

# Agreement for Purchase of Goods and/or Services

## SECTION A. CONTRACT PARTIES

This contract is entered into between the Ohio Department of Developmental Disabilities, on behalf of the **Northwest Ohio Developmental Center**, hereinafter referred to as "Agency", and **PAYKO Contracting, LLC**, hereinafter referred to as "Contractor".

## SECTION B. EFFECTIVE DATES

This contract is effective on April 16, 2024, and shall expire on June 30, 2024, unless terminated prior thereto pursuant to Section G. Services shall not begin until Agency receives OBM approved Purchase Order.

## SECTION C. COMPENSATION

1. The Agency agrees to pay Contractor at the rates set forth in the Contractor's quote dated April 12, 2024, on a reimbursement basis upon the Agency's receipt and approval of proper invoices. Contractor shall not be compensated for services except as expressly set forth on the quote or additional services and/or goods identified and agreed upon in writing by both parties. The total compensation to be paid to the Contractor under this Contract shall not exceed two hundred, twenty-seven thousand and eighty-two dollars (\$227,082).
2. Contractor shall not be reimbursed for travel expenses incurred in the provision of services under this agreement.
3. Agency shall pay Contractor within thirty (30) days of receipt of an approved invoice.

## SECTION D. GOODS AND/OR SERVICES

1. Contractor shall undertake and complete the work and activities as set forth in the Contractor's quote dated April 12, 2024. Contractor shall consult with personnel of the Northwest Ohio Developmental Center if additional goods and/or services are identified as necessary for the performance of this contract and must be agreed upon in writing by both parties before additional work is performed.
2. Contractor shall maintain all necessary licenses or registrations. Contractor shall perform all services with reasonable care, skill and diligence as would normally be provided by an experienced consultant and in accordance with industry standards.

## SECTION E. NATURE OF CONTRACT

1. Agency enters into this Contract in reliance upon Contractor's representations that it has the necessary expertise and experience to perform its obligations hereunder, and Contractor warrants that it does possess the necessary expertise and experience. It is specifically understood that the nature of the services to be rendered under this Contract are of such a personal nature that Agency is the sole judge of the adequacy of such services. Agency thus reserves the right to terminate this Contract should Agency at any time be dissatisfied with Contractor's performance of its duties under this Contract.
2. In the event of a termination of this Contract by Agency, Contractor shall be reimbursed in accordance with Section G.
3. Agency may, as it deems appropriate and necessary, communicate specific instructions and requests to Contractor concerning the performance of the work described in this Contract. Upon such notice, Contractor shall comply with such instructions and fulfill such requests to Agency's satisfaction. It is

expressly understood by the parties that these instructions and requests are for the sole purpose of performing the specific tasks requested to ensure satisfactory completion of the work described in this Contract. The management of the work, including the exclusive right to control or direct the manner or means by which the work is performed, remains with the Contractor.

## **SECTION F. CERTIFICATION OF FUNDS**

It is expressly understood and agreed by the parties that none of the rights, duties, and obligations described in this Contract shall be binding on either party until all relevant statutory provisions of the Ohio Revised Code, including, but not limited to, O.R.C. Section 126.07, have been complied with, and until such time as all necessary funds are available or encumbered and, when required, such expenditure of funds is approved by the Controlling Board of the State of Ohio, or in the event that grant funds are used, until such time that Agency gives Contractor written notice that such funds have been made available to Agency by Agency's funding source.

## **SECTION G. TERMINATION OF CONTRACT**

1. Agency may, at any time prior to the completion of services by Contractor under this Contract, suspend or terminate this Contract with or without cause by giving twenty (20) days written notice to Contractor.
2. Contractor, upon receipt of notice of suspension or termination, shall cease work on the suspended or terminated activities under this Contract, take all necessary or appropriate steps to limit disbursements and minimize costs, and, if requested by Agency, furnish a report, as of the date of receipt of notice of suspension or termination, describing the status of all work under this Contract, including, without limitation, results, conclusions resulting therefrom, and any other matters Agency requires.
3. Contractor shall be paid for services rendered up to the date Contractor received notice of suspension or termination, less any payments previously made, provided Contractor has supported such payments with invoices as required under Section C. In the event of suspension or termination, any payments made by Agency for which Contractor has not rendered services shall be refunded.
4. In the event this Contract is terminated prior to its completion, Contractor, upon payment as specified, shall deliver to Agency all work products and documents which have been prepared by Contractor in the course of providing services under this Contract. All such materials shall become and remains the property of Agency, to be used in such manner and for such purpose as Agency may choose.
5. Contractor agrees to waive any right to, and shall make no claim for, additional compensation against Agency by reason of such suspension or termination.
6. Contractor may terminate this Contract with or without cause upon thirty (30) days prior written notice to Agency.

## **SECTION H. INDEPENDENT CONTRACTOR**

1. No relationship of employer and employee is created by this Contract. Contractor will act hereunder as an independent contractor with no claim under this Contract or otherwise against Agency or the State of Ohio for business expenses, travel expenses, vacation pay, sick pay, retirement benefits, workers compensation, or disability or unemployment insurance benefits or employee benefits of any kind. Neither Contractor nor any of its employees or subcontractors is eligible to participate in any employee benefit or retirement plans offered by Agency or the State of Ohio. Agency shall withhold no payroll or employment taxes of any kind.
2. Contractor is solely responsible for all of Contractor's business expenses, including the payment or withholding of all federal, state and local income taxes, workers compensation insurance, social security and unemployment insurance, and the payment of wages and salaries, travel expenses, insurance of every kind, and health and retirement plans. Contractor shall indemnify and hold Agency harmless from and against any and all claims, demands, liabilities, losses, damages and expenses

resulting in any manner from any act or omission of Contractor or its employees or subcontractors related to its obligation to pay and withhold income tax, social security, unemployment insurance and to maintain worker's compensation insurance.

3. Contractor understands that as an independent contractor, it is not a public employee and is not entitled to contributions from the State to any public employee retirement system. Contractor acknowledges and agrees that any person providing services under this Contract is not a public employee for purposes of Ohio Revised Code Chapter 145. If Contractor is an individual performing service under the contract, Contractor shall complete and submit to the Agency the Independent Contractor/Worker Acknowledgement form, attached and found at the following link:  
<https://www.opers.org/forms-archive/PEDACKN-Non-Member-Acknowledgment.pdf>

## **SECTION I. RECORD KEEPING**

1. Until the expiration of six (6) years after the termination of this Contract, Contractor will, upon proper request, allow Agency, the Comptroller General of the United States, the U.S. Department of Health and Human Services, the State of Ohio, the Ohio Medicaid Fraud Control Unit and the Ohio Department of Medicaid and their duly-authorized representatives access to Contractor's books, documents and records necessary to certify the nature and extent of costs of reimbursable services provided under this Contract. For each subcontract in excess of \$10,000, the Contractor shall require the subcontractor to agree to these record keeping provisions. If Contractor is requested to disclose any books, documents, or records relevant to this Contract for the purpose of an audit or investigation by any government agency, Contractor shall immediately notify Agency of the nature and scope of the request and shall make available to Agency all books, documents and records relevant to the request.
2. All provisions under this section survive the expiration, suspension, or termination of this Contract.

## **SECTION J. CONFLICTS OF INTEREST, ETHICS, AND LEGAL COMPLIANCE**

1. No personnel of Contractor who exercise any functions or responsibilities in connection with the review or approval of this Contract or carrying out of any of the Work shall, prior to the completion of the Work, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of the Work. Any such person who acquires an incompatible or conflicting personal interest on or after the effective date of this Contract, or who involuntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his or her interest to the Agency in writing. Thereafter, he or she shall not participate in any action affecting the Work, unless the Agency shall determine in its sole discretion that, in light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.
2. Contractor represents, warrants, and certifies that it and its employees engaged in the administration or performance of this Contract are knowledgeable of and understand the Ohio Ethics and Conflicts of Interest laws. Contractor further represents, warrants, and certifies that neither Contractor nor any of its employees will do any act that is inconsistent with such laws.
3. Contractor represents and warrants that all applicable parties listed in Division (I) or (J) of O.R.C. Section 3517.13 are in full compliance with Divisions (I) and (J) of O.R.C. Section 3517.13.
4. Contractor represents and warrants that it is not subject to an "unresolved" finding for recovery under O.R.C. Section 9.24. If this warranty is found to be false, this Contract is void *ab initio* and Contractor shall immediately repay to Agency any funds paid under this Contract.
5. Contractor represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either O.R.C. Section 153.02

or O.R.C. Section 125.25. If this representation and warranty is found to be false, this Contract is void *ab initio* and Contractor shall immediately repay to Agency any funds paid under this Contract.

6. Contractor represents and warrants that neither it nor any of its employees or agents are excluded from participation under any Federal health care program, as defined under 42 U.S.C. Section 1320a-7b(D), for the provision of items or services for which payment may be made under a Federal health care program; Contractor has not arranged or contracted (by employment or otherwise) with any employee, contractor or agent that Contractor knows is excluded from participation in any Federal health care program, and no final adverse action, as defined under 42 USC Section 1320a-7e(g) has occurred or is pending against Contractor or to its knowledge against any employee contractor or agent engaged to provide items or services under this Contract (collectively, "Exclusions/Adverse Actions"). Contractor shall notify Agency of any Exclusions/Adverse Actions within five (5) business days of its learning of such Exclusions/Adverse Actions.
7. Contractor shall comply with all applicable federal, state and local laws regarding smoke-free and drug-free workplaces and shall make a good faith effort to ensure that none of its employees or permitted subcontractors engaged in the work being performed hereunder purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs in any way.
8. Contractor warrants that it has not entered into, nor shall it enter into, other Contracts, without prior written approval of Agency, to perform substantially identical work for the State of Ohio such that the product contemplated hereunder duplicates the work called for by the other Contracts.
9. Contractor affirms that it has all of the approvals, licenses, or other qualifications needed to conduct business in Ohio and that all are current. If at any time during the term of this Contract, Contractor, for any reason, becomes disqualified from conducting business in the State of Ohio, Contractor will immediately notify the Agency in writing and will immediately cease performance of work.
10. Contractor represents and warrants that neither it nor any of its employees or agents in a direct services position has been convicted of any offense set forth in Section 5123.081(A) (4) of the Ohio Revised Code.
11. Contractor affirms that neither it nor any of its employees or agents is presently holding a civil service position with the State of Ohio.

## **SECTION K. NONDISCRIMINATION**

1. Pursuant to O.R.C. Section 125.111, Contractor agrees that Contractor, any subcontractor, and any person acting on behalf of Contractor or a subcontractor, shall not discriminate, by reason of race, color, religion, sex, age, national origin, veteran status, or disability against any citizen of this state in the employment of any person qualified and available to perform the work under this Contract.
2. Contractor further agrees that Contractor, any subcontractor, and any person acting on behalf of Contractor or a subcontractor shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Contract on account of race, color, religion, sex, age, national origin, veteran status or disability.
3. Pursuant to Ohio Revised Code Section 125.111, Contractor shall maintain a written affirmative action program for the employment and effective utilization of economically disadvantaged persons and shall file a description of the affirmative action program and a progress report on its implementation with the equal employment opportunity office of the Department of Administrative Services.
4. Contractor shall not discriminate in the provision of services on account of race, color, religion, sex, age, natural origin, veteran status or disability.

## **SECTION L. LIABILITY**

1. Each party shall accept and be responsible for its own acts and omissions, as well as those of its employees discharging its obligations under this agreement. Nothing in the Agreement shall be

interpreted or construed to place any responsibility for acts or omissions of one party or its employees onto the other party.

2. In no event shall either party be liable to the other party for indirect, consequential, incidental, special, or punitive damages, or lost profits.

## **SECTION M. COMPLIANCE WITH LAWS**

1. Contractor, in the execution of duties and obligations under this Contract, agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances, along with all applicable Agency policies.
2. **PROHIBITION OF THE EXPENDITURE OF PUBLIC FUNDS FOR OFFSHORE SERVICES.** No State Cabinet Agency, Board or Commission will enter into any contract to purchase services provided outside of the United States or that allows State data to be sent, take, accessed, tested, maintained, backed-up, stored, or made available remotely outside (located) of the United States, unless a duly signed waiver from the State has been attained. Notwithstanding any other terms of this Contract, the State 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. The State does not waive any other rights or remedies provided to the State in the Contract.

Further, no State agency, board, commission, State educational institution, or pension fund will make any purchase from or investment in any Russian institution or company. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid to Contractor for purchases or investments in a Russian institution or company in violation of this paragraph. The provisions of this paragraph will expire when the applicable Executive Order (2022-02D) is no longer effective.

The Contractor must complete the attached Contractor/Subcontractor Affirmation and Disclosure Form (2019-12D & 2022-02D) affirming the Contractor understands and will meet the requirements of the above prohibition. During the performance of this Contract, if the Contractor 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.

3. The Department of Developmental Disabilities recognizes the safety of employees and contractors within Central Office and any of the agency's Developmental Centers. In accordance with State of Ohio Administrative Policy HR-42 "Response to Active Aggressor", every employee of the contractor providing services at the Offices of the Ohio Department of Developmental Disabilities under this Contract shall enroll and complete the online "Active Aggressor Response" training within thirty (30) days of the at employee's initiation of services on site.

## **SECTION N. CONFIDENTIALITY**

1. Contractor agrees that all data, reports and information received from Agency shall be used only for the services to be provided under this Contract. Contractor agrees that all discussions with Agency personnel and all reports prepared by Contractor are confidential. Contractor agrees to maintain the confidentiality of all such information and will not release such information without the prior written authorization of Agency or as required by law. If Contractor becomes subject to compulsory process to disclose any such information, Contractor shall immediately notify Agency of such process and the opportunity to contest any disclosure.
2. Contractor ☐ IS or ☒ IS NOT a "business associate" pursuant to the definition under the Health Insurance Portability and Accountability Act (HIPAA) and the regulations promulgated thereunder specifically 45CFR160.03.
3. All provisions under this section survive the expiration, suspension, or termination of this Contract.

## **SECTION O. ENTIRE CONTRACT/WAIVER**

1. This Contract contains the entire Contract between the parties hereto and shall not be modified, amended or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto.
2. This Contract supersedes any and all previous Contracts, whether written or oral, between the parties.
3. A waiver by any party of any breach or default by the other party under this Contract shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

## **SECTION P. NOTICES**

All notices, consents, and communications hereunder shall be given in writing, shall be deemed to be given upon mailing and shall be sent to the respective addresses set forth below:

Ohio Department of Developmental Disabilities  
Attn: Legal Counsel  
30 East Broad Street, 12<sup>th</sup> fl.  
Columbus, Ohio 43215

PAYKO Contracting, LLC  
840 Mount Zion Rd.  
Jackson, OH 45640

## **SECTION Q. SEVERABILITY**

The provisions of this Contract are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.

## **SECTION R. CONTROLLING LAW**

This Contract and the rights of the parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio and only Ohio courts shall have jurisdiction over any action or proceeding concerning the Contract and/or performance thereunder.

## **SECTION S. SUCCESSORS AND ASSIGNS**

Neither this Contract nor any rights, duties or obligations hereunder may be assigned or transferred in whole or in part by Contractor, without the prior written consent of Agency.

## **SECTION T. INCORPORATION of ANCILLARY DOCUMENTS**

Standard Affirmation and Disclosure Form (EO 2019-12D & 2022-02D)

## **SECTION U: SIGNATURES**

The Agency will accept either 1) a wet signature or 2) an electronic signature using OneSpan.

To execute the contract with a wet signature, Contractor may print the Contract, sign the contract, and scan the agreement and email it back to [DMRProcurement@dodd.ohio.gov](mailto:DMRProcurement@dodd.ohio.gov).

To execute the Contract electronically, using the electronic signature solution, OneSpan, Contractor shall inform DODD of its intent to sign the Contract electronically. DODD will then transmit Contractor to the signatory who may complete and sign the document(s) as required using OneSpan. The signatory will receive a notification via email from OneSpan when a copy of the fully executed Contract is available for download.

DODD will not accept electronic signatures using any other electronic solution unless specific approval is obtained from DODD prior to signing the Contract.

**IN WITNESS WHEREOF**, the parties hereto have caused this Contract to be executed by their duly authorized officers, as of the day and year first written above.

**Northwest Ohio Developmental Center**  
**Trina Kincaid, Superintendent**

By: \_\_\_\_\_

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

**PAYKO Contracting, LLC**  
**David Kovalski, Owner**

By: \_\_\_\_\_

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

**Ohio Department of Developmental Disabilities**  
**Kimberly Hauck, Director**

By: \_\_\_\_\_

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

**Ohio Department of Developmental Disabilities**  
**Sara Lawson, Deputy Director**

By: \_\_\_\_\_

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