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## **RFP-CE-OCM**

### **Attachment D**

#### **(Sample Contract)**

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**AGREEMENT  
BETWEEN THE  
OHIO ATTORNEY GENERAL  
AND  
NAME OF CONSULTANT**

THIS AGREEMENT is between the Ohio Attorney General (hereinafter the “Attorney General”), 30 East Broad Street, 17th Floor, Columbus, Ohio 43215-3414, and **Name of Consultant** (hereinafter “Consultant”), **Street Address, City, State, Zip**.

The parties agree as follows:

**I. NATURE OF AGREEMENT**

A. Consultant shall be employed as an independent contractor, to fulfill the terms of this Agreement and to act as a consultant to the Attorney General. It is specifically understood that the nature of the services to be rendered under this Agreement are of such a personal nature that the Attorney General is the sole judge of the adequacy of such services.

B. The Attorney General enters into this Agreement in reliance upon Consultant’s representations that it has the necessary expertise and experience to perform its obligations hereunder, and Consultant warrants that it does possess the necessary expertise and experience.

C. Consultant shall perform the services to be rendered under this Agreement and the Attorney General shall not hire, supervise, or pay any assistants to Consultant in its performance of services under this Agreement. The Attorney General shall not be required to provide any training to Consultant to enable it to perform services required hereunder.

**II. SCOPE OF WORK**

A. Consultant shall perform the services (the “Work”) set forth in Exhibit 1, Scope of Work, attached hereto and made a part hereof. The Work also includes any additional requirements defined in the Request for Proposals attached hereto as Exhibit 2 and made a part hereof, and the Consultant’s response to the Request for Proposals attached hereto as Exhibit 3 and made a part hereof.

B. The Work may be further revised, clarified, supplemented or amended only upon written agreement of the parties to this Agreement.

**III. TIME OF PERFORMANCE**

A. The Work shall be commenced on or after the date of an approved purchase order.

B. The Work shall be concluded on or before June 30, 2021, and this Agreement shall terminate on the earlier to occur of: (i) the date on which the Work is completed to the satisfaction of the Attorney General or (ii) the date on which this Agreement is terminated as provided in Article VII, Suspension or Termination of Consultant’s Services.

C. Notwithstanding the foregoing, as the current General Assembly cannot commit a future General Assembly to expenditure, this Agreement shall in any event expire no later than June 30, 2021. The Attorney General may renew this Agreement once on the same terms and conditions by

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giving written notice prior to expiration. Such renewal shall begin July 1, 2021 and shall expire no later than June 30, 2023, unless sooner terminated as set forth herein.

D. It is expressly agreed by the parties that none of the rights, duties, and obligations herein shall be binding on either party if award of this Agreement would be contrary to the terms of Ohio Revised Code (“R.C.”) 3517.13, 127.16 or Chapter 102.

#### **IV. COMPENSATION**

A. The Attorney General shall pay Consultant no more than **\$0.00** for the Work.

B. **The total amount due shall be computed according to the following cost schedule:**

1. **Cost Schedule**

C. Consultant shall not be reimbursed for travel, lodging or any other expenses incurred in the performance of the Work.

D. Consultant must receive a purchase order from the Attorney General prior to filling an order or performing any of the Work.

E. After Consultant receives a purchase order, Consultant shall submit an invoice for the Work performed consistent with this Article IV, Compensation. Each invoice shall contain an itemization of the Work performed, including dates the Work was performed **and total hours worked, if required by Paragraph B(1), above**, the location or address where the Work was performed, and the sum due at that time pursuant to this Agreement. All invoices shall contain Consultant's name and address and shall reference the Ohio Attorney General's Office and list the billing address as 30 E. Broad St., 15<sup>th</sup> Floor, Attn: Finance, Columbus, Ohio, 43215. After receipt and approval by the Attorney General of a proper invoice, as defined by Ohio Adm.Code 126-3-01(A)(5), payment will be made pursuant to Ohio Adm.Code 126-3-01. Unless otherwise directed by the Attorney General, invoices should be directed via email to: [invoices@ohioattorneygeneral.gov](mailto:invoices@ohioattorneygeneral.gov).

F. In the event that any customer of Consultant negotiates a lower fee structure for the Work or comparable services, Consultant shall promptly notify the Attorney General and shall extend the lower negotiated rate to the Attorney General retroactively to the first date the lower rate was offered to another customer.

#### **V. CERTIFICATION OF FUNDS**

A. It is expressly understood and agreed by the parties that none of the rights, duties, and obligations described in this Agreement shall be binding on either party until all relevant statutory provisions of the Ohio Revised Code, including, but not limited to, R.C. 126.07, have been complied with, and until such time as all necessary funds are available or encumbered and, when required, such expenditure of funds is approved by the Controlling Board of the State of Ohio, or in the event that grant funds are used, until such time that the Attorney General gives Consultant written notice that such funds have been made available to the Attorney General by the Attorney General's funding source.

#### **VI. KEY PERSONNEL**

A. Consultant will use commercially reasonable efforts to ensure the continued availability of all personnel listed in this Agreement, and may not remove those personnel from the Work without the

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prior written consent of the Attorney General. Consultant must have qualified replacement staff available to replace any key personnel, and shall follow the procedure specified in this Agreement for replacement of key personnel if replacement becomes necessary.

B. Consultant's key personnel, including any subcontractor key personnel, ("Key Personnel") are the following:

[List of Key Personnel (names and titles)]

C. Consultant shall have a designated replacement for each of the Key Personnel to ensure business and decision-making continues in the absence of any Key Personnel.

D. Consultant may remove a person listed above from the Work, if doing so is necessary for legal, performance, or disciplinary reasons, but Consultant must give the Attorney General 30 days' prior written notice of such removal, and must have qualified replacement staff available to replace any Key Personnel listed in this Agreement.

E. When the removal of any Key Personnel is permitted in this Agreement, or if any Key Personnel become unavailable, Consultant must submit to the Attorney General the resumes and any other information requested by the Attorney General for two replacement candidates for each Key Personnel removed or who becomes unavailable within ten business days after the decision to remove or the unavailability becomes known to Consultant.

F. The Attorney General will have ten business days after receiving the information on proposed replacement candidates to either select one of the proposed replacement candidates or reject both proposed candidates. Should the Attorney General reject both proposed candidates, Consultant shall submit to the Attorney General the resumes and any other information requested by the Attorney General for two additional replacement candidates within five business days after notification of the Attorney General's rejection of the first two proposed candidates. The Attorney General shall respond within the same timeframes as set forth in this paragraph.

G. If Consultant does not comply with any of the timeframes for notice or submission of replacement Key Personnel set forth in this Article, Consultant shall be in default of this Agreement without the opportunity to cure. The Attorney General may terminate this Agreement immediately upon such default and will be entitled to damages.

H. The Attorney General has the right to require Consultant to remove any individual performing any of the Work if determined to be in its best interests. In such a case, the request for removal will be treated as if the individual has become unavailable, and if that individual is a Key Personnel, Consultant shall follow the procedures set forth herein for replacement.

I. If Consultant removes any Key Personnel during the term of this Agreement for any reason other than those specified above without the Attorney General's consent, the Attorney General may assess liquidated damages in the amount of [to be mutually agreed upon] for every business day the Key Personnel are unavailable until either a (i) replacement is selected in accordance with the process identified in this Article and starts work on the Work; or (ii) this Agreement is terminated.

## VII. SUSPENSION OR TERMINATION OF CONSULTANT'S SERVICES

A. The Attorney General may, at any time prior to completion of the Work, suspend or terminate this Agreement with or without cause by giving written notice to Consultant.

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B. In the event that the Work includes divisible services, the Attorney General may, at any time prior to completion of the Work, by giving written notice to Consultant, suspend or terminate any one or more such portions of the Work.

C. Consultant, upon receipt of notice of suspension or termination, shall cease work on the suspended or terminated activities under this Agreement, suspend or terminate all subcontracts relating to the suspended or terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and, if requested by the Attorney General, furnish a report, as of the date Consultant receives notice of suspension or termination, describing the status of all Work, including, without limitation, results, conclusions resulting there from, and any other matters the Attorney General requires.

D. Consultant shall be paid for services rendered up to the date Consultant received notice of suspension or termination, less any payments previously made, provided Consultant has supported such payments with detailed factual data containing Work performed and hours worked. In the event of suspension or termination, any payments made by the Attorney General for which Consultant has not rendered services shall be refunded.

E. In the event this Agreement is terminated prior to completion of the Work, Consultant shall deliver to the Attorney General all work products and documents which have been prepared by Consultant in the course of performing the Work. All such materials shall become, and remain the property of, the Attorney General, to be used in such manner and for such purpose as the Attorney General may choose.

F. Consultant agrees to waive any right to, and shall make no claim for, additional compensation against the Attorney General by reason of any suspension or termination.

G. Consultant may terminate this Agreement upon 90 days' prior written notice to the Attorney General. Such termination is subject to the same processes and requirements set forth in this Article.

## **VIII. RELATIONSHIP OF PARTIES**

A. Consultant shall be responsible for all of its own business expenses, including, but not limited to, computers, email and internet access, software, phone service and office space. Consultant will also be responsible for all licenses, permits, employees' wages and salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage, if any.

B. While Consultant shall be required to render services described hereunder for the Attorney General during the term of this Agreement, nothing herein shall be construed to imply, by reason of Consultant's engagement hereunder as an independent contractor, that the Attorney General shall have or may exercise any right of control over Consultant with regard to the manner or method of Consultant's performance of services hereunder.

C. Except as expressly provided herein, neither party shall have the right to bind or obligate the other party in any manner without the other party's prior written consent.

D. It is fully understood and agreed that Consultant is an independent contractor and neither Consultant nor its personnel shall at any time, or for any purpose, be considered agents, servants, or employees of the Attorney General or the State of Ohio, or public employees for the purpose of Ohio Public Employees Retirement System benefits.

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E. For any employees or subcontractors working either onsite at any Attorney General location, or via remote access to any Attorney General information system, Consultant understands that these employees or subcontractors are subject to a background check conducted by the Attorney General. Such a background check may include criminal records, tax records, driving records, verification of academic credentials or degrees. The Attorney General may also conduct drug testing or field investigation of certain employees of the Consultant or its subcontractors, if the Attorney General believes such action is necessary. The Attorney General reserves the right to refuse access to the job site or the information system at any time if the Attorney General determines in its discretion that Consultant's employee or subcontractor presents a potential security threat or if there is a change in the results of the background check at any time during the completion of the Work.

## **IX. RECORD KEEPING**

A. During performance of this Agreement and for a period of seven years after its completion, Consultant shall maintain auditable records of all charges pertaining to this Agreement and shall make such records available to the Attorney General as the Attorney General may reasonably require.

## **X. RELATED AGREEMENTS**

A. All Work is to be performed by Consultant, who may subcontract without the Attorney General's approval only for the purchase of articles, supplies, components, or special mechanical services that do not involve the type of work or services described in Exhibit 1, Scope of Work, but which are required for satisfactory completion of the Work.

1. Consultant shall not enter into subcontracts related to the Work without prior written approval by the Attorney General. All work subcontracted shall be at Consultant's expense.

2. Consultant shall furnish to the Attorney General a list of all subcontractors, their addresses, tax identification numbers, and the dollar amount of each subcontract.

B. Consultant shall bind its subcontractors to the terms of this Agreement, so far as applicable to the work of the subcontractor, and shall not agree to any provision which seeks to bind the Attorney General to terms inconsistent with, or at variance from, this Agreement. Consultant shall provide to the Attorney General proof of subcontractors acceptance of the terms of this Agreement. Consultant shall also provide to the Attorney General copies of all subcontracts for any Work.

C. Consultant warrants that it has not entered into, nor shall it enter into, other agreements, without prior written approval of the Attorney General, to perform substantially identical work for the State of Ohio such that the Work duplicates the work called for by the other agreements.

D. Consultant acknowledges that the Attorney General may enter into other contracts for additional work or work related to the Work. Consultant shall fully cooperate with all other such contractors and Attorney General employees and coordinate its work with such other contractors and Attorney General employees as may be required. Consultant may not unreasonably interfere with such other work.

## **XI. RIGHTS IN DATA AND COPYRIGHTS/PUBLIC USE**

A. The Attorney General shall have unrestricted authority to reproduce, distribute and use (in whole or in part) any reports, data or materials prepared by Consultant pursuant to this Agreement. No such documents or other materials produced (in whole or in part) with funds provided to Consultant

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by the Attorney General shall be subject to copyright by Consultant in the United States or any other country.

B. All data or information provided by the Attorney General under this Agreement remains the property of the Attorney General. Consultant shall only use the data and information provided by the Attorney General for the specific purposes set forth in this Agreement, and for no other purpose. Upon the expiration or earlier termination of this Agreement, Consultant shall return all data or information provided by the Attorney General under this Agreement and any copies thereof, or destroy such data or information if it cannot be returned, pursuant to the instructions provided by the Attorney General.

C. Consultant agrees that all original works created under this Agreement shall be made freely available to the general public to the extent permitted or required by law until and unless specified otherwise by the Attorney General. Any requests for distribution received by Consultant shall be promptly referred to the Attorney General.

## **XII. CONFIDENTIALITY**

A. Consultant shall not discuss or disclose any information or material obtained pursuant to its obligations under this Agreement without the prior written consent of the Attorney General.

B. The Attorney General may disclose to Consultant written material or oral or other information that the Attorney General treats as confidential, including Confidential Personal Information (“Confidential Information”). Title to the Confidential Information and all related materials and documentation the Attorney General delivers to Consultant will remain with the Attorney General. Consultant must treat such Confidential Information as secret, if it is so marked or otherwise identified as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of the public, other contractors, potential contractors, or individuals or organizations about whom the Attorney General keeps information. By way of example, information must be treated as confidential if it includes any proprietary documentation, materials, flow charts, codes, software, computer instructions, techniques, models, information, diagrams, know-how, trade secrets, data, business records, or marketing information. By way of further example, Consultant also must treat as confidential materials such as police and investigative records, files containing personal information about individuals or employees of the Attorney General, such as personnel records, tax records, and other information considered Confidential Information, court and administrative records related to pending actions, any material to which an attorney-client, physician-patient, or similar privilege may apply, and any documents or records excluded by Ohio law from public records disclosure requirements.

C. Consultant acknowledges that the Confidential Information as defined herein includes proprietary information, trade secret information and “Personal information” as described in R.C. 1347.01(E). R. C. 1347.01(E) provides: “Personal Information means any information that describes anything about a person, or that indicates actions done by or to a person, or that indicates that a person possesses certain personal characteristics, and that contains, and can be retrieved from a system by, a name, identifying number, symbol, or other identifier assigned to a person.”

D. Consultant may not disclose any Confidential Information to third parties and must use Confidential Information solely to perform the Work. Consultant must restrict circulation of Confidential Information within its organization and then only to people in Consultant’s organization that have a need to know the Confidential Information to perform the Work. Consultant shall be solely liable for the disclosure of such information, whether the disclosure is intentional, negligent, or accidental, unless otherwise provided below. Without limiting the generality of the foregoing, if

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Consultant experiences any breach of data security that exposes the Confidential Information to disclosure or unauthorized use, Consultant agrees to bear all costs to notify every individual whose Confidential Information may have been compromised and in cases where Consultant experiences that breach of data, Consultant agrees that it shall also hold Attorney General harmless from any claim arising from or related to such breach, subject to the limits of liability set forth in this Agreement.

E. Consultant may be liable for any unintentional disclosure of Confidential Information that results despite Consultant's exercise of at least the same degree of care as it normally takes to safeguard its own secrets, except when Consultant's procedures are not reasonable given the nature of the Confidential Information.

F. Consultant will not incorporate any portion of any Confidential Information into any work or product, and will have no proprietary interest in any of the Confidential Information. Furthermore, Consultant must cause all of its personnel who have access to any Confidential Information to execute an agreement including containing terms substantially similar to those attached hereto as Exhibit 4.

G. Consultant's obligation to maintain the confidentiality of the Confidential Information will not apply where the information: (1) was already in Consultant's possession before disclosure by the Attorney General, and the information was received by Consultant without obligation of confidence; (2) is independently developed by Consultant; (3) is or becomes publicly available without breach of this Agreement; (4) is rightfully received by Consultant from a third party without an obligation of confidence; (5) is disclosed by Consultant with the written consent of the Attorney General; (6) is released in accordance with a valid order of a court or governmental agency, provided that Consultant (a) notifies the Attorney General of such order promptly, but in no event more than two (2) business days following receipt of the order and (b) allows the Attorney General to make an effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production; or (7) is limited to Residual Information. "Residual Information" means ideas, concepts, and know-how retained in the unaided memories of employees. Consultant must return all originals of any Confidential Information and destroy any copies it has made on termination or expiration of this Agreement.

H. Consultant may disclose Confidential Information to its subcontractors on a need-to-know basis, but Consultant first must obligate the subcontractors to the requirements of this section.

I. Consultant must notify the Attorney General in writing as soon as Consultant learns that Consultant or its subcontractors or agents have disclosed any of the Attorney General's Confidential Information in a manner that is inconsistent with the requirements of this section.

J. Consultant may use Confidential Information only as necessary for Consultant's performance under or pursuant to rights granted in this Agreement and for no other purpose. Consultant's limited right to use Confidential Information expires upon expiration or termination of this Agreement for any reason. Consultant's obligations of confidentiality and non-disclosure survive termination for any reason or expiration of this Agreement.

K. Consultant acknowledges that this Agreement is subject to the requirements, conditions and restrictions set forth in IRS Publication 1075 (available at <http://www.irs.gov/pub/irs-pdf/p1075.pdf>), as such publication may be revised, amended or replaced (the "Publication"). The terms set forth in Exhibit 5 attached hereto are hereby made a part of this Agreement as if fully set forth herein.

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L. Consultant shall require all employees, independent contractors and/or any other consultant performing work for Consultant under this Agreement to complete and submit to the Attorney General the [(choose one) Non-Employee Computer Usage, Network Access, Internet Usage and Social Media Policy Contractor Employee Acknowledgement/ Non-Employee Network Access Policy Acknowledgement/Products and Services Standards of Conduct Policy User Acknowledgement] set forth in Exhibit 6 attached hereto.

M. Consultant acknowledges that this Agreement is subject to the requirements, conditions and restrictions set forth in the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) Rules, codified at 45 C.F.R. Parts 160 and 164 (available at <https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/administrative/combined/hipaa-simplification-201303.pdf>), as those rules may be revised, amended or replaced. The terms set forth in Exhibit 7 attached hereto are hereby made a part of this Agreement as if fully set forth herein.

### **XIII. LIABILITY**

A. Consultant agrees to indemnify and to hold the Attorney General and the State of Ohio harmless and immune from any and all claims for injury or damages arising from this Agreement which are attributable to Consultant’s own actions or omissions or those of its trustees, officers, employees, subcontractors, suppliers, third party agents or joint venturers while acting under this Agreement. Such claims shall include any claims made under the Fair Labor Standards Act or under any other federal or state law involving wages, overtime or employment matters and any claims involving patents, copyrights and trademarks.

B. Consultant shall bear all costs associated with defending the Attorney General and the State of Ohio against any claims described in paragraph A above.

C. In no event shall either party be liable to the other party for indirect, consequential, incidental, special or punitive damages, or lost profits.

### **XIV. INSURANCE**

A. Until all obligations under this Agreement are complete, and without limiting Consultant’s indemnification obligations herein, Consultant agrees, at its own cost, to procure and continue in force at all times that this Agreement is in effect, in its name, the insurance policies set forth below. All commercial insurance required herein shall be provided by insurers authorized to engage in the business of insurance in the State of Ohio with an A.M. Best rating of at least “A-VII,” or a comparable rating agency. Consultant shall also cause each of its subcontractors under this Agreement, if applicable, to comply with the requirements in this Article XIV.

B. The insurance obligations set forth under this Agreement shall be the minimum insurance coverage requirements and/or limits required by this Agreement. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the Attorney General. No representation is made by the Attorney General that the minimum insurance requirements in this Agreement are sufficient to cover the obligations of Consultant under this Agreement. Consultant’s insurance coverage shall be at least as broad as the following:

1. Commercial General Liability (CGL): written on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$5,000,000 per occurrence. If a general aggregate

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limit applies, either the general aggregate limit shall apply separately to each location or the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be outside the policy limits.

2. Automobile Liability insurance covering, Code 1 (any auto), or if Consultant has no owned autos, Codes 8 (hired) and 9 (non-owned), with a limit no less than \$1,000,000 per accident for bodily injury and property damage.

3. Workers' Compensation insurance as required by the State of Ohio, or the state in which the work will be performed, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease. If Consultant is a sole proprietor, partnership, or has no statutory requirement for workers' compensation, Consultant must provide a letter stating that it is exempt and agreeing to hold the Attorney General and the State of Ohio harmless from loss or liability for such.

4. Property insurance:

a. Tools and Equipment: The Attorney General and State of Ohio shall not be liable for any loss, including theft or disappearance, of the Consultant's tools and equipment. Consultant is solely responsible for securing its tools and equipment and at no time shall such items be considered in the care, custody and control of the Attorney General or the State of Ohio. Should the Consultant choose not to adequately insure its property, no coverage shall be afforded under any insurance or self-insurance maintained by the Attorney General or the State of Ohio.

C. The insurance policies required by this Agreement shall contain, or be endorsed to contain, the following provisions:

1. **ADDITIONAL INSURED STATUS.** Except for Workers' Compensation and Professional Liability insurance, the Attorney General and the State of Ohio, its officers, officials and employees are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. Coverage can be provided in the form of an endorsement to the Consultant's insurance.

2. **PRIMARY COVERAGE.** For any claims related to this Agreement, the Consultant's insurance coverage shall be primary insurance. Any insurance or self-insurance maintained by the Attorney General or the State of Ohio, its officers, officials and employees shall be excess of the Consultant's insurance and shall not contribute with it.

3. **UMBRELLA OR EXCESS INSURANCE POLICIES.** Umbrella or excess commercial liability policies may be used in combination with primary policies to satisfy the limit requirements above. Such Umbrella or excess commercial liability policies shall apply without any gaps in the limits of coverage and be at least as broad as and follow the form of the underlying primary coverage required above.

4. **NOTICE OF CANCELLATION.** Consultant shall provide the Attorney General with 30 days' written notice of cancellation or material change to any insurance policy required above, except for non-payment cancellation. Material change shall be defined as any change to the insurance limits, terms or conditions that would limit or alter the Attorney General or the State of Ohio's available recovery under any of the policies required above. A lapse in any required insurance coverage during this Agreement shall be a breach of this Agreement.

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5. **WAIVER OF SUBROGATION.** Consultant hereby grants to the Attorney General and the State of Ohio a waiver of any right to subrogation which any insurer of Consultant may acquire against the Attorney General or the State of Ohio by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Attorney General or the State of Ohio has received a waiver of subrogation endorsement from the insurer.

6. **DEDUCTIBLES AND SELF-INSURED RETENTIONS.** Deductibles and self-insured retentions must be declared to and approved by the Attorney General. The Attorney General may require the Consultant to provide proof of ability to pay losses and related investigations, claims administration and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the deductible or self-insured retention may be satisfied by either the named insured or the State of Ohio.

7. **CLAIMS-MADE POLICIES.** If any of the required policies provide coverage on a claims-made basis:

a. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.

b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Work.

c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Work. The Discovery Period must be active during the Extended Reporting Period.

D. **VERIFICATION OF COVERAGE.** Consultant shall furnish the Attorney General with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received by the Attorney General before work commences. However, failure to obtain the required documents prior to the Work beginning shall not waive the Consultant's obligation to provide them. The Attorney General reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

E. **SUBCONTRACTORS.** Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that the Attorney General and the State of Ohio are additional insureds on insurance required from subcontractors.

F. **SPECIAL RISKS OR CIRCUMSTANCES.** The Attorney General reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

## **XV. ANTITRUST ASSIGNMENT**

A. Consultant assigns to the Attorney General all State and Federal antitrust claims and causes of action that relate to all goods and services provided for in this Agreement.

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## **XVI. CONSULTANT'S REPRESENTATIONS AND WARRANTIES**

A. **COMPLIANCE WITH LAWS.** Consultant, in the execution of its duties and obligations under this Agreement, agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances.

B. **DRUG FREE WORKPLACE.** Consultant agrees to comply with all applicable federal, state and local laws regarding smoke-free and drug-free work places and shall make a good faith effort to ensure that none of its employees or permitted subcontractors engaged in the Work purchase, transfer, use or possess illegal drugs or alcohol, or abuse prescription drugs in any way.

C. **NONDISCRIMINATION OF EMPLOYMENT.** Pursuant to R.C. 125.111 and the Attorney General's policy, Consultant agrees that Consultant, any subcontractor, and any person acting on behalf of Consultant or a subcontractor, shall not discriminate, by reason of race, color, religion, sex, sexual orientation, age, disability, military status, national origin, or ancestry against any citizen of this state in the employment of any person qualified and available to perform the Work. Consultant further agrees that Consultant, any subcontractor, and any person acting on behalf of Consultant or a subcontractor shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of the Work on account of race, color, religion, sex, sexual orientation, age, disability, military status, national origin, or ancestry.

D. **AFFIRMATIVE ACTION PROGRAM.** Consultant represents that it has a written affirmative action program for the employment and effective utilization of economically disadvantaged persons pursuant to R.C. 125.111(B) and has filed an Affirmative Action Program Verification form with the Equal Employment Opportunity and Affirmative Action Unit of the Department of Administrative Services.

E. **CONFLICTS OF INTEREST.** No personnel of Consultant who exercise any functions or responsibilities in connection with the review or approval of this Agreement or carrying out of any of the Work shall, prior to the completion of the Work, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of the Work. Any such person who acquires an incompatible or conflicting personal interest on or after the effective date of this Agreement, or who involuntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his or her interest to the Attorney General in writing. Thereafter, he or she shall not participate in any action affecting the Work, unless the Attorney General shall determine in its sole discretion that, in light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

F. **ETHICS COMPLIANCE.** Consultant represents, warrants and certifies that it and its employees engaged in the administration or performance of this Agreement are knowledgeable of and understand the Ohio Ethics and Conflict of Interest laws. Consultant further represents, warrants, and certifies that neither Consultant nor any of its employees will do any act that is inconsistent with such laws.

G. **QUALIFICATIONS TO DO BUSINESS.** Consultant affirms that it has all of the approvals, licenses, or other qualifications needed to conduct business in Ohio and that all are current. If at any time during the term of this Agreement Consultant, for any reason, becomes disqualified from conducting business in the State of Ohio, Consultant will immediately notify the Attorney General in writing and will immediately cease performance of the Work.

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H. CAMPAIGN CONTRIBUTIONS. Consultant hereby certifies that neither Consultant nor any of Consultant's partners, officers, directors or shareholders, nor the spouse of any such person, has made contributions to the Attorney General in excess of the limitations specified in R.C. 3517.13.

I. FINDINGS FOR RECOVERY. Consultant warrants that it is not subject to an "unresolved" finding for recovery under R.C. 9.24.

J. DEBARMENT. Consultant represents and warrants that it is not debarred from consideration for contract awards by the Executive Director of the Ohio Facilities Construction Commission or the Director of the Department of Administrative Services, pursuant to either R.C. 153.02 or R.C. 125.25.

K. BOYCOTTING. Pursuant to R.C. 9.76(B), Consultant warrants that Consultant is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the term of this Agreement.

L. OHIO RETIREMENT SYSTEM RETIRANT. If Consultant is a PERS retirant, as such term is defined by R.C. 145.38, Consultant shall notify the Attorney General of such status in writing prior to the commencement of Work. Notices pursuant to this Paragraph shall be sent to the Attorney General's Director of Human Resources by mail at 30 E. Broad Street, 16<sup>th</sup> Floor, Columbus, Ohio 43215, by fax at (614) 728-7582, or by email at HR@OhioAttorneyGeneral.gov. The Attorney General shall not be responsible for any changes to Consultant's retirement benefits that may result from entering into this Agreement.

M. REPAYMENT. If the representations and warranties in Paragraphs I or J of this Article XVI are found to be false, this Agreement is void ab initio and Consultant shall immediately repay to the Attorney General any funds paid under this Agreement.

N. UNITED STATES LOCATION. The Work shall be performed within the United States. No information or data provided by or belonging to the Attorney General shall be stored, accessed from, or transmitted to outside of the United States without the Attorney General's prior written consent.

## **XVII. MISCELLANEOUS**

A. CONTROLLING LAW. This Agreement and the rights of the parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio. Consultant consents to jurisdiction in a court of proper jurisdiction in Franklin County, Ohio.

B. WAIVER. A waiver by any party of any breach or default by the other party under this Agreement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

C. SURVIVAL. The provisions of Articles IV, VII, IX, XI, XII, XIII, XIV, XV and XVI(M) hereof shall survive the termination or expiration of this Agreement.

D. SUCCESSORS AND ASSIGNS. Neither this Agreement nor any rights, duties or obligations hereunder may be assigned or transferred in whole or in part by Consultant, without the prior written consent of the Attorney General.

E. NOTICES. Except to the extent expressly provided otherwise herein, all notices, consents and communications required hereunder (each, a "Notice") shall be in writing and shall be deemed to have been properly given when: 1) hand delivered with delivery acknowledged in writing; 2) sent by

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U.S. Certified mail, return receipt requested, postage prepaid; 3) sent by overnight delivery service (Fed Ex, UPS, etc.) with receipt; or 4) sent by fax or email. Notices shall be deemed given upon receipt thereof, and shall be sent to the addresses first set forth above. Notwithstanding the foregoing, notices sent by fax or email shall be effectively given only upon acknowledgement of receipt by the receiving party. Any party may change its address for receipt of Notices upon notice to the other party. If delivery cannot be made at any address designated for Notices, a Notice shall be deemed given on the date on which delivery at such address is attempted.

F. CONFLICT. In the event of any conflict between the terms and provisions of the body of this Agreement and any exhibit hereto, the terms and provisions of the body of this Agreement shall control first, and then the exhibits shall control in the following order:

1. Exhibit 1, Scope of Work;
2. Exhibit 2, Request for Proposals;
3. Exhibit 5, IRS Publication 1075;
4. Exhibit 7, HIPAA Terms;
5. Exhibit 3, Consultant's Response to the Request for Proposals;
6. Exhibit 6, Ohio Attorney General Non-Employee Computer Usage, Network Access, Internet Usage and Social Media Policy Contractor Employee Acknowledgement; and
7. Exhibit 3, Agreement for Protection of Confidential Information.

G. HEADINGS. The headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.

H. SEVERABILITY. The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.

I. ENTIRE AGREEMENT. This Agreement contains the entire agreement between the parties hereto and shall not be modified, amended or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto. This Agreement supersedes any and all previous agreements, whether written or oral, between the parties.

J. EXECUTION. This Agreement is not binding upon the Attorney General unless executed in full, and is effective as of the last date of signature by the Attorney General.

K. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

L. FACSIMILE SIGNATURES. Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax or e-mail. Each party hereto shall be entitled to rely upon a facsimile signature of any other party delivered in such a manner as if such signature were an original.

*(remainder of page intentionally left blank)*

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

**CONSULTANT**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**OHIO ATTORNEY GENERAL**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

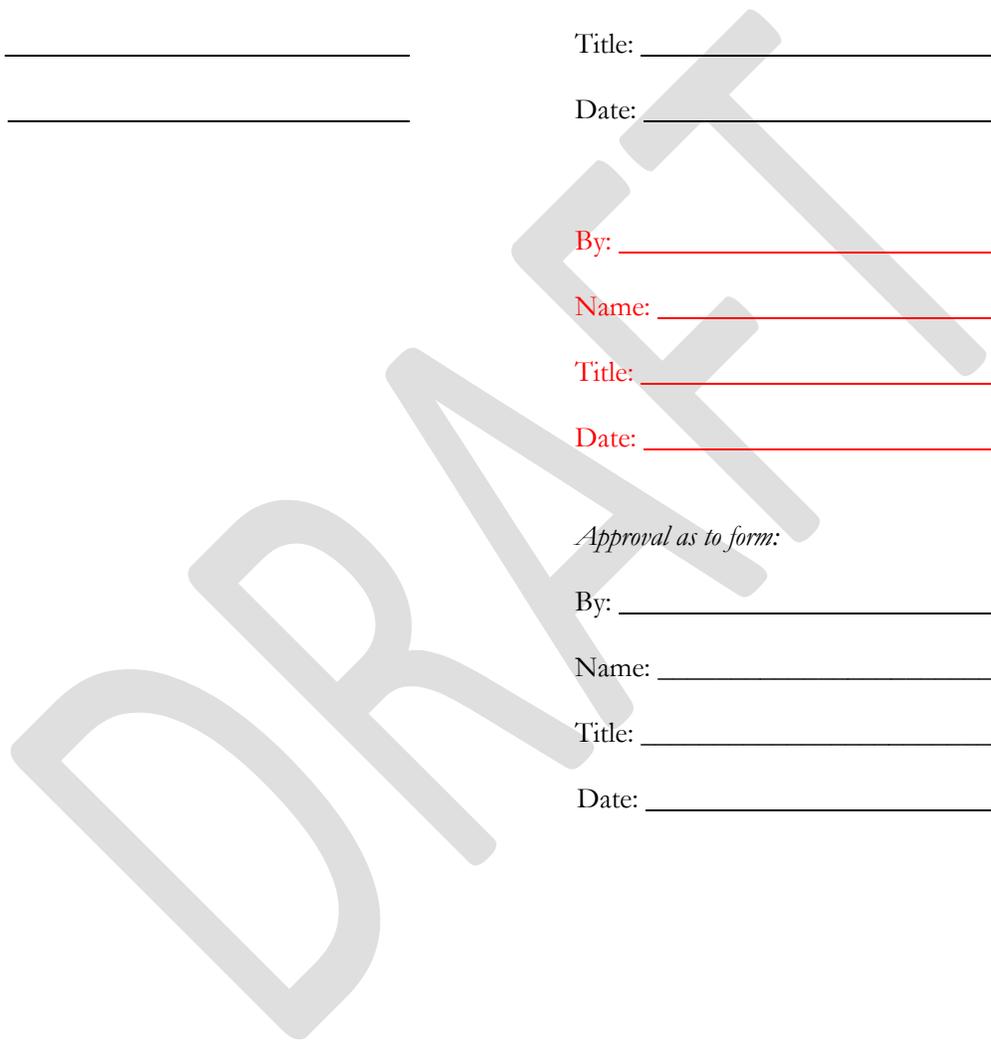
*Approval as to form:*

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_



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**EXHIBIT 1**  
**Scope of Work**

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**EXHIBIT 2**  
**Request for Proposals**

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**EXHIBIT 3**  
**Consultant's Response to the Request for Proposals**

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**EXHIBIT 4**  
**Agreement For Protection of Confidential Information**

“Confidential Information” means any and all tangible or intangible information, documents, prototypes, samples, products, services, methodologies, research, technical knowledge, marketing plans, trade secrets, and proprietary materials disclosed previously or in the future by Consultant or its clients to you, either directly or indirectly, in writing, orally or by inspection of tangible objects, including, without limitation, any information: (i) that has been marked as proprietary or confidential; (ii) whose confidential nature has been made known by Consultant; (iii) that due to its character and nature, a reasonable person under like circumstances would treat as confidential. Confidential Information may also include information disclosed to a Consultant by third parties; or (iv) Personal Information, as defined in Ohio Rev. Code 1347.01(E), in any form which is any information that describes anything about a person, or that indicates actions done by or to a person, or that indicates that a person possesses certain personal characteristics, and that contains, and can be retrieved from a system by, a name, identifying number, symbol, or other identifier assigned to a person. Confidential Information shall not, however, include any information which (i) was publicly known and made generally available in the public domain prior to the time of disclosure by Consultant; (ii) becomes publicly known and made generally available after disclosure by Consultant to the you through no action or inaction of you; (iii) is already in your possession at the time of disclosure by Consultant as shown by your files and records immediately prior to the time of disclosure; (iv) is obtained by you from a third party without a breach of such third party’s obligations of confidentiality; or (v) is required by law to be disclosed by you, provided that you give Consultant prompt written notice of such requirement prior to such disclosure and assistance in obtaining an order protecting the information from public disclosure, in which case such information shall remain Confidential Information.

Non-use and Non-disclosure. You agree not to use any Confidential Information of Consultant or its clients for any purpose except to provide services to Consultant and its clients. You agree not to disclose any Confidential Information to third parties.

Maintenance of Confidentiality. You agree to take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information.

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Consultant Name: \_\_\_\_\_

Date: \_\_\_\_\_

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**EXHIBIT 5**  
**IRS Publication 1075**

**I. PERFORMANCE**

In performance of this Agreement, Consultant agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be done under the supervision of Consultant or Consultant's employees.
- (2) Consultant and Consultant's employees with access to or who use Federal Tax Information ("FTI") must meet the background check requirements defined in IRS Publication 1075.
- (3) Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Agreement. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Agreement. Disclosure to anyone other than an officer or employee of Consultant will be prohibited.
- (4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- (5) Consultant certifies that the data processed during the performance of this Agreement will be completely purged from all data storage components of his or her computer facility, and no output will be retained by Consultant at the time the work is completed. If immediate purging of all data storage components is not possible, Consultant certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- (6) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, Consultant will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- (7) All computer systems receiving, processing, storing or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal Tax Information.
- (8) No work involving Federal Tax Information furnished under this Agreement will be subcontracted without prior written approval of the IRS.
- (9) Consultant will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
- (10) The agency will have the right to void the Agreement if the contractor fails to provide the safeguards described above.
- (11) Audit and accountability policy and procedures must be developed, documented, disseminated, and updated as necessary to facilitate implementing audit and accountability security controls.

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- a. To support the audit of activities, all agencies must ensure that audit information is archived for seven years.
- b. The information system must protect audit information and audit tools from unauthorized access, modification, and deletion.

(12) IRS Publication 1075 compliance is mandatory. The aforementioned compliance items are a small selection of key elements contained within the requirements defined in IRS publication 1075. The Attorney General reserves the right to impose additional and more stringent requirements as deemed necessary to protect FTI (Federal Tax Information).

## II. CRIMINAL/CIVIL SANCTIONS

(1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

(2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Agreement. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

(3) Additionally, it is incumbent upon Consultant to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(4) Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain

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their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4 of Publication 1075, Sanctions for Unauthorized Disclosure, and Exhibit 5 of Publication 1075, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches (See Section 10 of Publication 1075). For both the initial certification and the annual certification, Consultant must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

### **III. INSPECTION**

The IRS and the Agency, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of Consultant to inspect facilities and operations performing any work with FTI under this Agreement for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where Consultant is found to be noncompliant with Agreement safeguards.

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## EXHIBIT 6

### Ohio Attorney General Non-Employee Computer Usage, Network Access, Internet Usage and Social Media Policy Contractor Employee Acknowledgement

This Ohio Attorney General (“AGO”) Non-Employee Computer Usage, Network Access, Internet Usage, and Social Media Policy Contractor Employee Acknowledgement (the “Acknowledgement”) sets forth the policies and procedures for proper computer, network, Internet, and social media use by all non-AGO personnel performing work for the AGO (the “User”). This Computer Usage, Network Access, Internet Usage, and Social Media Policy (the “Policy”) applies to all independent contractors and/or any other consultant performing work for any contractor or consultant doing business with the AGO and their employees. Any violation of this Policy may result in, among other penalties and liabilities, immediate removal of User access to all AGO systems and notification to the User’s employer of the violation. Some circumstances may justify termination of this Agreement for cause by the AGO. The AGO may temporarily suspend or block a User’s access to an account when it appears reasonably necessary to do so to protect the security of the AGO network or to protect the AGO from liability. **All Users will be held personally responsible and liable, to the fullest extent of the law, for actions in violation of this Policy.**

#### I. COMPUTER USAGE AND NETWORK ACCESS POLICY

In order to comply with Ohio law and to ensure the security and integrity of AGO network resources (e.g. routers, switches, servers, workstations, printers, etc.), the User shall:

- Acknowledge he/she has been provided with and will comply with the provisions of this Policy;
- Utilize the AGO’s network resources and any information/data provided therefrom for authorized use only;
- Use all computer resources, including, but not limited to, equipment, hardware, software, documentation, and data solely for AGO business;
- Immediately notify the AGO of any proven or suspected unauthorized disclosure or exposure of any AGO data or of information or identity theft;
- Immediately notify the AGO if a Security Event has occurred or if suspicion of a Security Event has been identified. A Security Event includes, but is not limited to:
  - Any abnormality in the environment that could lead to a compromise of the system integrity or result in disclosure of data,
  - Hack attempts,
  - Malware,
  - Changes in security infrastructure,
  - System failures,
  - Compromised user accounts, and
  - Lost/stolen laptop or media.

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- Promptly notify the AGO of the date of separation if User leaves the employer or if access to AGO networks, applications, systems, and/or AGO data is no longer required. Access to the AGO network may be rescinded for failure to provide such notice;
- Take all reasonable precautions to prevent the dissemination of User's credentials by any means, including, but not limited to, not sharing the User's username and password, not writing down the username and password, etc.;
- Create a password in compliance with the AGO password criteria set forth below. The AGO reserves the right to change the password criteria from time to time. Compliance with the AGO password criteria will be enforced via automated password authentication or public/private keys with strong pass-phrases. The AGO password criteria are as follows:
  - Minimum 12 characters,
  - Must include 3 of the 4: a-z, A-Z, 0-9, and special characters,
  - Passwords will require being reset based on level of access at the AGO's discretion,
  - Passwords must be kept securely by the account owner, and never be shared,
  - Passwords must not contain sequences 01, 123, abc, etc.,
  - Passwords must not contain properly spelled dictionary words, and
  - Passwords must not be directly identifiable to the user (e.g. social security number, date of birth, spouse's name, username, etc.).

Password history will be retained for 24 changes to ensure unique passwords. Inactive accounts will be disabled at 90 days, and removed at 120 days. Users of accounts that reach 120 days of inactivity must reapply for an account.

- Comply with all applicable network or operating system restrictions, whether or not they are built into the operating system or network, and whether or not they can be circumvented by technical means;
- Comply with all federal, Ohio, and any other applicable law, including, but not limited to: Internal Revenue Service Publication 1075 which is based on United States Code Title 26, Section 6103; Ohio Revised Code Chapter 1347; the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the associated omnibus rule to modify the HIPAA Privacy, Security and Enforcement Rules; and the Health Information Technology for Economic and Clinical Health ("HITECH") Act; and
- Comply with all applicable contracts and licenses.

User shall not:

- Move, alter, delete, copy, or otherwise change any information/data stored or contained on AGO networks or computers without express, written authorization by the AGO (e.g. a written agreement, scope of work, or approved vendor quotation).
- Leave a computer unattended for any period of time unless it is secured in such a way that the computer cannot be used by any other individual (e.g. sign-off procedure, password protected screen saver, etc.);
- Make paper, electronic, or any other copies or reproductions of any AGO information/data or licensed materials, regardless of how the information/data or materials were obtained, without prior authorization from the AGO;
- Use an e-mail account, username, or signature line other than the User's own;

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- Attempt to represent himself or herself as any individual other than him/herself. This specifically includes, but is not limited to, use of the Internet, e-mail, online service account, or signature line; and
- Share any information/data gained through use of AGO networks with anyone outside the AGO without prior authorization from the AGO.

## II. INTERNET USAGE POLICY

Improper use of the AGO's Internet and Internet services can waste time and resources, violate AGO policies, and create legal liability and embarrassment for both the AGO and the User. The AGO's Internet services include, but are not limited to, e-mail, file transfer protocol, and access to the World Wide Web. This Policy applies to use of the AGO's Internet and Internet services (collectively the "Internet") accessed using AGO network resources or paid Internet access methods, and used in a manner that identifies the User with the AGO.

User's authorized Internet access will be provided by the AGO through vendors approved by the Information Technology Services Section of the AGO ("ITS"). All other access methods to the Internet are prohibited.

All activities that require use of the AGO's Internet must be pre-approved by the AGO. Certain activities that require use of the AGO's Internet are strictly prohibited. Therefore, the User shall not use the AGO's Internet in connection with any of the following activities:

- Engaging in illegal, fraudulent, or malicious conduct;
- Engaging in conduct that is beyond the scope of the contract or retention agreement, if applicable, for which User access is granted;
- Transmitting, downloading, retrieving, or storing offensive, obscene, defamatory, or otherwise prohibited material (including, but not limited to, pornographic, X-rated, religious, political, threatening, or racial or sexual harassing content);
- Harassment of any kind;
- Monitoring or intercepting the files or electronic communications of AGO employees or third parties;
- Attempting to test, circumvent, or defeat the security systems of the AGO or any other organization, or accessing or attempting to access the AGO's or any other organizations' systems without prior authorization from the AGO;
- Providing access to anyone other than the User to the AGO Internet and/or network resources without prior authorization from the AGO;
- Providing anyone access to or disseminating any AGO information/data, regardless of whether or not it is considered confidential or public, and regardless of how the information/data was obtained;
- Using or accessing social media;
- Participating in chat rooms, open forum discussions, interactive or instant messaging unless such participation is for business purposes and pre-approved by ITS;
- Operating a business for personal gain, sending chain letters, or soliciting money in any way for religious, political, charitable, personal, or business purposes while acting within the scope of User's work and using AGO Internet services;
- Transmitting, collecting, and/or receiving incendiary statements which might incite violence or describe or promote the use of weapons or devices associated with terrorist activities;

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- Distributing frivolous, non-business related material such as jokes and or cartoons; and
- Participating in any other unauthorized activity that may bring damage, discredit upon, or create liability to the AGO.

### **III. SOCIAL MEDIA POLICY**

Social media and social networking sites are not private and the User shall use good professional judgment regarding any references to the AGO, this Acknowledgement, any applicable contract or memorandum of understanding, clients of the AGO, or services provided by the AGO. All Users shall abide by and be aware of the following:

- Personal blogs shall contain clear disclaimers that the views expressed by the author in the blog are the author's alone and do not represent the views of the AGO;
- User shall refrain from discussions regarding employees and clients of the AGO on any social media or networking site;
- Social media activities shall not be conducted on AGO networks or while using the AGO's Internet;
- User's online presence may be linked to this Acknowledgement, any applicable related contract or memorandum of understanding, and the AGO. Be aware that the User's actions captured through images, posts, or comments should not include illegal, harassing, or other content that violates the law and/or the User's employer's or the AGO's policies or ethical requirements. Such conduct may lead to termination of the User's employment relationship with the AGO;
- AGO logos and templates shall not be used on personal blogs or for personal postings on social network sites; and
- Users engaging in chat rooms, blogging, tweeting, or other social media during non-working hours shall not reference or discuss information from the AGO or represent themselves as employees of, or spokespersons for, the Attorney General or the AGO.

### **IV. USER'S UNDERSTANDINGS**

- User understands that any User who engages in electronic communications with people or entities in other states or countries, or on other systems or networks, are on notice that they may also be subject to the laws of those other states and countries and the rules and policies of those other systems and networks. User is responsible for obtaining, understanding, and complying with the laws, rules, policies, contracts, and licenses applicable to their particular uses.
- User understands that the confidentiality and privileged nature of AGO files and information/data must be respected and protected. User understands that the AGO retains the right, and has the capability, among other security measures, to review, audit, or monitor the User's directories, files, e-mails (both sent and received), as well as Internet usage to ensure maintenance of information/data integrity. User also understands that the AGO has the right to remove or destroy unauthorized materials found on AGO networks and to terminate User's employment relationship with the AGO for breach of this Policy.
- User understands that, among other security measures, the AGO makes backup copies and stores User information. User activities are therefore not private and User content is potentially stored on AGO servers. User also understands that the AGO is subject to public records disclosure and to discovery requests and that the User's activities and information may be released pursuant to a public records or discovery request.

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- User understands that web browsers leave “footprints” that provide a record of all site visits. Access to, and use of, the Internet is not confidential and may be a public record.
- User understands that all Users and their employers will be held responsible and liable to the fullest extent of the law for actions while using the AGO’s network resources, computers, and Internet.

User Acknowledgement

By signing below, you, as a User, acknowledge that you have read and understand this Policy, and you, the User, agree to comply with the terms of this Policy.

Printed Name of User: \_\_\_\_\_ Title: \_\_\_\_\_

User’s Employer: \_\_\_\_\_ Contract End Date: \_\_\_\_\_

User’s Phone Number: \_\_\_\_\_ User’s E-mail: \_\_\_\_\_

Requested Period of Access:  
From: \_\_\_\_\_ To: \_\_\_\_\_

Application or resources requested:  
(VPN, AGO Domain Account, systems support, etc.)  
\_\_\_\_\_  
\_\_\_\_\_

Public IP: \_\_\_\_\_

User’s Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Account Identity Control Information (1): \_\_\_\_\_(mother’s maiden name, etc.)

Account Identity Control Information (2): \_\_\_\_\_(first car owned, etc.)

The above Account Identity Control Information will be used to identify you in the event that you have lost or do not remember your account ID or password. The User must provide two unique pieces of information as a shared secret with the AGO to verify your identity when account resets and other services that require identity verification are needed. It is the User’s obligation to provide and secure these shared secrets in the same manner that is required for account credentials.

Employer Acknowledgement

By signing below, you, as the User’s employer, acknowledge that you are a duly authorized representative of the User’s employer able to bind the employer to the terms of this Acknowledgement. By signing below, you, as the User’s employer, also agree that access by the employer may be rescinded at the discretion of the AGO, with prior notice, if the employer fails to take reasonable precautions, as defined above, to avoid a breach of this Policy and/or to ensure that the employer’s Users do not breach this Policy.

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Employer’s Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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Employer's Phone Number: \_\_\_\_\_

Employer's E-mail: \_\_\_\_\_

**Official AGO Use Only:**

**AGO Contract #:** \_\_\_\_\_

**AGO ITS Work Order Number:** \_\_\_\_\_

AGO issued username: \_\_\_\_\_

AGO issued rights: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**AGO Chief Information Officer, Chief Information Security Officer, or their designee**

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_

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**EXHIBIT 7**  
**HIPAA Terms**

In the course of providing the services to the Attorney General set forth in this Agreement, Consultant may have access to Protected Health Information (“PHI”) that is subject to federal privacy and security regulations contained in the Health Insurance Portability and Accountability Act (“HIPAA”), codified at 45 C.F.R. Parts 160, 162 and 164. For purposes of this Exhibit [REDACTED], Consultant will be referred to as Subcontractor, as that term is defined in HIPAA. In the performance of this Agreement, Consultant agrees to comply with and assume responsibility for compliance by his or her employees and subcontractors with the following requirements:

**I. Definitions.** The following capitalized terms in this Exhibit [REDACTED] will have the same meaning as those terms have in the HIPAA Rules: Breach, Covered Entity, Designated Record Set, Disclosure, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information (“PHI”), Required By Law, Security Incident, Subcontractor, Unsecured PHI, and Use. Other capitalized terms in this Exhibit will have the meanings set forth below:

- A. “Effective Date” means the date specified in paragraph XV(J) of this Agreement.
- B. “ePHI” has the same meaning as the term “electronic protected health information” in 45 C.F.R. §160.103.
- C. “HIPAA Rules” means the privacy, security, breach notification, and enforcement rules at 45 C.F.R. Parts 160 and 164.
- D. “Parties” means the Attorney General and Subcontractor, collectively.
- E. “Secretary” means the Secretary of the United States Department of Health and Human Services.
- F. “Successful Security Incident” means a Security Incident that results in the unauthorized access, Use, Disclosure, modification, encryption, or destruction of Subcontractor’s PHI.
- G. “Unsuccessful Security Incident” means a Security Incident that is not a Successful Security Incident, including without limitation any of the following that do not result in a Successful Security Incident: pings on the Attorney General’s firewall, port scans, attempts to log onto a system or enter a database without a valid password or user name, or phishing scams.

**II. Subcontractor’s Obligations.**

- A. General. The provisions of this Exhibit regarding the Use and Disclosure of PHI and ePHI relate only to PHI and ePHI that Subcontractor: i) has received from the Attorney General; or ii) receives from the Attorney General or is given access to, pursuant to this Agreement.
- B. Use and Disclosure. Subcontractor must not Use or disclose PHI or ePHI other than as permitted or required by this Agreement, as Required By Law, or as permitted by the HIPAA Rules. Subcontractor must Use appropriate administrative, physical, and technical safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to ePHI, to prevent Use or Disclosure of PHI other than as provided for by this Exhibit.
- C. Reporting Breaches and Other Incidents. Subcontractor must report to the Attorney General any Use or Disclosure of PHI not provided for in this Agreement, any Successful Security Incident

involving ePHI, and any Breach of Unsecured PHI as required by 45 C.F.R. §164.410. Such report will be provided promptly and without unreasonable delay, but no later than seven (7) calendar days after Subcontractor first learns of the unauthorized Use or Disclosure, Successful Security Incident or Breach, unless notification of a Breach is delayed at the request of law enforcement pursuant to 45 C.F.R. §164.412. Such notice must identify each Individual whose Unsecured PHI has been, or is reasonably believed by Subcontractor to have been, Used or disclosed during the Breach and must include information that a Covered Entity would be required to provide to an Individual pursuant to 45 C.F.R. §164.404(c). The Attorney General is responsible for providing notification to Individuals whose Unsecured PHI has been disclosed, as well as to the Secretary and the media, in the manner and to the extent required by 45 C.F.R. §164.400 – 164.414.

Subcontractor shall also use its best efforts to mitigate the effect of any unauthorized Use or Disclosure, Security Incident or Breach of Unsecured PHI, and shall implement or modify practices or take other reasonable action to prevent further unauthorized Use or Disclosure, Security Incident or Breach of Unsecured PHI.

Within fourteen (14) calendar days of receipt of a request by the Attorney General, Subcontractor must provide to the Attorney General a report of Unsuccessful Security Incidents. The report must identify the categories of Unsuccessful Security Incidents and must outline the steps that Subcontractor will take to improve its security measures if Subcontractor, in its sole discretion, determines that its then-current security measures should be improved.

D. Other Subcontractors and Agents. Subcontractor agrees to ensure that, should it require use of additional subcontractors or agents to create, receive, maintain, or transmit PHI on behalf of the Attorney General, the additional subcontractors or agents agree to the same restrictions, conditions, and requirements that apply to Subcontractor with respect to such information, in accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2).

E. Access to PHI. If the Attorney General requires Subcontractor's assistance in providing PHI to an Individual requesting access to, or a copy of, the Individual's PHI in a Designated Record Set pursuant to 45 C.F.R. §164.524, the Attorney General must ensure that Subcontractor receives a written request for such assistance. If Subcontractor possesses such PHI in a Designated Record Set, then within fourteen (14) calendar days after receiving the written request, Subcontractor must provide such requested PHI to the Attorney General, to the extent required for the Attorney General's compliance with its obligations under 45 C.F.R. §§164.524 and 164.524(b)(2), unless the requested PHI is confidential or privileged pursuant to any of the following:

1. The attorney-client privilege;
2. The work-product doctrine; or
3. State or federal laws or regulations that are not preempted by the HIPAA Rules.

If Subcontractor needs more time to comply with this Subsection (e), it must request additional time pursuant to 45 C.F.R. §164.524(b)(2) and it must notify the Attorney General in writing of the request for additional time.

If Subcontractor receives a written request directly from an Individual to access the Individual's own PHI in a Designated Record Set and Subcontractor possesses such PHI in a Designated Record Set, then within seven (7) calendar days after receiving the written request, Subcontractor must provide such PHI as directed or agreed to by the Attorney General under 45 C.F.R. §164.524, or take other

measures as necessary to satisfy the Attorney General's obligations under 45 C.F.R. §§164.524 and 164.524(b)(2).

F. Amendment of PHI. If the Attorney General receives a written request to amend PHI in a Designated Record Set and Subcontractor possesses such PHI in a Designated Record Set, then within fourteen (14) calendar days of a request from the Attorney General, Subcontractor must make any amendment(s) to such PHI as directed or agreed to the Attorney General under 45 C.F.R. §§164.526 and 164.526(b)(2) or take other measures as necessary to satisfy the Attorney General obligations under 45 C.F.R. §164.526.

G. Accounting. If the Attorney General receives a written request for an accounting of PHI by an Individual, Subcontractor must maintain and make available within seven (7) calendar days the information required to provide an accounting of Disclosures to the Attorney General as necessary to satisfy the Attorney General's obligations pursuant to 45 C.F.R. §§164.528 and 164.528(c), unless the information is confidential or privileged pursuant to any of the following:

1. The attorney-client privilege;
2. The work-product doctrine; or
3. State or federal laws or regulations that are not preempted by the HIPAA Rules.

H. Compliance with the Attorney General's Obligations. To the extent Subcontractor is to carry out one or more of the Attorney General's obligation(s) under 45 C.F.R. Part 164, Subpart E (45 C.F.R. §§164.500 – 164.534), Subcontractor must comply with the requirements of Subpart E that apply to the Attorney General in the performance of such obligation(s).

I. Access to Books and Records. Subcontractor must make its internal practices, books, and records available to the Secretary, and to the Attorney General when related to the Attorney General, for purposes of determining compliance with the HIPAA Rules, unless information sought by the Secretary is confidential or privileged pursuant to any of the following:

1. The attorney-client privilege;
2. The work-product doctrine; or
3. State or federal laws or regulations that are not preempted by the HIPAA Rules.

J. Training. Subcontractor must provide appropriate training regarding the requirements of this Exhibit to its employees who access or Use PHI.

### **III. Permitted Uses and Disclosures by Subcontractor.**

A. Subcontractor may Use or disclose PHI as Required By Law.

B. When using PHI, Subcontractor must take reasonable efforts to limit the Uses of PHI to the Minimum Necessary to accomplish the purpose of the Use, consistent with the Attorney General's minimum-necessary policy (see Subpart J to the Attorney General's HIPAA Privacy Procedure, attached hereto as Attachment 1).

C. Subcontractor must not Use or disclose PHI in a manner that would violate 45 C.F.R. Part 164, Subpart E (45 C.F.R. §§164.500 – 164.534) if done by the Attorney General, except that Subcontractor may:

1. Use PHI to carry out Subcontractor's scope of work responsibilities to be performed on behalf of the Attorney General;
2. Disclose PHI to carry out Subcontractor's scope of work responsibilities to be performed on behalf of the Attorney General, if the Disclosures are Required By Law.

**IV. The Attorney General Shall Inform Subcontractor of Privacy Practices and Restrictions.**

A. The Attorney General must notify Subcontractor in writing of any limitations in the Attorney General's Notice of Privacy Practices to the extent that such limitation may affect Subcontractor's Use or Disclosure of PHI.

B. The Attorney General must notify Subcontractor of any restriction on the Use or Disclosure of PHI that the Attorney General has agreed to or is required to abide by under 45 C.F.R. §164.522, to the extent that such restriction may affect Subcontractor's Use or Disclosure of PHI.

C. Subcontractor may not agree to restrict a Use or Disclosure if the restriction would be ineffective pursuant to 45 C.F.R. §164.522(a)(1)(v).

**V. Permissible Requests by the Attorney General.** The Attorney General must not request that Subcontractor Use or disclose PHI in any manner that would not be permissible under 45 C.F.R. Part 164, Subpart E (45 C.F.R. §§164.500 – 164.534) if done by a Covered Entity, except to the extent that Subcontractor may Use or disclose such PHI to perform its scope of work responsibilities for the Attorney General (see Section 3(c), above).

**VI. Termination.**

A. Term. The term of this Exhibit corresponds with the term of this Agreement. Subcontractor's obligations under this Exhibit    terminate sixty (60) calendar days after the termination or expiration of this Agreement, unless this Exhibit is sooner terminated for cause in accordance with this Article VI.

B. Termination for Cause. If the Attorney General, in good faith, believes that Subcontractor has violated a material term of this Exhibit, it must notify Subcontractor, in writing, of the alleged violation. Subcontractor will have sixty (60) calendar days from the date it receives written notice of the alleged violation to cure the alleged violation. An alleged violation of this Exhibit will be deemed cured if reasonable actions have been taken to minimize any damage caused by the alleged violation and prevent future violations of the type alleged. If within 60 calendar days after receiving written notice of the alleged violation, Subcontractor has not cured the alleged violation, the Attorney General may terminate this Agreement unless termination of this Agreement is inconsistent with the statutory obligations of Subcontractor or the Attorney General.

C. Subcontractor's Responsibilities Upon Termination or Expiration. Upon termination or expiration of this Agreement for any reason, Subcontractor will, with respect to PHI received from the Attorney General or to PHI maintained or received by Subcontractor on behalf of the Attorney General:

1. Immediately cease access to the Attorney General's network or systems where any PHI is stored;
2. Continue to use appropriate safeguards and comply with 45 C.F.R. Part 164, Subpart C (45 C.F.R. §§164.302 – 164.318), with respect to ePHI to prevent Use or Disclosure of the PHI for as long as Subcontractor retains the PHI;
3. Not Use or disclose the PHI retained by Subcontractor other than for the purposes for which such PHI was retained and subject to the same conditions set out in Article III of this Exhibit which applied before termination or expiration; and
4. Return to the Attorney General or destroy any PHI retained by Subcontractor pursuant to this Exhibit within 30 days of the expiration or termination of this Agreement or this Exhibit if terminated sooner. If the PHI is destroyed, and once the PHI is destroyed, Subcontractor shall submit a certificate of destruction to the Attorney General in the form attached hereto as Attachment 2. The certificate must be on Subcontractor's letterhead, signed by an official with appropriate authority to certify the destruction, and also signed by an additional witness. The completed certificate shall be sent via e-mail to the attention of the Chief Information Security Officer at [AGOSOG@OhioAttorneyGeneral.gov](mailto:AGOSOG@OhioAttorneyGeneral.gov) and also to the attention of the HIPAA Privacy Officer at [HIPAAPrivacyOfficer@OhioAttorneyGeneral.gov](mailto:HIPAAPrivacyOfficer@OhioAttorneyGeneral.gov).

D. Effect of Termination or Expiration. Upon termination or expiration of this Agreement, all of Subcontractor's obligations under this Exhibit cease, with the exception of Subcontractor's obligations under this Article VI.

**VII. Miscellaneous.**

A. Rule References. A reference in this Exhibit to a section or sections in the HIPAA Rules is a reference to that section or those sections in effect upon the Effective Date or as later amended.

B. Notices. All notices or other communications that are required to be given or that may be given under this Exhibit must be in writing and hand-delivered or delivered via first-class mail to:

To the Attorney General:

HIPAA Privacy Officer  
 Ohio Attorney General's Office  
 30 East Broad Street, 17<sup>th</sup> Floor  
 Columbus, OH 43215

To Subcontractor:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Attention: \_\_\_\_\_

Notices will be deemed delivered on the date of delivery when delivered by hand or three business days after being placed in the U.S. Mail when sent via first-class mail.

## ATTACHMENT 1

### ➤ **HIPAA/HITECH PRIVACY PROCEDURE**

**Effective Date: February 23, 2018**

#### **I. PURPOSE**

The Ohio Attorney General's Office is committed to complying with HIPAA, the HIPAA Rules, and HITECH. The AGO has documented its compliance with HIPAA, the HIPAA Rules, and HITECH by creating this procedure that is reviewed and updated as necessary, documenting enforcement of its written policies and procedures, documenting training of AGO personnel regarding the requirements of HIPAA, the HIPAA Rules, and HITECH; documenting periodic audits of the AGO's compliance with HIPAA, the HIPAA Rules, and HITECH; documenting complaints regarding the AGO's HIPAA/HITECH compliance and the resolution of those complaints; and documenting its investigation of, and response to, any alleged Breach of Unsecured PHI.

#### **II. AUTHORITY**

- 45 C.F.R. Part 164

#### **III. SCOPE**

These procedures apply to all full-time or part-time permanent, intermittent, or temporary employees (including interns and intermittent employees), contractors, subcontractors, and/or externs of the AGO, and all other users of AGO computer resources, regardless of whether such users are working from the office, home, or while on official travel status.

#### **IV. DEFINITIONS**

The following capitalized terms have the following meanings for the purpose of these Policies and Procedures.

“AGO” means the Ohio Attorney General's Office.

“Breach” means the acquisition, access, Use, or Disclosure of PHI in a manner not permitted by the HIPAA Rules which compromises the security or privacy of PHI. Exceptions to the definition of “Breach” are found at 45 C.F.R. §164.402.

“Business Associate” has the same meaning as defined in 45 C.F.R. §164.103 and includes a person who, with respect to a Covered Entity: 1) on behalf of such Covered Entity but other than in the capacity of a member of the Workforce of such Covered Entity, creates, receives, maintains, or transmits PHI for a function regulated by the HIPAA Rules, including claims processing or administration, utilization review, quality assurance, patient safety activities listed

at 42 C.F.R. §3.20, billing, benefit management, and practice management; or 2) provides, other than in the capacity of a member of such Covered Entity's Workforce, legal, actuarial, accounting, consulting, management, administrative, or financial services to or for such Covered Entity, where the provision of the service involves the disclosure of PHI from such Covered Entity or from another Business Associate of such Covered Entity.

"Covered Entity" means a Health Plan, a health care clearinghouse, and a health care provider who transmits any Health Information in electronic form in connection with a transaction covered by the HIPAA Rules.

"Designated Record Set" means a group of records maintained by or for a Covered Entity that is: 1) the medical records and billing records about individuals maintained by or for a covered health care provider; 2) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a Health Plan; or 3) used, in whole or in part, by or for the Covered Entity to make decisions about individuals.

"Disclosure" and "Disclose" mean the release, transfer, provision of access to, or divulging in any manner of information outside the entity holding the information.

"Health Information" means any information, including genetic information, whether oral or recorded in any form or medium that: 1) is created or received by a health care provider, Health Plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and 2) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

"Health Plan" has the same meaning as defined in 45 C.F.R. §164.103 and includes a group health plan, a health insurance issuer, a health maintenance organization, the Medicare and Medicaid programs, and any other individual or group plan that provides or pays for the cost of medical care.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191).

"HIPAA Rules" means the privacy, security, breach notification, and enforcement rules at 45 C.F.R. Parts 160 and 164.

"HITECH" means the Health Information Technology for Economic and Clinical Health Act (Pub. L. No. 111-5).

"Individually Identifiable Health Information" is information that is a subset of health information, including demographic information collected from an individual and: 1) is created or received by a health care provider, Health Plan, employer, or health care clearinghouse; and 2) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual and that identifies the individual or with respect to which there is a

reasonable basis to believe that the information can be used to identify the individual.

“Protected Health Information” and “PHI” mean Individually Identifiable Health Information that is transmitted or maintained by or in electronic media or transmitted or maintained in any other form or medium. It does not include Individually Identifiable Health Information: in education records covered by FERPA (20 U.S.C. §1232g); in records described in FERPA at 20 U.S.C. §1232g(a)(4)(B)(iv); in employment records held by a Covered Entity in its role as employer; or regarding a person who has been dead for more than 50 years.

“Subcontractor” means a person to whom a Business Associate delegates a function, activity, or service, other than in the capacity of the Workforce of such Business Associate.

“Treatment” means the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another.

“Unsecured PHI” means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary of the federal Department of Health & Human Services.

“Use” means, with respect to Individually Identifiable Health Information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

“Workforce” means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a Covered Entity or Business Associate, is under the direct control of such Covered Entity or Business Associate, regardless of whether they are paid by the Covered Entity or the Business Associate.

#### **IV. PROCEDURES AND DOCUMENTATION**

##### **A. Privacy Officer**

There is hereby created the position of AGO Privacy Officer. The Privacy Officer shall be appointed by the Ohio Attorney General and shall serve in that position at the pleasure of the Ohio Attorney General. The Privacy Officer’s responsibilities are:

- a. Acquiring and maintaining current knowledge of applicable state and federal privacy laws and regulations
- b. Creating, reviewing, and revising written policies and procedures regarding compliance with HIPAA and HITECH;
- c. Participating in the creation of a risk assessment regarding the AGO’s HIPAA and HITECH concerns;

- d. Creating, selecting, or recommending training materials and establishing a schedule for HIPAA and HITECH training to AGO personnel;
- e. Reporting regarding the AGO's compliance with HIPAA and HITECH.
- f. Drafting, reviewing, revising, negotiating, and implementing (or assisting in the negotiation and implementation) of Business Associate agreements or Subcontractor agreements, when necessary;
- g. Working with the AGO's Information Technology Section on issues regarding compliance with HIPAA and HITECH;
- h. In consultation with the AGO's Internal Audit Section, developing a schedule and criteria for auditing the AGO for HIPAA and HITECH compliance. The AGO's Internal Audit Section shall be responsible for conducting audits of the AGO for compliance with HIPAA and HITECH;
- i. Directing or performing the investigation, reporting, and mitigation of harm related to any Breach of Unsecured PHI;
- j. Responding to complaints regarding the AGO's compliance with HIPAA and/or HITECH, or the AGO's HIPAA and HITECH policies, procedures, and protocols;
- k. Communicating with the federal Department of Health and Human Services, or other agencies or organizations, regarding investigations of the AGO's compliance with HIPAA and HITECH; and
- l. Fulfilling those responsibilities delegated to the Privacy Officer in the AGO's written policies and procedures.

## **B. General Provisions**

The Ohio Attorney General's Office is committed to complying with HIPAA, the HIPAA Rules, and HITECH. The AGO will document its compliance with HIPAA, the HIPAA Rules, and HITECH by:

- a. Creating written policies and procedures that are reviewed and updated as necessary;
- b. Documenting enforcement of its written policies and procedures;
- c. Documenting its training of AGO personnel regarding the requirements of HIPAA, the HIPAA Rules, and HITECH;
- d. Documenting periodic audits of the AGO's compliance with HIPAA, the HIPAA Rules, and HITECH;
- e. Documenting complaints regarding the AGO's HIPAA/HITECH compliance and the resolution of those complaints; and
- f. Documenting its investigation of, and response to, any alleged Breach of Unsecured PHI.

The AGO will maintain documentation regarding the activities listed above for a minimum of six years from the date of the creation of the document or the date the document was last in effect, whichever is later. If the AGO's policies and procedures change, the prior versions of the policies and procedures must be maintained for six years from their original (pre-amendment) date of creation. Documentation will be retained in written or electronic form by the AGO's Privacy Officer.

Individuals who are found not to have complied with the AGO's policies and procedures regarding the HIPAA Rules may be subject to disciplinary action up to and including termination of employment. Having knowledge of inappropriate conduct and choosing not to report it is, in itself, a violation.

Questions regarding these HIPAA policies and procedures, the HIPAA Rules, and HITECH, should be directed to the AGO's Privacy Officer.

## **C. Complaints; No Retaliation**

Any individual who has a complaint about the AGO's policies and procedures regarding HIPAA or HITECH or the AGO's compliance with HIPAA or HITECH policies and procedures, may file a complaint with the AGO's Privacy Officer, the Secretary of the U.S. Department of Health & Human Services, or other appropriate oversight agency.

The AGO will not intimidate, threaten, coerce, discriminate against, or retaliate against an individual for filing a complaint regarding non-compliance with HIPAA or HITECH, assisting in an investigation, proceeding, or hearing, or for opposing any act or practice that the person believes in good faith is unlawful, so long as the manner of such opposition is reasonable and does not involve a disclosure of PHI in violation of the HIPAA Rules.

If an individual wishes to file a complaint with the AGO, he or she should immediately be directed to the Privacy Officer. The Privacy Officer will investigate, attempt to resolve, and document the complaint and resolution of all privacy complaints as necessary. Documentation of this process will be retained for at least six years.

If an individual wishes to file a complaint with the U.S. Department of Health & Human Services, he or she should immediately be directed to the Department's website and given the following address and email address for the Department's complaint department:

Centralized Case Management Operations  
U.S. Department of Health & Human Services  
200 Independence Avenue, S.W.  
Room 509F HHH Bldg.  
Washington, D.C. 20201  
OCRComplaints@hhs.gov

#### **D. Uses and Disclosures of Protected Health Information**

The AGO will Use and Disclose PHI in accordance with the HIPAA Rules. This means that the AGO will Use and Disclose PHI only to the extent that it would be permitted to do so if it were a Covered Entity, subject to the following exceptions:

- a. The AGO may Use or Disclose PHI for its own management and administration.
- b. The AGO may Use or Disclose PHI to carry out its legal responsibilities.
- c. The AGO may Use or Disclose PHI when required by law under 45 C.F.R. §164.512(a).
- d. The AGO may use or disclose PHI as permitted by a Business Associate agreement between the AGO and either a Covered Entity or a Business Associate.
- e. The AGO will disclose PHI to the Secretary of the federal Department of Health & Human Services, unless the requested PHI is subject to the attorney-client privilege, the work-product doctrine, or state or federal laws or regulations that are not preempted by the HIPAA Rules.

Through periodic training, AGO personnel who handle PHI will become generally familiar with the HIPAA Rules so that they will be able to identify potential issues regarding the Use or Disclosure of PHI. AGO Personnel who have questions about whether a particular Use or Disclosure is permitted by the Privacy Rules shall contact the Privacy Officer for further guidance.

#### **E. Requests for Disclosure Restrictions**

Individuals have the right to request restrictions on certain Uses and Disclosures of their PHI. Covered Entities and their Business Associates **must** agree to a request to restrict Disclosure of PHI to the individual's Health Plan and **may** agree to other restrictions. A Business Associate of the AGO may ask the AGO take steps to implement a restriction requested by an individual and agreed to by the Business Associate.

Any request that the AGO restrict its Use or Disclosure of an individual's PHI must be made to the AGO in writing. Any request that the AGO terminate a restriction shall also be made in writing. The AGO will immediately forward restriction requests and termination of restriction requests to the AGO's Privacy Officer. The AGO's Privacy Officer will contact the Business Associate to determine what steps, if any, are required to implement or terminate the restriction. The AGO may, in its discretion, not agree to restrict a use or disclosure, if the restriction would be ineffective under 45 C.F.R. §164.522(a)(1)(v). Any restriction implemented by the AGO will remain effective until the AGO receives written notice terminating the restriction.

#### **F. Request for an Accounting of Protected Health Information**

Individuals have the right to ask a Covered Entity for an accounting of certain Disclosures of their PHI within the past six years. A Covered Entity that is a Business Associate of the AGO may ask the AGO to help it respond to a request for such an accounting. Any such request from a Business Associate must be made in writing.

The AGO will immediately forward accounting requests to the AGO's Privacy Officer. The AGO's Privacy Officer will contact the Business Associate to determine what steps, if any, are required to help the Business Associate respond to a request for an accounting. If necessary to comply with the HIPAA Rules, the AGO's Privacy Officer will contact one or more Subcontractors and take steps to ensure that the Subcontractor(s) provide the information necessary to help the Covered Entity provide the required accounting. The AGO will respond to a request for assistance in responding to a request for an accounting within 60 days after the AGO receives written notice of a request for assistance. The AGO will not provide an accounting of any Disclosures of PHI that is subject to: a) the attorney-client privilege; b) the work-product doctrine; or c) state or federal laws or regulations that are not preempted by the HIPAA Rules.

## **G. Request for an Amendment of Protected Health Information**

Individuals have the right to ask a Covered Entity to amend PHI in a Designated Record Set. A Covered Entity that is a Business Associate of the AGO may ask the AGO to help it to amend information held in a Designated Record Set held by the AGO. Any such request from a Business Associate must be made in writing.

The AGO will immediately forward to the AGO's Privacy Officer a written request for assistance in responding to a request for an amendment of PHI. The AGO's Privacy Officer will contact the Business Associate to determine what steps, if any, are required to help the Business Associate respond to the request for amendment. If necessary to comply with the HIPAA Rules, the AGO's Privacy Officer will contact one or more Subcontractors and take steps to ensure that the Subcontractor(s) amend PHI in their possession or control. The AGO will respond to the Business Associate's written request within 30 days after the AGO receives the request.

## **H. Access of Individuals to Protected Health Information**

Individuals have certain rights regarding inspection and copying of their PHI that is contained in a Designated Record Set held by a Covered Entity. A Covered Entity that is a Business Associate of the AGO may ask the AGO to help it comply with its obligations to make PHI in a Designated Record Set held by the AGO available for inspection and copying. All such requests ("Access Requests") must be made in writing.

The AGO will immediately forward all Access Requests to the AGO's Privacy Officer. If a Business Associate of the AGO asks the AGO to copy the requested PHI, the AGO's Privacy Officer will first determine whether the AGO has any requested records in a Designated Record Set. If the AGO has such records, then within 14 days of receiving the Access Request, the AGO will provide the requested PHI available to the Business Associate in accordance with 45 C.F.R. §164.524, unless the PHI is subject to the attorney-client privilege, the work-product doctrine, or state or federal laws that are not preempted by the HIPAA Rules. PHI will be sent to a Business Associate via secure email. If the PHI cannot be sent via secure email, the AGO will consult with its Privacy Officer to determine another appropriate means of delivery.

If a Business Associate of the AGO asks the AGO to provide the requested PHI to the individual requestor, the AGO may, in its sole discretion, agree to such a request. If it agrees, then within 20 days of receiving an Access Request, the AGO will provide the requested PHI directly to the individual in accordance with 45 C.F.R. §164.524, unless the PHI is subject to the attorney-client privilege, the work-product doctrine, or state or federal laws that are not preempted by the HIPAA Rules. If it does not agree, the AGO will provide the PHI to the Business Associate as discussed in the immediately preceding paragraph.

PHI sent to an individual pursuant to this Policy will be sent via secure email. If the PHI cannot be sent via secure email, the AGO will consult with its Privacy Officer to determine another appropriate means of delivery. The AGO may, in its discretion, charge a Business Associate or an Individual a reasonable, cost-based fee for the production of PHI in accordance with 45 C.F.R. §164.524(c)(4).

If an individual or a Covered Entity that is a Business Associate of the AGO asks the AGO to

allow an individual access to PHI in a Designated Record Set held by the AGO, the AGO will provide the PHI to the Business Associate and allow the Business Associate to determine how best to provide the individual with access to the PHI.

## **I. Sale of Protected Health Information**

The AGO will not directly or indirectly receive any remuneration from a recipient of PHI in exchange for PHI unless one of the criteria at 45 C.F.R. §164.502(a)(5)(ii) is met. These criteria state that a sale of PHI does not include certain disclosures of PHI, including those made:

- a. For public health purposes under 45 C.F.R. §§164.512(b) or 164.514(e);
- b. For Treatment and Payment purposes under 45 C.F.R. §164.506;
- c. To or by a Business Associate (including the AGO) under 45 C.F.R. §§164.502(e) and 164.504(e);
- d. When required by law under 45 C.F.R. §164.512(a); or
- e. For any other purpose permitted by the HIPAA Rules when the only remuneration received by the Business Associate is a reasonable, cost-based fee to cover the cost to prepare and transmit the PHI for such purpose or a fee expressly permitted by law.

## **J. Minimum Necessary Uses and Disclosures**

1. When requesting, Using, or Disclosing PHI, the AGO will take reasonable steps to help ensure that it requests and uses PHI to the minimum extent necessary to accomplish the intended purpose of the request, Use, or Disclosure. 42 C.F.R. §164.502(b)(1). Whenever possible, the AGO will Use or Disclose only a Limited Data Set, as that term is defined in 45 C.F.R. §164.514(e)(2).
2. This policy does not limit the AGO's ability to Use or Disclose PHI regarding:
  - i. Disclosures to or requests by a health care provider for Treatment;
  - ii. Uses or disclosures made to an individual who is the subject of the PHI being used or disclosed, including requests by an individual requesting copies of his PHI under 45 C.F.R. §164.524 or an accounting of the uses and disclosures of his PHI within the previous 6 years, under 45 C.F.R. §164.528;
  - iii. Uses or disclosures made pursuant to a written, HIPAA-compliant authorization for the release of PHI, under 45 C.F.R. §164.508. When an individual authorizes the AGO to Use or Disclose of PHI, the AGO's ability to Use and Disclose PHI will be determined by the authorization;

- iv. Disclosures of PHI made to the Secretary of the Dept. of Health and Human Services for the purpose of investigating and determining compliance with HIPAA under 45 C.F.R. §§160.300 through 160.316;
  - v. Uses or Disclosures of PHI that are required by law under 45 C.F.R. §164.512(a); or
  - vi. Uses and Disclosures of PHI that are required to comply with the HIPAA Rules.
3. Upon request and written agreement, the AGO shall comply with the a minimum-necessary policy of a covered entity with which the AGO has a Business Associate agreement, if that policy is more stringent than the AGO's minimum-necessary policy.
4. The AGO will take reasonable steps to help ensure that PHI is shared only with individuals who need access to the PHI to perform their jobs.
5. AGO Sections that routinely handle PHI will achieve this goal by establishing protocols that define the minimum amount of PHI necessary for routine Uses, Disclosures, and requests.

Example 1 – Attorney X works in the Health & Human Services Section and represents the Ohio Medicaid program. Attorney X routinely has cases and other matters that involve PHI. Attorney X is assigned to defend against a new lawsuit filed against the Medicaid program. Defense of the case will require the Use of PHI. Pursuant to the Section's written protocols, when the Document Management System workspace for the case is created, only attorneys and administrative staff in the Health & Human Services Section to access the workspace. Attorney X will secure hard copies of all PHI by placing them in a locked file cabinet when not in use.

Later in the case, Attorneys X and Y receive discovery from their client that includes PHI. The discovery (including the PHI) is loaded into the Review Platform for review and production. Pursuant to the Section's written protocols, the only people who have permission to review this information in the Review Platform are other individuals in the Health & Human Services Section.

Example 2 – Employee Z is a non-attorney who works in the Collections Enforcement Section. He receives calls that might involve a wide variety of collection matters, including those involving PHI. Pursuant to the Section's written protocols, Employee Z has access to all collection matters in the Debt Collection System computer system, including those involving PHI, because he does not know which matters he might be called about.

Example 3 – Paralegal A works with three attorneys in the Court of Claims

Section. Paralegal B works with three different attorneys in the same section. Pursuant to the Section's written protocols, Paralegal A has access to: a) all of the Document Management System workspaces of the 5 attorneys for whom she works and any other electronic storage devices and systems to which her attorneys have access; **and** b) the Document Management System workspaces and other electronic devices and systems of other attorneys who work with Paralegal B. This is because Paralegal A occasionally covers for Paralegal B during vacations and absences and because attorneys assigned to Paralegal A and B often collaborate on cases.

Example 4 – Secretary C works in the Employment Law Section. She is assigned to work with six attorneys. Pursuant to written protocols, she has access to the Document Management System workspaces and other electronic devices and systems of all attorneys in the section. This is because attorneys in the Employment Law Section collaborate on the majority of their cases, so secretaries are often working with teams of attorneys, instead of individual attorneys. Also Secretary C needs to cover for other secretaries due to vacations and absences.

Example 5 – Attorney D works in the Executive Agencies Section and has an administrative case in which she needs to rebut a claim that an individual's right knee is incapable of bearing any weight. Attorney D has obtained complete medical records regarding the Plaintiff in discovery, including documents regarding the Plaintiff's hysterectomy and treatment for substance abuse in 2003. Pursuant to written protocols, Attorney D will use only those portions of the medical record necessary to prove her case. He determines that that such information includes medical information about the Plaintiff's right knee, as well as other medical information used to impeach Plaintiff.

6. Sections that do not routinely handle PHI will achieve the goal in subsection (a), above, by developing written criteria reasonably designed to limit their requests for PHI and their disclosures of PHI to the minimum necessary to accomplish the purpose for which the request or disclosure is made.

As discussed above, the AGO will request or disclose a Limited Data Set, when practicable. When it is impracticable to request or disclose a Limited Data Set, the Section will provide the minimum amount of PHI necessary, considering such criteria as: 1) the parties to the request; 2) the type of PHI being sought; 3) the amount of PHI being sought; and 4) the purported use of the PHI being sought.

A Section may rely upon a representation that a request for PHI represents the minimum necessary information if it is reasonable to do so under the circumstances and the request is: i) from a public official under 45 C.F.R. §164.512; ii) the information is requested by a covered entity; iii) the request is from a business associate of a covered entity and is for the purpose of providing professional services for the covered entity; iv) or the applicable requirements of 45 C.F.R. §164.512(i) have been met when the request relates to research.

## **K. Breach Notification**

The AGO will comply with the notification provisions of the HIPAA Rules in the event of a Breach of Unsecured PHI.

Any suspected Breach of Unsecured PHI by the AGO will be immediately reported to the Privacy Officer. The Privacy officer will promptly investigate and determine whether a Breach of Unsecured PHI has occurred. A Breach is presumed to have occurred if there is an unauthorized access, acquisition, or disclosure of Unsecured PHI unless the AGO can show that there is a low probability that the information was compromised based on a risk assessment of:

- a. The nature and extent of the PHI involved;
- b. The unauthorized person who used the PHI or to whom the Disclosure was made;
- c. Whether the PHI was actually acquired or viewed; and
- d. The extent to which the risk to the PHI has been mitigated.

A Breach does not include any of the following:

- a. An unintentional acquisition, access, or use of PHI by a workforce member or a person acting under the authority of a Covered Entity or Business Associate if the acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in an impermissible manner;
- b. Any inadvertent disclosure by someone who is authorized to access PHI at a Covered Entity or Business Associate to another person authorized to access PHI at the same entity and the information received as a result of the disclosure is not further used or disclosed in an impermissible manner;
- c. A disclosure of PHI where a Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

If the Privacy Officer determines that the AGO has experienced a Breach of Unsecured PHI, he will notify the Covered Entity whose PHI is affected by the Breach within 60 days after the Breach was discovered, unless a law enforcement official asks the AGO not to report the Breach under 45 C.F.R. §164.412.

A Breach is discovered when the AGO knows of the Breach or, by exercising reasonable diligence, an individual who is an employee, officer, or agent of the AGO would have known about the breach. The AGO will provide the Covered Entity with the following information regarding the Breach:

- a. The identity of the individual(s) whose Unsecured PHI was improperly accessed, used, or disclosed;
- b. A brief description of what happened, including the date of the Breach and the date of discovery of the Breach, if known;
- c. A description of the types of Unsecured PHI that were involved in the Breach (e.g., name, SSN, diagnosis code, etc.);
- d. Any steps individuals should take to protect themselves from potential harm resulting from the Breach;
- e. A brief description of what the AGO is doing to investigate the Breach, mitigate harm to individuals, and protect against further Breaches; and
- f. Contact procedures for individuals to ask questions or learn additional information which will include a toll-free telephone number, an email address, website, or postal address.

**The AGO has the burden of proving that all required notifications were made and that a given use or disclosure of Unsecured PHI did not constitute a Breach.**

#### **L. Subcontractors**

The AGO will ensure that it enters into a Business Associate Agreement with all Subcontractors, unless the AGO is otherwise permitted to provide the PHI to the Subcontractor. The exceptions that the AGO will most likely encounter are those at 45 C.F.R. §164.510 (disclosures in emergencies and to an individual's representative) and those at 45 C.F.R. §164.512 (disclosures for which no individual Authorization is required).

Whenever the AGO is considering Disclosing PHI to a Subcontractor with whom it does not have a Business Associate agreement, it will notify the Privacy Officer of the proposed Disclosure. The Privacy Officer will review the relationship between the parties and determine whether the parties need to enter into a Business Associate agreement. If they do, the Privacy Officer will work internally with AGO personnel or contact the Subcontractor directly and use his best efforts to obtain a signed Business Associate agreement between the Subcontractor and the AGO before PHI is disclosed to the Subcontractor.

## **M. Marketing and Fundraising; Sale of Protected Health Information**

The AGO will not use PHI for marketing (as that term is defined in the HIPAA Rules) or fundraising purposes. The AGO will not sell PHI.

## **V. CONTACT**

The AGO's HIPAA Privacy Officer is available for consultation or questions regarding this procedure.

ATTACHMENT 2

**Certificate of Destruction**

The information described below was destroyed in the normal course of business in accordance with the destruction policies and procedures outlined in the associated contract. This is to certify that all records described on this form have been completely destroyed by the individuals below, on the following date and in the following manner.

Date of destruction: \_\_\_\_\_

Description of records/data/files disposed of:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Method of destruction:

\_\_\_ Burning            \_\_\_ Shredding            \_\_\_ Pulping            \_\_\_ Demagnetizing  
\_\_\_ Overwriting        \_\_\_ Pulverizing            \_\_\_ Other \_\_\_\_\_  
\_\_\_\_\_

AGO Contract number: \_\_\_\_\_

Name of individual doing the destruction: \_\_\_\_\_

Title of the individual doing the destruction: \_\_\_\_\_

Name of organization the individual represents: \_\_\_\_\_

Signature of individual doing the destruction: \_\_\_\_\_

Witness Name: \_\_\_\_\_

Witness Title: \_\_\_\_\_

Witness Signature: \_\_\_\_\_

NOTE: If the data are destroyed by a vendor, please provide the following information as an attachment to this form. (Initial and date each below, if received.)

\_\_\_\_\_ Disposal receipt/verification of completing the destruction

\_\_\_\_\_ Vendor NAID AAA certification

