

**ATTACHMENT D. - Model Grant Agreement
ODJFS RFGA # R-1011-21-8029**

**GOVERNOR'S OFFICE OF FAITH-BASED AND COMMUNITY INITIATIVES
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
GRANT AGREEMENT**

G-1011-00-0000

This Grant Agreement is created pursuant to the Grant that is awarded by the Governor's Office of Faith-Based and Community Initiatives (hereinafter, "GOFBCI") and the Ohio Department of Job and Family Services, (hereinafter referred to as "ODJFS") to **Grantee Name** (hereinafter referred to as "GRANTEE"). GRANTEE hereby accepts the Grant and agrees to comply with all the terms and conditions set forth in this Agreement.

RECITALS

- A. The Grant is made pursuant to the following federal award: _____, CFDA number _____, award number _____, and awarded by the United States Department of Agriculture.
- B. ODJFS serves as the fiscal agent for GOFBCI.
- C. GOFBCI issued a Request for Application (RFA) numbered _____ and dated _____, 20__, which is hereby incorporated by reference.
- D. The ODJFS proposal review team recommended for award the Application of GRANTEE dated _____, 20__, which is hereby incorporated by reference.
- E. 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 the dispute in keeping with the objectives of this Agreement and the budgetary and statutory constraints of ODJFS.

ARTICLE I. PURPOSE; SUBGRANT ACTIVITIES

- A. The purpose of this Agreement is _____. The responsibilities ("Grant activities") are summarized as follows:
- B. The GOFBCI Agreement Manager is _____.
- C. The GOFBCI 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 GOFBCI within ten (10) days after GRANTEE's receipt of the requests or instructions. GOFBCI 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 GOFBCI Agreement Manager pursuant to ARTICLE VI of this Agreement. GRANTEE agrees to consult with the GOFBCI 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 _____, or upon signature of the ODJFS Director, whichever is later, through _____, unless this Agreement is suspended or terminated pursuant to ARTICLE V prior

to the above termination date. This Agreement may be renewed through _____, 20__, upon satisfactory completion of Grant activities hereunder, appropriation of funds by the Ohio General Assembly, and at the sole discretion of GOFBCI. GOFBCI will issue a notice to GRANTEE if GOFBCI 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 GOFBCI 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 Section 126.07 of the Ohio Revised Code (ORC), that there is a balance in the appropriation not already allocated to pay existing obligations. The GOFBCI Agreement Manager will notify GRANTEE when this certification is given.

ARTICLE III. AMOUNT OF GRANT/PAYMENTS

- A. The total amount of the Grant is _____ and 00/100 Dollars (\$_____) ODJFS will provide GRANTEE funds in an amount up to _____ and 00/100 Dollars (\$_____) in State Fiscal Year (SFY) 2010 and up to _____ and 00/100 Dollars (\$_____) in SFY 2011 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, allowable, expenditures incurred and paid by GRANTEE during the billing period pursuant to GRANTEE's accepted budget or cost proposal
- C. GRANTEE will submit three (3) copies of detailed invoices on a _____ basis to the Director of the Governor's Office of Faith-Based and Community Initiatives, 77 South High Street, 7th 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 GOFBCI 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 GOFBCI for the payments due under this Agreement, this Agreement will be terminated as of the date funding expires without further obligation of GOFBCI, ODJFS or the State of Ohio.

ARTICLE IV. SUSPENSION AND TERMINATION, BREACH AND DEFAULT

- A. This Agreement will automatically terminate upon expiration of the time period in ARTICLE II, upon completion of Grant activities, or once all of the compensation has been paid.
- B. Upon thirty (30) days written notice to the other parties, GOFBCI, ODJFS, or GRANTEE may terminate this Agreement.
- C. Notwithstanding the provision of Section A, above, GOFBCI or ODJFS may suspend or terminate this Agreement immediately upon delivery of a written notice to GRANTEE if:
1. GOFBCI loses funding as described in ARTICLE III, Section F;
 2. GOFBCI discovers any illegal conduct by GRANTEE; or
 3. GRANTEE has violated any provision of ARTICLE IX.
- 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 GOFBCI, 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 GOFBCI or ODJFS may require.
- E. In the event of suspension or termination under this ARTICLE IV, GOFBCI and 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, GOFBCI and ODJFS will base their calculations on the payment method described in ARTICLE III and in consideration of any funds previously paid by or on behalf of GOFBCI. GOFBCI and 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, GOFBCI and ODJFS reserve the right to exercise any administrative, contractual, equitable, or legal remedies available without limitation. Any waiver by GOFBCI or ODJFS of an occurrence of breach or default is not a waiver of subsequent occurrences. If GOFBCI, ODJFS or GRANTEE fails to perform any obligation under this Agreement and the other parties subsequently waive 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 GOFBCI or ODJFS will not be effective unless it is in writing signed by the Directors of GOFBCI and ODJFS.

ARTICLE V. NOTICES

- A. GOFBCI, 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 GOFBCI Agreement Manager pursuant to ARTICLE I, Section C of this Agreement.
- B. Notices to GOFBCI and/or 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 IX, and/or

any other formal notice regarding this Agreement will be sent to the ODJFS Deputy Director of Contracts and Acquisitions at 30 East Broad Street, 31st Floor, Columbus, Ohio 43215.

- C. Notices to GRANTEE from GOFBCI or 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 GOFBCI. This includes all documents, reports, data, photographs (including negatives), and electronic reports and records. GOFBCI will maintain the unrestricted right to reproduce, distribute, modify, maintain, and use the media in any way GOFBCI 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 GOFBCI or ODJFS determines that certain materials are confidential under federal or state law.
- B. All GOFBCI or ODJFS information that is classified as public or private under Ohio law and GOFBCI or ODJFS rules will be treated as such by GRANTEE. Should the nature of any information be in question, GOFBCI and ODJFS will determine whether the information is public or private. GRANTEE will restrict the use of any information, systems, or records GOFBCI or 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 GOFBCI, 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 GOFBCI and 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. GOFBCI and ODJFS reserve 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, GOFBCI, 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. GRANTEE must meet the requirements of the applicable OMB Circulars. 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 Title 42, Section 1320 of the United States Code (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. **Amendment.** This writing constitutes the entire agreement between GOFBCI, ODJFS and GRANTEE with respect to all matters herein. Only a writing signed by all parties may amend this Agreement. However, GOFBCI, 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. **Assignment of Interests.** GRANTEE agrees not to assign any interest in this Agreement nor transfer any interest in the Grant without the prior written approval of GOFBCI and ODJFS. GRANTEE will submit any requests for approval of assignments and transfers to the GOFBCI 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 GOFBCI and ODJFS deem necessary and that no approval by GOFBCI and ODJFS will be deemed to provide for any GOFBCI or 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 GOFBCI and 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, GOFBCI will consider this Agreement *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 GOFBCI and 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, GOFBCI 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 any GOFBCI or 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 GOFBCI or 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, 31st Floor, Columbus, Ohio 43215. GRANTEE further agrees that the person with the conflicting interest will not participate in any Grant activities until GOFBCI and ODJFS determine 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 GOFBCI, 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 X. MISCELLANEOUS PROVISIONS

- A. **Independent Contractor.** GRANTEE agrees that no agency, employment, joint venture, or partnership has been or will be created between GOFBCI, 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 GOFBCI and 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. GOFBCI and 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 GOFBCI or 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 GOFBCI or ODJFS be liable for any indirect or consequential damages, including loss of profits, even if GOFBCI or ODJFS knew or should have known of the possibility of such damages.
- C. Subject to ORC 109.02 CONTRACTOR agrees to defend any suit or proceeding brought against GOFBCI or ODJFS, any official or employee of GOFBCI or 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 Contract, including all work, services, materials, reports, studies, and computer programs provided by CONTRACTOR. GOFBCI and/or ODJFS will provide:
1. Prompt notification in writing of such suit or proceeding;
 2. Full right, authorization, and opportunity to conduct the defense thereof; and
 3. Full disclosure of information along with all reasonable cooperation for the defense of the suit.

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

- D. **Liens.** GRANTEE will not permit any lien or claim to be filed or prosecuted against GOFBCI, 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, GOFBCI, 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.** No party will be liable for any delay in 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 GOFBCI and ODJFS in their discretion.

ARTICLE XI. 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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