

**OHIO DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES
CONTRACT FOR SERVICES**

This Contract is entered into between the Ohio Department of Mental Health and Addiction Services (OhioMHAS), 30 East Broad Street, 36th Floor, Columbus, Ohio 43215, and Aetna Better Health of Ohio, (CONTRACTOR), 7400 West Campus View Rd MC F 494, New Albany, OH 43054, (hereby collectively referred to as the parties).

The parties agree as follows.

ARTICLE I. PURPOSE; DELIVERABLES

- A. The purpose of this Agreement is for Contractor to further develop the system of care in Ohio communities for the MRSS program by building relationships with Mobile Response and Stabilization Services (MRSS) providers, supporting MRSS workforce development, and generally assisting with efforts to build and support ongoing capacity for MRSS. OhioMHAS has delegated a subset of this work to Contractor as described in this Contract. MRSS requirements are defined by Ohio Administrative Code Rule 5122-29-14.

For the purposes of this Contract, "Deliverable" means any Contractor-provided products, supplies, services, reports, files, or work provided under this Contract and as described in this Article. CONTRACTOR shall perform the Deliverables under this Contract as described in Exhibit 1.

- B. The OhioMHAS Contract Manager is Alaina Deighan, or successor.
- C. The OhioMHAS 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 OhioMHAS within ten (10) business days after CONTRACTOR's receipt of the requests or instructions. OhioMHAS 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 OhioMHAS pursuant to the notice provision of this Contract. CONTRACTOR agrees to consult with the OhioMHAS Contract Manager as necessary to ensure understanding of the Deliverables and the successful completion thereof.
- D. **Ownership of Deliverables.**
1. All Deliverables provided by CONTRACTOR under this Contract or with funds hereunder, including any documents, data, photographs and negatives, electronic reports/records, or other media, are the property of OhioMHAS, which has an unrestricted right to reproduce, distribute, modify, maintain, and use the Deliverables. CONTRACTOR shall not obtain copyright, patent, or other proprietary protection for the Deliverables. CONTRACTOR shall not include in any Deliverable any copyrighted matter, unless the copyright owner gives prior written approval for OhioMHAS 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 OhioMHAS 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. OhioMHAS is and shall 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 OhioMHAS, CONTRACTOR agrees to, and by executing this Contract does, assign OhioMHAS all worldwide rights, title, and interest in and to the Deliverables. OhioMHAS 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 OhioMHAS and receive express written permission from OhioMHAS to include any of its own pre-existing, proprietary materials in any of the Deliverables under this Contract. OhioMHAS's approval of the inclusion of pre-existing, proprietary materials is predicated on CONTRACTOR granting to OhioMHAS 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, OhioMHAS 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 OhioMHAS of or advertisement for CONTRACTOR.

ARTICLE II. CONFIDENTIALITY OF INFORMATION

- A. CONTRACTOR agrees that it will 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.
 5. If Federal Tax Information is shared under this Contract, Internal Revenue Code 6103 and IRS Publication 1075.
- B. CONTRACTOR agrees that any data created, received, maintained or transmitted on behalf of OhioMHAS by CONTRACTOR will be returned to OhioMHAS, or destroyed so long as OhioMHAS has its own copy to retain prior to destruction, not later than ninety (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. Notwithstanding the foregoing, CONTRACTOR shall be entitled to retain one copy of such data only for purposes of complying with lawful records production requests from a regulator or court of competent jurisdiction.
- 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 OhioMHAS against use or disclosure not provided for by this Contract.
- D. CONTRACTOR agrees that access to the records and data provided by OhioMHAS for purposes of this Contract will be restricted to only those authorized employees, officials, subcontractors, and other persons who have a legitimate business reason to perform duties related to this Contract.
- 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 will 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 must 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 will 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 will receive any information without a written agreement with CONTRACTOR incorporating these assurances.
- G. CONTRACTOR agrees that any information provided under this Contract that is proprietary will 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 OhioMHAS. If there is an incident of unauthorized disclosure of information, OhioMHAS 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 OhioMHAS, 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. OhioMHAS shall 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 OhioMHAS IT resources.
- L. The express terms and conditions of this Article must 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 the date of the OhioMHAS's signature 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. Prior to expiration, this Contract may be renewed beginning July 1, 2025 through a date on or before June 30, 2027, upon satisfactory completion of Deliverables hereunder, appropriation of funds by the Ohio General Assembly, and at the sole discretion of OhioMHAS. OhioMHAS will issue a notice to CONTRACTOR if OhioMHAS 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 OhioMHAS 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. OhioMHAS will notify CONTRACTOR when this certification is given.

ARTICLE IV. COMPENSATION

- A. The total amount payable under this Contract for State Fiscal Year 2025 is fifteen million two hundred ninety two thousand Dollars (\$15,292,000.00; administrative costs not to exceed \$764,600.00) 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. CONTRACTOR hereby waives the interest provisions of ORC 126.30.

Compensation will be paid pursuant to CONTRACTOR's performance on the Deliverables outlined in the Scope of Work as incorporated in Exhibit 1. For CONTRACTOR's administrative costs, CONTRACTOR will be compensated 5% of the cost of deliverables performed during the designated billing period outlined within the invoice. Administrative

costs shall be used for necessary personnel, payment processing, technical support, reporting functions, operational expenses related to the systems and the resources needed to fulfill these responsibilities, and administrative funding for startup costs and any unforeseen challenges or additional demands that may arise during the program's initial phase. Administrative costs shall not exceed 5% of the total invoiced amount. CONTRACTOR shall not be reimbursed for administrative costs in excess of \$764,600.00 for state fiscal year 2025, ending June 30, 2025.

- B. CONTRACTOR will submit detailed invoices on a monthly basis in the following manner with a copy to the Contract Manager and e-mail to mhas-invoices@mha.ohio.gov (the preferred file type for email attachments is .pdf.).

CONTRACTOR agrees to use an invoice instrument to be prescribed by OhioMHAS 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, administrative costs, 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 OhioMHAS.
- C. CONTRACTOR expressly understands that OhioMHAS will not compensate CONTRACTOR for any work performed prior to CONTRACTOR's receipt of notice from OhioMHAS 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.
- D. CONTRACTOR expressly understands that OhioMHAS 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.
- E. 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 OhioMHAS for the payments due under this Contract, this Contract will be terminated as of the date funding expires without further obligation of OhioMHAS or the State of Ohio.
- F. CONTRACTOR and OhioMHAS 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.

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, OhioMHAS may terminate this Contract in full or in part at will or for convenience by giving 60 calendar days written notice to CONTRACTOR at OhioMHAS's sole discretion. Upon a 30-

calendar day written notice to CONTRACTOR, OhioMHAS may suspend in part or full this Contract at OhioMHAS's sole discretion.

- C. Notwithstanding the provision of Sections V., A and B., above, OhioMHAS may suspend or terminate this Contract immediately upon delivery of a written notice to CONTRACTOR if:
1. OhioMHAS loses funding as described in ARTICLE IV;
 2. OhioMHAS 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 OhioMHAS 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, OhioMHAS may immediately suspend or terminate this Contract. OhioMHAS 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 OhioMHAS 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, OhioMHAS may suspend or terminate this Contract without a cure period if CONTRACTOR again fails to meet any contractual obligation. At the sole discretion of OhioMHAS, certain instances of breach may require a shorter cure period than the 30 calendar days generally applicable in this Section. In such instances, OhioMHAS 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 OhioMHAS, 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. Return, or destroy so long as OhioMHAS has its own copy to retain prior to destruction, all records in their native format relating to cost, work performed, supporting documentation for invoices submitted to OhioMHAS, and copies of all materials produced under or pertaining to this Contract. Notwithstanding the foregoing, CONTRACTOR shall be entitled to retain one copy of such data only for purposes of complying with lawful records production requests from a regulator or court of competent jurisdiction; and
 5. Perform any other tasks OhioMHAS reasonably requires.
- F. In the event of suspension or termination under this Article, OhioMHAS 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, OhioMHAS will base its calculations on the payment method described in ARTICLE IV and any funds previously paid by or on behalf of OhioMHAS. OhioMHAS will not be liable for any further claims submitted by CONTRACTOR.
- G. If OhioMHAS terminates this Contract because of CONTRACTOR's material breach or default of provisions, obligations, or duties embodied in this Contract, OhioMHAS will be entitled to utilize another contractor to complete the Deliverables of this Contract on any commercially reasonable terms as OhioMHAS and the covering contractor may agree. In this event, CONTRACTOR will be liable to OhioMHAS 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, are directly

related to CONTRACTOR'S material breach or default, and only if such costs exceed those costs that OhioMHAS would have incurred under this Contract. CONTRACTOR's liability under this Section is in addition to any other remedies available to OhioMHAS pursuant to this Contract.

- H. Upon CONTRACTOR's material 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, OhioMHAS reserves the right to exercise any administrative, contractual, equitable, or legal remedies available without limitation. Any waiver by OhioMHAS of an occurrence of breach or default is not a waiver of subsequent occurrences. If OhioMHAS 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 OhioMHAS will not be effective unless it is in writing signed by the OhioMHAS Director.

ARTICLE VI. NOTICES

- A. OhioMHAS 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 OhioMHAS Contract Manager.
- B. Notices to OhioMHAS 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 OhioMHAS Office of Legal Services, 30 East Broad Street, 36th floor, Columbus, Ohio 43215.
- C. Notices to CONTRACTOR from OhioMHAS 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 OhioMHAS. This includes all documents, reports, data, photographs (including negatives), and electronic reports and records. OhioMHAS will maintain the unrestricted right to reproduce, distribute, modify, maintain, and use the media in any way OhioMHAS deems appropriate. CONTRACTOR further agrees not to seek or obtain copyright, patent or other proprietary protection for any materials or items produced under this Contract. CONTRACTOR understands that all materials and items produced under this Contract will be made freely available to the public unless OhioMHAS determines that certain materials are confidential under federal or state law.
- B. All OhioMHAS 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, OhioMHAS will determine whether the information is public or private. CONTRACTOR will restrict the use of any information, systems, or records OhioMHAS provides to the specific Deliverables of this Contract. CONTRACTOR and its employees agree to be bound by the same standards and rules of confidentiality that apply to employees of OhioMHAS and the State of Ohio. CONTRACTOR agrees that the terms of this section will be included in any subcontract executed by CONTRACTOR for work under this Contract.
- C. CONTRACTOR information that is proprietary and has been specifically identified by CONTRACTOR as proprietary will be held as confidential by OhioMHAS. Proprietary information is information that would put CONTRACTOR at a competitive disadvantage in CONTRACTOR's market place and trade if it were made public. OhioMHAS 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 OhioMHAS, 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, OhioMHAS, 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 F. 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.
- E. 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.
- F. All records relating to cost, work performed, supporting documentation for invoices submitted to OhioMHAS, 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 the work performed under this Contract is no less than 3 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.
- G. CONTRACTOR agrees to retain all records in accordance to any litigation holds that are provided to them by OhioMHAS, 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 OhioMHAS 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 OhioMHAS, CONTRACTOR agrees to pay reasonable costs associated with any cause, action or litigation directly arising from such destruction.
- H. 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

- 1. This writing constitutes the entire agreement between OhioMHAS 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.
- 2. CONTRACTOR agrees not to assign any interest in this Contract nor transfer any interest in the Contract without the prior written approval of OhioMHAS. CONTRACTOR will submit any requests for approval of assignments and transfers to the OhioMHAS 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 OhioMHAS deems necessary and

that no approval by OhioMHAS will be deemed to provide for any OhioMHAS 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 OhioMHAS is a Covered Entity under HIPAA. CONTRACTOR further acknowledges that it is a Business Associate of OhioMHAS, 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.
 2. **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 OhioMHAS.
 3. **Reporting of Disclosures.** CONTRACTOR shall immediately report to OhioMHAS the following:
 - a. Any use or disclosure of PHI, or other confidential information 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.

Immediately following discovery of a reportable security incident, CONTRACTOR shall notify OhioMHAS 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 to OhioMHAS the following information: (i) the nature of the disclosure, (ii) PHI used or disclosed, (iii) the individual(s) who made and received the disclosure, (iv) any corrective action taken to prevent further disclosure(s) and mitigate the effect of the current disclosure(s), and (v) any other information reasonably requested by OhioMHAS.

Reporting and other communications made to OhioMHAS under this section must be made to OhioMHAS's Office of Legal Services at: legal.mhas@mha.ohio.gov.

If the improper use or disclosure, or security incident involves Federal Tax Information, Social Security Administration information, or if the incident could result in compromise of other connected systems, then CONTRACTOR shall also immediately attempt to notify the Privacy Officer via telephone at 614-752-5012 and the Chief Legal Counsel at 614-752-2576.

Failure to adhere to these notification requirements may constitute violations(s) of applicable federal and state laws and regulations and may constitute just cause for immediate termination of this Agreement.

4. **Mitigation Procedures.** CONTRACTOR agrees to coordinate with OhioMHAS 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 OhioMHAS prior to any such communication being released. CONTRACTOR will report all of its mitigation activity to OhioMHAS and shall preserve all relevant records and evidence.
5. **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.
6. **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 OhioMHAS 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.
7. **Accessibility of Information.** CONTRACTOR will make available to OhioMHAS such information as OhioMHAS 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.
8. **Amendment of Information.** CONTRACTOR shall make any amendment(s) to PHI as directed by, or agreed to by, OhioMHAS pursuant to 45 CFR 164.526, or take other steps as necessary to satisfy OhioMHAS'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 OhioMHAS 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 OhioMHAS or individuals requesting the information, as appropriate, records of all disclosures of PHI in a Designated Record Set as necessary to satisfy OhioMHAS'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.

10. **Obligations of Department.** When CONTRACTOR is to carry out an obligation of OhioMHAS under Subpart E of 45 CFR 164, CONTRACTOR agrees to comply with all applicable requirements of Subpart E that would apply to OhioMHAS in the performance of such obligation.
11. **Access to Books and Records.** CONTRACTOR shall make available to OhioMHAS 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 OhioMHAS, or created or received on behalf of OhioMHAS. Such access is for the purposes of determining compliance with the HIPAA Rules.
12. **Material Breach.** In the event of material breach of CONTRACTOR's obligations under this Article, OhioMHAS 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.
13. **Return or Destruction of Information.** Upon termination of this Contract and at the request of OhioMHAS, CONTRACTOR will return to OhioMHAS 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 OhioMHAS or required by law, or as otherwise allowed for under this Contract. If CONTRACTOR, its agent(s), or subcontractor(s) destroy any PHI, then CONTRACTOR will provide to OhioMHAS 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.
14. **Agency Indemnification.** CONTRACTOR hereby indemnifies OhioMHAS and agrees to hold OhioMHAS harmless from and against any and all losses, expense, damage or injury that OhioMHAS may sustain as a result of, or arising out of, CONTRACTOR, or its agent's or subcontractor's, unauthorized use or disclosure of PHI.
15. **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 OhioMHAS relied in entering into this Contract:

- A. If at any time, CONTRACTOR is not in compliance with the conditions affirmed in this Section, OhioMHAS 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 OhioMHAS 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, OhioMHAS 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 shall 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 OhioMHAS 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 OhioMHAS 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 OhioMHAS 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 OhioMHAS determines that participation would not be contrary to public interest.

4. Lobbying Restrictions.

- a. CONTRACTOR affirms that no federal funds paid to CONTRACTOR by OhioMHAS 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 OhioMHAS 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. **Expenditure of Public Funds for Offshore Services—Executive Order Requirements.**
 - a. CONTRACTOR certifies that by executing this Contract and by completing and submitting to OhioMHAS 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 OhioMHAS 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 OhioMHAS has been attained. CONTRACTOR 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 OhioMHAS 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: OhioMHAS 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, OhioMHAS 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. OhioMHAS does not waive any other rights and remedies provided to OhioMHAS in the Contract.

In addition, if CONTRACTOR or any of its subcontractors perform any such services outside of the

United States, OhioMHAS may, at any time after the breach, terminate this Contract for such breach, upon written notice to CONTRACTOR. If OhioMHAS terminates the Contract, OhioMHAS may buy substitute services from a third party, and may recover the additional costs associated with acquiring the substitute services.

10. **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. OhioMHAS has the right to immediately and unilaterally terminate this Contract if any provision in this Section is violated and OhioMHAS may implement section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 USC 7104), see 2 CFR Part 175.

11. **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.).

12. **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 OhioMHAS.

13. **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 OhioMHAS.

14. **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.

15. **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.

16. **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 OhioMHAS immediately if it boycotts a jurisdiction with whom the State of Ohio can enjoy open trade. OhioMHAS reserves the right to terminate this Agreement immediately upon discovery of such a boycott.
17. **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.

ARTICLE XI. BUSINESS CONTINUITY PLAN

- A. CONTRACTOR recognizes that certain services under this Contract are vital to OhioMHAS and must be continued without interruption. CONTRACTOR shall be prepared to continue providing such services identified by OhioMHAS, 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 OhioMHAS 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 OhioMHAS 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.
- 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:

1. 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;
 2. Communicate the results of the performance review to the subcontractor and impose corrective action on the subcontractor as necessary;
 3. Notify OhioMHAS and submit a corrective action plan to OhioMHAS if at any time the subcontractor is found to be in non-compliance with CONTRACTOR delegated contractual obligations; and
 4. Ensure there is no disruption in meeting the CONTRACTOR's contractual obligations to OhioMHAS, 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.
 5. Any additional or new subcontractors must be approved by OhioMHAS in writing prior to subcontractor starting work. OhioMHAS 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 OhioMHAS within 15 days of a subcontractor being terminated.
 7. CONTRACTOR must allow OhioMHAS to review the terms of any subcontractor arrangement upon OhioMHAS's request.

- C. **Limitation of Liability, Indemnification, Jurisdiction.** To the extent allowable by law, CONTRACTOR agrees to defend, indemnify and hold OhioMHAS, its officials, employees and agents harmless from and against any and all liability, loss and expense (including reasonable attorneys' fees) or third party claims for personal injury, property damage, patent and copyright infringement, or for any liability or claims under ARTICLE IX above ("Business Associate Requirements Under HIPAA"), and/or any other type of third party claim that arises from the performance of the Deliverables under this Contract to the extent that CONTRACTOR has engaged in a negligent, intentional, fraudulent, reckless, willful or wanton, or other tortious act or omission that results in direct loss to OhioMHAS. CONTRACTOR must indemnify OhioMHAS for all liability and expense resulting from the unauthorized disclosure or loss of OhioMHAS data, including personally identifiable information and OhioMHAS sensitive information. Damages resulting from the unauthorized disclosure or loss of OhioMHAS 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 OhioMHAS; (iv) costs to OhioMHAS 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 OhioMHAS to reconstruct data that was lost or to repair any damaged OhioMHAS information technology infrastructure; and (vii) other such expenses incurred by OhioMHAS as a result of the unauthorized disclosure or loss of OhioMHAS data.

CONTRACTOR's sole and exclusive remedy for any OhioMHAS 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 OhioMHAS 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 OhioMHAS against any such claims or legal actions if called upon by OhioMHAS to do so.

In no event will OhioMHAS be liable for any indirect or consequential damages, including loss of profits, even if OhioMHAS 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.

- 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 OhioMHAS, any official or employee of OhioMHAS 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. OhioMHAS 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. OhioMHAS may participate in the defense of any such action. CONTRACTOR agrees to pay all damages and costs awarded against OhioMHAS, any official or employee of OhioMHAS 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 OhioMHAS 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 OhioMHAS 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, OhioMHAS 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 OhioMHAS 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 Attachments, the Purchase Order, or this Contract, the provisions of this Contract will determine the obligations of the parties. In the event of a disputed issue that is not addressed in any of the Attachments, the Purchase Order, or Contract, 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 OhioMHAS.

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

OHIO DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES
CONTRACT FOR SERVICES

SIGNATURE PAGE

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 Mental Health and Addiction Services.

CONTRACTOR

Ohio Department of Mental Health and Addiction
Services

Martha Taylor

Authorized Signature (Blue Ink Please)

Authorized Signature

Martha Taylor

Printed Name

LeeAnne Cornyn, Director

Printed Name

September 12, 2024

Date

Date

7400 W Campus Road, Suite 200, New Albany, OH 43054

Address

30 E. Broad Street, 36th Floor, Columbus, OH 43215

Address

Exhibit 1
Scope of Work

In support of Governor DeWine's goal to ensure that every child has access to critical mental health services during a time of crisis, the Ohio Department of Medicaid (ODM) has been collaborating with the Ohio Department of Mental Health and Addiction Service (OhioMHAS) to develop a statewide Mobile Response and Stabilization Services (MRSS) model. The model establishes 18 regional MRSS providers (RMPs) that will be responsible for providing services, contracting with other providers to ensure access, and collaborating with system of care partners.

To promote the success of the model and ensure that providers have the necessary support to build capacity and sustain services, ODM and OhioMHAS have committed to paying for these services through a 'firehouse' payment structure, through which providers will receive a single monthly payment for all rendered services; dollars to finance each MRSS provider's monthly payment will be pooled through a single entity (the Single Entity). Under this agreement, the Contractor will serve as the Single Entity.

A. Contractor Responsibilities

1. Contractor will establish a payment arrangement with each RMP designated by OhioMHAS.
2. Contractor will make monthly payments to RMPs as directed by OhioMHAS.
3. Contractor will make one monthly payment to each RMP that includes the sum of the non-Medicaid payment funded by OhioMHAS and the Medicaid payment funded by ODM.
4. Contractor will make adjustments to payments as requested by OhioMHAS.
5. Contractor will collect MRSS encounter information from RMPs as directed by OhioMHAS.
6. Contractor will provide instructions and technical assistance to RMP as necessary to support encounter reporting.
7. Contractor will administer and pay for select MRSS-related services as directed by OhioMHAS.
8. Contractor will provide, at a minimum, quarterly access to reports, to OhioMHAS. The content of such reports shall be mutually agreed upon by OhioMHAS and Contractor.

B. OhioMHAS Responsibilities

1. OhioMHAS will designate up to 18 RMPs.
2. OhioMHAS will determine the monthly payment amount for each RMP.
3. OhioMHAS make a monthly payment to the Contractor in an amount equal to the sum of the monthly payments to be made to all RMPs for non-Medicaid MRSS, administrative cost, and other select MRSS-related services.
4. OhioMHAS will determine the monthly payment schedule.
5. OhioMHAS will establish RMP encounter reporting requirements.
6. OhioMHAS will establish financial reporting requirements for Contractor to include a detailed accounting of RMP payments.
7. OhioMHAS will direct contractor to administer and pay for select other MRSS-related services.