request for Applications (RFA) for the purpose of obtaining an experienced Ohio Certified Minority Business Enterprise (MBE) Supplier or Suppliers to provide stenographic court reporting services for the Office of Legal Counsel for ODM within Franklin County. The selected supplier will provide certified court reporting services for administrative hearings conducted by ODM, and other stenographic services as requested by the ODM Office of Legal Counsel. Suppliers must demonstrate their capability of providing services as described in this RFA.

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 1, 2019 through June 30, 2021. Any contract renewal options are at the sole discretion of ODM.

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

The State is committed to making more State contracts and opportunities available to MBE's certified by the Ohio Department of Administrative Services (DAS) pursuant to Section 123.151 of the Ohio Revised Code and Rule 123:2-15-01 of the Ohio Administrative Code. This RFA is being issued as a minority set-aside contract in accordance Section 125.081 of the Ohio Revised Code. All suppliers must be an Ohio certified MBE as of the application due date. For more information regarding Ohio MBE certification requirements, including a list of Ohio certified MBE businesses, please visit the DAS Equal Opportunity Division web site at:

http://das.ohio.gov/Divisions/EqualOpportunity/MBEEDGECertification/tabid/134/default.aspx

ODM is under no obligation to enter into a contract with any supplier as a result of this solicitation. Changes in this RFA of a material nature will be provided on the agency website. All suppliers are responsible for obtaining any such changes and will not receive notice of any changes from ODM. If you are interested in submitting an application to this RFA, please follow the procedures stipulated in this RFA.

II. Time/Date and Format of Application

Organizations, companies, firms, or individuals who are interested in submitting applications must e-mail their application no later than **11:59 p.m. Eastern (local) Time, May 10, 2019.** ODM requests applications in electronic .pdf format. The information should be prepared and submitted in accordance with instructions found in this Section. Supplier applications must be submitted by email to the following address: ODM_Bid-Request@medicaid.ohio.gov.

All completed applications must be received by ODM by the above date and time. Materials received after the application deadline date will not be added to applications. ODM is not responsible for applications not received due to technical issues that prevent delays in the receipt of applications.

Suppliers must convert electronic applications into one .pdf document. If the application's size necessitates more than a single .pdf document to contain the entire application, please use the fewest separate .pdf documents possible. The supplier's total application submission must be received by ODM in accordance with this Section. All applications must contain the supplier's name, the RFA number, and the application date.

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

III. Anticipated Procurement and Project Timetable

May 1, 2019	ODM releases RFA on ODM and DAS Web Sites; Q&A period opens. Suppliers may submit inquiries for RFA clarification.
May 6, 2019	Supplier Q & A Period closes, 8 a.m. for inquiries for RFA clarification - No further inquiries for RFA clarification will be accepted.
May 10, 2019	**Deadline for Suppliers to Submit Applications to ODM (11:59 p.m. Eastern (local) Time).**
May 24, 2019	ODM Issues Contractor Selection Notification Letter (estimated)
July 1, 2019	**Contract effective date/Purchase Order approval – work may not begin until a state Purchase Order has been issued (Estimated Date).**
June 30, 2021	Contract terminates at the end of the State Fiscal Year, or June 30, 2021. This contract may be renewed until June 30, 2025.

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

In accordance with Ohio Revised Code (ORC) § 126.07, ODM contracts are not valid and enforceable until the Office of Budget and Management (OBM) certifies the availability of appropriate funding, as indicated by the approval of the Purchase Order (PO). The selected supplier may neither perform work nor submit an invoice for payment for work performed for this project for any time period prior to the PO approval date. ODM will notify the selected supplier when the requirements of ORC § 126.07 have been met and send them a copy of the PO. The initial contract period will be from July 1, 2019 through June 30, 2021, with the possibility for two renewal contracts that would be in effect from July 1, 2021 through June 30, 2023 and July 1, 2023 through June 30, 2025, contingent upon satisfactory performance, continued availability of funding, and all required approvals. Contracts and renewals may be subject to approval by the Controlling Board.

IV. Internet Question and Answer Period; RFA Clarification Opportunity

Suppliers 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, Suppliers 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 supplier (or other interested party), the company name, phone number, and e-mail address must be provided to submit an inquiry. ODM may, at its option, disregard any questions which do not appropriately reference an 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," Suppliers and others should select "View Q and A." ODM strongly encourages Suppliers to ask questions early in the Q&A period so that answers can be posted with sufficient time for any possible follow-up questions.

Supplier applications 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 Suppliers 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.

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

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

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

V. Qualifications

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

A. Mandatory Supplier Qualifications:

Suppliers which do not meet all the following experience and qualifications will be disqualified from further consideration for award.

1. ODM will only consider applications from Vendors currently certified by DAS as an MBE. A copy of the Ohio MBE certification letter must be submitted;

2. The supplier must, at the time of application submission, be an established business firm with all required licenses, bonds, facilities, equipment and trained personnel necessary to perform the work in this application;

3. Application received by ODM on or before the published deadline;

4. Include all required affirmative statements and certifications, signed by the supplier's responsible representative, as described in Attachment A to the RFA;

5. Been verified by ODM's review that supplier is not on the federal debarment list; that there are no unfair labor findings against it and therefore may enter into a contract with ODM;

6. Been verified by ODM's review of the Auditor of State website that the supplier is not excluded from contracting with ODM by ORC Section 9.24 for an unresolved finding for recovery (*i.e.*, the application or application of any supplier whose name appears on the Auditor's website as having an unresolved finding for recovery will be eliminated from further consideration.);

7. Provide documentation showing that the individual(s) to be assigned for the duration of this project are registered notaries with the Ohio Notary Public Commission, a division of the Office of the Secretary of State;

8. Demonstrated the firm has at least three (3) years of experience in recording and transcription of public hearings and/or other legal proceedings;

9. Supplier must provide a statement confirming all staff assigned to the proposed project are employed by the supplier and NOT a subcontractor; and

10. Staff assigned must be certified and/or licensed as a recording stenographer and/or transcriber.

B. Organizational Experience and Capabilities:

In order to be considered for the project expected to result from this RFA, ODM requires that interested suppliers provide or affirm the following:

1. Supplier must have at least three (3) years of experience in recording and transcription of public hearings and/or other legal proceedings.

2. Provide background information on the supplier, indicating organizational experience and staffing to perform the required procured functions of the services proposed in this RFA. Suppliers must include descriptions of at least two, but no more than four, similar-sized projects completed in the past two (2) years that demonstrate expertise in providing stenographic and court reporting services;

3. Provide names and contact information for at least two (2) entities, other than ODM, for which the supplier has performed similar scale projects in the past two (2) years. The supplier must provide the following information about each project:

    a. Company name and address;

    b. Contact person and phone number;

    c. Project name and time span; and

d. A detailed description of the scope of services provided that relate to the requirements of this RFA.

C. Staff Experience and Capabilities:

The supplier must demonstrate significant expertise by assigning staff for this project. Key personnel positions will require profiles and curriculum vitae. The supplier must, at minimum:

1. Assign staff to the proposed project that are employees of the supplier and are NOT subcontractors; and

2. Identify, at minimum, the individual(s) to be assigned to this project, who has at least three (3) years of experience recording and transcribing public hearings and/or other legal proceedings and is certified or licensed as recording stenographers and/or transcribers.

The ODM contract manager, if unsatisfied with the job performance of any of the selected supplier's staff, may ask for replacements. The selected supplier will be subject to a key personnel contractual requirement. ODM must be notified of any impending changes in key personnel and must approve any proposed replacement staff.

Important Sensitive Personal Information:
It is the affirmative responsibility of the supplier submitting an application to remove all personal confidential information (such as home addresses and social security numbers) of supplier staff from resumes or any other part of the application package. Following application to ODM, all applications submitted become part of the public record. ODM reserves the right to disqualify any supplier whose application is found to contain such prohibited personal information.

Failure to meet the above requirements will result in disqualification from consideration for an award.

VI. Scope of Work

The selected supplier(s) will provide certified court reporting services for administrative and deposition hearings conducted by ODM and other stenographer services such as depositions and public rule hearings, as requested by ODM Legal Counsel.

All transcripts shall be prepared using the same format used by the courts of general jurisdiction in Ohio. The transcripts shall be typed on bond paper with 25 numbered lines per page. All staff members must provide and/or secure reliable transportation to attend administrative hearings or depositions in Franklin County in Ohio. The selected supplier will be required to work anytime during the agency's normal business day (8 a.m. to 5 p.m.). Historically, court reporting services vary each month. Depending on scheduled hearings between one (1) and three (3) stenographers could be required simultaneously. ODM will require that the stenographer/court reporter arrive one-half hour prior to the scheduled hearing start time and remain until the conclusion of the hearing. In the event that a hearing is begun but not concluded on the same business day, ODM may, at its discretion, require that the same supplier staff be utilized for that hearing through its conclusion.

VII. Specifications of Deliverables

This section sets forth the minimum activities and deliverables that will be required of the selected supplier under the contract expected from this RFA:

1. The selected supplier must travel to the hearing room or deposition within Franklin County, Ohio and provide stenographic and/or court reporting services;

2. The selected supplier will be responsible for furnishing all equipment and supplies to record and transcribe the hearing;

3. The supplier must provide one original transcript of each hearing. The transcripts must be received by ODM within two (2) weeks of the conclusion of each administrative hearing and/or deposition. Each transcript must be submitted via email in an electronic .pdf version to: legal@medicaid.ohio.gov;

4. Address any transcription issues or adjustments within 48 business hours, or other mutually agreed upon timeframe, at the request of ODM; and

5. Provide transcription services from existing CDs and/or tape recordings.

VIII. Supplier Compensation

ODM will pay a fixed-rate fee of $45.00 per appearance for court reporting/transcription services. Transcripts will be paid at a rate of $4.50 per page for standard two-week delivery, and $5.75 per page for 24 hours delivery. ODM will pay $6.00 per delivery for transcripts. No travel reimbursement will be paid.

In the event an opposing party hires the selected contractor for stenographic services, ODM shall only pay a page rate for a copy of the transcript.

IX. Evaluation Process

Suppliers submitting a response will be evaluated based on the capacity and experience demonstrated in their Application. All qualifying applications will be collectively reviewed and evaluated by an Application Review Team (ART) appointed by ODM. The evaluation process will be based upon whether the supplier meets the requirements for Qualifications (Section V), Scope of Work (Section VI), and Specifications of Deliverables (Section VII). Suppliers should not assume that the ART members are familiar with any current or past work activities with ODM. ART members will be required to sign disclosure forms to establish that they have no personal or financial interest in the outcome of the application review and contractor selection process.

ODM reserves the right to request clarifications from suppliers regarding any information in their Application or related forms as it deems necessary at any point in the application review process. ODM reserves the right to negotiate with suppliers for adjustments to their applications should ODM determine, for any reason, to adjust the scope of the project for which this RFP is released. Such communications are not violations of any communications prohibition, and are expressly permitted when initiated by ODM, but are at the sole discretion of ODM.

NOTE:

The Veteran Friendly Procurement Program applies to all state agencies' purchases made by application, application, or application under chapter 125 of the Ohio Revised Code (R.C.). Essentially, the Program allows for:

Applications submitted by veteran-friendly suppliers to receive first consideration over applications submitted by businesses not certified as veteran-friendly of equal qualifications to be eligible for winning the award; and

Statutory and Regulatory Award:

The enabling statutes for the VBE program is R.C. 9.318. The regulations that govern the program are found in Ohio Adm. Code Chapter 123:5-1-01 and 123:5-1-16.

X. 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.

XI. Protests

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

A. A protest may be filed by a prospective or actual 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, 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 suppliers regarding the State's intent to make the award. The date on these ODM letters to responding suppliers 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 after the time periods set forth in Item B. of this section.

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

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

E. When a timely protest is filed, 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 supplier(s) who would have been awarded the contract shall be notified of the receipt of the protest.

F. ODM shall issue written decisions on all timely protests and shall notify any supplier who filed an untimely protest as to whether or not the protest will be considered.

XII. Trade Secrets Prohibition; Public Information Disclaimer

Suppliers are prohibited from including any trade secret information, as defined in ORC § 1333.61, in their applications. Any applications submitted in response to an ODM procurement effort which make claims of trade secret information may be disqualified from consideration immediately upon the discovery of such unallowable claim. ODM shall consider all submissions to be free of trade secrets and shall treat them accordingly. These submissions shall become the property of ODM. Applications received are deemed to be public records pursuant to ORC § 149.43.

XIII. Attachments

Attachment A – Required Applicant Information
Attachment B – Application Score Sheet
Attachment C – ODM Contract Model

Thank you for your interest in this project.

Attachment A1

REQUIRED SUPPLIER INFORMATION

Purpose: ODM requires the following information from suppliers who submit proposals or applications in response to any ODM Requests for Proposals (RFPs) or Requests for Applications (RFAs), in order to facilitate the development of the contract (or finalization of a purchase) with the selected supplier. ODM reserves the right to reject your application if you fail to provide this information fully, accurately, and by the deadline set by ODM. **Failure to provide such required supplier information may result in immediate disqualification of your application.**

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

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

1. ODM RFP/RFA# and TITLE: _____

2. Application Due Date: _____

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

   _____

4. Supplier Corporate Address: _____

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

   _____

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

   Supplier's Representative Name and Title: _____

   Supplier's Representative Phone # and Email Address: _____

7. Is this supplier an Ohio certified MBE? Yes____ No____. If yes, attach a copy of current certification to proposal/application. If ODM has specified the RFP/RFA is an opportunity exclusively for MBEs, failure to attach a copy of current certification may result in disqualification.

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

9. Supplier Employee Information:

Total Number of Employees Nationwide: _____

Total Number of Employees in Ohio: _____

% of Women Employees Nationwide: _____

% of Women Employees in Ohio: _____

% of Minority Employees Nationwide: _____

% of Minority Employees in Ohio: _____

Attachment A2 - Vendor and Grantee Ethics Certification and Mandatory Affirmations

1. 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) that:

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

(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.

2. I have read the ODM Model Contract attached to the RFP/RFA, 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 application for consideration by ODM. (If changes are requested, ODM will review those changes if you are the selected vendor. All requested changes to model contract language are subject to ODM approval.)

NOTE: Item 3 below is not applicable and not required when the subject ODM procurement opportunity is offered only to State Term Schedule Vendors.)

3. I _____, (authorized vendor representative) 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 application in response to the ODM RFP/RFA/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\application.)

4. I _____, (authorized vendor representative) hereby attest that I understand that <u>any and all information</u> included in this application is not confidential and/or trade secret information (as defined in the RFP or where found in an RFA document) and that the application submission may be posted in its entirety on the Internet for public viewing. Following submission to ODM, all applications submitted may become part of the public record. ODM reserves the right to disqualify any vendor whose application 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 application submission and any or all information released by ODM in a public records request(s).

5. I _____, (authorized vendor representative) hereby attest that our organization will maintain the confidentiality of information and records in accordance with state and federal laws, rules, and regulations. As a condition of receiving a contract from ODM, our company,

and any subcontractor(s), will be required to comply with 42 U.S.C. §§ 1320d through 1320d-8, and the implementing regulations found at 45 CFR § 164.502 (e) and § 164.504 (e) regarding disclosure of protected health information under the Health Insurance Portability and Accountability Act (HIPAA) of 1996. Protected Health Information (PHI) is information received by our organization from or on behalf of ODM that meets the definition of PHI as defined by HIPAA and the regulations promulgated by the United States Department of Health & Human Services, specifically 45 CFR 164.501 and any amendments thereto.

6. I _____, (authorized vendor representative) hereby attest that our organization will disclose whether our company or any proposed subcontractor has received a formal claim for breach of contract. For purposes of this disclosure, "formal claims" means any claims for breach that have been filed as a lawsuit in any court, submitted for arbitration (whether voluntary or involuntary, binding or not), or assigned to mediation. If any such claims are disclosed, our company shall fully explain the details of those claims, including the allegations regarding all alleged breaches, any written or legal action resulting from those allegations, and the results of any litigation, arbitration or mediation regarding those claims, including terms of any settlement.

7. I _____, (authorized vendor representative) hereby attest that our organization will disclose whether our organization and any of the proposed subcontractor(s) has been the subject of any adverse regulatory or administrative governmental action (federal, state, or local) with respect to performance. It will be fully explained, in detail, the nature of the governmental action, the allegations that led to the governmental action, and the results of the governmental action including any legal action that was taken against vendor by the governmental agency.

8. I _____, (authorized vendor representative) hereby attest that our organization will comply with the requirement to maintain a complete affirmative action plan and affirm to be in compliance with ORC § 125.111 prior to being awarded a contract.

Attachment A3 – Location of Business and Offshore Declaration Form

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

Pursuant to Governor's Executive Order 2019-12D (www.governor.ohio.gov), no public funds shall be spent on services provided offshore. This form serves as a certification of compliance with this policy and required disclosures. Please answer the following questions about the project or service you are seeking to perform for or the funding for which you are applying from the Ohio Department of Medicaid:

1. Principal location of business of Contractor:

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

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

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

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

2. Location where services will be performed by Contractor:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

By signing below, I hereby certify and affirm that I have reviewed, understand, and will abide by the Governor's Executive Order 2019-12D. I attest that no funds provided by ODM for this project or any other agreement will be used to purchase services provided outside the United States or to contract with a subcontractor who will use the funds to purchase services provided outside the United States. I will promptly notify ODM if there is a change in the location where any of the services relating to this project will be performed. If I am signing this on behalf of a company, business, or organization, I hereby acknowledge that I have the authority to make this certification on behalf of that entity.

Signature	Date
Entity Name	Address (Principal place of business)
Printed name of individual authorized to sign on behalf of entity	City, State, Zip

ATTACHMENT B
RFA#: ODMR-2021-0006
Application Score Sheet

PHASE I: Initial Qualifying Criteria

The application must meet all of the following Phase I application acceptance criteria in order to be considered for further evaluation. Any application receiving a "no" response to any of the following qualifying criteria **shall be disqualified from consideration**.

ITEM	APPLICATION ACCEPTANCE CRITERIA	RFA Section Reference	YES	NO
1	Is the supplier, at the time of bid submission, an established business firm with all required licenses, bonds, facilities, equipment and trained personnel necessary to perform the work in this bid?	Section V		
2	Was the supplier's application received by ODM on or before the published deadline at the location specified in Section II of this RFA?	Section V		
3	Did the supplier submit one (1) copy of their Application for consideration of supplier applications as established on the Application Score Sheet, Attachment B, to this RFA?	Section V		
4	Does the supplier's application include all required affirmative statements and certifications, signed by the supplier's responsible representative, as described in Attachment A to the RFA?	Section V		
5	Has the supplier affirmatively indicated that it is not on the federal debarment list; that there are no unfair labor findings against it, and therefore may enter into a contract with ODM?	Section V		
6	Has the ODM review of the Auditor of State website verified that the supplier is not excluded from contracting with ODM by ORC Section 9.24 for an unresolved finding for recovery (*i.e.,* the application of any supplier whose name appears on the Auditor's website as having an unresolved finding for recovery will be eliminated from further consideration.)?	Section V		
7	Has the supplier provided documentation showing that the individual(s) to be assigned for the duration of this project are registered notaries with the Ohio Notary Public Commission, a division of the Office of the Secretary of State?	Section V		
8	Has the supplier demonstrated at least three (3) years of experience in recording and transcription of public hearings and/or other legal proceedings?	Section V		
9	Has the supplier stated that supplier staff assigned to the proposed project will be employees of the supplier and NOT subcontractors?	Section V		
10	Has the supplier submitted proof that staff assigned are certified and/or licensed as a recording stenographer and/or transcriber?	Section V		
11	Is the supplier a State of Ohio certified Minority Business Enterprise (MBE)?	Section V		

PHASE II: Criteria for Scoring of Application

Qualifying applications will be collectively scored by an Application Review Team (ART) appointed by ODM. For each of the evaluation criteria given in the following score sheet, reviewers will collectively judge whether the application exceeds, meets, partially meets or does not meet the requirements expressed in the RFA, and assign the appropriate point value, as follows:

0	6	8	10
Does Not Meet Requirement	Partially Meets Requirement	Meets Requirement	Exceeds Requirement

An application's total PHASE II score will be the sum of the point value for all the evaluation criteria. The review team will collectively score each individual qualifying application. Applications which do not meet or exceed a total score of at least **175** points (a score which represents that it "meets" all the evaluation criteria) out of a maximum of **230** points, will be disqualified from further consideration.

ITEM #	EVALUATION CRITERIA	RFA SEC. REF.	Weighting	Doesn't Meet 0	Partially Meets 6	Meets 8	Exceed 10
SUPPLIER QUALIFICATIONS							
	ORGANIZATIONAL EXPERIENCE & CAPABILITIES						
1	The supplier has at least three (3) years of experience in recording and transcription of public hearings and/or other legal proceedings.	Section V, Part A	5				
2	The supplier has provided background information on the supplier, indicating sufficient organizational experience and staffing to perform the required procured functions of the project proposed in this RFA. Supplier included descriptions of at least two, but no more than four, similar-sized projects completed in the past two (2) years that demonstrate expertise in providing stenographic and court reporting services.	Section V, Part B	4				
3	The supplier has provided names and contact information for at least two (2) entities, other than ODM`, for which the supplier has performed similar scale projects in the past two (2) years. The supplier has provided the following information about each project: a. Company name and address; b. Contact person and phone number; c. Project name and time span; and, d. A detailed description of the scope of services provided that relate to the requirements of this RFA.	Section V, Part B	3				
	STAFF EXPERIENCE & CAPABILITIES						
4	The supplier has confirmed all staff assigned to the proposed project are employees of the supplier and NOT subcontractors.	Section V, Part A	3				
5	The supplier has identified, at minimum, the individual(s) to be assigned to this project has at least three (3) years of experience recording and transcribing public hearings and/or other legal proceedings.	Section V, Part A	5				
6	The supplier has provided resumes for the assigned staff expected to work on the project.	Section V, Part C	3				
Column Subtotal of "Partially Meets" points							
Column Subtotal of "Meets" points							
Column Subtotal of "Exceeds" points							
	GRAND TOTAL SCORE:						

Based upon the Grand Total Score earned, does the supplier's application meet the minimum of at least 175 points?

Yes _____ **No** _____

(If "No," Supplier will not be considered.)

OHIO DEPARTMENT OF MEDICAID
CONTRACT FOR SERVICES

C-2021-00-0000

RECITALS:

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

A. ODM issued a Request for Applications (RFA) titled _____, numbered _____, and dated _____, which is hereby incorporated by reference.

B. The ODM application review team recommended for award the Application 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 RFA, the Application, 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 RFA and the Application, the RFA will determine the obligations of the parties. In the event of a disputed issue that is not addressed in any of the aforementioned documents, the parties hereby agree to make every reasonable effort to resolve this dispute in keeping with the objectives of this Contract and the budgetary and statutory constraints of ODM.

ARTICLE I. PURPOSE; DELIVERABLES

A. INSERT PURPOSE AND LEGAL AUTHORITY. CONTRACTOR will perform its responsibilities under this Contract [in accordance with the RFA and the Application] (Deliverables) as follows:

INSERT DELIVERABLES

B. The ODM Contract Manager is ODM Contract Manager or successor.

C. The ODM Contract Manager may periodically communicate specific requests and instructions to CONTRACTOR concerning the performance of the Deliverables described in this Contract. CONTRACTOR agrees to comply with any requests or instructions to the satisfaction of ODM within ten business days after CONTRACTOR's receipt of the requests or instructions. ODM and CONTRACTOR expressly understand that any requests or instructions will be strictly construed to ensure the successful completion of the Deliverables described in this Contract, and are not intended to amend or alter this Contract in any way. If CONTRACTOR believes that any requests or instructions would materially alter the terms and conditions of this Contract or the compensation stated hereunder, CONTRACTOR will immediately notify ODM pursuant to the notice provision of this Contract. CONTRACTOR agrees to consult with the ODM Contract Manager as necessary to ensure understanding of the Deliverables and the successful completion thereof.

D. **Ownership of Deliverables.**

1. All Deliverables provided by CONTRACTOR under this Contract or with funds hereunder, including any documents, data, photographs and negatives, electronic reports/records, or other media, are the property of ODM, which has an unrestricted right to reproduce, distribute, modify, maintain, and use the Deliverables. CONTRACTOR will not obtain copyright, patent, or other proprietary protection for the Deliverables. CONTRACTOR will not include in any Deliverable any copyrighted matter, unless the copyright owner gives prior written approval for ODM and CONTRACTOR to use such copyrighted matter in the manner provided herein. CONTRACTOR agrees that all Deliverables will be made freely available to the public unless ODM determines that, pursuant to state or federal law, such materials are confidential or otherwise exempted from disclosure.

2. All Deliverables provided or produced pursuant to this Contract will be considered "works made for hire" within the meaning of copyright laws of the United States and the State of Ohio. ODM is and will be deemed sole author of the Deliverables and sole owner of all rights therein. If any portion of the Deliverables is deemed not a "work made for hire," or if there are any rights in the Deliverables not conveyed to ODM, CONTRACTOR agrees to, and by executing this Contract does, assign ODM all worldwide rights, title, and interest in and to the Deliverables. ODM acknowledges that its sole

TEMPLATE

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

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

ARTICLE II. CONFIDENTIALITY OF INFORMATION

A. CONTRACTOR agrees that it shall not use any information, systems, or records made available to it for any purpose other than to fulfill the obligations specified herein. CONTRACTOR specifically agrees to comply with state and federal confidentiality and information disclosure laws, rules, and regulations applicable to programs under which this Contract exists, including, but not limited to:

1. United States Code, 42 USC 1320d through 1320d-8 (HIPAA);
2. Code of Federal Regulations, 42 CFR 431.300, 431.302, 431.305, 431.306, 435.945, 45 CFR 164.502(e), 164.504(e), and 162.100;
3. Ohio Revised Code, ORC 173.20, 173.22, 1333.61, 2305.24, 2305.251, 2305.252, 3701.243, 3701.028, 4123.27, 5101.26, 5101.27, 5160.39, 5160.45, 5168.13, and 5165.88; and
4. Corresponding Ohio Administrative Code rules.
5. [If Federal Tax Information is shared] Internal Revenue Code 6103 and IRS Publication 1075.

B. CONTRACTOR agrees that any data created, received, maintained or transmitted on behalf of ODM by CONTRACTOR shall be returned to ODM not later than 90 calendar days following termination of this Contract and shall certify that no copies of source data were retained by CONTRACTOR, unless as may be otherwise provided for in this Contract or by law.

C. CONTRACTOR shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the paper and/or electronic protected personal data and health information that it creates, receives, maintains, or transmits on behalf of ODM against use or disclosure not provided for by this Contract.

D. CONTRACTOR agrees that access to the records and data provided by ODM for purposes of this Contract will be restricted to only those authorized employees, officials, subcontractors, and other persons who need it to perform duties related to this Contract. CONTRACTOR agrees to provide the ODM Contract Manager with a complete listing of any and all such persons who shall have access to the above referenced records and/or data.

E. CONTRACTOR agrees that the above records and/or data and any records, reports, databases, and/or other derivative documents created from the information provided under this Contract shall be stored in an area that is physically safe from access from unauthorized persons during duty and non-duty hours. Information provided under this Contract shall be protected electronically to prevent unauthorized access by computer, remote access, or any other means. CONTRACTOR expressly agrees that no records will be accessed, tested, maintained, backed up or stored outside of the United States.

F. CONTRACTOR shall assure that all persons who have access to the above referenced information shall be fully apprised as to the confidential nature of the information, the safeguards required to protect the information, and the applicable civil and criminal sanctions and penalties associated with any intentional or non-intentional disclosure. No subcontractor shall receive any information without a written agreement with CONTRACTOR incorporating these assurances.

TEMPLATE

G. CONTRACTOR agrees that any information provided under this agreement that is proprietary shall be held to be strictly confidential by CONTRACTOR.

H. CONTRACTOR shall not share or otherwise disclose any of the above referenced information to any third party without the express written authorization of the Director of ODM. If there is an incident of unauthorized disclosure of information, ODM must be notified in an acceptable timeframe to support regulatory requirements for breach notifications.

I. CONTRACTOR shall permit onsite inspection by the State of Ohio (including but not limited to ODM, the Auditor of the State of Ohio, the Inspector General of Ohio, the Ohio Attorney General or any duly authorized law enforcement officials) and by agencies of the United States government.

J. ODM will prepare data pursuant to the security and encryption standards found in Ohio IT Standard ITS-SEC-01, Data Encryption and Cryptography; and NIST Special Publication 800-53. CONTRACTOR shall prepare, store, and transmit all sensitive data relating to the state of Ohio in accordance with Ohio IT Standard ITS-SEC-01, Data Encryption and Cryptography; State of Ohio Administrative Policy IT-14, Data Encryption and Securing Sensitive Data; and NIST Special Publication 800-53.

K. CONTRACTOR shall comply with Ohio Administrative Policy IT-04, Use of Internet, E-mail and Other IT Resources, as well as any associated agency policies prior to gaining access to statewide and ODM IT resources.

L. The express terms and conditions of this Article shall be included in all subcontracts executed by CONTRACTOR for any and all work under this Contract.

ARTICLE III. EFFECTIVE DATE OF THE CONTRACT

A. This Contract is in effect from July 1, 2019 or upon issuance of an approved State of Ohio purchase order, whichever is later, through June 30, 2021, unless this Contract is suspended or terminated prior to the expiration date. This Contract may be renewed through June 30, _____, upon satisfactory completion of activities hereunder, appropriation of funds by the Ohio General Assembly, and at the sole discretion of ODM. ODM will issue a notice to CONTRACTOR if ODM decides to renew this Contract. CONTRACTOR will not obligate resources in anticipation of a renewal until notice is provided.

B. It is expressly understood by both ODM and CONTRACTOR that this Contract will not be valid and enforceable until the Director of the Ohio Office of Budget and Management, first certifies, pursuant to Section 126.07 of the Ohio Revised Code (ORC), that there is a balance in the appropriation not already allocated to pay existing obligations. ODM will notify CONTRACTOR when this certification is given.

ARTICLE IV. COMPENSATION

A. The total amount payable under this Contract is TOTAL AMT Dollars ($TOTAL). ODM will pay an amount up to _____ Dollars ($_____) for State Fiscal Year 2020 and up to _____ Dollars ($_____) for State Fiscal Year 2021 expressly for the completion of the Deliverables. CONTRACTOR understands that the terms of this Contract do not provide for compensation in excess of the total amount listed in this section. CONTRACTOR hereby waives the interest provisions of ORC 126.30.

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

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

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

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

TEMPLATE

Fax: 614.485.1039

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

1. CONTRACTOR's name, complete address, and federal tax identification number;

2. Contract number and dates;

3. Purchase order number;

4. Amount and purpose of the invoice, including such detail as required per the compensation section of this Contract, deliverables completed, description of services rendered, hourly rates and numbers of hours (if applicable), amount of monthly fee (if applicable), and itemized travel and other expenses if permitted by this Contract;

5. Description of Deliverables performed during the billing period;

6. Receipt of other proof of cost; and

7. Other documentation requested by ODM.

E. CONTRACTOR expressly understands that ODM will not compensate CONTRACTOR for any work performed prior to CONTRACTOR's receipt of notice from ODM that the provisions of ORC 126.07 have been met as set forth in ARTICLE III, nor for work performed after the ending date of this Contract.

F. CONTRACTOR expressly understands that ODM does not have the ability to compensate CONTRACTOR for invoices submitted after the State of Ohio purchase order has been closed. CONTRACTOR must submit final invoices for payment no later than 90 calendar days after the ending date of this Contract. Failure to do so will be deemed a forfeiture of the remaining compensation due hereunder.

G. CONTRACTOR understands that availability of funds is contingent on appropriations made by the Ohio General Assembly or by funding sources external to the State of Ohio, such as federal funding. If the Ohio General Assembly or the external funding source fails at any time to continue funding ODM for the payments due under this Contract, this Contract will be terminated as of the date funding expires without further obligation of ODM or the State of Ohio.

ARTICLE V. SUSPENSION AND TERMINATION, BREACH AND DEFAULT

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

B. Notwithstanding other provisions in this Article, either party may terminate this Contract at will by giving 90 calendar days written notice to the other party. Upon a 30 calendar day written notice to CONTRACTOR, ODM may suspend this Contract at ODM's sole discretion.

C. Notwithstanding the provision of Section A, above, ODM may suspend or terminate this Contract immediately upon delivery of a written notice to CONTRACTOR if:

1. ODM loses funding as described in ARTICLE IV;

2. ODM discovers any illegal conduct by CONTRACTOR; or

3. CONTRACTOR has violated any provision of ARTICLE X.

D. Unless provided for in Sections A, B and C of this Article, CONTRACTOR will have 30 calendar days within which to cure any breach that is curable after receipt of written notice from ODM that CONTRACTOR is in breach of any of its obligations under this Contract. If CONTRACTOR fails to cure the breach within the 30 calendar days after written notice or if the breach is not curable, ODM may immediately suspend or terminate

TEMPLATE

this Contract. ODM may also suspend or terminate this Contract when breaches are persistent, regardless of whether they are cured within 30 calendar days. For purposes of this Section, "persistent" means that ODM has notified CONTRACTOR three times in writing of CONTRACTOR's failure to meet any of its contractual obligations. The three notices do not have to relate to the same obligation or type of failure. After the third notice, ODM may suspend or terminate this Contract without a cure period if CONTRACTOR again fails to meet any contractual obligation. At the sole discretion of ODM, certain instances of breach may require a shorter cure period than the 30 calendar days generally applicable in this Section. In such instances, ODM will include in its notice of breach the shorter cure period deemed appropriate.

E. CONTRACTOR, upon receiving notice of suspension or termination, will:

1. Cease performance of the suspended or terminated Deliverables;

2. Take all necessary steps to limit disbursements and minimize costs including, but not limited to, suspending or terminating all contracts and subgrants related to suspended or terminated Deliverables;

3. Prepare and furnish a report to ODM, as of the date the notice of termination or suspension was received, that describes the status of all Deliverables and includes the results accomplished and the conclusions reached through Deliverables;

4. Return all records in their native format relating to cost, work performed, supporting documentation for invoices submitted to ODM, and copies of all materials produced under or pertaining to this Contract; and

5. Perform any other tasks ODM requires.

F. In the event of suspension or termination under this Article, ODM will, upon receipt of a proper invoice from CONTRACTOR, determine the amount of any unpaid Contract funds due to CONTRACTOR for Deliverables performed before CONTRACTOR received notice of termination or suspension. In order to determine the amount due to CONTRACTOR, ODM will base its calculations on the payment method described in ARTICLE IV and any funds previously paid by or on behalf of ODM. ODM will not be liable for any further claims submitted by CONTRACTOR.

G. If ODM terminates this Contract for any reason provided in this Article, except for termination at will pursuant to Section B or termination for loss of funding pursuant to Section C, ODM will be entitled to utilize another contractor to complete the Deliverables of this Contract on any commercially reasonable terms as ODM and the covering contractor may agree. In this event, CONTRACTOR will be liable to ODM for all costs related to covering the project to the extent that such costs, when combined with payments already made to CONTRACTOR prior to termination, exceed the costs that ODM would have incurred under this Contract. CONTRACTOR's liability under this Section is in addition to any other remedies available to ODM pursuant to this Contract.

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

ARTICLE VI. NOTICES

A. ODM and CONTRACTOR agree that communication regarding Deliverables, scope of work, invoice or billing questions, or other routine instructions will be between CONTRACTOR and the identified ODM Contract Manager.

B. Notices to ODM from CONTRACTOR that concern changes to CONTRACTOR's principal place of operation, billing address, legal name, federal tax identification number, mergers or acquisitions, corporate form,

TEMPLATE

excusable delay, termination, bankruptcy, assignment, any notice pursuant to ARTICLE X, and/or any other formal notice regarding this Contract will be sent to the ODM Chief Legal Counsel, Office of Chief Legal, 50 West Town Street, 5th floor, Columbus, Ohio 43215.

C. Notices to CONTRACTOR from ODM concerning termination, suspension, option to renew, breach, default, or other formal notices regarding this Contract will be sent to CONTRACTOR's representative at the address appearing on the signature page of this Contract.

D. All notices will be in writing and will be deemed given when received. All notices must be sent using a delivery method that documents actual delivery to the appropriate address herein indicated (*e.g.*, certified mail).

ARTICLE VII. RECORDS, DOCUMENTS AND INFORMATION

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

A. CONTRACTOR agrees that any media produced pursuant to this Contract or acquired with Contract funds will become the property of ODM. This includes all documents, reports, data, photographs (including negatives), and electronic reports and records. ODM will maintain the unrestricted right to reproduce, distribute, modify, maintain, and use the media in any way ODM deems appropriate. CONTRACTOR further agrees not to seek or obtain copyright, patent or other proprietary protection for any materials or items produced under this Contract. CONTRACTOR understands that all materials and items produced under this Contract will be made freely available to the public unless ODM determines that certain materials are confidential under federal or state law.

B. All ODM information that is classified as public or private under Ohio law will be treated as such by CONTRACTOR. Should the nature of any information be in question, ODM will determine whether the information is public or private. CONTRACTOR will restrict the use of any information, systems, or records ODM provides to the specific Deliverables of this Contract. CONTRACTOR and its employees agree to be bound by the same standards and rules of confidentiality that apply to employees of ODM and the State of Ohio. CONTRACTOR agrees that the terms of this section will be included in any subcontract executed by CONTRACTOR for work under this Contract.

C. CONTRACTOR information that is proprietary and has been specifically identified by CONTRACTOR as proprietary will be held as confidential by ODM. Proprietary information is information that would put CONTRACTOR at a competitive disadvantage in CONTRACTOR's market place and trade if it were made public. ODM reserves the right to require reasonable evidence of CONTRACTOR's assertion of the proprietary nature of any information. The provisions of this Article are not self-executing. CONTRACTOR must demonstrate that any information claimed as proprietary meets the definition of "trade secrets" found at ORC 1333.61.

D. For audit purposes only, all records relating to cost, work performed, supporting documentation for invoices submitted to ODM, and copies of all materials produced under or pertaining to this Contract will be retained by CONTRACTOR and will be made available for audit by state and federal government entities that include, but are not limited to, ODM, the Ohio Auditor of State, the Ohio Inspector General and all duly authorized law enforcement officials. The records and materials will be retained and made available for a minimum of three years after CONTRACTOR receives the last payment pursuant to this Contract. If an audit or similar action is initiated during this time period, CONTRACTOR will retain the records until the action is concluded and all issues are resolved, or until the end of the three-year period if the action is resolved prior to the end of the three-year period, unless otherwise directed below in Section E. If applicable, CONTRACTOR must meet the requirements of the federal Office of Management and Budget (OMB) Omni-Circular, 2 CFR Part 200.104. CONTRACTOR acknowledges, in accordance with ORC 149.43, that financial records related to the performance of services under this Contract are presumptively deemed public records.

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

TEMPLATE

E. All records relating to cost, work performed, supporting documentation for invoices submitted to ODM, and copies of all materials produced under or pertaining to this Contract will be retained by CONTRACTOR in accordance to the appropriate records retention schedule. The appropriate records retention schedule for this Contract is [INSERT # of years, no less than 3 year] years. If any records are destroyed prior to the date as determined by the appropriate records retention schedule, CONTRACTOR agrees to pay all costs associated with any cause, action or litigation arising from such destruction.

F. CONTRACTOR agrees to retain all records in accordance to any litigation holds that are provided to them by ODM, and actively participate in the discovery process if required to do so, at no additional charge. Litigation holds may require CONTRACTOR to keep the records longer than the approved records retention schedule. CONTRACTOR will be notified by ODM when the litigation hold ends and retention can resume based on the approved records retention schedule. If CONTRACTOR fails to retain the pertinent records after receiving a litigation hold from ODM, CONTRACTOR agrees to pay all costs associated with any cause, action or litigation arising from such destruction.

G. CONTRACTOR hereby agrees to current and ongoing compliance with Title 42, Sections 1320d through 1320d-8 of the United States Code (USC) and the implementing regulations found at Title 45, Parts 164.502(e) and 164.504(e) of the Code of Federal Regulations (CFR) regarding disclosure of Protected Health Information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). CONTRACTOR further agrees to include the terms of this section in any subcontracts that may be executed pursuant to this Contract.

ARTICLE VIII. AMENDMENT AND ASSIGNMENT

A. This writing constitutes the entire agreement between ODM and CONTRACTOR with respect to all matters herein. Only a writing signed by both parties may amend this Contract. However, ODM and CONTRACTOR agree that any amendments to any laws or regulations cited herein will result in the correlative modification of this Contract without the necessity for executing written amendments. Any written amendment to this Contract will be prospective in nature.

B. CONTRACTOR agrees not to assign any interest in this Contract nor transfer any interest in the Contract without the prior written approval of ODM. CONTRACTOR will submit any requests for approval of assignments and transfers to the ODM Contract Manager at least ten business days prior to the desired effective date. CONTRACTOR understands that any assignments and transfers will be subject to any conditions ODM deems necessary and that no approval by ODM will be deemed to provide for any ODM obligation that exceeds the Contract amount specified in ARTICLE IV of this Contract.

ARTICLE IX. BUSINESS ASSOCIATE REQUIREMENTS UNDER HIPAA

A. The definitions contained in this section are derived from federal law. Should there be any conflict between the meanings assigned in this Contract and the meanings defined in applicable federal law (even in the event of future amendments to law that create such conflict), the definitions found in federal law will prevail.

1. **General Definitions.** The following terms used in this Contract shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information and Use.

2. **Specific Definitions.**

   a. HIPAA means the Health Insurance Portability and Accountability Act of 1996, the American Recovery and Reinvestment Act of 2009 (ARRA) and any other applicable federal statute or regulation.

   b. HIPAA Rules shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

   c. Covered Entity means a health plan, a health care clearinghouse, or health care provider under 45 CFR 160.103.

TEMPLATE

d. Business Associate means a person or entity that, on behalf of the Covered Entity, maintains, performs, or assists in the performance of a function or activity that involves the use or disclosure of "Protected Health Information" under 45 CFR 160.103.

e. Protected Health Information (PHI) means individually identifiable information including but not limited to the past, present or future physical or mental health or condition of an individual, provision of health care to an individual, or the past, present or future payment for health care provided to an individual, as more fully defined under 45 CFR 164.501 and any amendments thereto, received or sent on behalf of the Department.

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

1. **Permitted Uses and Disclosures.** CONTRACTOR will not use or disclose PHI except as provided in this Contract or as otherwise required under HIPAA regulations or other applicable law.

2. **Safeguards.** CONTRACTOR will implement sufficient safeguards, and comply with Subpart C of 45 CFR Part 164 pertaining to electronic PHI to prevent the use or disclosure of PHI other than as provided for under this Contract. Safeguards will be implemented for all paper and electronic PHI created, received, maintained, or transmitted on behalf of ODM.

3. **Reporting of Disclosures.** CONTRACTOR agrees to promptly report to ODM any inappropriate use or disclosure of PHI that is not in accordance with this Contract or applicable law, including breaches of unsecured protected health information, as required at 45 CFR 164.410, and any security incident CONTRACTOR has knowledge of or reasonably should have knowledge of under the circumstances.

   Further, CONTRACTOR shall report to ODM the following:

   a. Any use or disclosure of PHI which is not in compliance with the terms of this Agreement or applicable law of which it becomes aware; and

   b. Any security incident of which it becomes aware. For purposes of this Agreement, "security incident" means the unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

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

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

4. **Mitigation Procedures.** CONTRACTOR agrees to coordinate with ODM to determine specific actions that will be required of the Business Associates for mitigation, to the extent practical, of the breach. These actions will include notification to the appropriate individuals, entities, or other authorities. Notification or communication to any media outlet must be approved, in writing, by ODM prior to any such communication being released. CONTRACTOR will report all of its mitigation activity to ODM and shall preserve all relevant records and evidence.

5. **Incidental Costs.** CONTRACTOR shall bear the sole expense of all costs to mitigate any harmful effect of any breaches or security incidents of which CONTRACTOR has knowledge which are directly caused by the use or disclosure of protected health information by CONTRACTOR in violation of the terms of this Contract. These costs will include, but are not limited to, the cost of investigation, remediation and assistance to the affected individuals, entities or other authorities.

6. **Agents and Subcontractors.** CONTRACTOR, in compliance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2) as applicable, will ensure that all its agents and subcontractors that create, receive,

TEMPLATE

maintain, or transmit PHI from or on behalf of CONTRACTOR and/or ODM agree to have, in a written agreement, the same restrictions, conditions, and requirements that apply to CONTRACTOR with respect to the use or disclosure of PHI.

7. **Accessibility of Information.** CONTRACTOR will make available to ODM such information as ODM may require to fulfill its obligations to provide access to, provide a copy of any information or documents with respect to PHI pursuant to HIPAA and regulations promulgated by the United States Department of Health and Human Services, including, but not limited to, 45 CFR 164.524 and 164.528 and any amendments thereto.

8. **Amendment of Information.** CONTRACTOR shall make any amendment(s) to PHI as directed by, or agreed to by, ODM pursuant to 45 CFR 164.526, or take other steps as necessary to satisfy ODM's obligations under 45 CFR 164.526. In the event that CONTRACTOR receives a request for amendment directly from an individual, agent, or subcontractor, CONTRACTOR will notify ODM prior to making any such amendment(s). CONTRACTOR's authority to amend information is explicitly limited to information created by CONTRACTOR.

9. **Accounting for Disclosure.** CONTRACTOR shall maintain and make available to ODM or individuals requesting the information, as appropriate, records of all disclosures of PHI in a Designated Record Set as necessary to satisfy ODM's obligations under 45 CFR 164.528. For every disclosure the record will include, at a minimum, the name of the individual who is the subject of the disclosure, the date of the disclosure, reason for the disclosure if any, and the name and address of the recipient to which the protected health information was disclosed.

10. **Obligations of Department.** When CONTRACTOR is to carry out an obligation of ODM under Subpart E of 45 CFR 164, CONTRACTOR agrees to comply with all applicable requirements of Subpart E that would apply to ODM in the performance of such obligation.

11. **Access to Books and Records.** CONTRACTOR shall make available to ODM and to the Secretary of the U.S. Department of Health and Human Services any and all internal practices, documentation, books, and records related to the use and disclosure of PHI received from ODM, or created or received on behalf of ODM. Such access is for the purposes of determining compliance with the HIPAA Rules.

12. **Material Breach.** In the event of material breach of CONTRACTOR's obligations under this Article, ODM may immediately terminate this Contract as set forth in ARTICLE V, Section B. Termination of this Contract will not affect any provision of this Contract, which, by its wording or its nature, is intended to remain effective and to continue to operate after termination.

13. **Return or Destruction of Information.** Upon termination of this Contract and at the request of ODM, CONTRACTOR will return to ODM or destroy all PHI in CONTRACTOR's possession stemming from this Contract as soon as possible but no later than 90 days, and will not keep copies of the PHI except as may be requested by ODM or required by law, or as otherwise allowed for under this Contract. If CONTRACTOR, its agent(s), or subcontractor(s) destroy any PHI, then CONTRACTOR will provide to ODM documentation evidencing such destruction. Any PHI retained by CONTRACTOR will continue to be extended the same protections set forth in this Section, HIPAA regulations and this Contract for as long as it is maintained.

14. **Survival.** These provisions shall survive the termination of this Contract.

ARTICLE X. CONTRACTOR CERTIFICATION OF COMPLIANCE WITH SPECIAL CONDITIONS

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

A. If at any time, CONTRACTOR is not in compliance with the conditions affirmed in this Section, ODM will consider this Contract *void ab initio* and will deliver written notice to CONTRACTOR. Any funds the State of Ohio paid CONTRACTOR for work performed before CONTRACTOR received notice that the Contract is

TEMPLATE

void ab initio will be immediately repaid or the State of Ohio may commence an action for recovery against CONTRACTOR.

1. **Debarment Requirements.** CONTRACTOR affirms that neither CONTRACTOR nor any of its principals or subcontractors, is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by any governmental agency. CONTRACTOR also affirms that within three years preceding this Contract neither CONTRACTOR nor any of its principals:

    a. Have been convicted of, or had a civil judgment rendered against them for commission of fraud or other criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local public transaction or contract under a public transaction; for violation of federal or state antitrust statutes; for commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements; or for receiving stolen property; or

    b. Are presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State, or local) for the commission of any of the offenses listed in this paragraph and have not had any federal, state, or local, public transactions terminated for cause or default.

2. **Qualifications to Conduct Business.** CONTRACTOR affirms that it has all of the approvals, licenses, or other qualifications needed to conduct business in Ohio and all are current. If at any time during the Contract period CONTRACTOR, for any reason, becomes disqualified from conducting business in the State of Ohio, CONTRACTOR will immediately notify ODM in writing and will immediately cease performance of all Deliverables.

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

4. **Finding for Recovery.** CONTRACTOR affirms that neither CONTRACTOR nor its principals or subcontractors, is subject to a finding for recovery under ORC 9.24, or it has taken the appropriate remedial steps required, or otherwise qualifies under ORC 9.24 to contract with the State of Ohio.

B. If at any time CONTRACTOR is not in compliance with the conditions affirmed in this Section, ODM may immediately suspend or terminate this Contract and will deliver written notice to CONTRACTOR. CONTRACTOR will be entitled to compensation, upon submission of a proper invoice per ARTICLE IV, only for work performed during the time CONTRACTOR was in compliance with the provisions of this Section. Any funds paid by the State of Ohio for work performed during a period when CONTRACTOR was not in compliance with this Section will be immediately repaid or the State of Ohio may commence an action for recovery against CONTRACTOR.

1. **Fair Labor Standards and Employment Practices.** CONTRACTOR certifies that it is in compliance with all applicable federal and state laws, rules, and regulations governing fair labor and employment practices.

2. **Civil Rights Laws.**

    a. CONTRACTOR, its officers, employees, members, and subcontractors hereby affirm current and ongoing compliance with all federal civil rights laws including:

        (1) Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352);
        (2) Title VI of the Civil Rights Act of 1964 (42 USC 2000d, et seq.);
        (3) The Americans with Disabilities Act of 1990 (42 USC 12101, et seq.) and Section 504 of the Rehabilitation Act of 1973; and
        (4) The Age Discrimination Act of 1975 (42 USC 6101, et seq.).

TEMPLATE

b. In carrying out this Contract, CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin, military status, disability, age, genetic information, or sexual orientation, in making any of the following employment decisions: hiring, layoff, termination, transfer, promotion, demotion, rate of compensation, and eligibility for in-service training programs.

c. CONTRACTOR agrees that it will not participate in, condone or tolerate any form of sexual harassment against any employee, subcontractor, or other person or entity with which it is associated in performance of this Agreement, which is considered a form of sex discrimination prohibited by Title VII of the Civil Rights Act of 1964, the Ohio Revised Code 4112.02, Ohio Administrative Code 123:1-49, the Anti-Discrimination Policy in State Government Executive Order 2019-05D, or state agency policy.

d. CONTRACTOR agrees to post notices affirming compliance with all applicable federal and state non-discrimination laws in conspicuous places accessible to all employees and applicants for employment.

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

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

a. CONTRACTOR certifies that by executing this Contract, it has reviewed, knows and understands the State of Ohio's ethics and conflict of interest laws. CONTRACTOR further agrees that it will not engage in any action(s) inconsistent with Ohio ethics laws or any Executive Orders.

b. CONTRACTOR certifies, by executing this Contract, that no party who holds a position listed or described in ORC 3517.13 (I) or (J), has made, while in his/her current position, one or more personal monetary contributions in excess of One Thousand and 00/100 Dollars ($1,000.00) to the current Governor or to the Governor's campaign committee when he was a candidate for office within the previous two calendar years. ORC 3517.13 does not apply to professional associations organized under ORC Chapter 1785.

c. CONTRACTOR agrees to refrain from promising or giving to any ODM employee anything of value that could be construed as having a substantial and improper influence upon the employee with respect to the employee's duties. CONTRACTOR further agrees that it will not solicit any ODM employee to violate ORC 102.03, 2921.42, or 2921.43.

d. CONTRACTOR agrees that CONTRACTOR, its officers, employees, and members have not nor will they acquire any interest, whether personal, business, direct or indirect, that is incompatible, in conflict with, or would compromise the discharge and fulfillment of CONTRACTOR's functions and responsibilities under this Contract. If CONTRACTOR, its officers, employees, or members acquire any incompatible, conflicting, or compromising interest, CONTRACTOR agrees it will immediately disclose the interest in writing to the ODM Chief Legal Counsel at 50 West Town Street, Columbus, Ohio 43215-3414. CONTRACTOR further agrees that the person with the conflicting interest will not participate in any Deliverables until ODM determines that participation would not be contrary to public interest.

4. **Lobbying Restrictions.**

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

TEMPLATE

b. CONTRACTOR certifies compliance with the Ohio executive agency lobbying restrictions contained in ORC 121.60 to 121.69.

c. CONTRACTOR, if a recipient of a federal award in excess of One Hundred Thousand and 00/100 Dollars ($100,000.00), certifies compliance with the Byrd Anti-Lobbying Amendment, which at a minimum, attests CONTRACTOR will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 USC Chapter 1352.

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

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

7. **Drug-Free Workplace.** CONTRACTOR, its officers, employees, members, any subcontractors and/or any independent contractors (including all field staff) associated with this Contract agree to comply with all applicable state and federal laws, including, but not limited to, 41 USC Chapter 10, regarding a drug-free workplace. CONTRACTOR will make a good faith effort to ensure that none of CONTRACTOR's officers, employees, members, or subgrantees will purchase, transfer, use, or possess illegal drugs or alcohol or abuse prescription drugs in any way while working or while on public property.

8. **Work Programs.** CONTRACTOR agrees not to discriminate against individuals who have or are participating in any work program administered by any county department of Job and Family Services under ORC Chapter 5101 or 5107.

9. **MBE Subcontracting Requirements.** Pursuant to the Governor's Executive Order 2008-13S, ODM is committed to making more State contracts and opportunities available to Minority Business Enterprises (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 an MBE.

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

a. CONTRACTOR certifies that by executing this Contract and by completing the Affirmation and Disclosure form, it has reviewed, understands, and will abide by the Governor's Executive Order 2019-12D and shall abide by those requirements in the performance of this Contract, and shall perform no services required under this Contract outside of the United States.

b. Prior to performing any services, and when there is a change in the location of any services provided under this Contract, CONTRACTOR must disclose:

(1) The location(s) where all services will be performed by CONTRACTOR or any subcontractor;

(2) The location(s) where any state data associated with any of the services through this Contract will be accessed, tested, maintained, backed-up, or stored; and

(3) The principal location of business for the contractor and all subcontractors.

TEMPLATE

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

d. Termination, Sanction, Damages**:** ODM is not obligated and shall not pay for any services provided under this Contract that CONTRACTOR or any of its subcontractors performed outside of the United States. If services are performed outside of the United States, this will be treated as a material breach of the Contract, and CONTRACTOR shall immediately return to ODM all funds paid for those services.

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

11. **Combatting Trafficking in Persons**.

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

b. CONTRACTOR, its employees, its subcontractors, or subcontractor's employees are prohibited from the following activities:

(1) Engaging in severe forms of trafficking in persons during the period of performance of the Contract;

(2) Procuring commercial sex acts during the period of performance of the Contract; or

(3) Using forced labor in the performance of the Contract.

c. CONTRACTOR agrees that it shall notify its employees, and require all of its subcontractors to notify their employees, of the prohibited activities described in the preceding paragraph.

d. ODM has the right to immediately and unilaterally terminate this Contract if any provision in this Section is violated and ODM may implement section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 USC 7104), *see* 2 CFR Part 175.

12. **Civil Rights Assurance**. CONTRACTOR hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d, et seq.) and the Age Discrimination Act of 1975 (42 USC 6101, et seq.).

13. **Clean Air Act**. CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401, et seq.) and the Federal Water Pollution Control Act as amended (33 USC 1251, et seq.). Violations must be reported to the Regional Office of the United States Environmental Protection Agency (US EPA) and ODM.

14. **Energy Policy and Conservation Act**. CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act in accordance with 42 USC 6201. Violations must be reported to the Regional Office of the US EPA and ODM.

15. **Solid Waste Disposal**. CONTRACTOR agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the US EPA at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with

TEMPLATE

maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000.00 or the value of the quantity acquired by the preceding federal fiscal year exceeded $10,000.00; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the US EPA guidelines.

16. **Experimental, Developmental, or Research Work.** When applicable, if CONTRACTOR enters into a subcontract or subgrant with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that funding agreement, the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any applicable federal and state regulations.

17. **Boycott.** CONTRACTOR acknowledges that, pursuant to ORC 9.76, a state agency may not enter into or renew a contract for supplies, equipment or services with a company that operates to earn a profit unless CONTRACTOR provides the following declaration. If applicable, CONTRACTOR certifies that it is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade and will not do so during the Contract period. CONTRACTOR will notify ODM immediately if it boycotts a jurisdiction with whom the State of Ohio can enjoy open trade. ODM reserves the right to terminate this Agreement immediately upon discovery of such a boycott.

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

ARTICLE XI. BUSINESS CONTINUITY PLAN

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

1. Enable continued performance under this Contract in the event of a disaster or other unexpected break in services; and

2. Ensure the continuity for identified vital services and supporting facilities.

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

ARTICLE XII. MISCELLANEOUS PROVISIONS

A. **Independent Contractor.** CONTRACTOR agrees that no agency, employment, joint venture, or partnership has been or will be created between ODM and CONTRACTOR. CONTRACTOR further agrees that as an independent contractor, it assumes all responsibility for any federal, state, municipal or other tax liabilities along with workers compensation, unemployment compensation and insurance premiums that may accrue as a result of funds received pursuant to this Contract. CONTRACTOR agrees that it is an independent contractor for all purposes including, but not limited to, the application of the Fair Labor Standards Act, the Social Security Act, the Federal Unemployment Tax Act, the Federal Insurance Contribution Act, provisions of the Internal Revenue Code, Ohio tax law, Workers Compensation law, and Unemployment Insurance law. CONTRACTOR acknowledges and agrees any individual providing personal services under this Contract is not a public employee for the purposes of Chapter 145 of the Revised Code. Pursuant to ORC 145.038, ODM is required to provide individuals and business entities with fewer than five employees the Independent Contractor Acknowledgment (Form PEDACKN, Attachment A). This form requires CONTRACTOR to acknowledge that ODM has notified CONTRACTOR that he or she has not been classified as a public

TEMPLATE

employee and no contributions to the Ohio Public Employees Retirement System will be made on his or her behalf for these services. If CONTRACTOR is a business entity with fewer than five employees, please have each employee complete the PEDACKN form, the first two pages of Attachment A. If CONTRACTOR is not an individual or a business entity with fewer than five employees, please complete page 3 of Attachment A.

B. **Subcontracting.** All subcontracts will be at the sole expense of CONTRACTOR and CONTRACTOR will be solely responsible for payments of its subcontractors. CONTRACTOR assumes responsibility for all subcontracting and third-party work performed under this Contract. In addition, all subcontractors agree to be bound by of the terms and conditions of this Contract. CONTRACTOR will be the sole point of contact with regard to all contractual matters.

C. **Limitation of Liability.** To the extent allowable by law, CONTRACTOR agrees to defend, indemnify and hold ODM, its officials, employees and agents harmless from and against any and all liability, loss and expense (including reasonable attorneys' fees) or claims for personal injury, property damage, patent and copyright infringement, or for any liability or claims under ARTICLE IX above ("Business Associate Requirements Under HIPAA"), and/or any other type of claim that arises from the performance of the Deliverables under this Contract. CONTRACTOR's sole and exclusive remedy for any ODM failure to perform under this Contract will be an action in the Ohio Court of Claims pursuant to ORC Chapter 2743 that will be subject to the limitations set forth in this Article. In no event will ODM be liable for any indirect or consequential damages, including loss of profits, even if ODM knew or should have known of the possibility of such damages. To the extent that ODM is a party to any litigation arising out of or relating in any way to this Contract or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio. Subject to ORC 109.02, CONTRACTOR agrees to defend ODM against any such claims or legal actions if called upon by ODM to do so.

D. **Infringement of Patent or Copyright.** To the extent allowable by law and subject to ORC 109.02, CONTRACTOR agrees to defend any suit or proceeding brought against ODM, any official or employee of ODM acting in his or her official capacity, or the State of Ohio due to any alleged infringement of patent or copyright arising out of the performance of this Contract, including all work, services, materials, reports, studies, and computer programs provided by CONTRACTOR. ODM will provide prompt notification in writing of such suit or proceeding; full right, authorization, and opportunity to conduct the defense thereof; and full disclosure of information along with all reasonable cooperation for the defense of the suit. ODM may participate in the defense of any such action. CONTRACTOR agrees to pay all damages and costs awarded against ODM, any official or employee of ODM in his or her official capacity, or the State of Ohio as a result of any suit or proceeding referred to in this Section C. If any information and/or assistance is furnished by ODM at CONTRACTOR's written request, it is at CONTRACTOR's expense. If any of the materials, reports, or studies provided by CONTRACTOR are found to be infringing items and the use or publication thereof is enjoined, CONTRACTOR agrees to, at its own expense and at its option, either procure the right to publish or continue use of such infringing materials, reports, or studies; replace them with non-infringing items of equivalent value; or modify them so that they are no longer infringing. The obligations of CONTRACTOR under this Section survive the termination of this Contract, without limitation.

E. **General Representations and Warranties.** CONTRACTOR warrants that:

1. The recommendations, guidance, and performance of CONTRACTOR under this Contract will be in accordance with the industry's professional standards, the requirements of this Contract and without material defect.

2. The Deliverables are merchantable and fit for the particular purpose described in this Contract and will perform substantially in accordance with its user manuals, technical materials, and related writings.

3. The Deliverables comply with all governmental, environmental and safety standards.

4. CONTRACTOR has the right to enter into this Contract.

5. CONTRACTOR has not entered into any other contracts or employment relationships that restrict CONTRACTOR's ability to perform under this Contract.

TEMPLATE

F. **Liens.** CONTRACTOR will not permit any lien or claim to be filed or prosecuted against ODM or the State of Ohio because of any labor, services, or materials furnished. If CONTRACTOR fails, neglects, or refuses to make prompt payment of any claims for labor, services, or materials furnished to CONTRACTOR in connection with this Contract, ODM or the State of Ohio may, but is not obligated to, pay those claims and charge the amount of payment against the funds due or to become due to CONTRACTOR under this Contract.

G. **Delay.** Neither party will be liable for any delay in its performance that arises from causes beyond its control and without its negligence or fault. The delaying party will notify the other promptly of any material delay in performance and will specify in writing the proposed revised performance date as soon as practicable after notice of delay. The delaying party must also describe the cause of the delay and its proposal to remove or mitigate the delay. Notices will be sent pursuant to ARTICLE VI. In the event of excusable delay, the date of performance or delivery of products may be extended by amendment, if applicable, for a time period equal to that lost due to the excusable delay. Reliance on a claim of excusable delay may only be asserted if the delaying party has taken commercially reasonable steps to mitigate or avoid the delay. Items that are controllable by CONTRACTOR's subcontractor(s) will be considered controllable by CONTRACTOR, except for third-party manufacturers supplying commercial items and over whom CONTRACTOR has no legal control. The final determination of whether an instance of delay is excusable lies with ODM in its discretion.

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

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

ARTICLE XIII. CONSTRUCTION

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

Signature Page Follows:

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TEMPLATE