

**DEPARTMENT OF ADMINISTRATIVE SERVICES/OHIO DEPARTMENT OF MENTAL HEALTH**  
STANDARD AFFIRMATION AND DISCLOSURE FORM  
EXECUTIVE ORDER 2011-12K  
Governing the Expenditure of Public Funds for Offshore Services

Print Form

All of the following provisions must be included in all invitations to bid, requests for proposals, state term schedules, multiple award contracts, requests for quotations, informal quotations, and statements of work. This information is to be submitted as part of the response to any of the procurement methods listed.

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**CONTRACTOR/SUBCONTRACTOR AFFIRMATION AND DISCLOSURE:**

By the signature affixed to this response, the Bidder/Offeror affirms, understands and will abide by the requirement of Executive Order 2011-12K. If awarded a contract, the Bidder/Offeror becomes the Contractor and affirms that both the Contractor and any of its subcontractors shall perform no services requested under this Contract outside of the United States.

The Signee shall provide all the name(s) and location(s) where services under this Contract/Grant will be performed in the spaces provided below or by attachment. Failure to provide this information as part of the response will deem the signee not responsive and no further consideration will be given to the response. Signee's offering will not be considered. If the Signee will not be using subcontractors/subgrantees, indicate "Not Applicable" in the appropriate spaces.

1. Principle location of business of Contractor/Grantee:

\_\_\_\_\_

(Address)

\_\_\_\_\_

(City, State, Zip)

Name/Principal location of business of Subcontractor(s)/Subgrantee(s):

\_\_\_\_\_

(Name)

\_\_\_\_\_

(Address; City, State, Zip)

\_\_\_\_\_

(Name)

\_\_\_\_\_

(Address; City, State, Zip)

2. Location where services will be performed by Contractor/Grantee:

\_\_\_\_\_

(Address)

\_\_\_\_\_

(City, State, Zip)

Name/Principal location of business of Subcontractor(s)/Subgrantee(s):

\_\_\_\_\_

(Name)

\_\_\_\_\_

(Address; City, State, Zip)

\_\_\_\_\_

(Name)

\_\_\_\_\_

(Address; City, State, Zip)

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

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

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

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

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

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

Contractor also affirms, understands and agrees that Contractor and its subcontractors are under a duty to disclose to the State any change or shift in location of services performed by Contractor or its subcontractors before, during and after execution of any Contract with the State. Contractor agrees it shall so notify the State immediately of any such change or shift in location of its services. The State has the right to immediately terminate the contract, unless a duly signed waiver from the State has been attained by the Contractor to perform the services outside the United States.

On behalf of the Contractor, I acknowledge that I am duly authorized to execute the Affirmation and Disclosure form and have read and understand that this form is a part of any Contract that Contractor may enter into with the State and is incorporated therein.

**For the Contractor/Grantee:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Address (Principal Place of Business)

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

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

## BUSINESS ASSOCIATE AGREEMENT

THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between [Name of Vendor] (referred to as "Vendor") and the Ohio Department of Mental Health (ODMH) [Department Name] Department (referred to as "ODMH"), [define term/duration of the agreement. Example: for length of underlying contract.]

WHEREAS, ODMH will make available and/or transfer to Vendor confidential, personally identifiable health information in conjunction with [describe function to be performed by BA on behalf of CE]; and

WHEREAS, such information may be used or disclosed only in accordance with the privacy regulations [45 CFR §§ 164.502(e); 164.504(e)] and the security regulations [45 CFR §§ 164.308; 164.314] issued pursuant to the Health Insurance Portability and Accountability Act [42 USC §§ 1320 - 1320d-8], relevant amendments effected by the American Recovery and Reinvestment Act of 2009 [Pub. L. 111-5, §§ 13400 *et seq.*] and the terms of this Agreement, or more stringent provisions of the law of the State of Ohio;

NOW THEREFORE, the parties agree as follows:

1. **Protected Health Information** ("PHI") means individually identifiable information relating to the past, present or future physical or mental health or condition of an individual, provision of health care to an individual, or the past, present or future payment for health care provided to an individual, as more fully defined in 45 CFR § 164.501, and any amendments thereto, received from or on behalf of the ODMH.
2. **Unsecured PHI** is PHI that is not rendered unusable, unreadable or indecipherable to unauthorized individuals according through the use of a technology or methodology specified by the Secretary of the U.S. Department of Health and Human Services.
3. If applicable, ODMH shall provide to the Vendor a copy of the current Notice of Privacy Practices and any relevant information on changes to or agreed upon restrictions relating to legal permissions for the use or disclosure of PHI.
4. The Vendor agrees that it shall not receive, create, use or disclose PHI except as follows:
  - A. [describe covered function being performed or refer to an Exhibit, attached to and made a part of the agreement];
  - B. If necessary for the proper management and administration of the Vendor or to carry out legal responsibilities of the Vendor. PHI may only be disclosed to another person/entity for such purposes if:
    - Disclosure is required by law; or
    - Where the Vendor obtains reasonable assurances from the person to whom disclosure is made that the PHI released will be held confidentially and only may be used or further disclosed as required

by law or for the purposes of the disclosure; and person/entity agrees to notify Vendor of any breaches of confidentiality in a timely fashion and in writing. Documentation needs to follow the same standards and time frames as item 6 below;

- C. To permit The Vendor to provide data aggregation services relating to the health care operations of ODMH. Aggregation is defined as combining PHI received from multiple Business Associates to produce data analysis that relates to the operation of the respective Covered Entities.
5. The Vendor agrees that it will not request, use or release more than the minimum amount of PHI necessary to accomplish the purpose of the use, disclosure or request.
6. The Vendor shall establish and maintain appropriate safeguards to prevent any unauthorized use or disclosure of PHI, and shall implement administrative, physical, and technical safeguards that reasonably protect the confidentiality, integrity and availability of the electronic PHI that it creates, receives, maintains or transmits on behalf of ODMH.
7. The Vendor agrees that it shall immediately report to ODMH, in writing and within 72 hours of discovery, any unauthorized uses/disclosures of unsecured PHI and any security incident resulting in the loss or disclosure of PHI of which it becomes aware. Reports of unauthorized access, use or disclosure of unsecured PHI shall include identification of affected individuals whose PHI has been or is reasonably believed to have been accessed, used, disclosed or lost. At the request of ODMH, the Vendor shall identify: the date of any security incident, the scope of the security incident, Vendor's response to the security incident and the identification of the party responsible for causing the security incident, if known. The Vendor shall take all reasonable steps to mitigate the potentially harmful effects of all privacy and security breaches. **Optional:** Vendor hereby indemnifies ODMH and agrees to hold ODMH harmless from and against any and all losses, expense, damage or injury that ODMH may sustain as a result of, or arising out of, Vendor, or its agent's or subcontractor's, unauthorized use or disclosure of PHI.
8. **Optional:** The Vendor shall carry comprehensive general liability insurance [fill in details as to amounts of coverage and/or other policy requirements, i.e. naming Department as additional insured].
9. Vendor shall ensure that all of its subcontractors and agents are bound, in writing, by the same restrictions and obligations contained herein, including but not limited to the obligation to implement reasonable and appropriate safeguards to protect the information, whenever PHI is made accessible to such subcontractors or agents. **Optional:** The Vendor shall give prior notice to ODMH and/or obtain ODMH approval prior to entering into such agreements.
10. Vendor shall make all PHI and related information in its possession available as follows:

- A. To the individual or his/her personal representative and to the ODMH, to the extent necessary to fulfill any obligation to allow access for inspection and copying in accordance with the provisions of 45 CFR § 164.524 and ARRA;
  - B. To the individual or his/her personal representative and to the ODMH, to the extent necessary to fulfill any obligation to account for disclosures of PHI in accordance with 45 CFR § 164.528 and ARRA.
11. Vendor shall make all PHI in its possession available to ODMH to fulfill ODMH's obligation to amend PHI and related information in accordance with 45 CFR § 164.526, and shall, as directed by ODMH, incorporate any amendments or related statements into the information held by the Vendor and any subcontractors or agents.
  12. The Vendor agrees to make its internal practices, books and records relating to the use or disclosure of information received from or on behalf of ODMH available to the U. S. Secretary of Health and Human Services, or the Secretary's designee, for purposes of determining compliance with the privacy and security regulations, and any amendments thereto.
  13. Upon termination of this Agreement, Vendor agrees, at the option of ODMH, to return or securely destroy all PHI created or received from or on behalf of ODMH. The Vendor agrees that it will not retain any copies of PHI except as required by law. If PHI is destroyed, the Vendor agrees to provide ODMH with appropriate documentation/certification evidencing such destruction. If return or destruction of all PHI, and all copies of PHI, is not feasible, the Vendor agrees to extend the protections of this Agreement to such information for as long as it is maintained and to limit further uses and disclosures to those which make return or destruction infeasible. Termination of this Agreement shall not affect any of its provisions that, by wording or nature, are intended to remain effective and to continue in operation.
  14. **Optional:**The PHI and any related information created or received from or on behalf of ODMH is and shall remain the property of the ODMH. The Vendor agrees that it acquires no title in or rights to the information, including any de-identified information.
  15. Any non-compliance by the Vendor with the terms of this Agreement or the privacy and security regulations shall be a breach of this Agreement if the Vendor knew of the breach and failed to take immediate and reasonable steps to cure the non-compliance. The Vendor agrees that ODMH has the right to immediately terminate this Agreement and seek relief, **Optional:**including the right to contract for replacement service through another entity at the same cost, with the Vendor responsible for paying any difference in cost, if ODMH determines that the Vendor has violated a material term of the Agreement.
  16. Notwithstanding any rights or remedies under this Agreement or provided by law, ODMH retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of PHI by the Vendor, any of its subcontractors or agents, or any third party who has received PHI from the Vendor.

- 17. This Agreement shall be binding on the parties and their successors, but neither party may assign the Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld.
- 18. The obligations to safeguard the confidentiality and security of PHI imposed herein shall survive the termination of this Agreement.
- 19. Any ambiguities in this Agreement shall be resolved in favor of an interpretation that promotes compliance with HIPAA, regulations promulgated thereunder and ARRA. The parties agree that any modifications to those laws shall modify the obligations of the parties hereunder without the need for formal amendment of the Agreement. Any other amendments to this Agreement shall not be effective without the written agreement of both parties.
- 20. Any notice to the other party pursuant to this Agreement shall be deemed provided if sent by first class United States mail, postage prepaid, as follows:

To ODMH HIPAA Officer:

[ODMH Site/Department Name]  
 [ODMH Site/Department Address]  
 [ODMH Site/Department Phone]

To Vendor:

[Vendor Name]  
 [Vendor Address]  
 [Vendor Phone]

IN WITNESS WHEREOF, the parties hereto agree to the foregoing,

**[Vendor Name Here]**

**For Ohio Dep. Of Mental Health**

\_\_\_\_\_  
 Representative

\_\_\_\_\_  
 Representative

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Title

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

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

## Vendor Controlling Board Required Questions

### To be completed by Vendor

1. Is this contractor in compliance with Buy America and Buy Ohio\*? Explain.
2. Provide the following Employee Information:

	<u>Nationwide</u>	<u>Ohio</u>
Total Number of Employees:		
Percentage of Women:		
Percentage of Minorities:		
3. What percent of the work will be done by subcontractors?  
If more than 50 percent, provide the same information for each subcontractor as requested in number 2 above for the contractor.
4. Provide all subsequent renewal schedules (beginning and ending dates) and amounts associated with this contract. A contract renewal is the exercise of an option to enter into a subsequent contract with a vendor in accordance with renewal provisions specified in a preceding contract.
5. Is this contractor currently performing services for the Ohio Department of Mental Health? If yes, for each contract please provide the date that the contractor first began performing services as well as the ODMH location at which the services are being performed.

\*Buy America/"Domestic End Product" means:

1. An un-manufactured end product mined or produced in the United States, or
2. An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States, exceeds fifty percent of the cost of all its components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic.

\*Buy Ohio/"Significant Ohio Economic Presence" means business organizations that:

1. Pay required taxes to the State of Ohio
2. Are registered and licensed to do business in the State of Ohio with the Office of the Secretary of State; and
3. Have ten or more employees based in Ohio, or seventy-five percent or more of their employees based in Ohio.

