

**OHIO DEPARTMENT OF JOB AND FAMILY SERVICES  
CONTRACT FOR SERVICES**

**C-89-00-0000**

This Contract is entered into by and between the State of Ohio, Department of Job and Family Services (hereinafter "ODJFS") and **Contractor Name** (hereinafter "CONTRACTOR") for \_\_\_\_\_.

**RECITALS:**

- A. ODJFS issued a Request for Proposal (hereinafter "RFP") entitled \_\_\_\_\_, numbered \_\_\_\_\_, and dated \_\_\_\_\_, 200\_, which is hereby incorporated by reference.
- B. The ODJFS proposal review team recommended for award the Proposal of CONTRACTOR dated \_\_\_\_\_, 200\_, (hereinafter "Proposal"), which is hereby incorporated by reference.

THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED IN THIS CONTRACT, THE PARTIES AGREE AS FOLLOWS:

**ARTICLE I: DELIVERABLES**

- A. CONTRACTOR agrees to report to \_\_\_\_\_, the ODJFS Contract Manager, and to perform the services detailed in the RFP and the Proposal(hereinafter "Deliverables") that include:
  - 1. \_\_\_\_\_
- B. CONTRACTOR agrees to furnish its own support staff and services as necessary for the satisfactory performance of the work described in ARTICLE I, Section A, above.
- C. The ODJFS Contract Manager may periodically communicate specific instructions and requests to CONTRACTOR concerning the performance of the work described in this Contract. CONTRACTOR agrees to comply with any instructions or requests to the satisfaction of ODJFS and within ten (10) days after receiving notice of the instructions or requests. ODJFS and CONTRACTOR understand that any instructions and requests are strictly to ensure satisfactory completion of the work described in this Contract, and are not intended to amend or alter this Contract or any part thereof. CONTRACTOR will notify the ODJFS Contract Manager pursuant to ARTICLE IV if it believes any instructions or requests would materially alter the terms of this Contract or the amount of compensation stated in ARTICLE III of this Contract. CONTRACTOR will consult with the ODJFS Contract Manager as necessary to assure comprehensive understanding of the work and satisfactory completion of the Deliverables described in Section A, above.
- D. Ownership of Deliverables:
  - 1. All Deliverables provided by CONTRACTOR under this Contract or with funds hereunder, including any documents, data, photographs and negatives, electronic reports/records, or other media, are the property of ODJFS, which has an unrestricted right to reproduce, distribute, modify, maintain, and use the Deliverables. CONTRACTOR will not obtain copyright, patent, or other proprietary protection for the Deliverables. CONTRACTOR will not include in any Deliverable any copyrighted matter, unless the copyright owner gives prior written approval for ODJFS and CONTRACTOR to use such copyrighted matter in the manner provided herein. CONTRACTOR agrees that all Deliverables will be made freely available to the public unless ODJFS determines that, pursuant to state or federal law, such materials are confidential or otherwise exempted from disclosure.
  - 2. All Deliverables provided or produced pursuant to this Contract will be considered "works made for hire" within the meaning of copyright laws of the United States and the State of Ohio. ODJFS is and will be deemed sole author of the Deliverables and sole owner of all rights therein. If any portion of the Deliverables are deemed not a "work made for hire," or if there are any rights in the Deliverables not conveyed to ODJFS, CONTRACTOR agrees to, and by executing this Contract does, assign ODJFS all worldwide rights, title, and interest in and to the Deliverables. ODJFS acknowledges its sole ownership of the Deliverables under this Contract does not affect

CONTRACTOR's right to use general concepts, algorithms, programming techniques, methodologies, or technology that CONTRACTOR developed prior to or as a result of this Contract or that are generally known and available.

3. CONTRACTOR understands that it must submit a written request to ODJFS and receive express written permission from ODJFS include any of its own pre-existing, proprietary materials in any of the Deliverables under this Contract. ODJFS's approval of the inclusion of pre-existing, proprietary materials is predicated on CONTRACTOR granting to ODJFS and the State of Ohio a worldwide, non-exclusive, perpetual, royalty-free license to use, modify, sell, and otherwise distribute all such materials that are included in the Deliverables under this Contract. Upon request by CONTRACTOR, ODJFS will incorporate into any future copies of the Deliverables under this Contract any proprietary notice(s) CONTRACTOR may reasonably require for any pre-existing, proprietary materials included in the Deliverables of this Contract. Any proprietary notices will be the minimum required by law so as not to be seen as an endorsement by ODJFS of or advertisement for CONTRACTOR.
4. If the Deliverables of this Contract require the inclusion of third-party proprietary software or operating systems, such third-party software or operating systems must be commercially available to any person, entity, or State and must be considered "off-the-shelf" products with published (catalog/SKU) prices.
5. For computer software developed under this Contract, or for proprietary software incorporated into the Deliverables pursuant to the terms of this Section E, copies of any source code, object code, documentation, and any other item necessary for the proper operation of a Deliverable (hereinafter "Operational Materials") under this Contract will be given to ODJFS in conjunction with or prior to the invoicing for payment of the Deliverable. CONTRACTOR will include an affirmative statement with every invoice for payment that all applicable Operational Materials for all Deliverables included in that invoice have been delivered to ODJFS. ODJFS will have no obligation to pay on an invoice until necessary copies of Operational Materials are delivered and the affirmative written statement of CONTRACTOR is obtained. All software will conform to documentation.

#### ARTICLE II: TIME OF PERFORMANCE

- A. This Contract is in effect from the date of issuance of an approved State of Ohio purchase order (see ARTICLE II, Section B, *infra*) or \_\_\_\_\_, whichever is later, through \_\_\_\_\_, unless this Contract is suspended or terminated pursuant to ARTICLE V prior to the expiration date.
- B. It is expressly understood by both ODJFS and CONTRACTOR that this Contract will not be valid and enforceable until the Director of the Office of Budget and Management first certifies, pursuant to section ORC 126.07, that there is a balance in the appropriation not already allocated to pay existing obligations. CONTRACTOR expressly agrees to neither perform work nor submit an invoice for payment for work performed under this Contract for any time period prior to receiving notice from the ODJFS Contract Manager that the requirements of ORC 126.07 have been met. CONTRACTOR further agrees to neither perform work nor submit an invoice for payment for work performed under this Contract for any time period after the effective end date for this Contract found in ARTICLE II, Section A above.

#### ARTICLE III: COMPENSATION

- A. The total amount payable under this Contract is \_\_\_\_\_ and 00/100 Dollars (\$0.00). ODJFS will pay an amount up to \_\_\_\_\_ and 00/100 Dollars (\$0.00) in State Fiscal Year (SFY) 2008 and an amount up to \_\_\_\_\_ and 00/100 Dollars (\$0.00) in SFY 2009 expressly for the completion of the Deliverables described in ARTICLE I, Section A of this Contract. It is expressly understood by ODJFS and CONTRACTOR that the terms of this Contract do not allow total compensation in excess of the total amount listed in this ARTICLE III, Section A for the Contract period set forth in ARTICLE II. CONTRACTOR hereby waives the interest provisions of ORC 126.30.
- B. Compensation will be paid on a \_\_\_\_\_ basis upon \_\_\_\_\_ pursuant to \_\_\_\_\_.
- C. CONTRACTOR will render detailed invoices in triplicate \_\_\_\_\_ to the Ohio Department of Job and Family Services, Bureau of Accounts Payable, at 30 East Broad Street, 38<sup>th</sup> Floor, Columbus, Ohio 43215. All invoices must contain the following information:

1. CONTRACTOR's name (as it appears on the Contract and purchase order);
  2. CONTRACTOR's mailing address and, if applicable, a remit address;
  3. CONTRACTOR's invoice number and the date of the invoice;
  4. Amount and purpose of billing that includes all detail required per this ARTICLE III, and a description of services rendered during the month;
  5. Contract number and date;
  6. Purchase order number; and
  7. Federal Tax identification number.
- D. Subject to the provisions of ORC 126.07 and ORC 131.33, which will at all times govern this Contract, ODJFS represents that:
1. It has adequate funds to meet its obligations under this Contract;
  2. It intends to maintain this Contract for the full Contract period set forth in ARTICLE II, and has no reason to believe that it will not have sufficient funds to enable it to make all payments due hereunder during the Contract period; and
  3. It will use its best effort to obtain the appropriation of any necessary funds during the Contract period.

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

- E. CONTRACTOR expressly understands that ODJFS will not compensate CONTRACTOR for any work performed prior to notification from the ODJFS Contract Manager that the requirements of ORC 126.07 have been met as set forth in ARTICLE II, Section B of this Contract, and that ODJFS will not compensate CONTRACTOR for any work performed after the termination date set forth in ARTICLE II, Section A of this Contract, or in the event this Contract is terminated pursuant to ARTICLE V.
- F. ODJFS does not have the ability to compensate CONTRACTOR for work performed under the Contract after the State of Ohio purchase order for the Contract has been closed. The final invoice for compensation of work performed under this Contract must be received by ODJFS, per this ARTICLE III, no later than ninety (90) days after the termination date of this Contract. Failure of CONTRACTOR to submit the final invoice by this deadline will be deemed a forfeiture by CONTRACTOR of all remaining compensation due hereunder.

#### **ARTICLE IV: NOTICES**

- A. ODJFS and CONTRACTOR agree that, pursuant to ARTICLE I, Section C, that communication regarding the Deliverable(s), scope of work, invoice or billing questions, and other routine instructions will be between CONTRACTOR and the identified ODJFS Contract Manager.
- B. Notices sent by CONTRACTOR to ODJFS concerning changes to CONTRACTOR's principal place of business, billing address, legal name, federal tax identification number, mergers or acquisitions, corporate form, excusable delay, termination, bankruptcy, assignment, any notice pursuant to ARTICLE XI, and/or any other formal notice regarding this Contract will be sent to the ODJFS Deputy Director of Contracts and Acquisitions at the ODJFS Office of Contracts and Acquisitions, 30 East Broad Street, 31st Floor, Columbus, Ohio 43215-3414.

- C. Notices sent by ODJFS to CONTRACTOR concerning termination, suspension, option to renew, breach, default, or other formal notices required by this Contract, will be sent to the person who has signed this Contract on behalf of CONTRACTOR at the address listed on the final signature page.
- D. All notices in accordance with this ARTICLE IV 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.

#### **ARTICLE V: SUSPENSION AND TERMINATION; BREACH AND DEFAULT**

- A. Notwithstanding other provisions in this ARTICLE V, either party may terminate this Contract at will by giving ninety (90) days written notice to the other party. Upon thirty (30) days written notice to CONTRACTOR, ODJFS may suspend this Contract at ODJFS's sole discretion.
- B. Notwithstanding this ARTICLE V, Sections A or C, ODJFS may suspend or terminate this Contract immediately upon delivery of written notice to CONTRACTOR if:
  - 1. ODJFS loses funding as described in ARTICLE III, Section D;
  - 2. ODJFS discovers any illegal conduct by CONTRACTOR; or
  - 3. CONTRACTOR has violated any provision of ARTICLE XI.
- C. Except as provided in Sections A and B of this ARTICLE V, CONTRACTOR will have thirty (30) calendar days within which to cure any breach that is curable after receipt of written notice from ODJFS that CONTRACTOR is in breach of any of its obligations under this Contract. If CONTRACTOR fails to cure the breach within the thirty (30) calendar days after written notice or if the breach is not curable, ODJFS may immediately suspend or terminate this Contract. ODJFS may also suspend or terminate this Contract when breaches are persistent, regardless of whether they are cured within thirty (30) calendar days. For purposes of this Section C, "persistent" means that ODJFS has notified CONTRACTOR three (3) times in writing of CONTRACTOR's failure to meet any of its contractual obligations. The three (3) notices do not have to relate to the same obligation or type of failure. After the third notice, ODJFS may suspend or terminate this Contract without a cure period if CONTRACTOR again fails to meet any contractual obligation. At the sole discretion of ODJFS, certain instances of breach may require a shorter cure period than the thirty (30) calendar days generally applicable in this Section C. In such instances, ODJFS will include in its notice of breach the shorter cure period deemed appropriate.
- D. CONTRACTOR, upon receipt of notice of suspension or termination, agrees to:
  - 1. Cease work on the suspended or terminated Deliverables under this Contract;
  - 2. Suspend or terminate all subcontracts relating to such suspended or terminated Deliverables;
  - 3. Take all necessary and/or appropriate steps to limit disbursements and minimize cost;
  - 4. 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 Deliverables completed and includes any results accomplished as well as any conclusions reached in the completion of the Deliverables; and
  - 5. Perform any other tasks ODJFS requires.

Suspension, termination, or expiration of this Contract will not limit CONTRACTOR's continuing obligations with respect to Deliverables paid for by ODJFS prior to the suspension or termination nor will it limit ODJFS's rights in those Deliverables.

- E. In the event of suspension or termination under this ARTICLE V, CONTRACTOR will be entitled to compensation, upon submission of a proper invoice per ARTICLE III, for the work performed prior to CONTRACTOR's receipt of notice of suspension or termination. Compensation will be calculated by ODJFS based on the compensation structure set forth in ARTICLE III, less any funds previously paid by or on behalf of ODJFS, or in the case of services for which CONTRACTOR charges a flat rate, based on a

reasonable percentage of the total services performed as determined by ODJFS, less any funds previously paid by or on behalf of ODJFS.

- F. If ODJFS terminates this Contract for any reason provided in this ARTICLE V, except for termination at will pursuant to Section A or termination for loss of funding pursuant to Section B, ODJFS will be entitled to utilize another contractor to complete the Deliverables described in ARTICLE I of this Contract on any commercially reasonable terms as ODJFS and the covering contractor may agree. In this event, CONTRACTOR will be liable to ODJFS for all costs related to covering the project to the extent that such costs, when combined with payments already made to CONTRACTOR prior to termination, exceed the costs that ODJFS would have incurred under this Contract. CONTRACTOR's liability under this Paragraph is in addition to any other remedies available to ODJFS pursuant to this Contract.
- G. Upon breach or default of any of the provisions, obligations, or duties embodied in this Contract, ODJFS may exercise any administrative, contractual, equitable, or legal remedies available, without limitation. The waiver of any occurrence of breach or default is not a waiver of subsequent occurrences, and ODJFS retains the right to exercise all remedies hereinabove mentioned.
- H. If ODJFS or CONTRACTOR fails to perform an obligation or obligations under this Contract and the failures is thereafter waived by the other party, ODJFS and CONTRACTOR understand that the waiver is limited to that particular occurrence of failure and will not be deemed a waiver of subsequent failures that may occur. Waiver by ODJFS is not effective unless it is in writing signed by the ODJFS Director.

#### **ARTICLE VI: EQUAL EMPLOYMENT OPPORTUNITY**

- A. In carrying out this Contract, CONTRACTOR agrees not to 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. CONTRACTOR will ensure that applicants are hired and that employees are treated during employment in matters of employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship, without regard to their race, religion, national origin, ancestry, color, gender, gender identity, sexual orientation, age, disability, or veteran status. CONTRACTOR certifies current and ongoing compliance with the Executive Order 11246 concerning Equal Employment Opportunity, as amended by Executive Order 11375, and as supplemented by Department of Labor regulations found in Title 41 of the Code of Federal Regulations, Part 60 (41 CFR 60).
- B. CONTRACTOR agrees to post in conspicuous places, available to all employees and applicants for employment, notices stating that CONTRACTOR complies with all applicable federal and state non-discrimination laws. CONTRACTOR will incorporate the foregoing requirements of this ARTICLE VI in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR and in all of its contracts for any of the work prescribed in this Contract. CONTRACTOR will also require all of its subcontractors to incorporate such requirements in all subcontracts for any part of the work under this Contract.
- C. CONTRACTOR, its officers, employees, members, and subcontractors hereby certify current and ongoing compliance with the statutes and regulations pertaining to The Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973.

#### **ARTICLE VII: RECORDS, DOCUMENTS AND INFORMATION**

CONTRACTOR agrees that all records, documents, writings, or other information, whatever their form, produced by CONTRACTOR under this Contract, and all records, documents, writings, or other information used by CONTRACTOR in the performance of this Contract are treated according to the following terms:

- A. All ODJFS information that, under the laws of the State of Ohio or federal law, is classified as public or as private will be treated as such by CONTRACTOR. In the event there is a question as to whether information is public or private, ODJFS will make the final determination.
- B. All CONTRACTOR information that is proprietary will be held strictly confidential by ODJFS. Proprietary information is information which, if made public, would put CONTRACTOR at a disadvantage in CONTRACTOR's marketplace and trade. CONTRACTOR is responsible for notifying ODJFS of the proprietary nature of the information prior to its release to ODJFS. Failure to provide prior notification is

deemed a waiver of the proprietary nature of the information, and a waiver of CONTRACTOR's right to proceed against ODJFS for violation of any proprietary or trade secret laws. CONTRACTOR's failure to provide prior notification will also be deemed a waiver of trade secret protection in that CONTRACTOR will have failed to make reasonable efforts to maintain the information's secrecy pursuant to ORC 1333.61(D)(2). ODJFS reserves the right to require reasonable evidence of CONTRACTOR's assertion of the proprietary nature of any information to be provided and will make the final determination as to whether any or all of the information identified by CONTRACTOR is proprietary or a trade secret.

- C. All records relating to costs, work performed, and supporting documentation for invoices submitted to ODJFS by CONTRACTOR with copies of all Deliverables submitted to ODJFS pursuant to this Contract will be retained and made available by CONTRACTOR for audit by the State of Ohio (including but not limited to ODJFS, the Auditor of the State of Ohio, the Inspector General of Ohio, or any duly authorized law enforcement officials) and by agencies of the United States government for a minimum of three (3) years after payment for work performed under this Contract. If an audit, litigation, or other action related to this Contract is initiated during this time period, CONTRACTOR will retain the records until the action is concluded and all issues have been resolved. If appropriate, CONTRACTOR must comply with the requirements of the federal Office of Management and Budget ("OMB") Circulars A-87, A-21, or A-133. CONTRACTOR acknowledges, in accordance with ORC 149.43, that financial records related to the performance of services under this Contract are presumptively deemed public records.
- D. CONTRACTOR agrees not to use any information, systems, or records made available to it for any purpose other than to fulfill the contractual duties specified herein. CONTRACTOR agrees to be bound by the same standards of confidentiality that apply to the employees of ODJFS and the State of Ohio. The terms of this ARTICLE VII will be included in any subcontracts executed by CONTRACTOR for work under this Contract. CONTRACTOR agrees that any data made available to CONTRACTOR by ODJFS will be returned to ODJFS no later than ninety (90) days following the termination of this Contract, and CONTRACTOR certifies that it will not retain copies of source data, or any product of source data. CONTRACTOR hereby agrees to current and ongoing compliance with 42 United States Code (USC) 1320d through 1320d-8 and 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").

#### **ARTICLE VIII: INDEPENDENT CONTRACTOR**

CONTRACTOR agrees that no agency, employment, joint venture, or partnership has been or will be created between the parties hereto pursuant to the terms and conditions of this Contract. CONTRACTOR also agrees that, as an independent contractor, CONTRACTOR 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 compensation received for services or deliverables rendered hereunder. CONTRACTOR agrees that it is an independent contractor for all purposes including, but not limited to, the application of the Fair Labor Standards Act, the Social Security Act, the Federal Unemployment Tax Act, the Federal Insurance Contribution Act, provisions of the Internal Revenue Code, Ohio tax law, Workers Compensation law, and Unemployment Insurance law.

#### **ARTICLE IX: LIMITATION OF LIABILITY; CONTRACTOR DUTIES**

- A. CONTRACTOR agrees to hold ODJFS, any official or employee of ODJFS acting in his or her official capacity, and the State of Ohio harmless from any and all claims for personal injury, property damage, and/or infringement resulting from activities in furtherance of the work hereunder. CONTRACTOR will reimburse ODJFS, any official or employee of ODJFS acting in his or her official capacity, and the State of Ohio for any judgments for infringement of patents or copyrights.
- B. ODJFS's liability, whether in contract or in tort, may not exceed the total amount of compensation payable to CONTRACTOR under ARTICLE III or the amount of direct damages incurred by CONTRACTOR, whichever is less. CONTRACTOR's sole and exclusive remedy for ODJFS's failure to perform under this Contract is an action in the Ohio Court of Claims, pursuant to ORC Chapter 2743, and subject to the limitations set forth in this ARTICLE IX. In no event is ODJFS 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. Subject to ORC 109.02 CONTRACTOR 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 Contract, including all work, services, materials, reports, studies, and computer programs provided by CONTRACTOR. 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.

ODJFS may participate in the defense of any such action. CONTRACTOR 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 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. CONTRACTOR will not permit any lien or claim to be filed or prosecuted against the State of Ohio or ODJFS on account of any labor, services, or materials furnished to CONTRACTOR by any entity in connection with this Contract. Should any such claims become due, the proper officer(s) representing ODJFS may, but is/are not obligated to, pay such claims to the entity furnishing the labor or services and charge the amount of the payment against funds due or to become due to CONTRACTOR pursuant to this Contract.
- E. 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 CONTRACTOR's subcontractor(s) will be considered controllable by CONTRACTOR, except for third-party manufacturers supplying commercial items and over whom CONTRACTOR has no legal control. The final determination of whether an instance of delay is excusable lies with ODJFS in its discretion.

#### **ARTICLE X: AMENDMENT AND ASSIGNMENT**

- A. This writing constitutes the entire agreement between the parties with respect to all matters herein. Only a writing signed by both parties may amend this Contract; however, both parties agree that any amendment(s) to laws or regulations cited herein will result in the correlative modification of this Contract, without the need to execute written amendments. The impact of any applicable law, statute, or regulation not cited herein and enacted after the date of execution of this Contract will be incorporated into this Contract by written amendment signed by both parties and will be effective as of the date of enactment of the law, statute, or regulation. Any other written amendment to this Contract is prospective in nature.
- B. CONTRACTOR agrees that it will neither assign nor transfer any obligation or interest in this Contract, including subcontracts, whether by assignment or novation, without the prior written approval of ODJFS, which will be subject to any conditions and provisions ODJFS deems necessary. Any ODJFS approval of an assignment or transfer will not provide for an obligation by ODJFS that exceeds the total amount of compensation listed in ARTICLE III of this Contract.

#### **ARTICLE XI - SPECIAL CERTIFICATIONS MADE BY CONTRACTOR**

By executing this Contract, CONTRACTOR certifies recurrent and continued compliance with each condition listed in this ARTICLE XI. CONTRACTOR's certification of compliance with each of these conditions is considered material representations of fact upon which ODJFS relied upon in entering into this Contract.

- A. If at any time CONTRACTOR is not in compliance with the conditions certified and affirmed in this ARTICLE XI, Section A, ODJFS will consider the contract *void ab initio* and will deliver written notice to CONTRACTOR pursuant to ARTICLE IV and ARTICLE V of this Contract. Any funds paid by the State of Ohio for work performed before CONTRACTOR was notified that the Contract was considered *void ab initio* will be immediately repaid or the State of Ohio may commence an action for recovery of the funds paid.
1. CONTRACTOR certifies that neither CONTRACTOR, nor any principal of CONTRACTOR is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by the United States Department of Labor or any other federal department or agency.
  2. CONTRACTOR certifies that CONTRACTOR is not on the list established by the Ohio Secretary of State, pursuant to ORC 121.23, which identifies CONTRACTOR as having more than one (1) unfair labor practice contempt of court finding.
  3. CONTRACTOR certifies that CONTRACTOR is not 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.
  4. CONTRACTOR certifies that all approvals, licenses, or other qualifications necessary to conduct business in Ohio have been obtained and are current. If at any time during the contract period CONTRACTOR becomes disqualified from conducting business in Ohio for any reason, CONTRACTOR must immediately notify ODJFS of the disqualification, and immediately cease performance hereunder.
  5. CONTRACTOR certifies that CONTRACTOR, its principals, affiliated groups, or persons with a controlling interest in CONTRACTOR'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 CONTRACTOR is not in compliance with the conditions certified in this ARTICLE XI, Section B, ODJFS may immediately suspend or terminate this Contract and will deliver written notice of suspension or termination to CONTRACTOR pursuant to ARTICLE IV and ARTICLE IV of this Contract. CONTRACTOR will be subject to all provisions in the Contract pertaining to termination for any reason, except for termination at will pursuant to ARTICLE V, Section A, or termination for loss of funding pursuant to ARTICLE III, Section D, with all provisions as stated in ARTICLE V. CONTRACTOR will be entitled to compensation, upon submission of a proper invoice per ARTICLE III, only for work performed during the time CONTRACTOR was in compliance with the provisions of this ARTICLE XI, Section B. Compensation will be calculated by ODJFS pursuant to ARTICLE V. Any funds paid by the State of Ohio for work performed during a period when CONTRACTOR was not in compliance with this ARTICLE XI, Section B, will be immediately repaid or the State of Ohio may commence an action to recover the paid funds.
1. CONTRACTOR affirms that it, its officers, members, and employees, have no interest, personal or otherwise, direct or indirect, that is incompatible or in conflict with, or would compromise in any manner or degree, the discharge and fulfillment of CONTRACTOR's responsibilities under this Contract. CONTRACTOR agrees to periodically inquire of its officers, members, and employees concerning such interests. Any person who acquires an incompatible, compromising, or conflicting personal or business interest will immediately disclose his or her interest to ODJFS in writing. Thereafter, he or she will not participate in any action affecting the work under this Contract, unless ODJFS will determine that, in light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest. The written disclosure of such interest will be sent to the Chief Legal Counsel of the Ohio Department of Job and Family Services at 30 East Broad Street, 31st Floor, Columbus, Ohio 43215-3414.
  2. CONTRACTOR agrees to refrain from promising or giving to any ODJFS employee anything of value that is of such a character as to manifest a substantial and improper influence upon the employee with respect to his or her duties. CONTRACTOR also agrees that it will not solicit an ODJFS employee to violate any ODJFS rule or policy relating to the conduct of contracting parties or to violate ORC sections 102.03, 2921.42, or 2921.43.



3. CONTRACTOR certifies that by executing this Contract, 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. CONTRACTOR further agrees that it will not engage in any action(s) inconsistent with Ohio ethics laws or the aforementioned Executive Order.
  4. CONTRACTOR certifies, by executing this Contract, that no party who holds a position listed or described in ORC 3517.13 (I) or (J), has made, while in his/her current position, one (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 section 1785.
  5. CONTRACTOR agrees that CONTRACTOR, its officers, employees, and members have not nor will they acquire any interest, whether personal, business, direct or indirect, that is incompatible, in conflict with, or would compromise the discharge and fulfillment of CONTRACTOR's functions and responsibilities under this Contract. If CONTRACTOR, its officers, employees, or members acquire any incompatible, conflicting, or compromising interest, CONTRACTOR agrees it will immediately disclose the interest in writing to the ODJFS Chief Legal Counsel at 30 East Broad Street, 31<sup>st</sup> Floor, Columbus, Ohio 43215-3414. CONTRACTOR further agrees that the person with the conflicting interest will not participate in any subcontract activities until ODJFS determines that participation would not be contrary to public interest.
  6. **Lobbying Restrictions:**
    - a. Federal: CONTRACTOR affirms that no federal funds paid to CONTRACTOR by ODJFS through this Contract or any other agreement have been or will be used to lobby Congress or any federal agency in connection with a particular contract, grant, cooperative agreement or loan. CONTRACTOR further affirms further certifies compliance with all federal lobbying restrictions, including 13 USC 1352. If this Contract exceeds One Hundred Thousand and 00/100 Dollars (\$100,000.00), CONTRACTOR has executed the Disclosure of Lobbying Activities, Standard Form LLL, if required by federal regulation.
    - b. State: CONTRACTOR certifies compliance with the Ohio executive agency lobbying restrictions contained in ORC 121.60 to 121.69.
  7. CONTRACTOR agrees to cooperate with ODJFS and any child support enforcement agency in ensuring that CONTRACTOR and its employees meet child support obligations established by state and federal law including present and future compliance with any court or valid administrative order for the withholding of support issued pursuant to the applicable sections of ORC Chapters 3119, 3121, 3123, and 3125.
  8. If any Deliverables call for services to minors, CONTRACTOR agrees to comply with the Pro-Children Act of 1994; Public Law 103-277, Part C – Environment Tobacco Smoke that requires smoking to be banned in any portion of any indoor facility owned, leased, or contracted by an entity that will routinely or regularly use the facility for the provision of health care services, day care, library services, or education to children under the age of eighteen (18).
  9. CONTRACTOR, its officers, employees, members, any subcontractors and/or any independent contractors (including all field staff) associated with this Contract agree to comply with all applicable state and federal laws, including, but not limited to, 41 USC Chapter 10, regarding a drug-free workplace. CONTRACTOR will make a good faith effort to ensure that none of CONTRACTOR's officers, employees, members, or subcontractors will purchase, transfer, use, or possess illegal drugs or alcohol or abuse prescription drugs in any way while working or while on public property.
  10. CONTRACTOR agrees not to discriminate against individuals who have or are participating in any work program administered by any county department of Job and Family Services under ORC 5101 or ORC 5107.
- C. If any of the information pertaining to ARTICLE X, Sections A and B changes after the Contract has been signed CONTRACTOR is required to report such changes immediately to ODJFS in writing to the address listed for notice in ARTICLE IV, Section B.

**ARTICLE XII: BUSINESS ASSOCIATE REQUIREMENTS UNDER HIPAA**

- A. Definitions: The definitions contained in this Section are derived from federal law. Should there be any conflict between the meanings assigned in this Contract and the meanings defined in applicable federal law (even in the event of future amendments to law that create such conflict), the definitions found in federal law will prevail.
1. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996.
  2. "Covered Entity" means a health plan, a health care clearinghouse, or health care provider under 45 CFR 160.103.
  3. "Business Associate" means a person or entity that, on behalf of the Covered Entity, performs or assists in the performance of a function or activity that involves the use or disclosure of "Protected Health Information" under 45 CFR 160.103.
  4. "Protected Health Information" (hereinafter "PHI") means information received from or on behalf of a Covered Entity that meets the definition of PHI as defined by HIPAA and 45 CFR 164.501 and any amendments thereto.
- B. CONTRACTOR acknowledges that ODJFS, through its Office of Ohio Health Plans, is a Covered Entity under HIPAA. CONTRACTOR further acknowledges that CONTRACTOR is a Business Associate of ODJFS, and, in carrying out the work described in this Contract, CONTRACTOR agrees to comply with all of the following provisions:
1. Permitted Uses and Disclosures: CONTRACTOR will not use or disclose PHI except as provided in this Contract or as otherwise required under HIPAA regulations or other applicable law.
  2. Safeguards: CONTRACTOR will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the ODJFS against use or disclosure not provided for by this Contract.
  3. Reporting of Disclosures: CONTRACTOR will promptly report to ODJFS any knowledge of uses or disclosures of PHI that are not in accordance with this Contract or applicable law. In addition, CONTRACTOR will mitigate any adverse effects of such a breach of confidentiality to the greatest extent possible.
  4. Agents and Subcontractors: CONTRACTOR will ensure that all its agents and subcontractors that receive PHI from or on behalf of CONTRACTOR and/or ODJFS agree to the same restrictions and conditions that apply to CONTRACTOR with respect to the use or disclosure of PHI.
  5. Accessibility of Information: CONTRACTOR will make available to ODJFS such information as ODJFS may require to fulfill its obligations to provide access to, provide a copy of, and account for disclosures with respect to PHI pursuant to HIPAA and regulations promulgated by the United States Department of Health and Human Services, including, but not limited to, 45 CFR 164.524 and 164.528 and any amendments thereto.
  6. Amendment of Information: CONTRACTOR will make PHI available to ODJFS so that ODJFS may fulfill its obligations pursuant to HIPAA to amend the information. As directed by ODJFS, CONTRACTOR will also incorporate any amendments into the information held by CONTRACTOR and will ensure incorporation of any such amendments into information held by CONTRACTOR's agents or subcontractors.
  7. Disclosure: CONTRACTOR will make available to ODJFS and to the Secretary of the United States Department of Health and Human Services any and all internal practices, documentation, books, and records related to the use and disclosure of PHI received from ODJFS, or created or received by CONTRACTOR on behalf of ODJFS. The access is for determining ODJFS's compliance with HIPAA, regulations promulgated by the United States Department of Health and Human Services, and any amendment thereto.

8. Material Breach: In the event of material breach of CONTRACTOR obligations under this ARTICLE XII, ODJFS may immediately terminate this Contract as set forth in ARTICLE V, Section B. Termination of this Contract will not affect any provision of this Contract, which, by its wording or its nature, is intended to remain effective and to continue to operate after termination.
9. Return or Destruction of Information: Upon termination of this Contract and at the request of ODJFS, CONTRACTOR will return to ODJFS or destroy all PHI in CONTRACTOR's possession stemming from this CONTRACT, and will not keep copies of the PHI except as requested by ODJFS or required by law. If CONTRACTOR, its agent(s), or subcontractor(s) destroy any PHI, then CONTRACTOR will provide to ODJFS documentation evidencing such destruction. Any PHI retained by CONTRACTOR will continue to be extended the same protections set forth in this Section and HIPAA regulations for as long as it is maintained.

### **ARTICLE XIII: CONSTRUCTION**

This Contract will be governed, construed, and enforced in accordance with the laws of the State of Ohio. Should any portion of this Contract be unenforceable by operation of statute or by administrative or judicial decision, the operation of the balance of this Contract is not affected thereby; provided, however, the absence of the illegal provision does not render the performance of the remainder of the Contract impossible. Should the removal of such an unenforceable provision render the intended performance under this Contract difficult or nonsensical, but not impossible, the parties will negotiate in good faith replacement provision(s) in keeping with the objectives of the Contract and the budgetary and statutory constraints of ODJFS.

### **ARTICLE XIV: INCORPORATION BY REFERENCE**

In the event of any inconsistency or ambiguity between the provisions of the RFP, the Proposal or this Contract, the provisions of this Contract will determine the obligations of the parties. In the event that this Contract fails to clarify any inconsistency or ambiguity between the RFP and the Proposal, the RFP 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 the Contract and the budgetary and statutory constraints of ODJFS.

(In Actual Contract, SIGNATURE PAGE WOULD FOLLOW HERE)

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