

OHIO DEPARTMENT OF HEALTH
CONTRACT

This Contract is between

Ohio Department of Health ("ODH")
ODH Division, Bureau
ODH Contact Name , "ODH Contract Manager"
ODH Street Address
City, State Zip Code
ODH Contact Telephone Number
ODH Contact Email

AND

Vendor Name ("Contractor")
Vendor Contact Name , Vendor Contact Title
Vendor's Street Address.
City, State Zip Code
Vendor Telephone Number
Vendor Email
Vendor OAKS # Vendor OAKS #

For the purpose of this Contract, the term "Parties" may be used to collectively refer to both ODH and Contractor. In order to be valid, this Contract must be signed by Contractor and returned along with required attachments (see §3) to ODH, ATTN: Carol Cook, Contract Unit, 246 North High Street, Columbus, Ohio 43215, within fourteen (14) days of receipt at the above address.

1. CONTRACT TERM. Subject to §6 and other terms and conditions specified in this Contract:

1.1. "Contract Beginning Date" shall be defined as the date indicated here, or the date of Contract execution by both Parties, whichever is later:

Enter Date

1.2. "Contract Ending Date" shall be defined as the date indicated here, or the date of Contract termination, whichever is first:

Enter Date

1.3. "Contract Period" shall be defined as the time between the "Contract Beginning Date" and "Contract Ending Date" unless prior to the expiration date, the Contract is renewed, terminated, or cancelled in accordance with the Contract Terms and Conditions.

2. CONTRACT FUNDING.

2.1. "Contract Funding Source": shall be defined as:

Name of Grant or indicate GRF

2.2. Grant Award Number:

Grant number

2.3. CFDA Number:

CFDA number

2.4. Ohio Statute Authorizing Administration of the Program:

Indicate revised code statute

3. ATTACHMENTS. Attachments specified in this Contract are made a part hereof, and are incorporated as terms and conditions of this Contract. Please provide attachments as applicable with submission of original, executed Contract.

PLEASE READ CAREFULLY AND INITIAL EACH PARAGRAPH BELOW:

____ Contractor affirms that they have read and understand and agree to be bound by the Contract Terms and Conditions in §6 below.

____ Contractor must complete and submit with this Contract an Affirmative Action Plan pursuant to §6.9 and marked Attachment 3.2. An example plan is provided at <http://das.ohio.gov/LinkClick.aspx?fileticket=iKMhHxmx6MU%3d&tabid=133>;

____ In addition, if the Total Contract Amount is greater than \$2,500 then said plan must be filed with the Department of Administrative Services Equal Opportunity Division at <http://das.ohio.gov/Divisions/EqualOpportunity/AffirmativeActionProgramVerification/tabid/133/Default.aspx>;

____ Contractor must complete and submit a Standard Affirmation and Disclosure marked Attachment 3.4 provided at http://procure.ohio.gov/pdf/Standard_Affirmation_and_Disclosure_form.pdf;

____ Contractor must submit with this Contract verification of any required licenses, registrations or other qualifications required by this Contract or relevant Request for Proposal;

____ Contractor must submit with this Contract a copy of its Request for Taxpayer Identification Number, Form W-9 which may be downloaded at <http://www.irs.gov/pub/irs-pdf/fw9.pdf>; and,

____ If Contractor has not previously submitted a Vendor Information Form to ODH, Contractor must submit with this Contract a Vendor Information Form provided at http://media.obm.ohio.gov/oss/documents/New+Vendor+Information+Form_11+15+2013.pdf.

4. SUPPLEMENTAL TERMS & EXCEPTIONS.

4.1. Notice of Award Requirements
4.2. Supplemental Program Information

IN WITNESS WHEREOF, the Parties by signing below indicate their agreement to this Contract.

CONTRACTOR

OHIO DEPARTMENT OF HEALTH

[Signature, Blue Ink Please]

Lance D. Himes, Interim Director Health

[Print Name & Title]

Date

Date

Remainder of Page Left Intentionally Blank. Scope of Work, Deliverable & Compensation & General Terms and Conditions Immediately Follow this Page.

5. SCOPE OF WORK, DELIVERABLES & COMPENSATION.

	Scope of Work and/or Deliverables (Due Date and Compensation only noted if Applicable or Required)	Due Date	Compensation
	During the Contract Period, CONTRACTOR agrees to the following:		
5.1.			
5.2.			
5.3.			
5.4.			
5.5.			
5.6.			
5.7.			
5.8			
	TOTAL CONTRACT AMOUNT		

Remainder of Page Left Intentionally Blank. Terms & Conditions Immediately Follow this Page.

6. CONTRACT TERMS AND CONDITIONS.

- 6.1. Mutual Promises & Covenants. In consideration of the mutual promises expressed in this Contract and intending to be legally bound, Contractor agrees to perform, and ODH agrees to pay Contractor, in accordance with the terms of this Contract.
- 6.2. Purpose of Contract. Contractor will provide ODH goods or services in accordance with the terms of this Contract.
- 6.3. Scope of Work, Deliverables, and Compensation. Contractor shall provide work, services, products and deliverables in the time and manner and for the compensation specified in §5 and any attachment specified or incorporated into this Contract.
 - 6.3.1. Compensation. In consideration of the Scope of Work and Deliverables specified in §5, ODH agrees to pay the Compensation as set forth in §5 for a total not to exceed the Total Contract Amount. ODH will compensate Contractor upon the successful completion of each deliverable, in accordance with §5 of this Contract.
 - 6.3.2. Total Contract Amount. The Total Contract Amount, as indicated in §5, includes the cost for all services, travel, or any other expenses that Contractor may incur as a result of Contractor's performance of this Contract.
 - 6.3.2.1. In the event that §5 specifically allows ODH to reimburse Contractor for travel and other related expenses, ODH will reimburse Contractor for those expenses in accordance with this section. Travel and travel-related expenses must be pre-approved by Contract Manager in advance of travel and may not exceed the amounts specified for the State Fiscal Year. Contractor may invoice ODH for reimbursement of travel and travel-related expenses no later than thirty days after the travel occurred. Contractor must invoice travel invoices separate from invoices for services and work. Reimbursement for authorized travel and other related expenses shall be limited to actual and necessary expenses as specified in the Ohio Revised Code ("O.R.C.") 126.31 and O.R.C. 126.32 and the provisions of the Ohio Administrative Code ("O.A.C.") 126-1-02. Contractor shall submit all claims/travel invoices to the Contract Manager for approval prior to submitting a claim for reimbursement. ODH will not reimburse Contractor for any other expenses except as specifically provided in this Contract. For the purpose of determining allowable travel expenses, Contractor's headquarters shall be Franklin County, Ohio.
 - 6.3.2.2. Contractor shall not submit claims for expenses which do not meet the requirements specified.
- 6.3.3. Contractor shall monitor the work under this Contract and shall not accept an assignment under this Contract if it will cause or is reasonably likely to cause the Compensation specified in §5 to exceed the Total Contract Amount for the Contract Period.
- 6.3.4. Contractor waives the interest provisions of O.R.C. 126.30.
- 6.3.5. Subject to the provisions of O.R.C. 126.07 and O.R.C. 131.33, which shall at all times govern this Contract, ODH represents that it intends to maintain this Contract for the full Contract Period set forth in this Contract and has no reason to believe that it will not have sufficient funds to enable it to make all payments due. ODH further represents that it will use best efforts to obtain the appropriation of any necessary funds during the Contract Period.
- 6.3.6. Funds Availability. Contractor understands and agrees that the availability of necessary funds for this Contract is contingent upon the availability of lawful appropriations by the Ohio General Assembly and/or if applicable another Contract Funding Source. If the Ohio General Assembly or other Contract Funding Source fails at any time to continue funding ODH for the Compensation specified in this Contract, this Contract is terminated as of the date funding expires without further obligation of ODH, State of Ohio, or any other Contract Funding Source.
- 6.3.7. ODH will not compensate Contractor for any work performed prior to receipt of written notification from the ODH Contract Manager that the requirements of O.R.C. 126.07 and, if applicable, O.R.C. 127.16 have been met ODH will not compensate Contractor for any work performed after the Contract Ending Date, as applicable.
- 6.3.8. Invoices. Contractor shall invoice ODH in accordance with §5 for work or services Contractor provides. An itemized statement listing the services provided, the dates services were provided, and the amount of payment due shall accompany the invoice. Invoices shall be sent to ODH, ATTN: Accounts Payable,

P.O. Box 118, Columbus, Ohio 43216-0118. ODH will reimburse Contractor within forty-five (45) days of receipt of a valid invoice for the amount of payment due. ODH shall return any invalid or incomplete invoice to Contractor within fifteen (15) days after ODH receives the invoice. An explanation will accompany the invoice that states the reason for return and any information needed to correct the invoice. Final invoices for services provided under this Contract shall be submitted by Contractor no later than thirty (30) days after the end of the Contract Period.

6.3.8.1. Electronic Commerce Program. The State of Ohio is an active participant in the E-Commerce to include Electronic Data Interchange (EDI). This program will benefit both the State and the Contractor by reducing time delays in receiving invoices and making payments that are associated with the existing manual processes. The Contractor is encouraged to move toward compliance with electronic commerce technologies, as this will be the preferred method of doing business with the State of Ohio. Information regarding E-Commerce is available on the Office of Budget and Management's website at <http://obm.ohio.gov/sectionpages/electroniccommerce/>.

6.3.9. Contractor shall furnish its own support staff and services as necessary for the satisfactory performance of this Contract. Unless otherwise specified in this Contract, ODH will not provide any staff, services, or material to Contractor for the purpose of assisting Contractor's performance.

6.3.10. ODH may, from time to time as it deems appropriate, communicate specific instructions and requests to Contractor concerning the performance of the work described in this Contract. Upon such notice and within ten (10) days after receipt of instructions, Contractor shall comply with such instructions and fulfill such requests to the satisfaction of ODH. It is expressly understood by the Parties that these instructions and requests are for the sole purpose of ensuring satisfactory completion of the work described in this Contract and are not intended to amend or alter this Contract or any part thereof. The Contract Manager will communicate all such instructions and requests to Contractor.

6.3.11. Attachments. Attachments specified in §3 of this Contract are made a part of, and are incorporated as terms and conditions of this Contract. In the event of a conflict of terms, the terms of the specified Attachment to this Contract shall take precedence over any conflicting terms appearing in this Contract.

6.4. Time of Performance & Amendments.

6.4.1. Contract Period; Extension. Upon approval by ODH and, if required, the Controlling Board, this Contract shall be effective on the Contract Beginning Date and shall remain in effect until the Contract Ending Date. Upon mutual consent of both parties, this Contract may be renewed or extended past the Contract Ending Date, subject to the same terms and conditions of this Contract and subject to any federal and state directives, regulations, laws, Request for Quote or Request for Proposals relating to the subject matter of this Contract. Any extensions or renewals are subject to sections 6.3.6 and 6.4.3.

6.4.1.1. Biennium Year. In the event that the term of this Contract Period spans the State of Ohio biennium ending on June 30th of an odd-numbered year, e.g. June 30, 2015, then this Contract will terminate on the last day of that biennium. At that time, ODH may unilaterally extend the Contract by giving Contractor written notice. Until such notice is given, Contractor is subject to §6.4.3 below.

6.4.2. Amendments. This writing constitutes the entire agreement between the Parties with respect to all matters herein. This Contract may be amended only by a writing signed by both Parties. However, it is agreed by the Parties that any amendments to laws or regulations cited herein will result in the correlative modification of this Contract, without the necessity for executing written amendments. Any written amendments to this Contract shall be prospective in nature. When a new or different term or condition is added, additional consideration is not necessary to bind the Parties.

6.4.3. Pursuant to O.R.C. 126.07, this Contract is not valid nor enforceable in any fiscal year unless the director of budget and management first certifies that there is a balance in the appropriation not already obligated to pay existing obligations, in an amount at least equal to the current fiscal year funding specified for each fiscal year that comprises the Total Contract Amount. Contractor shall not perform nor charge ODH for any work performed by Contractor in the time period prior to receiving written notification from ODH that the requirements of O.R.C. 126.07 and, if applicable, O.R.C. 127.16 have been met. Contractor shall neither perform work nor submit an invoice for payment for any Contract performance after the Contract Ending Date.

- 6.5. Suspension and Termination. ODH may suspend or terminate this Contract for any reason thirty (30) days after delivery of written notice to Contractor. ODH may suspend or terminate this Contract immediately after delivery of written notice to Contractor if ODH discovers any illegal conduct on the part of Contractor; discovers a violation of §6.8 of this Contract regarding Conflict of Interest and Ethics Laws or §6.16 regarding a Drug Free Workplace; is subject to a loss of funding as specified in §6.3.6; discovers that Contractor or any of its sub-Contractors has performed any services under this Contract outside the United States and is not in compliance with Executive Order 2011-12K "Governing the Expenditure of Public Funds for Offshore Services" in §6.13; or discovers or is notified that a petition in bankruptcy or similar proceeding has been filed by or against Contractor. If at any time during the contractual period a bankruptcy or similar proceeding has been filed by or against Contractor, Contractor shall immediately notify ODH of the filing.
- 6.5.1. Contractor to Cease Work and Other Contract Activities. Contractor, upon receipt of notice of suspension or termination, shall cease work on the suspended or terminated activities under this Contract, suspend or terminate any subcontracts relating to such suspended or terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and 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 accomplished, conclusions resulting therefrom, and such other matters as ODH may require.
- 6.5.2. Determining Compensation after Contract Suspension or Termination. In the event of suspension or termination under this Contract, Contractor shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination or suspension, which shall be calculated by ODH based on the compensation rate set forth in §6.3, less any funds previously paid by or on behalf of ODH. In the case of services for which Contractor's compensation is based upon a fixed fee per deliverable, compensation shall be based on a reasonable percentage of the total services performed, as determined by ODH, less any funds previously paid by or on behalf of ODH. ODH shall not be liable for any further claims, and the claims submitted by Contractor shall not exceed the total amount of compensation allowed by this Contract.
- 6.6. Breach or Default.
- 6.6.1. Upon breach or default by Contractor of any of the provisions, obligations or duties provided for in this Contract, ODH may exercise all administrative, contractual, equitable or legal remedies available, without limitation. The waiver of any occurrence of breach or default is not a waiver of subsequent occurrences, and ODH retains the right to exercise all remedies provided for in this Contract.
- 6.6.2. If ODH or Contractor fail to perform an obligation or obligations under this Contract and thereafter such failure is waived by the other party; such waiver shall be limited to the particular failure so waived and shall not be deemed to waive other failures hereunder. Waiver by ODH shall not be effective unless it is in writing and signed by the Director of Health or his or her designee, except that Contract Manager may agree in writing to non-substantial changes to §5, such as changes in form, format, deadlines, or other minimal changes that do not diminish the value of the specified work or deliverable.
- 6.6.3. A breach or default based upon Contractor's failure to comply with §6.13 Offshore Outsourcing is subject to that section with regard to Contract termination, sanctions, and damages.
- 6.7. Independent Contractor. Contractor acknowledges and agrees any individual providing personal services under this agreement is not a public employee for purposes of O.R.C. Chapter 145. No agency, employment, joint venture or partnership has been or will be created between the Parties hereto pursuant to the terms and conditions of this Contract. Inasmuch as ODH is interested in Contractor's end product, ODH does not control the manner in which Contractor performs this Contract. ODH is not liable for the workers' compensation or unemployment compensation payments required by O.R.C. Chapters 4123 and 4141, respectively. In addition, Contractor assumes responsibility for tax liabilities that result from compensation paid to Contractor by ODH. ODH will report any payment made under this Contract to the Internal Revenue Service on Form 1099. Additionally, no provision contained in this Contract shall be construed as entitling Contractor to participate in hospital plans, medical plans, sick leave benefits, vacation, and other benefits available to employees of ODH or to become a member of the Public Employees Retirement System (O.R.C. Chapter 145).
- 6.8. Conflict of Interest and Ethics Laws.
- 6.8.1. Neither Contractor nor any officer, member or employee of Contractor shall, prior to the completion of such work and payment for such work, acquire any interest, personal or otherwise, direct or indirect, which is incompatible or in conflict with or would compromise in any manner or degree with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of such work.

- 6.8.2. Contractor hereby covenants that Contractor, and any officer, member, or employee of Contractor, have no interest, personal or otherwise, direct or indirect, which is incompatible or in conflict with or would compromise in any manner or degree with the discharge and fulfillment of his or her functions and responsibilities under this Contract.
- 6.8.3. Contractor shall not promise or give to any ODH employee anything of value that is of such a character as to manifest a substantial and improper influence upon the employee with respect to his or her duties. Contractor shall not solicit an ODH employee to violate any ODH rule or policy relating to the conduct of contracting Parties or to violate O.R.C. 102.03 to 102.04 or O.R.C. 2921.42.
- 6.8.4. Contractor hereby covenants that Contractor and any officer, member or employee of Contractor are in compliance with O.R.C. 102.04 and that if Contractor is required to file a statement pursuant to O.R.C. 102.04(D)(2), such statement has been filed with the ODH General Counsel in addition to any other required filings.
- 6.8.5. Contractor hereby certifies compliance with the executive agency lobbying requirements of O.R.C. 121.60 to 121.69.
- 6.8.6. Contractor hereby certifies and affirms that, as applicable to Contractor, no party listed in Division (I) or (J) of O.R.C. 3517.13 or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions in excess of \$1,000.00 to the Governor or to his campaign committees. If it is determined that Contractor's certification of this requirement is false or misleading, notwithstanding any criminal or civil liabilities imposed by law, Contractor shall return to ODH all monies paid to Contractor under this Contract. The provisions of this section shall survive the expiration or termination of this Contract.

6.9. Nondiscrimination and Equal Employment Opportunity.

- 6.9.1. In carrying out this Contract, Contractor shall comply with all applicable State of Ohio and Federal laws relating to nondiscrimination as those laws may be amended from time to time, including but not limited to the following:
 - 6.9.1.1. Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency ("LEP"), which requires reasonable steps to ensure that LEP persons have meaningful access to programs (see www.lep.gov), and Health and Human Services ("HHS") implementing regulations at 45 CFR part 80;
 - 6.9.1.2. Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex, and HHS implementing regulations at 45 CFR part 86;
 - 6.9.1.3. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps in the provision of benefits or services as well as employment, and the HHS implementing regulations are codified at 45 CFR parts 84 and 85;
 - 6.9.1.4. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age and the HHS implementing regulations codified at 45 CFR part 91;
 - 6.9.1.5. If grant funding is from the U.S. Department of Justice, comply with 28 C.F.R. pt. 54 (nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance), 28 C.F.R. pt. 38 (Equal Treatment for Faith-Based Organizations, and Ex. Order 13279 (Equal Protection of the Laws for Faith-Based and Community Organizations); and
 - 6.9.1.6. Prohibitions against retaliation against individuals for taking action or participating in an action to secure rights provided in State and Federal laws relating to nondiscrimination.
 - 6.9.1.7. Contractor hereby certifies that Contractor is in compliance with O.R.C. 125.111(B) and has a written affirmative action program for the employment and effective utilization of economically disadvantaged persons. If the Total Contract Amount of this Contract is equal to or more than \$2,500.00 (Two Thousand Five Hundred Dollars) then Contractor shall file a description of the affirmative action program and a progress report on its implementation with the Equal Employment Opportunity Office of the Ohio Department of Administrative Services. Contractor shall incorporate the foregoing State of Ohio and Federal laws relating to

nondiscrimination in all of its contracts for performance of any of the work prescribed in this contract, and shall require all of its subcontractors to incorporate these requirements in all subcontracts for such work.

- 6.10. “Sweatshop Free” Certification. Contractor hereby certifies that all facilities used for the production of supplies or performance of services offered in this Contract is in compliance with applicable domestic labor, employment, health and safety, environmental and building laws. This certification applies to any and all suppliers and/or subcontractors used by Contractor in furnishing the supplies or services pursuant to this Contract. If it is determined that Contractor's certification of this requirement is false or misleading, then Contractor understands that it shall be grounds for the termination of this Contract and may result in the loss of other contracts or grants with the State of Ohio.
- 6.11. Records, Documents and Information. All records, documents, writings or other information produced or used by Contractor in the performance of this Contract shall be treated according to the following terms:
- 6.11.1. All ODH information which, under the laws of the State of Ohio, is classified as public or private will be treated as such by Contractor. Where there is a question as to whether information is public or private, ODH shall make the final determination. Contractor shall not use any information, systems, or records made available to it for any purpose other than to fulfill the contractual duties specified herein. Contractor agrees to be bound by the same standards of confidentiality that apply to the employees of ODH and the State of Ohio. If at any time during the contract period a proceeding has been filed by or against Contractor which would compel disclosure of private information under this Contract, Contractor shall immediately notify ODH of the filing. The terms of this section shall be included in any subcontracts executed by Contractor for work under this Contract.
- 6.11.2. All proprietary information of Contractor shall be held to be strictly confidential by ODH. Proprietary information is information which, if made public, would put Contractor at a disadvantage in the market place and trade of which Contractor is a part. Contractor is responsible for notifying ODH of the nature of the information prior to its release to ODH. ODH reserves the right to require reasonable evidence of Contractor's assertion of the proprietary nature of any information to be provided.
- 6.11.3. All records relating to costs, work performed and supporting documentation for invoices submitted to ODH by Contractor shall be retained and made available by Contractor for audit by the State of Ohio (including, but not limited to, ODH, the Auditor of the State of Ohio, the Ohio Inspector General or duly authorized law enforcement officials) and agencies of the United States government for a minimum of three years after payment for work performed under this Contract. If an audit, litigation, or other action is initiated during this time period, Contractor shall retain such records until the action is concluded and all issues resolved or the three years end, whichever is later.
- 6.12. Disclosure of Personal Health Information. Contractor hereby agrees that the information provided or made available by ODH shall not be used or disclosed other than as permitted or required by this Contract or as required by law. Contractor will establish and maintain appropriate safeguards to prevent any use or disclosure of the information, other than as provided for by this Contract. Contractor shall comply with 45 C.F.R.164.504(e)(2)(ii). Contractor shall immediately report to ODH any discovery of use or disclosure of information not provided for or allowed by the Contract. Contractor hereby agrees that anytime information is provided or made available to any sub-Contractor or agent, Contractor must enter into a subcontract with the sub-Contractor or agent that contains the same terms, conditions, and restrictions on the use and disclosure of information as contained in this Contract. Contractor must obtain ODH approval prior to entering into such agreements. Further, Contractor agrees to make available and provide right of access to an individual of their protected health information when that protected health information is obtained in the performance of Contractor's obligations under this Contract.
- 6.13. Offshore Outsourcing and Executive Order 2011-12K. Contractor affirms to have read and understands Executive Order 2011-12K “Governing the Expenditure of Public Funds for Offshore Services” (see <http://www.governor.ohio.gov/Portals/0/pdf/executiveOrders/EO%202011-12K.pdf>). In addition, if the purpose of this Contract is to acquire services for compensation, Contractor must complete and execute the Standard Affirmation and Disclosure Form for said Executive Order and shall abide by those requirements in the performance of this Contract, and shall perform no services required under this Contract outside of the United States. Contractor also affirms, understands, and agrees to immediately notify ODH of any change or shift in the location(s) of services performed by Contractor or its sub-Contractors under this Contract, and no services shall be changed or shifted to a location(s) that is outside of the United States.
- 6.13.1. Termination, Sanction, Damages. If Contractor or any of its sub-Contractors perform services under this Contract outside of the United States, the performance of such services shall be treated as a

material breach of the Contract. ODH is not obligated to pay and shall not pay for such services. If Contractor or any of its sub-Contractors perform any such services, Contractor shall immediately return to ODH all funds paid for those services. ODH may also recover from Contractor all costs associated with any corrective action ODH may undertake, including but not limited to an audit or a risk analysis, as a result of Contractor performing services outside the United States.

- 6.13.1. ODH may, at any time after the breach, terminate the Contract, upon written notice to Contractor. ODH may recover all accounting, administrative, legal and other expenses reasonably necessary for the preparation of the termination of the Contract and costs associated with the acquisition of substitute services from a third party.
- 6.13.2. If ODH determines that actual and direct damages are uncertain or difficult to ascertain, ODH in its sole discretion may recover a payment of liquidated damages in the amount of 1% of the value of the Contract.
- 6.13.3. ODH, in its sole discretion, may provide written notice to Contractor of a breach and permit Contractor to cure the breach. Such cure period shall be no longer than fourteen (14) calendar days. During the cure period, ODH may buy substitute services from a third party and recover from Contractor any costs associated with acquiring those substitute services.
- 6.13.4. Notwithstanding the ODH permitting a period of time to cure the breach or Contractor's cure of the breach, ODH does not waive any of its rights and remedies provided ODH in this Contract, including but not limited to recovery of funds paid for services Contractor performed outside of the United States, costs associated with corrective action, or liquidated damages.
- 6.14. Assignment. Contractor will not assign any of its rights nor delegate any of its duties and responsibilities under this Contract without prior written consent of ODH. Any assignment or delegation not consented to may be deemed void by the ODH.
- 6.15. Drug Free Workplace. Contractor shall comply with all applicable state and federal rules, regulations and statutes pertaining to a drug free workplace. Contractor shall make a good faith effort to ensure that all employees of Contractor do not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way while working on state, county, or municipal property.
- 6.16. Compliance.
 - 6.16.1. Contractor affirmatively represents and warrants to ODH that it is not subject to a finding for recovery under O.R.C. 9.24 or that it has taken the appropriate remedial steps required under O.R.C. 9.24 or otherwise qualifies under that section. Contractor further affirmatively represents and warrants to ODH that it is not debarred or suspended from entering into state of Ohio contracts pursuant to O.R.C. 125.25 and is not subject to exclusion, disqualification or ineligibility as defined in 2 C.F.R.180.110. Contractor agrees that if this representation and warranty is deemed false, the Contract will be void *ab initio* as between the Parties to this Contract, and any funds paid by ODH hereunder shall be immediately repaid to ODH, or an action for recovery may be immediately commenced by ODH for the recovery of said funds.
 - 6.16.2. Contractor certifies that Contractor is not federally debarred from participating in government contracts funded by federal money as described in 2 C.F.R. 180.220. If at any time during the contractual period Contractor is federally debarred from participating in government contracts funded by federal money, for whatever reason, Contractor shall immediately notify ODH of the debarment.
 - 6.16.3. Contractor certifies that all approvals, licenses, registrations or other qualifications necessary to conduct business where the services are performed have been obtained and are operative. If at any time during the contractual period Contractor becomes disqualified from conducting business in Ohio, for whatever reason, Contractor shall immediately notify ODH of the disqualification.
- 6.17. Limitation of Liability. Contractor agrees to accept and be responsible for the actions or omissions of its agents, officers, and employees arising out of this Contract, and nothing in this Contract shall be interpreted or construed to place any responsibility for professional acts or omissions onto ODH; and ODH agrees to accept and be responsible for the actions or omissions of its agents, officers, and employees arising out of this Contract, and nothing in this Contract shall be interpreted or construed to place any such responsibility on the Contractor. ODH's liability for damages, whether in contract or in tort, shall not exceed the Total Contract Amount or the amount of direct damages incurred by Contractor, whichever is less, and is the Contractor's sole and exclusive remedy for ODH's failure to perform its obligations under this Contract. In no event shall ODH be liable for any indirect or consequential damages, including loss of profit, even if ODH knew or should have known of the possibility of such damages. Neither party is responsible to the other party for nonperformance or

delay in performance of the terms of this Contract due to acts of God, wars, riots, strikes, or other causes beyond the control of the Parties.

- 6.18. Insurance. Contractor will provide, at its own expense, Workers' Compensation insurance, as required by Ohio law or the laws of any other state where work under this Contract will be performed. Contractor may be required to show proof of insurance upon request by ODH. Contractor also will provide for its employees performing work under this Contract employer's liability insurance, and personal injury, bodily injury, and property damage liability insurance, including automobile coverage with personal injury and bodily injury coverage in the amount of at least \$100,000.00 per person, \$300,000.00 per occurrence. In lieu of providing the policies of insurance in the amounts specified in this section, Contractor instead may elect to self-insure such risk in accordance with the laws of this state, based upon a good-faith analysis of the potential liability as it relates to the work to be performed under this Contract, provided that contractor is one of the following:
- 6.18.1. A "state institution of higher education" as defined in O.R.C. [3345.12\(A\)\(1\)](#), a community college established under O.R.C. Chapter 3354, a state community college established under O.R.C. Chapter 3358, a university branch established under O.R.C. Chapter 3355, or technical college established under O.R.C. Chapter 3357;
 - 6.18.2. A "state agency", which means a department, bureau, board, commission, office, agency, institution or other organized body or instrumentality established by the constitution and laws of the state of Ohio for the exercise of any function of state government; or
 - 6.18.3. A "political subdivision" of this state, which means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities only in geographical areas smaller than that of the state.
- 6.19. Rights in Deliverables, Data and Copyrights. Any intellectual property or copyrightable materials produced specifically for and as a deliverable under the terms of this Contract, including any documents, data, photographs and negatives, electronic reports, records, software, source code, or other media, shall become the property of ODH, which shall have an unrestricted right to reproduce, distribute, modify, maintain, and use the Deliverables. This section does not apply to any preexisting materials owned by Contractor. Contractor shall not obtain copyright, patent, or other proprietary protection for the Work or Deliverables under this Contract. ODH grants Contractor an unlimited license to use work and materials produced by Contractor under this Contract, including the right to publish the results of any work performed under this Contract. In the event that the Contract Funding Source is federal funding, in whole or in part, such license is subject to the royalty-free, non-exclusive and irrevocable license to such material retained by the United States government. Further, the work must state: "This publication was made possible by Grant Number [insert grant number] from [insert federal funding agency]. Its contents are solely the responsibility of the authors and do not necessarily represent the official views of [insert federal funding agency]." Contractor shall not include in any Deliverable or Work any copyrighted matter, unless the copyright owner gives prior written approval to use such copyrighted matter.
- 6.20. Construction. This Contract is governed, construed and enforced in accordance with the laws of the State of Ohio. Further, the Ohio courts shall have jurisdiction over the subject matter and the Parties hereto in connection with disputes concerning validity and enforcement of this Contract. If any portion of this Contract is found to be unenforceable by operation of statute or by administrative or judicial decision, the enforceability of the balance of this Contract shall not be affected thereby, provided that the absence of the unenforceable provision does not render impossible the performance of the remainder of this Contract.