

**THE OHIO STATE UNIVERSITY
OFFICE OF HEALTH SCIENCES
DATA SHARING AND CONFIDENTIALITY AGREEMENT**
Master Agreement G-2021-05-0069 Task order Enter Task Order #

This Data Sharing and Confidentiality Agreement (“Agreement”) is entered into by and between Name of Entity or Individual - up to 1000 characters (hereinafter referred to as “Subcontractor”) and the Ohio State University, Office of Health Sciences on behalf of the Government Resource Center (hereinafter referred to as “OSU-GRC”).

ARTICLE I - PURPOSE AND LEGAL AUTHORITY

This Agreement is entered into between Subcontractor and OSU-GRC for the purpose of providing Subcontractor with data provided by the Ohio Department of Medicaid (hereinafter referred to as "ODM") pursuant to the agreement among ODM; The Ohio State University, Office of Sponsored Programs, on behalf of OSU-G-2021-05-0069, and signed June 18, 2019, and any amendments or renewals thereof, for the provision of certain predetermined research activities relative to the effective and efficient administration of the Ohio Medicaid program (hereinafter the “Master Agreement”). All terms used in this Agreement have the meanings provided in the Master Agreement.

The authority to release this data is 42 CFR 431.300 through 431.307, 435.945, 45 CFR 164.502(e) and 164.504.

The Agreement Manager for OSU-GRC is Lorin Ranbom.

ARTICLE II – DESCRIPTION OF RECORDS OR DATA TO BE PROVIDED

A. Data Use and Management

1. OSU-GRC shall provide Medicaid data relevant to the purposes of the Master Agreement to Subcontractor. Any data release or data sharing shall be role-based and project specific, and in accordance with state and federal regulations. Any requests for access to data will be directed by OSU-GRC under the guidance of ODM and decisions about providing data to any parties will be at the sole discretion of OSU-GRC under the guidance of ODM.
2. OSU-GRC shall perform validation upon receipt of monthly master files prior to its use or sharing with subcontractor. Subcontractor shall report any anomalies and obtain clarification from OSU-GRC.
3. All data provided to Subcontractor may only be used for the specific associated Project Enter Project Title - 250 Characters with assigned Task Order number Enter Task Order # and for no other use in projects not associated with the Task Order. Any data release, sharing, or transfer beyond its initial approved scope and specifications will be considered as unauthorized. A description of the project scope and data to be shared with Subcontractor covered by this Agreement is described in Attachment A which is incorporated in this Agreement.

B. Presentation, Publications and Dissemination

1. Subcontractor shall obtain OSU-GRC/ODM review and comment for release of any results including preliminary and/or final results related to funded projects or funded data under this Agreement.
2. Any data or publication release may be pending or delayed due to ODM policy or program change.
3. Subcontractor shall obtain OSU-GRC/ODM prior review and permission to release any products resulting from activities, funded data or projects under this Agreement.

4. When issuing press releases, requests for proposals, bid solicitations, and other documents or statements describing projects or programs funded in whole or in part with federal money, any of OSU-GRC subcontractors and/or subgrantees receiving federal funds, including but not limited to state and local governments, shall clearly state:
 - a. the percentage of total costs of the program or project which will be financed with federal money,
 - b. the dollar amount of federal funds for the program or project, and
 - c. the percentage and dollar amount of the total costs or the program or project that will be financed by nongovernment sources.

C. Conflicts of Interest

1. Subcontractor shall disclose non-MEDTAPP funded projects and obtain OSU-GRC/ODM prior approval for commission or production should such effort present potential conflicts/associations with this Agreement.
2. Subcontractor shall avoid self-interests including promoting university or medical provider products or services.

ARTICLE III - CONFIDENTIALITY OF INFORMATION

- A. Subcontractor agrees that it shall not use any information, systems, or records made available to it for any purpose other than to fulfill the obligations specified herein. Subcontractor specifically agrees to comply with state and federal confidentiality and information disclosure laws, rules, and regulations applicable to programs under which this Agreement 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 through 431.307, 435.945, 45 CFR 164.502(e) and 164.504(e);
 3. Ohio Revised Code, ORC 173.20, 173.22, 2305.24, 2305.251, 3701.243, 3701.028, 5101.26, 5101.27, 5101.572, 5112.21, and 5111.61; and
 4. Corresponding Ohio Administrative Code rules.
- B. Subcontractor agrees that any data made available to Subcontractor by OSU-GRC shall be returned to OSU-GRC or destroyed not later than forty five (45) days following termination of this Agreement or Task Order and shall certify destruction and that no copies of source data were retained by Subcontractor.
- C. Subcontractor shall implement administrative, physical, and technical safeguards as described in Article XI.
- D. Subcontractor agrees that access to the records and data provided by OSU-GRC and described in ARTICLE II will be restricted to only those authorized employees, officials, subcontractors and other persons who need it to perform duties related to this Agreement. Subcontractor agrees to provide the OSU-GRC Agreement Manager with a complete listing of any and all persons who shall have access to the above referenced records and/or data.
- E. Subcontractor 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 Agreement shall be stored in an area that is physically safe from access from unauthorized persons during duty and non-duty hours. Information provided under this Agreement shall be protected electronically to prevent unauthorized access by computer, remote access, or any other means. No records will be accessed, tested, maintained, backed up or stored outside of the United States.

- F. Subcontractor shall assure that all persons who have access to the above referenced information shall be fully apprised as to the confidential nature of the information, the safeguards required to protect the information, and the applicable civil and criminal sanctions and penalties associated with any intentional or non-intentional disclosure. No subcontractor shall receive any information without a written agreement with Subcontractor incorporating these assurances.
- G. Subcontractor shall not disclose any of the above referenced information to any third party without the specific written authorization of the Director of OSU-GRC.
- H. Subcontractor shall permit onsite inspection by OSU-GRC, by the State of Ohio (including but not limited to ODM, the Auditor of the State of Ohio, the Inspector General of Ohio, or any duly authorized law enforcement officials) and by agencies of the United States government.
- I. OSU-GRC will prepare data pursuant to the security and encryption standards found in Ohio IT Standard ITS-SEC-01, Data Encryption and Cryptography; and OIT Bulletin ITB-2077.02, Data encryption and securing sensitive data. Subcontractor shall retain this encryption while the data is in a portable format (e.g. tape, laptop, flash/USB drive).
- J. The terms of this ARTICLE III shall be included in all subcontracts executed by Subcontractor for any and all work under this Agreement. Subcontractor shall provide a copy of any and all subcontracts related to this Agreement to the OSU-GRC Agreement Manager.

ARTICLE IV - TIME OF PERFORMANCE

- A. Upon approval by the authorized representative of OSU-GRC, this Agreement shall be in effect from the effective date of above referenced Master Agreement through June 30, 2021, unless this Agreement is suspended or terminated pursuant to ARTICLE VI prior to the termination date. Data must be returned to OSU-GRC or certified as destroyed within 45 days of the termination of the Task Order. This Agreement may be renewed upon satisfactory performance by Subcontractor, continued statutory authority for disclosure of data, and at the sole discretion of OSU-GRC/ODM.
- B. The Confidentiality provisions of this Agreement shall survive the termination of this Agreement.

ARTICLE V - COST OF DATA PREPARATION

The parties agree that no reimbursement will be sought under the terms of this Agreement.

ARTICLE VI - SUSPENSION AND TERMINATION

- A. Upon thirty (30) days written notice to the other party, either party may terminate this Agreement.
- B. Notwithstanding Section A of this Article, OSU-GRC may suspend or terminate this Agreement immediately upon delivery of written notice to Subcontractor, if OSU-GRC discovers any illegal conduct on the part of Subcontractor or if there is any breach of the confidentiality provisions of ARTICLE III.
- C. Notice of termination or suspension under either Section A or B of this Article must be sent to: the authorized representative of Subcontractor; and to the authorized representative of OSU-GRC at the address appearing on the signature page of this Agreement.

ARTICLE VII - BREACH OR DEFAULT

- A. Upon breach or default of any of the provisions, obligations or duties embodied in this Agreement, OSU-GRC may exercise any 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 OSU-GRC retains the right to exercise all remedies hereinabove mentioned.
- B. If either of the parties fails to perform an obligation or obligations under this Agreement and thereafter such failure(s) is (are) waived by the other party, such waiver shall be limited to the particular failure(s) so waived and shall not be deemed to waive other failure(s) hereunder. Waiver by OSU-GRC shall not be effective unless it is in writing signed by the authorized representative of OSU-GRC.

ARTICLE VIII - AMENDMENTS

This Agreement may be modified or amended provided that any such modification or amendment is in writing and is signed by the authorized representatives of OSU-GRC and Subcontractor. It is agreed, however, that any amendments to laws, rules, or regulations cited herein will result in the correlative modification of this Agreement, without the necessity for executing a written amendment.

ARTICLE IX - INDEPENDENT CONTRACTOR

Subcontractor agrees that 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 Agreement. Subcontractor also 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 which may accrue as a result of compensation received for services or deliverables rendered hereunder. Subcontractor 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. Subcontractor certifies that all approvals, licenses, or other qualifications necessary to conduct business in Ohio have been obtained and are operative. If at any time during the contractual period Subcontractor becomes disqualified from conducting business in Ohio, for whatever reason, Subcontractor must immediately notify OSU- GRC of the disqualification and will immediately cease performance of its obligations hereunder.

ARTICLE X - LIMITATION OF LIABILITY: OSU-GRC SUBCONTRACTOR/SUBGRANTEE DUTIES

OSU-GRC agrees to be responsible for any liability directly relating to any and all acts of negligence by OSU- GRC. Subcontractor agrees to be responsible for any liability directly related to any and all acts of negligence by Subcontractor.

ARTICLE XI - 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 Agreement 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. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996.
 2. "Covered Entity" means a health plan, a health care clearinghouse, or health care provider under 45 CFR 160.103.
 3. "Business Associate" means a person or entity that, on behalf of the Covered Entity, 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.

4. “Protected Health Information” (hereinafter “PHI”) means information received from or on behalf of a Covered Entity that meets the definition of PHI as defined by HIPAA and 45 CFR 164.501 and any amendments thereto.

B. Subcontractor acknowledges that OSU-GRC, through its Office of Health Sciences, is a Business Associate of ODM, through its Office of Ohio Health Plans, a Covered Entity under HIPAA. Subcontractor further acknowledges that it is a Business Associate of OSU-GRC, and, in carrying out the work described in this Agreement, Subcontractor agrees to comply with all of the following provisions:

1. Permitted Uses and Disclosures: Subcontractor will not use or disclose PHI except as provided in this Agreement or as otherwise required under HIPAA regulations or other applicable law.
2. Safeguards: Subcontractor will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the OSU-GRC against use or disclosure not provided for by this Agreement.
3. Reporting of Disclosures: Subcontractor will promptly report to OSU-GRC any knowledge of uses or disclosures of PHI that are not in accordance with this Agreement or applicable law. In addition, Subcontractor will mitigate any adverse effects of such a breach of confidentiality to the greatest extent possible.
4. Agents and Subcontractors: Subcontractor will ensure that all its agents and subcontractors that receive PHI from or on behalf of Subcontractor and/or OSU-GRC agree to the same restrictions and conditions that apply to Subcontractor with respect to the use or disclosure of PHI.
5. Accessibility of Information: Subcontractor will make available to ODM/OSU-GRC such information as ODM/OSU-GRC may require to fulfill its obligations to provide access to, provide a copy of, and account for disclosures 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.
6. Amendment of Information: Subcontractor will make PHI available to ODM/OSU-GRC so that ODM/OSU-GRC may fulfill their obligations pursuant to HIPAA to amend the information. As directed by ODM/OSU-GRC, Subcontractor will also incorporate any amendments into the information held by Subcontractor, and will ensure incorporation of any such amendments into information held by Subcontractor or agents.
7. Disclosure: Subcontractor will make available to OSU-GRC/ODM and to the Secretary of the United States 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 Subcontractor, or created or received by Subcontractor on behalf of OSU-GRC/ODM. The access is for determining OSU-GRC/ODM’s compliance with HIPAA, regulations promulgated by the United States Department of Health and Human Services, and any amendment thereto.
8. Material Breach: In the event of material breach of Subcontractor obligations under this Article, OSU-GRC may immediately terminate this Agreement as set forth in ARTICLE VI, Section B. Termination of this Agreement will not affect any provision of this Agreement, which, by its wording or its nature, is intended to remain effective and to continue to operate after termination.
9. Return or Destruction of Information: Upon termination of this Agreement and at the request of OSU-GRC Subcontractor will return to OSU-GRC or destroy all PHI in Subcontractor possession stemming from this Agreement, and will not keep copies of the PHI except as requested by OSU-

GRC/ODM or required by law. If Subcontractor, its agent(s), or subcontractor(s) destroy any PHI, then Subcontractor will provide to OSU-GRC documentation evidencing such destruction. Any PHI retained by Subcontractor will continue to be extended the same protections set forth in this Section and HIPAA regulations for as long as it is maintained.

ARTICLE XII - CONSTRUCTION

This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Ohio. Should any portion of this Agreement be found to be unenforceable by operation of statute or by administrative or judicial decision, the operation of the balance of this Agreement is not affected thereby; provided, however, the absence of the illegal provision does not render the performance of the remainder of the Agreement impossible.

*SIGNATURE PAGE FOLLOWS
REMAINDER OF PAGE LEFT INTENTIONALLY BLANK*

**THE OHIO STATE UNIVERSITY
OFFICE OF HEALTH SCIENCES
DATA SHARING AND CONFIDENTIALITY AGREEMENT
Signature Page**

The Agreement manager for the Subcontractor is Agreement Manager or Contact Person of Subcontractor.
Task order Enter Task Order #

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the signature of the authorized representative of the Ohio State University, Office of Health Sciences.

The Ohio State University on behalf
Office of Health Sciences

Subcontractor

Signature

Signature

Michael Papadakis
Senior Vice President for Business and Finance
and CFO

Signing Authority Name

Signing Authority Title

Date _____

Date _____

Business and Finance
190 North Oval Mall
108 Bricker Hall
Columbus, Ohio 43210

Subcontractor

Subcontractor address

Subcontractor address

Subcontractor address