

**ODJFS RFGA # R-1011-06-8020 Attachment D.**

**OHIO DEPARTMENT OF JOB AND FAMILY SERVICES  
GRANT AGREEMENT**

**G-1011-00-0000**

**RECITALS:**

This Grant Agreement between the Ohio Department of Job and Family Services, (hereinafter referred to as "ODJFS") and the **Vendor Name** (hereinafter referred to as "GRANTEE") is created pursuant to the Grant awarded by ODJFS to GRANTEE. GRANTEE hereby accepts the Grant and agrees to comply with all the terms and conditions set forth in this Agreement.

The Grant is made pursuant to the following federal award: **Award Title**, CFDA number \_\_\_\_\_, award number \_\_\_\_\_, which was awarded by the United States Department of \_\_\_\_\_.

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

**ARTICLE I. PURPOSE; GRANT ACTIVITIES**

- A. The purpose of this Agreement is **INSERT PURPOSE**. GRANTEE will perform its responsibilities under this Agreement in accordance with the RFA and the Application. The responsibilities ("Grant activities") are summarized as follows:

**INSERT SPECIFIC DELIVERABLES**

- B. The ODJFS Agreement Manager is **ODJFS Agreement Manager Name**.
- C. The ODJFS Agreement Manager may periodically communicate specific requests and instructions to GRANTEE concerning the performance of activities described in this Agreement. GRANTEE agrees to comply with any requests or instructions to the satisfaction of ODJFS within ten (10) days after GRANTEE's receipt of the requests or instructions. ODJFS and GRANTEE expressly understand that any requests or instructions will be strictly to ensure the successful completion of the Grant activities described in this Agreement, and are not intended to amend or alter this Agreement in any way. If GRANTEE believes that any requests or instructions would materially alter the terms and conditions of this Agreement or the compensation stated hereunder, GRANTEE will immediately notify the ODJFS Agreement Manager pursuant to ARTICLE V of this Agreement. GRANTEE agrees to consult with the ODJFS Agreement Manager as necessary to ensure understanding of the Grant activities and the successful completion thereof.

**ARTICLE II. EFFECTIVE DATE OF THE GRANT**

- A. This Grant Agreement will be in effect from **Start Date**, or upon signature of the Director of ODJFS, whichever is later, through **End Date**, unless this Agreement is suspended or terminated pursuant to ARTICLE IV prior to the above termination date. **This Agreement may be renewed through [DATE], upon satisfactory completion of activities hereunder, appropriation of funds by the Ohio General Assembly, and at the sole discretion of ODJFS. ODJFS will issue a notice to GRANTEE if ODJFS decides to renew this Agreement. GRANTEE will not obligate resources in anticipation of a renewal until notice is provided.**
- B. In addition to Section A above, it is expressly understood by both ODJFS and GRANTEE that this Agreement will not be valid and enforceable until the Director of the Office of Budget and Management, State of Ohio, first certifies, pursuant to ORC 126.07, that there is a balance in the appropriation not already allocated to pay existing obligations. The ODJFS Agreement Manager will notify GRANTEE when this certification is given.

### **ARTICLE III. AMOUNT OF GRANT/PAYMENTS**

- A. The total amount of the Grant is **Total Dollar Amt** Dollars (**\$Total**) ODJFS will provide GRANTEE with funds in an amount up to **SFY1 Dollar Amt** Dollars (**\$SFY1**) for State Fiscal Year **SFY1** and up to **SFY2 Dollar Amt** Dollars (**\$SFY2**) for State Fiscal Year **SFY2** expressly to perform the Grant activities described in ARTICLE I. GRANTEE understands that the terms of this Agreement do not provide for compensation in excess of the total amount listed in this section. GRANTEE hereby waives the interest provisions of ORC 126.30.
- B. Compensation will be made as reimbursement for actual expenditures incurred and paid by GRANTEE during the billing period pursuant to GRANTEE's accepted budget or cost proposal **included in the Application OR attached as Attachment \_\_\_ OR as follows [INSERT BUDGET]**

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

- C. GRANTEE will submit three (3) copies of detailed invoices on a **monthly/ quarterly/ one-time** basis to the ODJFS Bureau of Accounts Payable at 30 East Broad Street, 38th Floor, Columbus, Ohio 43215. GRANTEE agrees to use an invoice instrument to be prescribed by ODJFS and will include in each invoice:
1. GRANTEE's name, complete address, and Federal Tax Identification number;
  2. Agreement number and dates;
  3. Purchase order number;
  4. Amount and purpose of the invoice;
  5. Description of activities performed during the billing period; and
  6. Receipt or other proof of costs paid by GRANTEE for which GRANTEE is seeking reimbursement.
- D. GRANTEE expressly understands that ODJFS will not compensate GRANTEE for any work performed prior to GRANTEE's receipt of notice from the ODJFS Agreement Manager that the provisions of ORC 126.07 have been met as set forth in ARTICLE II, nor for work performed after the ending date specified in ARTICLE II.

- E. GRANTEE expressly understands that ODJFS does not have the ability to compensate GRANTEE for invoices submitted after The State of Ohio purchase order has been closed. GRANTEE must submit final invoices for payment no later than ninety (90) days after the ending date of this Agreement. Failure to do so will be deemed a forfeiture of the remaining compensation due hereunder.
- F. Subject to the provisions of ORC 126.07 and 131.33, which will at all times govern this Agreement, ODJFS represents that:
  - 1. It has adequate funds to meet its obligations under this Agreement;
  - 2. It intends to maintain this Agreement for the full period set forth in ARTICLE II and has no reason to believe that sufficient funds will not be available to make all payments due hereunder; and
  - 3. It will use its best efforts to obtain the appropriation of necessary funds during the term of this Agreement. GRANTEE understands that availability of funds is contingent on appropriations made by the Ohio General Assembly or by funding sources external to the State of Ohio, such as federal funding. If the Ohio General Assembly or the external funding source fails at any time to continue funding ODJFS for the payments due under this Agreement, this Agreement will be terminated as of the date funding expires without further obligation of ODJFS or the State of Ohio.

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

- A. This Agreement shall automatically terminate upon expiration of the time period in ARTICLE II, upon completion of performance, or once all of the compensation has been paid.
- B. Upon thirty (30) days written notice to the other party, either party may terminate this Agreement.
- C. Notwithstanding the provision of Section A, above, ODJFS may suspend or terminate this Agreement immediately upon delivery of a written notice to GRANTEE if:
  - 1. ODJFS loses funding as described in ARTICLE III, Section F;
  - 2. ODJFS discovers any illegal conduct by GRANTEE; or
  - 3. GRANTEE has violated any provision of ARTICLE VIII.
- D. GRANTEE, upon receiving notice of suspension or termination, will:
  - 1. Cease performance of the suspended or terminated Grant activities;
  - 2. Take all necessary steps to limit disbursements and minimize costs including, but not limited to, suspending or terminating all contracts and subgrants related to suspended or terminated Grant activities;
  - 3. Prepare and furnish a report to ODJFS, as of the date the notice of termination or suspension was received, that describes the status of all Grant activities and includes the results accomplished and the conclusions reached through Grant activities; and
  - 4. Perform any other tasks ODJFS requires.
- E. In the event of suspension or termination under this ARTICLE IV, ODJFS will, upon receipt of a proper invoice from GRANTEE, determine the amount of any unpaid Grant funds due to GRANTEE for Grant activities performed before GRANTEE received notice of termination or suspension. In order to determine the amount due to GRANTEE, ODJFS will base its calculations on the payment method described in ARTICLE III and

any funds previously paid by or on behalf of ODJFS. ODJFS will not be liable for any further claims submitted by GRANTEE.

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

#### **ARTICLE V. NOTICES**

- A. ODJFS and GRANTEE agree that communication regarding Grant activities, scope of work, invoice or billing questions, or other routine instructions will be between GRANTEE and the identified ODJFS Agreement Manager pursuant to ARTICLE I, Section C of this Agreement.
- B. Notices to ODJFS from GRANTEE that concern changes to GRANTEE's principal place of operation, billing address, legal name, federal tax identification number, mergers or acquisitions, corporate form, excusable delay, termination, bankruptcy, assignment, any notice pursuant to ARTICLE VIII, and/or any other formal notice regarding this Agreement will be sent to the ODJFS Deputy Director of Agreements and Acquisitions at 30 East Broad Street, 31st Floor, Columbus, Ohio 43215.
- C. Notices to GRANTEE from ODJFS concerning termination, suspension, option to renew, breach, default, or other formal notices regarding this Agreement will be sent to GRANTEE's representative at the address appearing on the signature page of the this Agreement.
- D. All notices in accordance with Sections B and C of this Article will be in writing and will be deemed given when received. All notices must be sent using a delivery method that documents actual delivery to the appropriate address herein indicated (e.g., certified mail).

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

GRANTEE agrees that all records, documents, writings, and other information, created or used pursuant to this Agreement will be treated according to the following terms, and that the terms will be included in any subgrant agreements executed for the performance of Activities relative to this Agreement:

- A. GRANTEE agrees that any media produced pursuant to this Agreement or acquired with Grant funds will become the property of ODJFS. This includes all documents, reports, data, photographs (including negatives), and electronic reports and records. ODJFS will maintain the unrestricted right to reproduce, distribute, modify, maintain, and use the media in any way ODJFS deems appropriate. GRANTEE further agrees not to seek or obtain copyright, patent or other proprietary protection for any materials or items produced under this Agreement. GRANTEE understands that all materials and items produced under this Agreement will be made freely available to the public unless ODJFS determines that certain materials are confidential under federal or state law.
- B. All ODJFS information that is classified as public or private under Ohio law and ODJFS rules will be treated as such by GRANTEE. Should the nature of any information be in question, ODJFS will determine whether the information is public or private. GRANTEE will restrict the use of any information, systems, or records ODJFS provides to the specific Grant activities specified in ARTICLE I of this Agreement. GRANTEE and its

employees agree to be bound by the same standards and rules of confidentiality that apply to employees of ODJFS and the State of Ohio. GRANTEE agrees that the terms of this Section B will be included in any contract or subgrant executed by GRANTEE for work under this Agreement.

- C. GRANTEE information that is proprietary and has been specifically identified by GRANTEE as proprietary will be held as confidential by ODJFS. Proprietary information is information that would put GRANTEE at a competitive disadvantage in GRANTEE's market place and trade if it were made public. ODJFS reserves the right to require reasonable evidence of GRANTEE's assertion of the proprietary nature of any information. The provisions of this Article are not self-executing. GRANTEE must demonstrate that any information claimed as proprietary meets the definition of "trade secrets" found at ORC 1333.61.
- D. All records relating to cost, work performed, supporting documentation for invoices submitted to ODJFS, and copies of all materials produced under or pertaining to this Agreement will be retained by GRANTEE and will be made available for audit by state and federal government entities that include but not limited to, ODJFS, the Ohio Auditor of State, the Ohio Inspector General and all duly authorized law enforcement officials. The records and materials will be retained and made available for a minimum of three (3) years after GRANTEE receives the last payment pursuant to this Agreement. If an audit, litigation or similar action is initiated during this time period, GRANTEE will retain the records until the action is concluded and all issues are resolved, or until the end of the three-year period if the action is resolved prior to the end of the three-year period. If applicable, GRANTEE must meet the requirements of the federal Office of Management and Budget (OMB) Circulars A-110, A-122, and A-133. GRANTEE acknowledges, in accordance with ORC 149.43, that financial records related to the performance of services under this Agreement are presumptively deemed public records.
- E. GRANTEE hereby agrees to current and ongoing compliance with 42 USC 1320(d) - 1320(d)(8) and the implementing regulations found at 45 CFR 164.502(e) and 164.504(e) regarding disclosure of Protected Health Information under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). GRANTEE further agrees to include the terms of this Section E in any subgrant agreements that may be executed pursuant to this Agreement.

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

- A. This writing constitutes the entire agreement between ODJFS and GRANTEE with respect to all matters herein. Only a writing signed by both parties may amend this Agreement. However, ODJFS and GRANTEE agree that any amendments to any laws or regulations cited herein will result in the correlative modification of this Agreement without the necessity for executing written amendments. Any written amendment to this Agreement will be prospective in nature.
- B. GRANTEE agrees not to assign any interest in this Agreement nor transfer any interest in the Grant without the prior written approval of ODJFS. GRANTEE will submit any requests for approval of assignments and transfers to the ODJFS Agreement Manager at least 10 (ten) days prior to the desired effective date. GRANTEE understands that any assignments and transfers will be subject to any conditions ODJFS deems necessary and that no approval by ODJFS will be deemed to provide for any ODJFS obligation that exceeds the Grant amount specified in ARTICLE III of this Agreement.

#### **ARTICLE VIII. GRANTEE CERTIFICATION OF COMPLIANCE WITH SPECIAL CONDITIONS**

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

A. If at any time, GRANTEE is not in compliance with the conditions affirmed in this Section A, ODJFS will consider this Agreement to be *void ab initio* and will deliver written notice to GRANTEE. Any funds the State of Ohio paid GRANTEE for work performed before GRANTEE received notice that the Agreement is *void ab initio* will be immediately repaid or the State of Ohio may commence an action for recovery against GRANTEE.

1. **Federal Debarment Requirements.** GRANTEE affirms that neither GRANTEE nor any of its principals, subgrantees, or subcontractors, is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by any federal agency. GRANTEE also affirms that within three (3) years preceding this agreement neither GRANTEE nor any of its principals:
  - a. Have been convicted of, or had a civil judgment rendered against them for commission of fraud or other criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local public transaction or contract under a public transaction; for violation of federal or state antitrust statutes; for commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements; or for receiving stolen property; or
  - b. Are presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State, or local) for the commission of any of the offenses listed in this paragraph and have not had any federal, state, or local, public transactions terminated for cause or default.
2. **Qualifications to Conduct Business.** GRANTEE affirms that it has all of the approvals, licenses, or other qualifications needed to conduct business in Ohio and all are current. If at any time during the Agreement period GRANTEE, for any reason, becomes disqualified from conducting business in the State of Ohio, GRANTEE will immediately notify ODJFS in writing and will immediately cease performance of all Grant activities.
3. **Unfair Labor Practices.** GRANTEE affirms that neither GRANTEE nor its principals are on the most recent list established by the Ohio Secretary of State, pursuant to ORC 121.23, which would identify GRANTEE as having more than one (1) unfair labor practice contempt of court finding.
4. **Finding for Recovery.** GRANTEE affirms that neither GRANTEE nor its principals, subgrantees, or subcontractors, is subject to a finding for recovery under ORC 9.24, or it has taken the appropriate remedial steps required, or otherwise qualifies under ORC 9.24 to contract with the State of Ohio.
5. **Material Assistance to Terrorist Organization.** GRANTEE affirms that GRANTEE, its principals, affiliated groups, or persons with a controlling interest in GRANTEE's organization are in compliance with ORC 2909.33 in that none of the aforementioned have provided Material Assistance to a Terrorist Organization.

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

1. **Americans with Disabilities.** GRANTEE, its officers, employees, members, and subcontractors hereby affirm current and ongoing compliance with all statutes

and regulations pertaining to The Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973.

2. **Fair Labor Standards and Employment Practices.**

- a. GRANTEE certifies that it is in compliance with all applicable federal and state laws, rules, and regulations governing fair labor and employment practices.
- b. In carrying out this Agreement, GRANTEE will not discriminate against any employee or applicant for employment because of race, religion, national origin, ancestry, color, gender, gender identity, sexual orientation, age, disability, or veteran status. GRANTEE will ensure that all applicants are hired, and all employees are considered for promotion, demotion, transfer; recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, selection for training--including apprenticeship-- or any other employment-related opportunities, without regard to race, religion, national origin, ancestry, color, gender, gender identity, sexual orientation, age, disability, or veteran status.
- c. GRANTEE agrees to post notices affirming compliance with all applicable federal and state non-discrimination laws in conspicuous places accessible to all employees and applicants for employment.
- d. GRANTEE will incorporate the foregoing requirements of this Paragraph 2 in all of its subgrants or subcontracts for any of the work prescribed herein.

3. **Ethics Laws.** GRANTEE certifies that by executing this Agreement, it has reviewed, knows and understands the State of Ohio's ethics and conflict of interest laws, which includes the Governor's Executive Order 2007-01S pertaining to ethics. GRANTEE further agrees that it will not engage in any action(s) inconsistent with Ohio ethics laws or the aforementioned Executive Order.

4. **Conflicts of Interest.**

- a. GRANTEE certifies, by executing this Agreement, that no party who holds a position listed or described in ORC 3517.13 (I) or (J), has made, while in his/her current position, one (1) or more personal monetary contributions in excess of One Thousand and 00/100 Dollars (\$1,000.00) to the current Governor or to the Governor's campaign committee when he was a candidate for office within the previous two (2) calendar years. ORC 3517.13 does not apply to professional associations organized under ORC Chapter 1785.
- b. GRANTEE agrees to refrain from promising or giving to any ODJFS employee anything of value that could be construed as having a substantial and improper influence upon the employee with respect to the employee's duties. GRANTEE further agrees that it will not solicit any ODJFS employee to violate ORC 102.03, 2921.42, or 2921.43.
- c. GRANTEE agrees that GRANTEE, its officers, employees, and members have not nor will they acquire any interest, whether personal, business, direct or indirect, that is incompatible, in conflict with, or would compromise the discharge and fulfillment of GRANTEE's functions and responsibilities under this Agreement. If GRANTEE, its officers, employees, or members acquire any incompatible, conflicting, or compromising interest, GRANTEE agrees it will immediately disclose the interest in writing to the ODJFS Chief Legal Counsel at 30 East Broad

Street, 31<sup>st</sup> Floor, Columbus, Ohio 43215-3414. GRANTEE further agrees that the person with the conflicting interest will not participate in any Grant activities until ODJFS determines that participation would not be contrary to public interest.

5. **Lobbying Restrictions.**
  - a. GRANTEE affirms that no federal funds paid to GRANTEE by ODJFS through this Agreement or any other agreement have been or will be used to lobby Congress or any federal agency in connection with a particular contract, grant, cooperative agreement or loan. GRANTEE further affirms compliance with all federal lobbying restrictions, including, 31 USC 1352. If this Grant exceeds One Hundred Thousand and 00/100 (\$100,000.00), GRANTEE affirms that it has executed and filed the Disclosure of Lobbying Activities standard form LLL, if required by federal regulations.
  - b. GRANTEE certifies compliance with the Ohio executive agency lobbying restrictions contained in ORC 121.60 to 121.69.
6. **Child Support Enforcement.** GRANTEE agrees to cooperate with ODJFS and any child support enforcement agency in ensuring that GRANTEE and its employees meet child support obligations established by state and federal law including present and future compliance with any court or valid administrative order for the withholding of support issued pursuant to the applicable sections of ORC Chapters 3119, 3121, 3123, and 3125.
7. **Pro-Child Act.** If any Grant activities call for services to minors, GRANTEE agrees to comply with the Pro-Children Act of 1994; Public Law 103-277, Part C – Environment Tobacco Smoke that requires smoking to be banned in any portion of any indoor facility owned, leased, or contracted by an entity that will routinely or regularly use the facility for the provision of health care services, day care, library services, or education to children under the age of eighteen (18).
8. **Drug-Free Workplace.** GRANTEE, its officers, employees, members, any subgrantees and/or any independent contractors (including all field staff) associated with this Agreement agree to comply with all applicable state and federal laws, including, but not limited to, 41 USC Chapter 10, regarding a drug-free workplace. GRANTEE will make a good faith effort to ensure that none of GRANTEE's officers, employees, members, or subgrantees will purchase, transfer, use, or possess illegal drugs or alcohol or abuse prescription drugs in any way while working or while on public property.
9. **Work Programs.** GRANTEE agrees not to discriminate against individuals who have or are participating in any work program administered by any county department of Job and Family Services under ORC Chapter 5101 or 5107.
10. **MBE/EDGE.** Pursuant to the Governor's Executive Order 2008—13S, GRANTEE agrees to purchase goods and services under this Agreement from certified Minority Business Enterprise ("MBE") and Encouraging Diversity, Growth, and Equity ("EDGE") vendors whenever possible. GRANTEE agrees to encourage any of its subgrantees or subcontractors to purchase goods and services from certified MBE and EDGE vendors.
11. **Certification of Compliance.** GRANTEE certifies that it is in compliance with all other applicable federal and state laws, regulations, and rules and will require the same certification from its subgrantees or subcontractors.

## ARTICLE IX. MISCELLANEOUS PROVISIONS

- A. **Independent Contractor.** GRANTEE agrees that no agency, employment, joint venture, or partnership has been or will be created between ODJFS and GRANTEE. GRANTEE further agrees that as an independent contractor, it assumes all responsibility for any federal, state, municipal or other tax liabilities along with workers compensation, unemployment compensation and insurance premiums that may accrue as a result of funds received pursuant to this Agreement. GRANTEE agrees that it is an independent contractor for all purposes including, but not limited to, the application of the Fair Labor Standards Act, the Social Security Act, the Federal Unemployment Tax Act, the Federal Insurance Contribution Act, provisions of the Internal Revenue Code, Ohio tax law, Workers Compensation law, and Unemployment Insurance law.
- B. **Limitation of Liability.** GRANTEE agrees to hold ODJFS harmless in any and all claims for personal injury, property damage, and/or infringement resulting from Grant activities. GRANTEE will reimburse ODJFS, any official or employee of ODJFS acting in his or her official capacity, and/or the State of Ohio for any judgments for infringement of patents or copyrights. ODJFS's liability for damages, whether in contract or in tort, will not exceed the lesser of the total amount of funds payable to GRANTEE under this Agreement or the amount of direct damages incurred by GRANTEE. GRANTEE's sole and exclusive remedy for any ODJFS failure to perform under this Agreement will be an action in the Ohio Court of Claims pursuant to ORC Chapter 2743 that will be subject to the limitations set forth in this Article. In no event will ODJFS be liable for any indirect or consequential damages, including loss of profits, even if ODJFS knew or should have known of the possibility of such damages.
- C. **Infringement of Patent or Copyright.** Subject to ORC 109.02, GRANTEE agrees to defend any suit or proceeding brought against ODJFS, any official or employee of ODJFS acting in his or her official capacity, or the State of Ohio due to any alleged infringement of patent or copyright arising out of the performance of this Agreement, including all work, services, materials, reports, studies, and computer programs provided by GRANTEE. ODJFS will provide prompt notification in writing of such suit or proceeding; full right, authorization, and opportunity to conduct the defense thereof; and full disclosure of information along with all reasonable cooperation for the defense of the suit. ODJFS may participate in the defense of any such action. GRANTEE agrees to pay all damages and costs awarded against ODJFS, any official or employee of ODJFS in his or her official capacity, or the State of Ohio as a result of any suit or proceeding referred to in this Section C. If any information and/or assistance is furnished by ODJFS at GRANTEE's written request, it is at GRANTEE's expense. If any of the materials, reports, or studies provided by GRANTEE are found to be infringing items and the use or publication thereof is enjoined, GRANTEE agrees to, at its own expense and at its option, either procure the right to publish or continue use of such infringing materials, reports, or studies; replace them with non-infringing items of equivalent value; or modify them so that they are no longer infringing. The obligations of GRANTEE under this Section survive the termination of this Agreement, without limitation.
- D. **Liens.** GRANTEE will not permit any lien or claim to be filed or prosecuted against ODJFS or the State of Ohio because of any labor, services, or materials furnished. If GRANTEE fails, neglects, or refuses to make prompt payment of any claims for labor, services, or materials furnished to GRANTEE in connection with this Agreement, ODJFS or the State of Ohio may, but is not obligated to, pay those claims and charge the amount of payment against the funds due or to become due to GRANTEE under this Agreement.
- E. **Delay.** Neither party will be liable for any delay in its performance that arises from causes beyond its control and without its negligence or fault. The delaying party will notify the other promptly of any material delay in performance and will specify in writing the proposed revised performance date as soon as practicable after notice of delay. The delaying party must also describe the cause of the delay and its proposal to remove or mitigate the delay. Notices will be sent pursuant to ARTICLE IV. In the event of excusable delay, the date of performance or delivery of products may be extended by amendment, if applicable, for a time period equal to that lost due to the excusable delay. Reliance on a claim of excusable delay may only be asserted if the delaying party has

taken commercially reasonable steps to mitigate or avoid the delay. Items that are controllable by GRANTEE's subcontractor(s) will be considered controllable by GRANTEE, except for third-party manufacturers supplying commercial items and over whom GRANTEE has no legal control. The final determination of whether an instance of delay is excusable lies with ODJFS in its discretion.

#### **ARTICLE X. CONSTRUCTION**

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

In actual Grant Agreement,  
Signature Page Would Follow Here

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