

**MEMORANDUM OF UNDERSTANDING  
BY AND BETWEEN  
AN ORGANIZATION OHIO AND  
THE OHIO DEPARTMENT OF HIGHER EDUCATION**

This Memorandum of Understanding (“MOU”) is entered into by and between the Ohio Department of Higher Education (“ODHE”) whose powers and duties are specified in Ohio Revised Code §3333.04 and whose principal place of business is at 25 South Front Street, Columbus, Ohio 43215, and AN ORGANIZATION OHIO (“ORGANIZATION”), 5555 Reading Avenue, Columbus, Ohio 43215.

**WHEREAS**, ODHE consists of the Chancellor of Higher Education and the Chancellor’s employees, agents and representatives and is responsible for overseeing higher education in the State of Ohio; and

**WHEREAS**, Section 381.520 of Amended Substitute House Bill Number 110 of the 134th Ohio General Assembly appropriated funds to ODHE from the Research Incentive Third Frontier Fund to advance collaborative research at institutions of higher education regarding spinal cord research in Ohio; and

**WHEREAS**, ODHE issued an RFP for a project to advance collaborative research at institutions of higher education regarding spinal cord research in Ohio (“Project”);

**WHEREAS**, ODHE subsequently had an independent reviewer make recommendations; and

**WHEREAS**, the source of the funds distributed in this agreement are from the Third Frontier Research and Development Taxable Bond Fund (Fund 7014); and

**WHEREAS**, Section 503.90 of Amended Substitute House Bill 110 of the 134th General Assembly provides the Director of Budget and Management with the authority to transfer appropriations between the Third Frontier Research and Development Bond Fund (Fund 7011) and the Third Frontier Research and Development Taxable Bond Fund (Fund 7014) as necessary to maintain the exclusion from the calculation of gross income for federal income taxation purposes under the “Internal Revenue Code of 1986,” 100 Stat. 2085, 26 U.S.C. 1 et seq., with respect to obligations issued to fund projects as appropriated from the Third Frontier Research and Development Fund (Fund 7011); and

**WHEREAS**, ORGANIZATION agrees to use the funds provided under this MOU for research and development purposes only; and

**WHEREAS**, ODHE desires that the results of the Project be used by public and private actors to further the objectives of the Project; and

**NOW THEREFORE**, in consideration of the mutual covenants and promises set forth herein and for other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, ODHE and ORGANIZATION (individually, a “party”; collectively the “parties”) agree as follows:

**ARTICLE I: SCOPE OF SERVICES**

Attachment I, which is attached hereto and made fully a part of this MOU as if fully written herein, describes the deliverables, timeline, and budget of the Project, which shall be implemented by ORGANIZATION except to the extent as modified below:

Regarding the use of the funds, which are taxable bond dollars, ORGANIZATION shall follow the parameters set forth in Article VII.

ORGANIZATION will participate in phone conferences to update ODHE on the project as requested by ODHE with reasonable notice given to ORGANIZATION.

#### **ARTICLE II: TERM OF THE MOU**

The term of this MOU begins when this MOU is executed by both parties and ends on June 30, 2023, unless earlier terminated pursuant to the terms contained herein.

#### **ARTICLE III: COMPENSATION**

##### **Compensation based upon award amount.**

#### **ARTICLE IV: RIGHTS IN DATA, PATENTS AND COPYRIGHT**

- A. In consideration of ODHE's participation as a sponsor of this project, (1) ORGANIZATION hereby grants to ODHE a perpetual, worldwide, nonexclusive, paid-up noncommercial-use license to use and otherwise practice University Intellectual Property (this can be defined to include reports, data, patents and copyrights) arising from the Project; (2) ORGANIZATION, at ODHE's request, hereby grants the Ohio Agencies a perpetual, worldwide, nonexclusive, paid-up noncommercial-use license to use and otherwise practice ORGANIZATION Intellectual Property arising from the Project for the purpose of achieving, promoting or otherwise advancing their respective agency objectives ("Objectives"); and (3) ORGANIZATION hereby grants ODHE and, at ODHE's request, the Ohio Agencies each the right to sublicense ORGANIZATION Intellectual Property arising from the Project for the limited purpose of advancing the Objectives provided that any such sublicense shall expressly limit the license grant to the furtherance of the Objectives. Prior to granting any sublicense which would grant a third-party commercial rights, ODHE shall notify ORGANIZATION and enter into good faith conversations to ensure that any license grant is consistent with ORGANIZATION's existing license obligations.
- B. All reports properly marked as Trade Secret or Confidential by ORGANIZATION will remain in confidence with ODHE. However, ODHE will comply with all Public Records Requests properly received. Prior to the release of any confidential or trade secret documentation, ODHE shall notify and allow ORGANIZATION the opportunity to defend against the release and seek injunctive relief. If at any point, the information contained within the confidential or trade secret documentation is made public, ODHE shall no longer have a duty to notify ORGANIZATION of any further Public Records Requests related to those items. Provided that, ODHE may disclose Confidential Information to the Ohio Agencies and any ODHE sublicensee or Ohio Agency sublicensee (collectively, "Receiving Party") if (1) the Confidential Information is necessary to further an Objective; (2) the Receiving Party agrees to the requirements of Article IV(B); and (3) notice is given to ORGANIZATION of any such disclosure.

#### **ARTICLE V: TERMINATION**

This MOU may be terminated only as follows:

- 1) By ODHE without cause upon thirty (30) days written notice to ORGANIZATION.
- 2) By mutual consent of the parties.
- 3) In accordance with the term limitations set forth in Article II of the MOU entitled "TERM OF THE MOU."
- 4) If the General Assembly fails at any time to continue funding for the payments and other obligations set forth herein, ODHE's obligations under this MOU are terminated as of the

date the funding expires and ODHE shall have no further obligations hereunder. If ODHE discovers or is notified of the discontinuation of funding for this MOU, then ODHE agrees to notify ORGANIZATION of said discontinuation as soon as is practicable. ORGANIZATION shall not perform any work under the MOU after it receives such notice.

**ARTICLE VI: OPERS INDEPENDENT CONTRACTOR ACKNOWLEDGEMENT**

ORGANIZATION acknowledges and agrees any individual providing personal services under this MOU is not a public employee of ODHE for purposes of Chapter 145 of the Revised Code.

**ARTICLE VII: COMPLIANCE WITH LAW**

ORGANIZATION agrees to comply with all applicable federal, state, and local laws and regulations, in the conduct of the work hereunder. ORGANIZATION acknowledges that its employees are not employees of ODHE with regard to the application of the Fair Labor Standards Act minimum wages and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code and for state revenue and tax laws, state workers' compensation laws and state unemployment insurance laws. ORGANIZATION accepts full responsibility for payment of all taxes including without limitation, unemployment compensation insurance premiums, all income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by ORGANIZATION in the performance of the work authorized by this MOU.

ORGANIZATION agrees to use funds provided under this MOU in accordance with the Ohio Constitution and any state or federal laws and regulations that may apply. ORGANIZATION shall repay ODHE for any funds improperly expended. Additionally, ORGANIZATION agrees to comply with all requirements within its control necessary to preserve the tax status of all taxable bonds the proceeds of which are used to provide the funding to ORGANIZATION set forth in this MOU, and ORGANIZATION shall be liable for any payments to the Internal Revenue Service or the U.S. Treasury as penalties or to preserve the tax status of tax-exempt or tax-credit bonds, and any other costs, resulting in whole or in part from actions taken by ORGANIZATION, including the failure of ORGANIZATION to comply with federal income tax laws applicable to such bonds.

**ARTICLE VIII: AMENDMENTS OR MODIFICATION**

No amendment or modification of this MOU shall be effective against either party unless such amendment or modification is set forth in writing and signed by both parties.

**ARTICLE IX: DRUG AND ALCOHOL-FREE WORKPLACE**

ORGANIZATION shall comply with all applicable federal, state, and local laws regarding smoke free and drug free work places and shall make a good faith effort to ensure that any of its employees or permitted subcontractors engaged in the work being performed hereunder do not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

**ARTICLE X: CERTIFICATION AND AVAILABILITY OF FUNDS**

The MOU is subject to the provisions of Ohio Revised Code §126.07. It is expressly understood by the parties that none of the rights, duties, and obligations described in this MOU shall be binding on either party until all statutory provisions under the Ohio Revised Code have been complied with and until such time as all necessary funds are made available and forthcoming from the appropriate state agencies.

**ARTICLE XI: ENTIRE MOU**

This MOU constitutes the entire MOU of the parties hereto and supersedes any prior understandings or written or oral communications between the parties respecting the subject matter hereof.

**ARTICLE XII: WAIVER**

The waiver or failures of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further right hereunder.

**ARTICLE XIII: NOTICE**

Any notice required hereunder shall be made in writing and shall be accomplished by personal delivery, facsimile, or by United States certified mail, return receipt requested, postage prepaid, addressed to the party at the address set forth below or such other address as said party shall hereafter designate in writing to the other party.

- Grants & Contracts  
ORGANIZATION  
5555 Reading Avenue  
Columbus, Ohio 43215  
contracts@ORGANIZATION.us
- Ohio Department of Higher Education  
Attn: General Counsel  
25 South Front Street, 7<sup>th</sup> Floor  
Columbus, OH 43215  
Phone: (614) 466-6000  
Facsimile: (614) 466-5866

**ARTICLE XIV: SEVERABILITY**

If any provision of this MOU is found invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, said provision shall be severed. The validity, legality, and enforceability of all other provisions of this MOU shall not in any way be affected or impaired unless such severance would cause this MOU to fail of its essential purpose.

**ARTICLE XV: GOVERNING LAW**

This MOU shall be construed under and in accordance with the laws of the State of Ohio.

**ARTICLE XVI: SUCCESSORS AND ASSIGNS**

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

**ARTICLE XVII: SUBCONTRACTING**

ORGANIZATION is hereby granted ODHE's approval to contract with the proposed subcontractors as provided in Attachment I, for the completion of the scope of work. All subcontracts shall be paid using the funds provided to ORGANIZATION under this MOU, or at ORGANIZATION's expense. Any additional subcontracts entered into by ORGANIZATION will require the prior written approval of ODHE.

**ARTICLE XVIII: HEADINGS**

The headings herein are for reference and convenience only. They are not intended and shall not be construed to be a substantive part of this MOU or in any other way to affect the validity, construction, interpretation, or effect of any of the provisions of this MOU.

**IN WITNESS WHEREOF**, the parties have executed this MOU on the day and year set aside by their respective signatures.

**ORGANIZATION**

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

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

Title: \_\_\_\_\_

Read and Approved by ORGANIZATION PI:

\_\_\_\_\_  
John Smith, PhD.

**OHIO DEPARTMENT OF HIGHER EDUCATION**

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

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

Randy Gardner  
Chancellor



*Fiscal Expenditure Report ("FER")*

Name of Institution

Fiscal Year

Appropriation Line Item (ALI)/Program Name

Amount received from ODHE during Fiscal Year

Amount remaining at the end of Fiscal Year

Type of Expenditure (Please list all expenditures. See examples under Instructions tab. )	Amount Expended
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -

**Please answer the following questions: (Attach a separate document if preferred)**

**1. Provide a brief overview of the program - describe the major services or initiatives supported by this funding source and describe the major constituencies served/impacted.**

**2. How many people were served in the most current fiscal year?**

**3. Does this state support leverage other sources for the institution to expand the level of services provided?**



**Department of  
Higher Education**

*Fiscal Expenditure Report ("FER")*

Name of Institution

Fiscal Year

Appropriation Line Item (ALI)/Program Name

Amount received from ODHE during Fiscal Year

Amount remaining at the end of Fiscal Year

**4. Describe any factors influencing the costs of this program, including trends in demographics, caseloads, or technology, and any changes in federal/state regulations.**

**5. If a reduction in state funding occurred, which services, initiatives, or functions would be reduced or eliminated? Describe the short-term and long-term impacts of these reductions.**

**I certify that the information provided on the Expenditure Report is true and correct and that all expenditures were incurred solely for the purposes of the subsidy and in accordance with the agreed conditions of the Memorandum of Understanding (MOU):**

**ADMINISTRATIVE APPROVAL**

Signature of Project Director

Name (typed)

Telephone

email address

**FISCAL APPROVAL**

Signature of Financial Officer

Name (typed)

Telephone

email address

## Fiscal Expenditure Report

### Instructions

The purpose of the Expenditure Form is to report the use of subsidy funds and to provide transparency for publicly used dollars. We ask that you use the attached excel format and please remember to sign the documents before submitting. For questions regarding the legislative use of the assigned funds, you may referred to the Memorandum of Understanding (MOU) agreed upon by your institution and the Ohio Department of Higher Education (ODHE) and the main operating budget bill [www.lsc.ohio.gov](http://www.lsc.ohio.gov)

[www.lsc.ohio.gov](http://www.lsc.ohio.gov)

#### ADDITIONAL ITEMS TO NOTE:

- "Type of Expenditure" may be reported by account or functional category. Please be as descriptive as possible.
- Please type your name and contact information and sign the Expenditure Report.
- The Chancellor and Department of Higher Education may request additional information or documentation if necessary. Therefore, please maintain supporting documentation to reflect proper use of funds.

#### Example:

Name of Institution:	<i>University</i>
Fiscal Year:	<i>FY20</i>
Appropriation Line Item (ALI)/Program Name:	<i>235-519 Family Practice</i>
Amount received from ODHE during Fiscal Year:	\$ 600,000.00
Amount remaining at the end of Fiscal Year:	\$ -

Type of Expenditure	Amount Expended during the Fiscal Year
Salaries and benefits	\$100,000
Purchased Services/Contractors	\$250,000
Travel	\$10,000
Supplies	\$40,000
Equipment	\$5,000
Capital Outlay	\$150,000
Other (PLEASE DESCRIBE)	\$45,000
<b>Final Totals</b>	<b>\$ 600,000</b>

**Your Expenditure Report is due based on the dates established in the MOU.** Please submit your Expenditure Report to [OdheFiscalReports@highered.ohio.gov](mailto:OdheFiscalReports@highered.ohio.gov)