

**OHIO DEPARTMENT OF MEDICAID
CONTRACT FOR SERVICES**

C-2425-01-0027

This Contract is entered into between the Ohio Department of Medicaid (ODM), 50 West Town Street, Columbus, Ohio 43215, and Permedion, Inc., (CONTRACTOR), 5615 High Point Drive, Irving, TX 75038, (hereby collectively referred to as the parties).

RECITALS:

- A. ODM issued a Request for Proposal titled Clinical Utilization Management and Prior Authorization Program, numbered ODMR 2223-0006, and dated September 29, 2022 (RFP), which is hereby incorporated by reference.
- B. The ODM proposal review team recommended for award the Proposal submitted by CONTRACTOR on October 26, 2022 which is hereby incorporated by reference.

The parties agree as follows:

ARTICLE I. PURPOSE; DELIVERABLES

- A. Pursuant to the Code of Federal Regulations (CFR) 42 CFR 456.3, Statewide Surveillance and Utilization Control Program, CONTRACTOR will perform its responsibilities under this Contract in accordance with the RFP and the Proposal (Deliverables) as follows:

Support the ODM Bureau of Program Integrity's (BPI) quality efforts by implementing and managing a statewide quality and hospital utilization control program for services provided to Ohio Medicaid consumers. This program shall include:

- 1. Utilization reviews, including focused reviews,
- 2. Prior authorizations,
- 3. Special reviews,
- 4. Retrospective reviews,
- 5. Pre-certification reviews,
- 6. Medical record reviews of denied Managed Care prior authorizations, as requested,
- 7. Reporting and analysis of review findings,
- 8. Quality of care studies, as requested,
- 9. Provider education, and
- 10. Technical assistance to policy and operational units within ODM.

- B. The ODM Contract Manager is Rachel Jones, or successor.
- C. The ODM Contract Manager may periodically communicate specific requests and instructions to CONTRACTOR concerning the performance of the Deliverables described in this Contract. CONTRACTOR agrees to comply with any requests or instructions to the satisfaction of ODM within ten business days after CONTRACTOR's receipt of the requests or instructions. ODM and CONTRACTOR expressly understand that any requests or instructions will be strictly construed to ensure the successful completion of the Deliverables described in this Contract, and are not intended to amend or alter this Contract in any way. If CONTRACTOR believes that any requests or instructions would materially alter the terms and conditions of

this Contract or the compensation stated hereunder, CONTRACTOR will immediately notify ODM pursuant to the notice provision of this Contract. CONTRACTOR agrees to consult with the ODM Contract Manager as necessary to ensure understanding of the Deliverables and the successful completion thereof.

- D. The parties agree that the RFP and all attachments, supplements, templates, amendments, written addenda, the CONTRACTOR's accepted Proposal, authorized amendments and clarifications thereto, and the question and answers posted during the inquiry period of the RFP are hereby incorporated in this Contract by reference.
- E. **Ownership of Deliverables.** For purposes of this Contract, "Deliverables" means any Contractor-provided products, supplies, services, work, or product described in Article I of the Contract, including, but not limited to: reports, files, data, findings, and financial recoveries.
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 ODM, 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 ODM 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 ODM 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. ODM is and will be deemed sole author of the Deliverables and sole owner of all rights therein. If any portion of the Deliverables is deemed not a "work made for hire," or if there are any rights in the Deliverables not conveyed to ODM, CONTRACTOR agrees to, and by executing this Contract does, assign ODM all worldwide rights, title, and interest in and to the Deliverables. ODM acknowledges that 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 ODM and receive express written permission from ODM to include any of its own pre-existing, proprietary materials in any of the Deliverables under this Contract. ODM's approval of the inclusion of pre-existing, proprietary materials is predicated on CONTRACTOR granting to ODM 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, ODM 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 ODM of or advertisement for CONTRACTOR.
 4. Intellectual Property. Notwithstanding any contrary language in this Contract, ODM acknowledges that all rights, title and interest in CONTRACTOR's reporting software, analyses, processes and process flows, programs, materials, confidential Information, software systems and documentation, works of authorship, analytical methodologies and algorithms, information management systems, associated proprietary forms of data organization, whether confidential or not confidential, all enhancements, modifications, improvements or derivatives thereof, and all Intellectual Property Rights therein existing on the effective date of the Contract (collectively, "Background Intellectual Property"), shall remain at all times the property of CONTRACTOR (and its licensors, as applicable). Except as granted herein, ODM shall not acquire or claim or purport to transfer any proprietary rights or licenses in the Background Intellectual Property, whether such proprietary rights are used by CONTRACTOR in the course of performance under this Contract. ODM will not use or attempt to reverse engineer, replicate, decrypt, disassemble, or decompile Background Intellectual Property.

ODM acknowledges that the Background Intellectual Property includes valuable trade secrets of CONTRACTOR (and/or its licensors, as applicable), and is protected or protectable by domestic and international trade secret, copyright and patent laws and other forms of proprietary rights.

All Intellectual Property created as a result of work performed by CONTRACTOR pursuant to CONTRACTOR'S obligations in this Contract shall be Project Intellectual Property. The parties agree that ODM shall own all Project Intellectual Property. CONTRACTOR hereby assigns to ODM all right and title, including all Intellectual Property rights, in the Project Intellectual Property to the extent any such rights exists.

For purposes of this Contract, "Intellectual Property Rights" means all existing intellectual property rights of any kind or nature throughout the world, however, including without limitation rights with respect to (i) patents and patent applications; (ii) trademarks and service marks together with all goodwill associated therewith and registrations, applications and renewals related thereto; (iii) copyrights, copyrightable works (in whatever form or medium), and all registrations, applications, and renewals for any of the foregoing; (iv) trade secrets, data, database rights, and confidential information; and (v) all claims, causes of action and remedies of any kind related to the foregoing.

CONTRACTOR hereby grants ODM a fully paid up, perpetual, irrevocable license to Intellectual Property that is incorporated into any Deliverable and (b) Background Intellectual Property for purposes of using any Deliverable. The foregoing license grant includes the right to sublicense for purposes of using any Deliverable provided that the sublicensee agrees to be bound by confidentiality provisions similar to those in this Contract.

ARTICLE II. CONFIDENTIALITY OF INFORMATION

- A. CONTRACTOR agrees that it shall not use any information, systems, or records made available to it for any purpose other than to fulfill the obligations specified herein. CONTRACTOR specifically agrees to comply with state and federal confidentiality and information disclosure laws, rules, and regulations applicable to programs under which this Contract exists, including, but not limited to:
1. United States Code, 42 USC 1320d through 1320d-8 (HIPAA);
 2. Code of Federal Regulations, 42 CFR 431.300, 431.302, 431.305, 431.306, 435.945, 45 CFR 164.502(e), 164.504(e), and 162.100;
 3. Ohio Revised Code, ORC 173.20, 173.22, 1333.61, 2305.24, 2305.251, 2305.252, 3701.243, 3701.028, 4123.27, 5101.26, 5101.27, 5160.39, 5160.45, 5168.13, and 5165.88; and
 4. Corresponding Ohio Administrative Code rules.
- B. CONTRACTOR agrees that any data created, received, maintained or transmitted on behalf of ODM by CONTRACTOR shall be returned to ODM not later than 90 calendar days following termination of this Contract and shall certify that no copies of source data were retained by CONTRACTOR, unless as otherwise provided for in this Contract or by law.
- C. CONTRACTOR shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the paper and/or electronic protected personal data and health information that it creates, receives, maintains, or transmits on behalf of ODM against use or disclosure not provided for by this Contract.
- D. CONTRACTOR agrees that access to the records and data provided by ODM for purposes of this Contract will be restricted to only those authorized employees, officials, subcontractors, and other persons who need it to perform duties related to this Contract. CONTRACTOR agrees to provide the ODM Contract Manager with a complete listing of any and all such persons who shall have access to the above referenced records and/or data.
- E. CONTRACTOR agrees that the above records and/or data and any records, reports, databases, and/or other derivative documents created from the information provided under this Contract shall be stored in an area that is physically safe from access from unauthorized persons during duty and non-duty hours. Information

provided under this Contract shall be protected electronically to prevent unauthorized access by computer, remote access, or any other means. CONTRACTOR expressly agrees that no records will be accessed, tested, maintained, backed up or stored outside of the United States.

- F. CONTRACTOR shall assure that all persons who have access to the above referenced information shall be fully apprised as to the confidential nature of the information, the safeguards required to protect the information, and the applicable civil and criminal sanctions and penalties associated with any intentional or non-intentional disclosure. No subcontractor shall receive any information without a written agreement with CONTRACTOR incorporating these assurances.
- G. CONTRACTOR agrees that any information provided under this agreement that is proprietary shall be held to be strictly confidential by CONTRACTOR.
- H. Unless otherwise permitted under this Contract, CONTRACTOR shall not share or otherwise disclose any of the above referenced information to any third party without the express written authorization of the Director of ODM. If there is an incident of unauthorized disclosure of information, ODM must be notified in an acceptable timeframe to support regulatory requirements for breach notifications.
- I. CONTRACTOR shall permit onsite inspection by the State of Ohio (including but not limited to ODM, the Auditor of the State of Ohio, the Inspector General of Ohio, the Ohio Attorney General or any duly authorized law enforcement officials) and by agencies of the United States government.
- J. ODM will prepare data pursuant to the security and encryption standards found in Ohio IT Standard ITS-SEC-01, Data Encryption and Cryptography; and NIST Special Publication 800-53. CONTRACTOR shall prepare, store, and transmit all sensitive data relating to the state of Ohio in accordance with Ohio IT Standard ITS-SEC-01, Data Encryption and Cryptography; State of Ohio Administrative Policy IT-14, Data Encryption and Securing Sensitive Data; and NIST Special Publication 800-53.
- K. CONTRACTOR shall comply with Ohio Administrative Policy IT-04, Use of Internet, E-mail and Other IT Resources, as well as any associated agency policies prior to gaining access to statewide and ODM IT resources.
- L. The express terms and conditions of this Article shall be included in all subcontracts executed by CONTRACTOR for any and all work under this Contract.

ARTICLE III. EFFECTIVE DATE OF THE CONTRACT

- A. This Contract is in effect from July 1, 2023, or upon issuance of an approved State of Ohio purchase order, whichever is later, through June 30, 2025, unless this Contract is suspended or terminated prior to the expiration date. This Contract may be renewed through June 30, 2031, upon satisfactory completion of Deliverables hereunder, appropriation of funds by the Ohio General Assembly, and at the sole discretion of ODM. ODM will issue a notice to CONTRACTOR if ODM decides to renew this Contract. CONTRACTOR will not obligate resources in anticipation of a renewal until notice is provided.
- B. It is expressly understood by both ODM and CONTRACTOR that this Contract will not be valid and enforceable until the Director of the Ohio Office of Budget and Management, 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. ODM will notify CONTRACTOR when this certification is given.

ARTICLE IV. COMPENSATION

- A. The total amount payable under this Contract is Ten Million, One Hundred Fifty-Eight Thousand, Five Hundred Sixty-Nine and 10/100 Dollars (\$10,158,569.10). ODM will pay an amount up to Five Million, Two Hundred Twenty-Eight Thousand, One Hundred Twenty-Six and 65/100 Dollars (\$5,228,126.65) for State Fiscal Year 2024 and up to Four Million, Nine Hundred Thirty Thousand, Four Hundred Forty-Two and 45/100 Dollars (\$4,930,442.45) for State Fiscal Year 2025 expressly for the completion of the Deliverables. CONTRACTOR understands that the terms of this Contract do not provide for compensation in excess of the total amount listed in this section. ORC 126.30 shall govern with regard to interest on overdue payments.
- B. Compensation will be paid pursuant to CONTRACTOR's accepted cost proposal as incorporated below.

	SFY 24	SFY25
Focused Reviews	\$852.89 per review	\$802.25 per review
Behavioral Health and Substance Abuse Reviews	\$99.09 per review	\$93.20 per review
Pre-certification Reviews	\$87.34 per review	\$82.15 per review
Retrospective Reviews	\$132.58 per review	\$124.71 per review
Mobile Response and Stabilization Service Prior Authorization	\$99.09 per review	\$93.20 per review
Prior Authorization for Non-Institutional Services	\$39.24 per review	\$36.91 per review
Provider Prior Authorization Appeal Requests	\$54.58 per review	\$51.34 per review
Prior Authorization for Private Duty Nursing	\$285.59 per review	\$285.59 per review
Other Prior Authorization	\$99.09 per review	\$93.20 per review
Reporting and Analysis	\$28,240.29 per month	\$26,563.63 per month
Health Care Studies	\$40,993.62 per study	\$38,559.77 per study
Provider Education	\$7,146.59 per month	\$6,722.28 per month
Technical Assistance	\$127.67 per hour	\$120.09 per hour

- C. CONTRACTOR shall only bill ODM for 85% of moneys due on each invoice, and the other 15% shall be designated as a Minority Business Enterprise (MBE) holdback. The 15% holdback funds are payable to CONTRACTOR at the end of each fiscal year upon satisfying the minimum 15% Minority Business Enterprise set-aside prescribed by Section 8.24 of the RFP and ARTICLE IV.I. and ARTICLE X.B.9 of this Agreement.
- D. CONTRACTOR will submit detailed invoices on a monthly basis in one of the following manners with a copy to the Contract Manager:

E-Mail: invoices@ohio.gov (the preferred file type for email attachments is .pdf.).

Mail: Ohio Shared Services
P.O. Box 182880
Columbus, Ohio 43218-2880

Fax: 614.485.1039

CONTRACTOR agrees to use an invoice instrument to be prescribed by ODM and will include in each invoice:

1. CONTRACTOR's name, complete address, and federal tax identification number;
 2. Contract number and dates;
 3. Purchase order number;
 4. Amount and purpose of the invoice, including such detail as required per the compensation section of this Contract, deliverables completed, description of services rendered, hourly rates and numbers of hours (if applicable), amount of monthly fee (if applicable), and itemized travel and other expenses if permitted by this Contract;
 5. Description of Deliverables performed during the billing period;
 6. Receipt of other proof of cost; and
 7. Other documentation requested by ODM.
- E. CONTRACTOR expressly understands that ODM will not compensate CONTRACTOR for any work performed prior to CONTRACTOR's receipt of notice from ODM that the provisions of ORC 126.07 have been met as set forth in ARTICLE III, nor for work performed after the ending date of this Contract.

- F. CONTRACTOR expressly understands that ODM does not have the ability to compensate CONTRACTOR for invoices submitted after the State of Ohio purchase order has been closed. CONTRACTOR must submit final invoices for payment no later than 90 calendar days after the ending date of this Contract. Failure to do so will be deemed a forfeiture of the remaining compensation due hereunder.
- G. CONTRACTOR 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 ODM for the payments due under this Contract, this Contract will be terminated as of the date funding expires without further obligation of ODM or the State of Ohio.
- H. CONTRACTOR and ODM understand that the terms of this Contract, when combined with any other payments made to or open encumbrances with CONTRACTOR during the same State Biennium, cannot establish compensation in excess of Fifty Thousand and 00/100 Dollars (\$50,000.00) aggregate without prior approval from the State Controlling Board in accordance with ORC 127.16.
- I. **Minority Business Enterprise Set-Aside Percentage:** Contractors doing business with all state-level agencies, including ODM, are required to identify and set aside a specific percentage of contract-related Work to be exclusively performed by Ohio-certified Minority Business Enterprise (MBE) businesses, and to actively seek and subcontract for these businesses' services. MBE set-aside required percentages for SFY 2020 and SFY 2021 are established pursuant to ARTICLE X.B.9. of this Contract, while related determinations regarding payments shall be managed pursuant to this Section.
1. On invoices submitted to ODM, for each Deliverable (or other compensation methodology established in this Contract), CONTRACTOR shall indicate the dollar amount attributed to Ohio certified MBE subcontractors, along with documentation demonstrating the MBE subcontractor activities.
 2. If CONTRACTOR does not attain the MBE set-aside percentage prescribed by either ARTICLE X.B.9. or another percentage approved by ODM pursuant to an approved waiver or modification in accordance with ARTICLE X.B.9., CONTRACTOR shall forfeit the deficient percentage. ODM shall determine the difference between the required percentage and the attained percentage to determine the *deficient percentage*.
 3. If a modification or waiver request is submitted and approved, ODM may waive or modify the holdback forfeiture. At ODM's sole discretion, a partial or modified holdback forfeiture may be approved without the necessity of a formal amendment. If ODM determines that it is appropriate to retain a portion of the MBE holdback, ODM shall advise CONTRACTOR.
 4. **Determination of Final Holdback Payment.** Within thirty (30) days of the end of each fiscal year, CONTRACTOR shall submit an invoice with a detailed breakdown of the fiscal year's MBE spending to evidence the required percentage was met and to justify payment of the MBE holdback. ODM shall determine, at its sole discretion, whether CONTRACTOR provided sufficient documentation and whether the MBE requirement was satisfied.

ARTICLE V. SUSPENSION AND TERMINATION, BREACH AND DEFAULT

- A. This Contract will automatically terminate upon expiration of the time period in ARTICLE III, or upon completion of all Deliverables, or once all of the compensation has been paid.
- B. Notwithstanding other provisions in this Article, ODM may terminate this Contract in full or in part at will or for convenience by giving 90 calendar days written notice to CONTRACTOR at ODM's sole discretion. Upon a 30 calendar day written notice to CONTRACTOR, ODM may suspend in part or full this Contract at ODM's sole discretion.
- C. Notwithstanding the provision of Sections V., A and B., above, ODM may suspend or terminate this Contract immediately upon delivery of a written notice to CONTRACTOR if:
1. ODM loses funding as described in ARTICLE IV;
 2. ODM discovers any illegal conduct by CONTRACTOR; or

3. CONTRACTOR has violated any provision of ARTICLE X.
- D. Unless provided for in Sections A, B and C of this Article, CONTRACTOR will have 30 calendar days within which to cure any breach that is curable after receipt of written notice from ODM that CONTRACTOR is in breach of any of its obligations under this Contract. If CONTRACTOR fails to cure the breach within the 30 calendar days after written notice or if the breach is not curable, ODM may immediately suspend or terminate this Contract. ODM may also suspend or terminate this Contract when breaches are persistent, regardless of whether they are cured within 30 calendar days. For purposes of this Section, "persistent" means that ODM has notified CONTRACTOR three times in writing of CONTRACTOR's failure to meet any of its contractual obligations. The three notices do not have to relate to the same obligation or type of failure. After the third notice, ODM may suspend or terminate this Contract without a cure period if CONTRACTOR again fails to meet any contractual obligation. At the sole discretion of ODM, certain instances of breach may require a shorter cure period than the 30 calendar days generally applicable in this Section. In such instances, ODM will include in its notice of breach the shorter cure period deemed appropriate.
- E. CONTRACTOR, upon receiving notice of suspension or termination, will:
1. Cease performance of the suspended or terminated Deliverables;
 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 Deliverables;
 3. Prepare and furnish a report to ODM, as of the date the notice of termination or suspension was received, that describes the status of all Deliverables and includes the results accomplished and the conclusions reached through Deliverables;
 4. Except as required by law, return all records in their native format relating to cost, work performed, supporting documentation for invoices submitted to ODM, and copies of all materials produced under or pertaining to this Contract. Any retained information shall continue to be subject to the confidentiality provisions of this agreement and applicable law, and will be returned to ODM when no longer required by law to be retained; and
 5. Perform any other tasks ODM reasonably requires.
- F. In the event of suspension or termination under this Article, ODM will, upon receipt of a proper invoice from CONTRACTOR, determine the amount of any unpaid Contract funds due to CONTRACTOR for Deliverables performed before CONTRACTOR received notice of termination or suspension. In order to determine the amount due to CONTRACTOR, ODM will base its calculations on the payment method described in ARTICLE IV and any funds previously paid by or on behalf of ODM. ODM will not be liable for any further claims submitted by CONTRACTOR.
- G. If ODM terminates this Contract for any reason provided in this Article, except for termination for convenience or at will pursuant to Section B or termination for loss of funding pursuant to Section C, ODM will be entitled to utilize another contractor to complete the Deliverables of this Contract on any commercially reasonable terms as ODM and the covering contractor may agree. In this event, CONTRACTOR will be liable to ODM 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 ODM would have incurred under this Contract. CONTRACTOR's liability under this Section is in addition to any other remedies available to ODM pursuant to this Contract.
- H. Upon CONTRACTOR's breach or default of provisions, obligations, or duties embodied in this contract 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, ODM reserves the right to exercise any administrative, contractual, equitable, or legal remedies available without limitation. Any waiver by either party of an occurrence of breach or default is not a waiver of subsequent occurrences. If ODM or CONTRACTOR fails to perform any obligation under this Contract 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 ODM will not be effective unless it is in writing signed by the ODM Director, and a waiver by CONTRACTOR will not be effective unless is in writing signed by an individual with authority to bind CONTRACTOR.

ARTICLE VI. NOTICES

- A. ODM and CONTRACTOR agree that communication regarding Deliverables, scope of work, invoice or billing questions, or other routine instructions will be between CONTRACTOR and the identified ODM Contract Manager.
- B. Notices to ODM from CONTRACTOR that concern changes to CONTRACTOR'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 X, and/or any other formal notice regarding this Contract will be sent to the ODM Chief Legal Counsel, Office of Chief Legal, 50 West Town Street, 5th floor, Columbus, Ohio 43215.
- C. Notices to CONTRACTOR from ODM concerning termination, suspension, option to renew, breach, default, or other formal notices regarding this Contract will be sent to CONTRACTOR's representative at the address appearing on the signature page of this Contract.
- D. All notices 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 VII. RECORDS, DOCUMENTS AND INFORMATION

CONTRACTOR agrees that all records, documents, writings, and other information, created or used pursuant to this Contract will be treated according to the following terms, and that the terms, will be included in any subcontracts executed for the performance of the Deliverables under this Contract:

- A. CONTRACTOR agrees that any media produced pursuant to this Contract or acquired with Contract funds will become the property of ODM. This includes all documents, reports, data, photographs (including negatives), and electronic reports and records. ODM will maintain the unrestricted right to reproduce, distribute, modify, maintain, and use the media in any way ODM deems appropriate. Subject to Section I (E) (4) (Contractor Intellectual Property), CONTRACTOR further agrees not to seek or obtain copyright, patent or other proprietary protection for any materials or items produced under this Contract. Subject to Section I (E) (4) (Contractor Intellectual Property), CONTRACTOR understands that all materials and items produced under this Contract will be made freely available to the public unless ODM determines that certain materials are confidential under federal or state law.
- B. All ODM information that is classified as public or private under Ohio law will be treated as such by CONTRACTOR. Should the nature of any information be in question, ODM will determine whether the information is public or private. CONTRACTOR will restrict the use of any information, systems, or records ODM provides to the specific Deliverables of this Contract.
- C. CONTRACTOR information that is proprietary and has been specifically identified by CONTRACTOR as proprietary will be held as confidential by ODM. Proprietary information is information that would put CONTRACTOR at a competitive disadvantage in CONTRACTOR's market place and trade if it were made public. ODM reserves the right to require reasonable evidence of CONTRACTOR's assertion of the proprietary nature of any information. The provisions of this Article are not self-executing. CONTRACTOR must demonstrate that any information claimed as proprietary meets the definition of "trade secrets" found at ORC 1333.61.
- D. For audit purposes only, all records relating to cost, work performed, supporting documentation for invoices submitted to ODM, and copies of all materials produced under or pertaining to this Contract will be retained by CONTRACTOR and will be made available for audit by state and federal government entities that include, but are not limited to, ODM, 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 years after CONTRACTOR receives the last payment pursuant to this Contract. If an audit or similar action is initiated during this time period, CONTRACTOR 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, unless otherwise directed below in Section E. If applicable, CONTRACTOR must meet the requirements of the federal Office of Management and Budget (OMB) Omni-Circular, 2 CFR Part 200.104. 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.

CONTRACTOR must, for each subcontract in excess of \$2,500.00, require its subcontractors to agree to the same provisions of this Section. CONTRACTOR may not artificially divide contracts with its subcontractors to avoid requiring subcontractors to agree to this provision. This provision does not apply to contracts where federal funds are used and the federal government requires audits of all subcontracts regardless of the amount of the contract.

- E. All records relating to cost, work performed, supporting documentation for invoices submitted to ODM, and copies of all materials produced under or pertaining to this Contract will be retained by CONTRACTOR in accordance to the appropriate records retention schedule. The appropriate records retention schedule for this Contract is seven (7) years. If any records are destroyed prior to the date as determined by the appropriate records retention schedule, CONTRACTOR agrees to pay all costs associated with any cause, action or litigation arising from such destruction.
- F. CONTRACTOR agrees to retain all records in accordance to any litigation holds that are provided to them by ODM, and actively participate in the discovery process if required to do so, at no additional charge. Litigation holds may require CONTRACTOR to keep the records longer than the approved records retention schedule. CONTRACTOR will be notified by ODM when the litigation hold ends and retention can resume based on the approved records retention schedule. If CONTRACTOR fails to retain the pertinent records after receiving a litigation hold from ODM, CONTRACTOR agrees to pay all costs associated with any cause, action or litigation arising from such destruction.
- G. CONTRACTOR hereby agrees to current and ongoing compliance with Title 42, Sections 1320d through 1320d-8 of the United States Code (USC) and the implementing regulations found at Title 45, Parts 164.502(e) and 164.504(e) of the Code of Federal Regulations (CFR) regarding disclosure of Protected Health Information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). CONTRACTOR further agrees to include the terms of this section in any subcontracts that may be executed pursuant to this Contract.

ARTICLE VIII. AMENDMENT AND ASSIGNMENT

- A. This writing constitutes the entire agreement between ODM and CONTRACTOR with respect to all matters herein. Only a writing signed by both parties may amend this Contract. However, this Contract is governed by and construed in accordance with all applicable state or federal laws and regulations; and the Contract is automatically amended to conform to any changes in laws or regulations without the necessity for written amendment. Any written amendment to this Contract will be prospective in nature.
- B. CONTRACTOR agrees not to assign any interest in this Contract nor transfer any interest in the Contract without the prior written approval of ODM. CONTRACTOR will submit any requests for approval of assignments and transfers to the ODM Contract Manager at least ten business days prior to the desired effective date. CONTRACTOR understands that any assignments and transfers will be subject to any conditions ODM deems necessary and that no approval by ODM will be deemed to provide for any ODM obligation that exceeds the Contract amount specified in ARTICLE IV of this Contract.

ARTICLE IX. BUSINESS ASSOCIATE REQUIREMENTS UNDER HIPAA

- A. 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. **General Definitions.** The following terms used in this Contract shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information and Use.

2. Specific Definitions.

- a. HIPAA means the Health Insurance Portability and Accountability Act of 1996, the American Recovery and Reinvestment Act of 2009 (ARRA) and any other applicable federal statute or regulation.
- b. HIPAA Rules shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- c. Covered Entity means a health plan, a health care clearinghouse, or health care provider under 45 CFR 160.103.
- d. Business Associate means a person or entity that, on behalf of the Covered Entity, maintains, 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.
- e. Protected Health Information (PHI) means individually identifiable information including but not limited to the past, present or future physical or mental health or condition of an individual, provision of health care to an individual, or the past, present or future payment for health care provided to an individual, as more fully defined under 45 CFR 164.501 and any amendments thereto, received or sent on behalf of the Department.

B. CONTRACTOR acknowledges that ODM is a Covered Entity under HIPAA. CONTRACTOR further acknowledges that it is a Business Associate of ODM, and, in carrying out the work described in this Contract, 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.
3. **Safeguards.** CONTRACTOR will implement sufficient safeguards, and comply with Subpart C of 45 CFR Part 164 pertaining to electronic PHI to prevent the use or disclosure of PHI other than as provided for under this Contract. Safeguards will be implemented for all paper and electronic PHI created, received, maintained, or transmitted on behalf of ODM.
4. **Reporting of Disclosures.** CONTRACTOR agrees to promptly report to ODM any inappropriate use or disclosure of PHI that is not in accordance with this Contract or applicable law, including breaches of unsecured protected health information, as required at 45 CFR 164.410, and any security incident CONTRACTOR has knowledge of or reasonably should have knowledge of under the circumstances.

Further, CONTRACTOR shall report to ODM the following:

- a. Any use or disclosure of PHI which is not in compliance with the terms of this Agreement or applicable law of which it becomes aware; and
- b. Any security incident of which it becomes aware. For purposes of this Agreement, "security incident" means the unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

As soon as is practical following discovery of a reportable security incident, CONTRACTOR shall notify ODM of the existence and nature of the incident as understood at that time. CONTRACTOR shall immediately investigate the incident and within 24 hours of discovery shall provide ODM, in writing, a report describing the status and any results of CONTRACTOR's investigation.

Reporting and other communications made to ODM under this section must be made to ODM's HIPAA privacy officer and Office of Legal Counsel at: PrivacyOffice@medicaid.ohio.gov and Mcdlegal@medicaid.ohio.gov

5. **Mitigation Procedures.** CONTRACTOR agrees to coordinate with ODM to determine specific actions that will be required of the Business Associates for mitigation, to the extent practical, of the breach. These actions will include notification to the appropriate individuals, entities, or other authorities. Notification or communication to any media outlet must be approved, in writing, by ODM

prior to any such communication being released. CONTRACTOR will report all of its mitigation activity to ODM and shall preserve all relevant records and evidence.

6. **Incidental Costs.** CONTRACTOR shall bear the sole expense of all costs to mitigate any harmful effect of any breaches or security incidents of which CONTRACTOR has knowledge which are directly caused by the use or disclosure of protected health information by CONTRACTOR in violation of the terms of this Contract. These costs will include, but are not limited to, the cost of investigation, remediation and assistance to the affected individuals, entities or other authorities.
7. **Agents and Subcontractors.** CONTRACTOR, in compliance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2) as applicable, will ensure that all its agents and subcontractors that create, receive, maintain, or transmit PHI from or on behalf of CONTRACTOR and/or ODM agree to have, in a written agreement, the same restrictions, conditions, and requirements that apply to CONTRACTOR with respect to the use or disclosure of PHI.
8. **Accessibility of Information.** CONTRACTOR will make available to ODM such information as ODM may require to fulfill its obligations to provide access to, provide a copy of any information or documents 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.
9. **Amendment of Information.** CONTRACTOR shall make any amendment(s) to PHI as directed by, or agreed to by, ODM pursuant to 45 CFR 164.526, or take other steps as necessary to satisfy ODM's obligations under 45 CFR 164.526. In the event that CONTRACTOR receives a request for amendment directly from an individual, agent, or subcontractor, CONTRACTOR will notify ODM prior to making any such amendment(s). CONTRACTOR's authority to amend information is explicitly limited to information created by CONTRACTOR.
10. **Accounting for Disclosure.** CONTRACTOR shall maintain and make available to ODM or individuals requesting the information, as appropriate, records of all disclosures of PHI in a Designated Record Set as necessary to satisfy ODM's obligations under 45 CFR 164.528. For every disclosure the record will include, at a minimum, the name of the individual who is the subject of the disclosure, the date of the disclosure, reason for the disclosure if any, and the name and address of the recipient to which the protected health information was disclosed.
11. **Obligations of Department.** When CONTRACTOR is to carry out an obligation of ODM under Subpart E of 45 CFR 164, CONTRACTOR agrees to comply with all applicable requirements of Subpart E that would apply to ODM in the performance of such obligation.
12. **Access to Books and Records.** CONTRACTOR shall make available to ODM and to the Secretary of the U.S. 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 ODM, or created or received on behalf of ODM. Such access is for the purposes of determining compliance with the HIPAA Rules.
13. **Material Breach.** In the event of material breach of CONTRACTOR's obligations under this Article, ODM 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.
14. **Return or Destruction of Information.** Upon termination of this Contract and at the request of ODM, CONTRACTOR will return to ODM or destroy all PHI in CONTRACTOR's possession stemming from this Contract as soon as possible but no later than 90 days, and will not keep copies of the PHI except as may be requested by ODM or required by law, or in the event that return or destruction of PHI is reasonably infeasible, as determined by ODM, or as otherwise allowed for under this Contract. If CONTRACTOR, its agent(s), or subcontractor(s) destroy any PHI, then CONTRACTOR will

provide to ODM documentation evidencing such destruction. Any PHI retained by CONTRACTOR will continue to be extended the same protections set forth in this Section, HIPAA regulations and this Contract for as long as it is maintained.

15. **Agency Indemnification.** CONTRACTOR hereby indemnifies ODM and agrees to hold ODM harmless from and against any and all losses, expense, damage or injury that ODM may sustain as a result of, or arising out of, CONTRACTOR, or its agent's or subcontractor's, unauthorized use or disclosure of PHI.
16. **Survival.** These provisions shall survive the termination of this Contract.

ARTICLE X. CONTRACTOR CERTIFICATION OF COMPLIANCE WITH SPECIAL CONDITIONS

By executing this Contract, CONTRACTOR hereby affirms current and continued compliance with each condition listed in this Article. CONTRACTOR's certification of compliance with each of these conditions is considered a material representation of fact upon which ODM relied in entering into this Contract:

- A. If at any time, CONTRACTOR is not in compliance with the conditions affirmed in this Section, ODM will consider this Contract *void ab initio* and will deliver written notice to CONTRACTOR. Any funds the State of Ohio paid CONTRACTOR for work performed before CONTRACTOR received notice that the Contract is *void ab initio* will be immediately repaid or the State of Ohio may commence an action for recovery against CONTRACTOR.
 1. **Debarment Requirements.** CONTRACTOR affirms that neither CONTRACTOR nor any of its principals or subcontractors, is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by any governmental agency. CONTRACTOR also affirms that within three years preceding this Contract neither CONTRACTOR 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.** CONTRACTOR 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 Contract period CONTRACTOR, for any reason, becomes disqualified from conducting business in the State of Ohio, CONTRACTOR will immediately notify ODM in writing and will immediately cease performance of all Deliverables.
 3. **Unfair Labor Practices.** CONTRACTOR affirms that neither CONTRACTOR nor its principals are on the most recent list established by the Ohio Secretary of State, pursuant to ORC 121.23, which would identify CONTRACTOR as having more than one unfair labor practice contempt of court finding.
 4. **Finding for Recovery.** CONTRACTOR affirms that neither CONTRACTOR nor its principals 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.
- B. If at any time CONTRACTOR is not in compliance with the conditions affirmed in this Section, ODM may immediately suspend or terminate this Contract and will deliver written notice to CONTRACTOR. CONTRACTOR will be entitled to compensation, upon submission of a proper invoice per ARTICLE IV, only for work performed during the time CONTRACTOR was in compliance with the provisions of this Section. Any funds paid by the State of Ohio for work performed during a period when CONTRACTOR was not in

compliance with this Section will be immediately repaid or the State of Ohio may commence an action for recovery against CONTRACTOR.

1. Fair Labor Standards and Employment Practices. CONTRACTOR certifies that it is in compliance with all applicable federal and state laws, rules, and regulations governing fair labor and employment practices.

2. Civil Rights Laws.

a. CONTRACTOR, its officers, employees, members, and subcontractors hereby affirm current and ongoing compliance with all federal civil rights laws including:

(1) Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352);

(2) Title VI of the Civil Rights Act of 1964 (42 USC 2000d, et seq.);

(3) The Americans with Disabilities Act of 1990 (42 USC 12101, et seq.) and Section 504 of the Rehabilitation Act of 1973; and

(4) The Age Discrimination Act of 1975 (42 USC 6101, et seq.).

b. In carrying out this Contract, CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin, military status, disability, age, genetic information, or sexual orientation, in making any of the following employment decisions: hiring, layoff, termination, transfer, promotion, demotion, rate of compensation, and eligibility for in-service training programs.

c. CONTRACTOR agrees that it will not participate in, condone or tolerate any form of sexual harassment against any employee, subcontractor, or other person or entity with which it is associated in performance of this Agreement, which is considered a form of sex discrimination prohibited by Title VII of the Civil Rights Act of 1964, the Ohio Revised Code 4112.02, Ohio Administrative Code 123:1-49, the Anti-Discrimination Policy in State Government Executive Order 2019-05D, or state agency policy.

d. CONTRACTOR 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.

e. CONTRACTOR 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 and Conflicts of Interest Laws.

a. CONTRACTOR certifies that by executing this Contract, it has reviewed, knows and understands the State of Ohio's ethics and conflict of interest laws. CONTRACTOR further agrees that it will not engage in any action(s) inconsistent with Ohio ethics laws or any Executive Orders.

b. 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 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 calendar years. ORC 3517.13 does not apply to professional associations organized under ORC Chapter 1785.

c. CONTRACTOR agrees to refrain from promising or giving to any ODM 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. CONTRACTOR further agrees that it will not solicit any ODM employee to violate ORC 102.03, 2921.42, or 2921.43.

- d. 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 ODM Chief Legal Counsel at 50 West Town Street, Columbus, Ohio 43215-3414. CONTRACTOR further agrees that the person with the conflicting interest will not participate in any Deliverables until ODM determines that participation would not be contrary to public interest.
4. **Lobbying Restrictions.**
 - a. CONTRACTOR affirms that no federal funds paid to CONTRACTOR by ODM 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 compliance with all federal lobbying restrictions, including 31 USC 1352. If this Contract exceeds One Hundred Thousand and 00/100 Dollars (\$100,000.00), CONTRACTOR affirms that it has executed and filed the Disclosure of Lobbying Activities standard form LLL, if required by federal regulations.
 - b. CONTRACTOR certifies compliance with the Ohio executive agency lobbying restrictions contained in ORC 121.60 to 121.69.
 - c. CONTRACTOR, if a recipient of a federal award in excess of One Hundred Thousand and 00/100 Dollars (\$100,000.00), certifies compliance with the Byrd Anti-Lobbying Amendment, which at a minimum, attests CONTRACTOR will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 USC Chapter 1352.
5. **Child Support Enforcement.** CONTRACTOR agrees to cooperate with ODM 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.
6. **Pro-Child Act.** 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 18.
7. **Drug-Free Workplace.** 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 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.
8. **Work Programs.** 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 Chapter 5101 or 5107.
9. **MBE Subcontracting Requirement.** ODM is committed to making more contracts and opportunities available to MBEs certified by the Ohio Department of Administrative Services pursuant to Section 123.151 of the Ohio Revised Code and Rule 123:2-15-01 of the Ohio Administrative Code. This Contract is awarded pursuant to a RFP containing a sheltered solicitation requirement which requires

CONTRACTOR to seek and set aside a portion of the Work to be exclusively performed by Ohio certified MBE businesses.

In seeking solicitations from Ohio certified MBE subcontractors, CONTRACTOR certifies that it:

- a. Utilized a competitive process to which only Ohio certified MBEs may have responded;
- b. Established criteria by which prospective Ohio MBEs would be evaluated including business ability and specific experience related to the Work requirements; and
- c. Required that the Ohio certified MBE maintain a valid certification throughout the term of this Contract, including any renewals.
- d. Required that the Ohio certified MBE maintain the appropriate classification codes in accordance with OAC 123:2-14-02(V), for the products, supplies, or services specified in the Contractors procurement submission.

MBE Subcontractor Plan. CONTRACTOR certifies that it implemented an Ohio certified MBE subcontractor plan (Plan) as required by the RFP. The Plan (a) set aside for Ohio certified MBE subcontractors a minimum of 15% of the cost of this Contract; (b) used a competitive process for the selection of Ohio certified MBE subcontractors to which only Ohio certified MBEs were permitted to respond; and (c) identified proposed portions of Deliverables to be performed by Ohio certified MBE subcontractors. As a result of this process, CONTRACTOR selects Ardent Technologies, Inc. and Diversified Systems, Inc. to perform services under this Contract.

Tracking. CONTRACTOR acknowledges that it must indicate on all invoices submitted to ODM the dollar amount attributed to the Deliverables provided by any selected Ohio certified MBE subcontractor to which CONTRACTOR subcontracts a portion of the Work under this Contract, along with documentation of its activities, and shall report such payments monthly to ODM's Office of Contracts and Procurement. Compliance with CONTRACTOR's proposed cost set-aside percentage is a term of this Contract and failure to attain the proposed percentage each fiscal year may result in CONTRACTOR being found in breach of contract.

Remedies. CONTRACTOR may apply in writing to ODM for a waiver or modification of its proposed MBE set-aside cost percentage if it has given its best efforts to meet the requirement, has consulted with ODM's MBE coordinator for assistance, and is still unable to attain the full percentage requirement for a fiscal year. However, modification or waiver request must be submitted at least four (4) months after the start of the fiscal year and no later than three (3) months prior to the end of the fiscal year. CONTRACTOR shall submit detailed evidence acceptable to ODM demonstrating that CONTRACTOR made its best efforts to seek and maintain Ohio certified MBE subcontractors in order to justify the granting of a waiver or modification. If the waiver or modification could negatively impact an MBE subcontractor (i.e. if CONTRACTOR proposes severing the relationship with the MBE subcontractor), it is the CONTRACTOR's responsibility to provide adequate notice to the MBE partner and valid justification for the change. ODM will determine, at its sole discretion, whether CONTRACTOR's efforts and submitted documentation justify the granting of a waiver or modification. Compliance with any modified cost set-aside percentage is a term of this Contract and failure to attain the percentage may result in CONTRACTOR being found in breach of contract.

Failure to Comply. Compliance with CONTRACTOR's proposed cost set-aside percentage is a term of this Contract and failure to attain the proposed percentage or an approved modified percentage each fiscal year will be considered a reportable contract breach. If CONTRACTOR fails to meet the required percentage as provided in the Contract or as otherwise approved, pursuant to the waiver process outlined above, that failure is considered a material breach that must be reported on all future CONTRACTOR proposals in response to State of Ohio procurements.

Fee at Risk. Compliance with the minimum cost MBE set-aside percentage is a term of this Contract. CONTRACTOR agrees to place 15% of its payment at risk for failure to attain the MBE set-aside percentage each fiscal year, in accordance with ARTICLE IV.I.

10. Expenditure of Public Funds for Offshore Services—Executive Order Requirements.

- a. CONTRACTOR certifies that by executing this Contract and by completing and submitting to ODM the Affirmation and Disclosure form, it has reviewed, understands, and will abide by the Governor's Executive Orders 2019-12D and 2022-02D and shall abide by those requirements in the performance of this Contract, CONTRACTOR is prohibited from providing services outside of the United States or that allows ODM data to be sent, taken, accessed, tested, maintained, backed-up, stored, or made available remotely outside (located) of the United States, unless a duly signed waiver from ODM has been attained. CONTRACTOR affirms and understands that ODM is prohibited from purchasing from Russian institutions or companies. The applicable provisions of this paragraph will expire when the applicable Executive Order(s) is no longer effective.
- b. Prior to performing any services, and when there is a change in the location of any services provided under this Contract, CONTRACTOR must disclose:
 - (1) The location(s) where all services will be performed by CONTRACTOR or any subcontractor;
 - (2) The location(s) where any state data associated with any of the services through this Contract will be accessed, tested, maintained, backed-up, or stored; and
 - (3) The principal location of business for the contractor and all subcontractors.
- c. CONTRACTOR also affirms, understands, and agrees to immediately notify ODM of any change or shift in the location(s) of services performed by CONTRACTOR or its subcontractors under this Contract, and no services shall be changed or shifted to a location outside of the United States. During the performance of this Contract, if the Contractor/subcontractor changes the location(s) disclosed on the Affirmation and Disclosure Form, CONTRACTOR must complete and submit a revised Affirmation and Disclosure Form reflecting such changes.
- d. Termination, Sanction, Damages: ODM is not obligated and shall not pay for any services provided under this Contract that CONTRACTOR or any of its subcontractors performed outside of the United States. Notwithstanding any other terms of this Contract, ODM reserves the right to: recover any funds paid for services the CONTRACTOR performs outside of the United States for which it did not receive a waiver; recover any funds paid to CONTRACTOR for purchases or investments in a Russian institution or company. If services are performed outside of the United States, this will be treated as a material breach of the Contract. ODM does not waive any other rights and remedies provided to ODM in the Contract.

In addition, if CONTRACTOR or any of its subcontractors perform any such services outside of the United States, ODM may, at any time after the breach, terminate this Contract for such breach, upon written notice to CONTRACTOR. If ODM terminates the Contract, ODM may buy substitute services from a third party, and may recover the additional costs associated with acquiring the substitute services.

11. Combatting Trafficking in Persons.

- a. CONTRACTOR agrees that it is in compliance with the Federal Acquisition Regulation (FAR) for Combatting Trafficking in Persons, 48 CFR Subpart 22.17, in which "the United States Government has adopted a zero-tolerance policy regarding trafficking in persons." The provisions found in 48 CFR Subpart 52.2, specifically Subpart 52.222-50 are hereby incorporated into this CONTRACT by reference.
- b. CONTRACTOR, its employees, its subcontractors, or subcontractor's employees are prohibited from the following activities:
 - (1) Engaging in severe forms of trafficking in persons during the period of performance of the Contract;

- (2) Procuring commercial sex acts during the period of performance of the Contract; or
 - (3) Using forced labor in the performance of the Contract.
 - c. CONTRACTOR agrees that it shall notify its employees, and require all of its subcontractors to notify their employees, of the prohibited activities described in the preceding paragraph.
 - d. ODM has the right to immediately and unilaterally terminate this Contract if any provision in this Section is violated and ODM may implement section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 USC 7104), *see* 2 CFR Part 175.
12. **Civil Rights Assurance.** CONTRACTOR hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d, et seq.) and the Age Discrimination Act of 1975 (42 USC 6101, et seq.).
13. **Clean Air Act.** CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401, et seq.) and the Federal Water Pollution Control Act as amended (33 USC 1251, et seq.). Violations must be reported to the Regional Office of the United States Environmental Protection Agency (US EPA) and ODM.
14. **Energy Policy and Conservation Act.** CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act in accordance with 42 USC 6201. Violations must be reported to the Regional Office of the US EPA and ODM.
15. **Solid Waste Disposal.** CONTRACTOR agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the US EPA at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000.00 or the value of the quantity acquired by the preceding federal fiscal year exceeded \$10,000.00; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the US EPA guidelines.
16. **Experimental, Developmental, or Research Work.** When applicable, if CONTRACTOR enters into a subcontract or subgrant with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that funding agreement, the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any applicable federal and state regulations.
17. **Boycott.** CONTRACTOR acknowledges that, pursuant to ORC 9.76, a state agency may not enter into or renew a contract for supplies, equipment or services with a company that operates to earn a profit unless CONTRACTOR provides the following declaration. If applicable, CONTRACTOR certifies that it is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade and will not do so during the Contract period. CONTRACTOR will notify ODM immediately if it boycotts a jurisdiction with whom the State of Ohio can enjoy open trade. ODM reserves the right to terminate this Agreement immediately upon discovery of such a boycott.
18. **Certification of Compliance.** CONTRACTOR 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.
19. **Subcontract provisions**

ARTICLE XI. BUSINESS CONTINUITY PLAN

- A. CONTRACTOR recognizes that certain services under this Contract are vital to ODM and must be continued without interruption. CONTRACTOR shall be prepared to continue providing such services identified by ODM, during periods of disaster, crisis, or other unexpected break in services based upon a Business Continuity Plan (Plan). CONTRACTOR is required to implement and maintain a sustainable Plan throughout the term of this Contract, and provide a summary of the Plan to ODM upon request. The Plan will, at a minimum:
1. Enable continued performance under this Contract in the event of a disaster or other unexpected break in services; and
 2. Ensure the continuity for identified vital services and supporting facilities.
- B. For purposes of this Article, the term "disaster" means an unanticipated incident or event, including, but not limited to, force majeure events, technological accidents or human-caused events that may cause a material service or critical application to be unavailable without any reasonable prediction for resumption; or causes data loss, property damage or other business interruption without any prediction for recovery within a commercially reasonable time period.

ARTICLE XII. MISCELLANEOUS PROVISIONS

- A. **Independent Contractor.** CONTRACTOR agrees that no agency, employment, joint venture, or partnership has been or will be created between ODM and CONTRACTOR. CONTRACTOR 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 Contract. 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. CONTRACTOR acknowledges and agrees any individual providing personal services under this Contract is not a public employee for the purposes of Chapter 145 of the Revised Code. Pursuant to ORC 145.038, ODM is required to provide individuals and business entities with fewer than five employees the Independent Contractor Acknowledgment (Form PEDACKN, Attachment A). This form requires CONTRACTOR to acknowledge that ODM has notified CONTRACTOR that he or she has not been classified as a public employee and no contributions to the Ohio Public Employees Retirement System will be made on his or her behalf for these services. If CONTRACTOR is a business entity with fewer than five employees, please have each employee complete the PEDACKN form, the first two pages of Attachment A. If CONTRACTOR is not an individual or a business entity with fewer than five employees, please complete page 3 of Attachment A.
- B. **Subcontracting.**
1. All subcontracts will be at the sole expense of CONTRACTOR and CONTRACTOR will be solely responsible for payments of its subcontractors.
 2. CONTRACTOR assumes responsibility for all subcontracting and third-party work performed under this Contract. The CONTRACTOR is ultimately responsible for meeting all contractual obligations under this Contract, regardless of delegation.
 3. For all CONTRACTOR delegated responsibilities under this CONTRACT, the CONTRACTOR must:
 - a. Monitor a subcontractor's performance on an ongoing basis and conduct a formal review at least annually to identify any deficiencies or areas for improvement;
 - b. Communicate the results of the performance review to the subcontractor and impose corrective action on the subcontractor as necessary;
 - c. Notify ODM and submit a corrective action plan to ODM if at any time the subcontractor is found to be in non-compliance with CONTRACTOR delegated contractual obligations; and

- d. Ensure there is no disruption in meeting the CONTRACTOR's contractual obligations to ODM, if the subcontractor or the CONTRACTOR terminates the arrangement between the subcontractor and the CONTRACTOR.
4. All subcontractors agree to be bound by of the terms and conditions of this Contract; and therefore, CONTRACTOR must bind subcontractors to the terms and conditions this Contract without limitation. CONTRACTOR will be the sole point of contact with regard to all contractual matters.
 - a. If a provision in the subcontract agreement contradicts, or is incompatible with, any applicable provision in this Contract, the applicable provision in the subcontract is rendered null and void, unenforceable, and without effect.
5. Any additional or new subcontractors must be approved by ODM in writing prior to subcontractor starting work. ODM has the right to not approve CONTRACTOR'S request for new or additional subcontractors for any reason, without limitation.
6. CONTRACTOR must provide notice to ODM within 15 days of a subcontractor being terminated.
7. CONTRACTOR must allow ODM to review the terms of any subcontractor arrangement upon ODM's request.

C. **Limitation of Liability, Indemnification, Jurisdiction.** To the extent allowable by law, CONTRACTOR agrees to defend, indemnify and hold ODM, its officials, employees and agents harmless from and against any and all liability, loss and expense (including reasonable attorneys' fees) for third party claims for personal injury, property damage, patent and copyright infringement, or for any liability for third party claims under ARTICLE IX above ("Business Associate Requirements Under HIPAA"), and/or any other type of third party claim that arises from the CONTRACTOR's performance of the Deliverables under this Contract. CONTRACTOR must indemnify ODM for all liability and expense resulting from the unauthorized disclosure or loss of ODM data, including personally identifiable information and ODM sensitive information. Damages resulting from the unauthorized disclosure or loss of ODM data shall be considered direct damages under this Contract and include, but are not limited to, the following: (i) expenses for legally-required notification of impacted individuals; (ii) responding to inquiries from such notifications; (iii) government fines and penalties assessed against ODM; (iv) costs to ODM for investigations, audits or forensic services as applicable related to the disclosure or loss; (v) mitigation measures, including 12 months of credit monitoring for individuals impacted by a disclosure; (vi) costs to ODM to reconstruct data that was lost or to repair any damaged ODM information technology infrastructure; and (vii) other such expenses incurred by ODM as a result of the unauthorized disclosure or loss of ODM data by CONTRACTOR. CONTRACTOR's sole and exclusive remedy for any ODM failure to perform under this Contract 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. To the extent that ODM is a party to any litigation arising out of or relating in any way to this Contract or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio. Subject to ORC 109.02, CONTRACTOR agrees to defend ODM against any such third-party claims or legal actions if called upon by ODM to do so. In no event will ODM be liable for any indirect or consequential damages, including loss of profits, even if ODM was advised, knew or should have known of the possibility of such damages. Any limitation provisions contained in the documents and materials incorporated by reference into this Contract are considered stricken and of no force and effect.

NOTWITHSTANDING ANY CONTRARY LANGUAGE IN THIS CONTRACT, CONTRACTOR'S SOLE AND AGGREGATE LIABILITY FOR ANY AND ALL DAMAGES, CLAIMS, LOSSES, OR LIABILITIES ARISING OUT OF THIS CONTRACT, INCLUDING PERFORMANCE BY CONTRACT OR PURSUANT TO THIS CONTRACT, EXCEPT FOR DAMAGES, CLAIMS, LOSSES, OR LIABILITIES ARISING UNDER ARTICLE IX OF THIS CONTRACT, (COLLECTIVELY, "CLAIMS") WILL IN NO EVENT EXCEED TWO TIMES THE BIENNIAL COST OR \$20,000,000.00 (TWENTY MILLION DOLLARS), WHICHEVER IS GREATER, UNDER THIS CONTRACT GIVING RISE TO THE LIABILITY AND ASSOCIATED WITH THE SERVICES PROVIDED. THE LIMITATIONS AND EXCLUSIONS OF LIABILITY SET FORTH IN THIS SECTION SHALL NOT APPLY TO: (i) CLAIMS ATTRIBUTABLE TO THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF CONTRACTOR (OR THAT OF ANY SUBCONTRACTOR OF CONTRACTOR); (ii) CLAIMS FOR WHICH LIABILITY CANNOT BE EXCLUDED UNDER LAW, INCLUDING THE RESTRICTIONS SET FORTH IN OHIO REVISED CODE 9.27; (iii) CLAIMS FOR PERSONAL INJURY; (iv) CONTRACTOR'S INDEMNIFICATION OBLIGATION FOR INFRINGEMENT OF PATENT OR COPYRIGHT; AND (v)

CONTRACTOR'S OBLIGATIONS SET FORTH IN ODM'S BUSINESS ASSOCIATE REQUIREMENTS UNDER HIPAA AS PROVIDED IN THIS CONTRACT.

Notwithstanding any contrary language in this Contract, (i) Contractor will be obligated to indemnify ODM to the extent a claim, cause of action, injury or breach is attributable to Contractor and (ii) Contractor will not be liable for any damages or liability to the extent caused by the negligence or willful misconduct of ODM, its contractors or agents.

- D. **Infringement of Patent or Copyright.** To the extent allowable by law and subject to ORC 109.02, CONTRACTOR agrees to defend any suit or proceeding brought against ODM, any official or employee of ODM 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. ODM 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. ODM may participate in the defense of any such action. CONTRACTOR agrees to pay all damages and costs awarded against ODM, any official or employee of ODM 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 ODM 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.
- E. **General Representations and Warranties.** CONTRACTOR warrants that:
1. The recommendations, guidance, and performance of CONTRACTOR under this Contract will be in accordance with the industry's professional standards, the requirements of this Contract and without material defect.
 2. The Deliverables are merchantable and fit for the particular purpose described in this Contract and will perform substantially in accordance with its user manuals, technical materials, and related writings.
 3. The Deliverables comply with all governmental, environmental and safety standards.
 4. CONTRACTOR has the right to enter into this Contract.
 5. CONTRACTOR has not entered into any other contracts or employment relationships that restrict CONTRACTOR's ability to perform under this Contract.
- F. **Liens.** CONTRACTOR will not permit any lien or claim to be filed or prosecuted against ODM or the State of Ohio because of any labor, services, or materials furnished. If CONTRACTOR fails, neglects, or refuses to make prompt payment of any claims for labor, services, or materials furnished to CONTRACTOR in connection with this Contract, ODM 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 CONTRACTOR under this Contract.
- G. **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 VI. 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 ODM in its discretion.

- H. **Severability.** If any provision of this Contract or the application of any provision is held by a court to be contrary to law, the remaining provisions of this Contract will remain in full force and effect. If this Contract contains an impermissible term or condition described in ORC 9.27, that term or condition is void ab initio, and the contract containing the term or condition otherwise shall be enforceable as if it did not contain such term or condition.
- I. **Counterpart.** This Contract may be executed in one, or more than one counterpart, and each executed counterpart shall be considered an original, provided that such counterpart is delivered to the other party by facsimile, mail courier or electronic mail, all of which together shall constitute one and the same contract.
- J. **Conflict of Terms.** 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 this dispute in keeping with the objectives of this Contract and the budgetary and statutory constraints of ODM.
- K. **Background Check.** CONTRACTOR must comply with Attachment B, ODM IPP 5001 - Background Checks, as applicable to this Contract. If background checks are required under Attachment B: CONTRACTOR and subcontractor personnel, including any replacement personnel, assigned to perform services under this Contract must have a background check completed as described in Attachment B; and, background checks must be current (i.e. completed no more than six months prior to the commencement of the services under this Contract) and completed before the work starts or before reporting to ODM designated project facilities. At its discretion, ODM may reject any CONTRACTOR or subcontractor personnel based on the information provided in the completed background check.

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 found unenforceable by operation of statute or by administrative or judicial decision, the remaining portions of this Contract 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 Contract impossible.

Signature Page Follows:

Remainder of page intentionally left blank

**OHIO DEPARTMENT OF MEDICAID
CONTRACT FOR SERVICES**

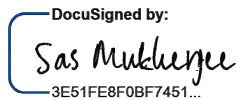
SIGNATURE PAGE

C-2425-01-0027

To show their agreement, the parties have executed this contract as of the date of the signature of the Director of the Ohio Department of Medicaid.

Permedion, Inc.

Ohio Department of Medicaid

DocuSigned by:

3E51FE8F0BF7451...

Authorized Signature (Blue Ink Please)

Sas Mukherjee, EVP and CFO

Printed Name

4/14/2023

Date

5615 High Point Drive
Irving, TX 75038

Maureen M. Corcoran, Director

Date

50 West Town Street
Columbus, Ohio 43215

STEP 3: Acknowledgment

The public employer identified in Step 2 has classified you as an independent contractor or another classification other than a public employee. Ohio law requires that you acknowledge in writing that you have been informed that the public employer identified in Step 2 has classified you as an independent contractor or another classification other than a public employee for the services described in Step 2 and that you have been advised that contributions to OPERS will not be made on your behalf for these services.

If you disagree with the public employer's classification, you may contact OPERS to request a determination as to whether you are a public employee eligible for OPERS contributions for this service. Ohio law provides that a request for a determination must be made within five years after you begin providing personal services to the public employer, unless you are able to demonstrate through medical records to the Board's satisfaction that at the time the five-year period ended, you were physically or mentally incapacitated and unable to request a determination.

By signing this form, you are acknowledging that the public employer for whom you are providing personal services has informed you that you have been classified as an independent contractor or another classification other than a public employee and that no contributions will be remitted to OPERS for the personal services you provide to the public employer. This acknowledgment will remain valid as long as you continue to provide the same services to the same employer with no break in service regardless of whether the initial contract period is extended by any additional agreement of the parties. You also acknowledge that you understand you have the right to request a determination of your eligibility for OPERS membership if you disagree with the public employer's classification. **A copy of this form must be sent to OPERS.**

Signature _____

Do not print or type name


Today's Date _____/_____/_____

Ohio Department of Medicaid
Jessica Gaston Mathews, Deputy Legal Counsel
Office of Contracts and Procurement
50 West Town Street
Columbus, Ohio 43215

Dear Ms. Gaston Mathews,

By signing below, I acknowledge that I have received a copy of the PEDACKN form. I have not completed the form because it does not apply to my company or my employer.

Signed:

DocuSigned by:

SES1FE0F0BF7451....

Printed Name: Sas Mukherjee, EVP and CFO

On behalf of Permedion, Inc.

[Contractor Name]

Date: 4/14/2023

For Official Use Only:

Contract DIN _____


 BACKGROUND CHECKS
 IPP NUMBER: ODM IPP 5001

APPOINTING AUTHORITY APPROVAL <i>Maurice M. Conneran J.E.P.</i>	POLICY NUMBER: ODM-IPP 5001 VERSION 2
	EFFECTIVE DATE: September 1, 2021

I. PURPOSE/REASON:

- A. To ensure agency managers have the most complete information available with which to make hiring decisions, the Ohio Department of Medicaid (ODM) requires that those internal and external applicants selected and offered a position with the agency successfully complete a criminal background check before the effective date of their employment.
- B. Persons selected for employment with ODM in positions covered by the Federal Omnibus Transportation Employee Testing Act of 1991, safety-sensitive positions, and unclassified positions are subject to a pre-employment urinalysis for illegal substance use in accordance with the State of Ohio Drug Free Workplace Services Program, State of Ohio Employees Drug Testing Programs Manual. This test must be satisfactorily completed prior to the effective date of employment.
- C. Employment in some offices of ODM may be limited by regulations set in place by the federal government. This includes individuals employed in positions that have access to Federal Tax Information (FTI), who must undergo appropriate background checks in accordance with IRS Publication 1075 upon hire and every ten (10) years thereafter.
- D. ODM will validate all new employees' eligibility to legally work in the United States (e.g., a United States citizen or foreign citizen with the appropriate authorization) in accordance with IRS Publication 1075.
- E. All offers of employment are contingent on meeting the requirements of this policy and all offers can be rescinded at any time for any legal reason at the discretion of ODM.

II. REFERENCES/AUTHORITY:

- A. REFERENCES
 - 1. Ohio Revised Code (ORC) 5160.03
 - 2. ORC 2921.02, 2921.41, 2921.43, and 2961.02
 - 3. ORC 124.25
 - 4. ORC 124.74
 - 5. OAC 123:1-76-01 through 1-76-14
 - 6. State of Ohio Employees Drug Testing Programs Manual
 - 7. Federal Omnibus Transportation Employee Testing Act of 1991
 - 8. United States Code (USC): 42 U.S.C. 1320a-7
 - 9. Code of Federal Regulations (CFR): 42 CFR 1001 and 42 CFR 1003
 - 10. State of Ohio Administrative Policy HR-29

11. IRS Publication 1075 (see <https://www.irs.gov/privacy-disclosure/safeguards-program>)
12. ODM IPP 8510 Access, Use, or Disclosure of Federal Tax Information
13. ODM IPP 8511 Safeguarding Confidential Personal Information

B. AUTHORITY

1. This policy is established by order of the director of ODM, hereinafter referred to as director.
2. Per ORC 5160.03, all duties conferred on the various work units of the department by law or by order of the director shall be performed under such rules as the director prescribes and shall be under the director's control.

III. SCOPE:

- A. This policy applies to all applicants selected for and offered positions with ODM (final candidates), including all current ODM employees applying for positions within ODM or those ODM employees who require access to FTI as part of their job duties as outlined in their position description.
- B. All contract personnel performing work for ODM, including temporary service personnel, are required to have a satisfactory criminal background check in accordance with the conditions set forth in this policy.
- C. All persons selected for positions covered by Federal Omnibus Transportation Employee Testing Act of 1991 or safety-sensitive positions will be required to submit to a urinalysis test for illegal substances when requested. All persons selected for positions with ODM will be verified against the U.S. Department of Health and Human Services, Office of Inspector General, List of Excluded Individuals/Entities (LEIE) database.
- D. The ODM Bureau of Human Resources (BHR) is responsible for implementing the procedures contained within this policy and ensuring they are equally applied to all persons offered employment with ODM as appropriate based on job classification and position description.

IV. PROCEDURES - CRIMINAL BACKGROUND CHECKS:

A. INTRODUCTION

1. Employment in a position with ODM is contingent upon successful completion of a criminal background check.
2. All persons selected for and tentatively offered a position with ODM are required to provide ODM BHR a consent form for the criminal background check. Exceptions for contract personnel and temporary service personnel are specified in Section IV-D.
3. The background check will include a review of state and local law enforcement agencies where the final candidate or employee has lived, worked, and/or

- attended school within at least the last 7 years, and if applicable, of the appropriate agency for any identified arrests.
4. Those selected for and tentatively offered an unclassified position with ODM must complete a special Background Information Form for Unclassified Employee and a Tax Liability Waiver when requested by ODM BHR. (See Appendix B.) These forms will be sent to the Department of Public Safety for a separate check.
 5. In addition to a background investigation including a review of state and local law enforcement agencies described in Section IV-A-3 above, final candidates and employees, including intermittent, contract, and temporary employees, who have or will have access to FTI are also required to have a national agency criminal background check that includes Federal Bureau of Investigation (FBI) fingerprinting conducted by the Ohio Bureau of Criminal Identification and Investigation (BCI) and ODM in accordance with IRS Publication 1075. The local, state, and national agency background checks shall occur before an individual has access to systems containing FTI and then every ten (10) years thereafter if the individual remains in a position that has access to FTI. As part of this check, final candidates are required to submit fingerprints electronically. ODM BHR will facilitate the process of submitting the fingerprints to BCI. A review of FBI fingerprint results will be conducted to identify possible suitability issues in accordance with the guidelines set forth in Section IV-B below.

B. DISQUALIFYING FACTORS

Unless provided by law, a record of criminal conviction(s) and/or prosecution(s) will not automatically disqualify a final candidate or employee from being appointed to or maintaining a position with ODM. If a final candidate or employee has a criminal conviction and/or prosecution, ODM BHR, with assistance from the Office of Legal Counsel as needed, will determine whether the candidate is or remains qualified and suitable to hold the applied-for position given the criminal conviction history or nature of the prosecution by following the procedures outlined below.

1. The following are in and of themselves disqualifying factors:
 - a. Refusal to consent to a criminal background check, including unusual or unreasonable delay in executing the consent to conduct a background check;
 - b. A conviction identified in ORC 2961.02;
 - c. A felony conviction for a violation of any of the following sections of the ORC or a felony conviction (or equivalent) in another state for the same type of violation:
 - i. Bribery (ORC 2921.02);
 - ii. Theft in office (ORC 2941.41);
 - iii. Soliciting or accepting improper compensation (ORC 2921.43); any conviction for this offense within seven years of submission of the employment application to ODM or during current ODM employment is a disqualifying factor.
2. Criminal convictions and/or prosecutions considered for positions with access to FTI:

When a position includes access to FTI, ODM will engage in the individualized analysis described below when reviewing any conviction, except for those automatically disqualifying conditions listed in section IV-B-1 above.

3. General relevance of criminal convictions and/or prosecutions to employment at ODM:
Even when an employee will not, in the course of employment, have access to or use FTI, ODM will conduct an individualized analysis on a final candidate's or an employee's conviction or prosecution history, as set forth below.
4. Individualized analysis:
 - a. Unless otherwise provided by federal or state law (as described above), to determine whether a final candidate or employee is or continues to be suitable for a position with ODM, ODM will conduct an analysis of the duties of the position and the crime(s) committed, along with a review of the following non-exclusive list of factors:
 - i. Relevance of the criminal record to the position sought;
 - ii. The nature of the work performed;
 - iii. The time that has lapsed since the conviction;
 - iv. The age of the final candidate or employee at the time of the offense;
 - v. The severity and specific circumstances of the offense, including the type of harm that the final candidate or employee caused, and/or the legal elements involved in the specific crime committed;
 - vi. The number of offenses;
 - vii. Whether the final candidate or employee has pending charges;
 - viii. Whether a prosecution is ongoing but not concluded or the manner of conclusion, if not a conviction (*e.g.*, a plea bargain);
 - ix. Any evidence of rehabilitation or contrition;
 - x. Any other relevant information, including information submitted by or on behalf of the final candidate or employee, or other information obtained by ODM.
 - b. Assessing a criminal background check with arrests: if the identity of the employee or final candidate is confirmed, and if there is corroborating evidence of criminal activity involving acts identified in section IV-B above, arrests may be considered in determining suitability for a position with access to FTI.
 - c. Based on these factors and other relevant information deemed appropriate for review, the ODM Human Resources Director will determine whether there is a significant nexus between the duties that the final candidate or employee would or does perform for ODM, ODM's policies and procedures, and the crime(s) or wrongdoing committed, and whether the criminal background renders the final candidate or employee unsuitable for the job. The final decision whether to withdraw a conditional offer of employment to a candidate or to seek termination of the current employee's employment based on this analysis will be made by the ODM Human Resources Director. This process also applies to contractors described in Sections IV-D.

5. Notification of disqualification:

- a. If the ODM Human Resources Director determines, in accordance with Section IV-B, that an individual's criminal record disqualifies or renders the individual unsuitable or no longer suitable for the position, the individual will be notified immediately.
- b. The individual will be provided a copy of the background check information upon which the ODM Human Resources Director relied, a copy of this policy, and the reason why the criminal record rendered this individual disqualified or unsuitable for employment with ODM.
- c. The individual will be provided information about how to dispute the accuracy of the criminal record. **Note:** ODM has no responsibility concerning the challenge and review process of information contained in the BCI or other background check report but will consider and review any revised reports provided by BCI or other background check provider.

C. REPORTING OF KNOWN OFFENDERS

Should the results of the criminal background check disclose outstanding warrant(s), violation(s) of probation or parole, or any other similar outstanding actions against the employee or final candidate, any pertinent information supplied as part of the employment process will be forwarded to the ODM Office of Legal Counsel for appropriate action on behalf of the director and the agency.

D. CONTRACT PERSONNEL AND TEMPORARY SERVICE PERSONNEL

1. Contract and temporary service personnel (contractor) hired through a contract with ODM or DAS that perform work for ODM are required to have a satisfactory BCI check. The check is to be performed by the Contract Vendor before the contractor will be allowed to commence work for ODM. The Contract Vendor shall verify that a background check was completed on the contractor in accordance with the terms outlined in Section IV-B. ODM reserves the right to conduct random audits on the background check report at any time and for any reason. ODM reserves the right to disapprove the use of any contractor who does not meet the standards outlined in Section IV-B.
2. Requirements of this section, other than FTI requirements, may be waived by ODM if:
 - a. Unwarranted delays in mission essential work will occur;
 - b. The contractor will be at an ODM worksite only on an as needed basis (e.g., copier servicers, lecturers, installers, etc....);
 - c. The contractor will not be working at an ODM worksite and will not have access to ODM systems (e.g. IME Providers);
 - d. The contractor will be working at an ODM worksite for short periods of time (e.g., less than 1 week at a time) with a cumulative total of less than 90 days during a calendar year.

V. PROCEDURES – ELIGIBILITY TO WORK IN THE UNITED STATES

- A. ODM will validate all new employees' eligibility to legally work in the United States (e.g., a United States citizen or foreign citizen with the appropriate authorization) in accordance with IRS Publication 1075.
 1. ODM BHR will complete the USCIS Form I-9 to document verification of the identity and employment authorization of each new employee to work in the United States.
 2. Within 3 days of completion, ODM BHR will process all new employees who will have access to FTI through E-Verify to assist with verification of his or her status and the documents provided with the Form I-9. The E-verify system is located at www.uscis.gov/e-verify.
- B. This verification process will only be completed on new employees. Any employee with expiring employment eligibility will be documented and monitored for continued compliance.
- C. Any employee not found eligible to work in the United States will be notified in writing and tentative offer of employment withdrawn.

VI. PROCEDURES - TESTING FOR ILLEGAL SUBSTANCE USE:

A. INTRODUCTION

1. Employment with ODM in a position covered by the Federal Omnibus Transportation Employee Testing Act of 1991, a safety-sensitive position, or an unclassified position is contingent upon successful completion of a preemployment urinalysis test for illegal substances.
2. Every person interviewed for a position requiring drug testing will be required to sign a form indicating their acknowledgment that the appointment of the final candidate for the position will be contingent upon successful completion of the preemployment urinalysis test for illegal substance use. See Federal Omnibus Transportation Employee Testing Act of 1991 Position, Safety-sensitive Position, and Unclassified Position Drug Testing Acknowledgment Form, Appendix A.
3. Every final candidate for a testing designated position will be advised that he or she will have the opportunity to offer explanation or submit medical documentation to the Medical Review Officer of any legally prescribed medications which might explain a positive test.

B. DISQUALIFYING FACTORS

1. The following will result in disqualifying a final candidate for a position (as described in Section VI-A-1) with ODM:
 - a. Refusal to consent to and/or satisfactorily complete the urinalysis.
 - b. Having a positive test result for an illegal substance.
2. Any final candidate that tests positive will not be eligible for state employment for a period of one year following the date of a positive result. Final candidates who refuse to be tested or whose actions impede the collection process in any way will not be hired. The ODM Human Resources Director will be notified and

provided with all information pertinent to the situation.

C. NOTIFICATION OF DISQUALIFICATION

1. Upon receipt of a positive drug test result, the individual will be notified by telephone or in person by ODM BHR.
2. After the initial notification, a letter will be sent to the disqualified individual providing him or her with written notification of the withdrawal of the tentative offer of employment. This letter will also detail the process for a retest or other ways to appeal the results of the test.

Note: ODM has no responsibility concerning the retest or other appeal processes resulting from the urinalysis. Those processes are controlled by the Drug Free Workplace Services Program Office of the Ohio Department of Administrative Services.

D. CURRENT ODM EMPLOYEES TESTING POSITIVE FOR ILLEGAL SUBSTANCES

Current employees that test positive for an illegal substance as a result of a test done in accordance with this policy will be disqualified for that new position and will have the tentative offer withdrawn. The test result will be referred to BHR for further investigation in accordance with the State of Ohio Employees Drug Testing Programs Manual and all applicable bargaining union contracts.

VII. SPECIAL PROGRAM REQUIREMENTS:

A. BACKGROUND

1. The Congress of the United States has worked diligently to protect the health and welfare of the nation's elderly and poor by implementing legislation to prevent certain individuals and businesses from participating in Federally-funded health care programs. The US Department of Health and Human Service, Office of Inspector General (HHS/OIG), under this Congressional mandate, established a program to exclude individuals and entities affected by these various legal authorities and maintains a list of all currently excluded parties called the List of Excluded Individuals / Entities (LEIE).
2. In accordance with 42 U.S.C. 1320a-7(d), the Secretary of Health and Human Services "shall exercise the authority under this section and section 1128A in a manner that results in an individual's or entity's exclusion from all the programs under title XVIII and all the State health care programs in which the individual or entity may otherwise participate."
3. No program payment will be made to any entity in which an excluded individual is serving as an employee, administrator, operator, or in any other capacity, for any services, including administrative and management services furnished, ordered, or prescribed during the period of exclusion.

- B. Based on the possible loss of federal funding to the agency, ODM must take all due precautions in hiring individuals that will be employed in the agency. All those

selected for a position with ODM will be screened by ODM BHR utilizing the on-line LEIE database.

- C. If a final candidate's name appears on the LEIE, he or she will be notified and afforded reasonable opportunity (14 calendar days) to provide evidence that the information contained on the LEIE is either incorrect or out-of-date. If it is determined that the final candidate's name correctly appears on the exclusion list, the individual's tentative offer of employment will be withdrawn.
- D. NOTIFICATION TO FINAL CANDIDATE
 - 1. If a final candidate's name appears on the LEIE, he or she will be notified by telephone or in person by ODM BHR.
 After the initial notification, a letter will be sent to the individual providing him or her with written notification of his or her name appearing on the LEIE. The letter also will provide contact information for HHS/OIG.
Note: ODM has no responsibility concerning the challenge of information contained on the LEIE beyond providing the disqualified individual a reasonable opportunity to provide evidence that the information contained on the LEIE is either incorrect or out-of-date. The inclusion of an individual's name on the LEIE is determined solely by HHS/OIG.
- E. If after 14 (fourteen) calendar days the final candidate fails to produce evidence that the LEIE is incorrect, ODM BHR will notify the individual and will withdraw the tentative offer of employment.
- F. Copies of all information pertaining to any actions taken as a result of the information and requirements contained in the section will be maintained by ODM BHR in accordance with current recordkeeping and retention requirements.

VIII. CONTACT:

Please direct all questions or concerns to IPP ODM Policy Admin@medicaid.ohio.gov.

IX. APPENDICES:

- A. FEDERAL OMNIBUS TRANSPORTATION EMPLOYEE TESTING ACT OF 1991 POSITION, SAFETY-SENSITIVE POSITION, AND UNCLASSIFIED POSITION DRUG TESTING ACKNOWLEDGMENT FORM
- B. BACKGROUND INFORMATION FORMS (A and B) AND DISCLOSURE QUESTIONNAIRE FOR UNCLASSIFIED EMPLOYEE

X. REVISION HISTORY:

This Policy supersedes any previously issued directive or policy and will remain effective until cancelled or superseded.

Date	Description of Change
August 14, 2015	Original
September 1, 2021	Added language re. IRS Publication 1075