STATE OF OHIO
DEPARTMENT OF INSURANCE
OFFICE OF LEGAL SERVICES

REQUEST FOR PROPOSAL ("RFP")
Project: Hearings/Hearing Officer
Maximum Amount of Contract: $20,000.00
October 5, 2010

Purpose

The Ohio Department of Insurance ("Department"), an agency of the State of Ohio, located at 50 West Town Street, 3rd Floor, Suite 300, Columbus, Ohio 43215, is seeking proposals from qualified vendors to provide professional legal services as a Hearing Officer for the Department's Office of Legal Services.

This request is to cover the period commencing upon execution of a contract with a vendor and ending on or about June 30, 2011. The exact starting dates and times will be established upon issuing the purchase order and may not be the exact dates for the starting periods stated herein.

Background

The Office of Legal Services is responsible for conducting formal administrative proceedings in accordance with Chapter 119 of the Ohio Revised Code and all other applicable Ohio statutes and rules. The Hearing Officer will preside over these formal proceedings.

Calendar of Events

RFP Issued	Oct. 5, 2010
Inquiry Period Ends	open until vendor is selected
Proposal Due Date	open until vendor is selected
Vendor Selected (estimated)	to be determined
Purchase Order Issued (estimated)	to be deterimined
Work Begins (estimated)	to be determined

Proposal Submission

The vendor must submit its proposal via e-mail to sharon.green@ins.state.oh.us.

Inquiries

Send to the above e-mail address.

Modification of RFP

The Department may modify the RFP in writing at any.

Rejection of Proposals

The Department reserves the right to reject any and all proposals where the vendor takes exception to the terms and conditions of the RFP or fails to meet the terms and conditions, including but not limited to standards, specifications and requirements as set out in the RFP. The Department reserves the right to reject, in whole or in part, any and all proposals where the

Department, taking into consideration factors including but not limited to, price and the results of the evaluation process, has determined that award of a contract would not be in the best interest of the Department or the State of Ohio. Additionally, the Department reserves the right to cancel this RFP, reject all proposals and seek to do the work by other means.

Records

All proposals and other material submitted to the Department in response to this RFP will become the property of the Department. The vendor should not include trade secrets or proprietary information in a proposal or supporting materials because all proposals and supporting information are subject to Ohio's Public Records Law, Section 149.43 of the Ohio Revised Code. To protect the integrity of the competitive process and to comply with Section 125.071(C) of the Ohio Revised Code, the Department will close proposals from public review until the evaluation and award process is concluded. After the Department selects a successful proposal, all proposals will be public records.

Contract Terms and Conditions

The successful vendor will perform this work governed by the terms and conditions of the standard Department contract, a blank of which is attached hereto as Exhibit A and is incorporated herein as part of this RFP.

Executive Order 2010-09S: Banning the Expenditure of Public Funds on Offshore Services

The vendor must comply with the requirements of Executive Order 2010-09S addressing the banning of expenditure of public funds on offshore services and must complete and submit with the vendor's proposal the "Standard Affirmation and Disclosure Form," a blank of which is attached hereto as Exhibit B and is incorporated herein as part of this RFP.

Attorney Qualifications

Both law firms and individual attorneys may respond to this RFP. In either case, the attorney or attorneys that are proposed to act as Hearing Officer must be specifically identified and must meet at a minimum the qualifications set out below.

1. Is an attorney licensed to practice law, and is in good standing, in the State of Ohio.
2. Meet one of the following three qualifications:
   a. Have, at a minimum, two (2) years Hearing Officer experience conducting Ohio Revised Code Chapter 119 adjudication hearings or state agency specific administrative hearings; or
   b. Have, at a minimum, five (5) years background in insurance law; or
   c. Have, at a minimum, five (5) years experience representing clients before administrative agencies or boards.
3. Does not represent clients that are regulated by the Department and is not a member of a firm that represents clients that are regulated by the Department.

Scope of Work

The attorney who will serve as Hearing Officer will be responsible for the tasks and duties as set out below.

1. Act as an impartial Hearing Officer at formal administrative proceedings that the Department is required by law to conduct. The hearings may be conducted in person or

through written submissions and include analysis of testimony, written stipulations of the parties, motions, oral arguments, written briefs, or any other submissions required by law or reasonably necessary for the Hearing Officer to arrive at a decision and prepare a written report. During the pendency of a proceeding, the vendor shall have and shall exercise all authority appropriate to the role of Hearing Officer as necessary to assure that all proceedings will be conducted in a timely and orderly manner. This shall include, without limitation, coordination of the conduct of the hearing; sequestration and calling of witnesses; handling of exhibits and other matters necessary for the efficient conduct of the proceeding at issue.

2. Conduct all formal administrative proceedings in accordance with Ohio Revised Code Chapter 119 and all other applicable Ohio statutes and rules, including the general and procedural guidance provided by the Chief Legal Counsel of the Department's Office of Legal Services.
3. Prepare and provide the Department with a written report as soon as practicable and within the time deadlines specified by law following each proceeding for which the vendor acts as Hearing Officer. The written report shall set forth Hearing Officer's findings of fact and conclusions of law and other matters appropriate for such report under the law applicable to the particular proceeding at issue.
4. Upon request, prepare and provide the Department with Draft Orders for the signature of the Department Director in any proceeding in which the Hearing Officer presided and submitted a written report.
5. Coordinate all activities through the Department's Office of Legal Services and the Department's Chief Legal Counsel.
6. Not discuss with or disclose to any third party any information or material obtained pursuant to the obligations as Hearing Officer without the prior written consent of the Department.
7. Furnish and use materials, tools, equipment and supplies necessary for the satisfactory performance of work, except as provided by the Department.

The Department will provide the facilities and services needed by the Hearing Officer to perform the obligations under the resulting contract as follows:

1. A hearing room appropriately equipped for conducting administrative hearings.
2. A court reporter or electronic audio recording device for the purpose of creating a record of the proceedings.
3. A hearing administrator who will coordinate issuance of notices, scheduling of hearings, issuance of subpoenas, arrangements for court reporters and issuance of other required correspondence for the efficient conduct of the proceeding at issue.
4. Any other reasonable resource requested in advance by the vendor for the purpose of convenient and efficient conduct at the proceeding at issue.

Proposal Content

The successful vendor's proposal for this project must include the following:

Cover Letter. The cover letter is to be in the form of a standard business letter and is to be signed in blue ink by an individual legally authorized to bind the vendor. The cover letter must include the following: (1) a summary of the vendor's services to be provided; (2) the name, telephone number, fax number and e-mail address of a contact person with authority to answer questions regarding the proposal; (3) a statement that the vendor's proposal is public information; (4) a statement that the proposal will be valid for ninety (90) days following the Department's receipt of the proposal; and (5) a statement that the vendor will not use subcontractors in this project.

Executive Summary. The vendor is to include its legal name, business address and business telephone number. The vendor is to provide a brief narrative of the proposal to the Department and a description of the vendor's relevant experience.

Proposal Elements. Any vendor that submits a proposal will include in the body of the proposal the elements listed below.

1. A resume for no more than two proposed attorneys to act as Hearing Officer. If a law firm is submitting candidates, the firm must screen all candidates to ensure that each candidate meets the qualifications.
2. Signed acknowledgement forms for each proposed attorney acknowledging that the attorney has been proposed to act as Hearing Officer by the submitting vendor and confirming that the attorney is available under the terms of the RFP.

   > [The acknowledgement can read as follows: I (attorney name) acknowledge that (vendor name) is submitting my name as a candidate for the Office of Legal Services Hearing Officer proposal. I am available for this assignment for the period of _____, 2010 to June 30, 2011. Also, I understand that knowingly being proposed on more than one vendor's proposal will disqualify me for consideration as a candidate for each and all proposals. (Candidate signature/Date.)]

3. A description of how each proposed attorney meets the qualifications set out in the "Attorney Qualifications" section of this RFP.
4. A description of each proposed attorney's experience and background relative to the seven Hearing Officer duties and/or tasks listed in the "Scope of Work" section of this RFP.
5. A completed "Standard Affirmation and Disclosure Form," a blank of which is attached as Exhibit B.

Cost. The vendor will submit a per hour cost for the services of each attorney that would act as Hearing Officer. The maximum value of the resulting contract that the Department would offer is $20,000.00. However, the Department does not guarantee that any vendor would receive the total amount of the contract as Hearing Officer services are requested on an "as needed" basis.

The State of Ohio assumes no responsibility for costs that the vendor incurs prior to the award of any contract. The vendor will not be reimbursed for travel, lodging or any other expenses incurred in the performance of the services of Hearing Officer. The total liability of the State of Ohio is limited to the terms and conditions of a resulting contract.

Evaluation Criteria and Procedures

The Department will award the contract to the responsive and responsible vendor whose proposal the Department determines to be most advantageous to the State of Ohio. The Department will consider the following factors equally in evaluating the proposals: (1) meeting the "Attorney Qualifications" as set forth in this RFP, (2) background and experience relative to the duties and tasks listed in the "Scope of Work" section of this RFP and (3) rate as described in the "Cost" section of this RFP. The Department may request additional information to evaluate a vendor's proposed costs, responsiveness to the RFP and responsibility. If a vendor does not provide the requested information, that fact may adversely impact the Department's evaluation of the vendor's bid.

A committee of the Office of Legal Services will open and evaluate the proposals and will chose the successful vendor. At its option, the Department may select two vendors and split the maximum contract amount between these vendors.

AGREEMENT
BETWEEN THE
OHIO DEPARTMENT OF INSURANCE
AND

_____

THIS AGREEMENT is made and entered into by and between the **Ohio Department of Insurance** (hereinafter "Department"), 50 West Town Street, 3rd Floor, Suite 300, Columbus, Ohio, 43215 and _____ (hereinafter "Contractor"), _____ and is effective as of the date of the signature by the Department on this Agreement.

WHEREAS, the Department desires to engage Contractor to provide professional consulting services;

(Optional): **WHEREAS,** [If applicable, insert language showing statutory authority to undertake this agreement – example: Pursuant to Ohio Revised Code Section _____, the Department may enter into agreements with contractors to effectuate the purposes for which the Department was created]; and

WHEREAS, Contractor desires to perform such services for the Department in accordance with the terms and conditions prescribed by the Department;

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements set forth herein, the parties hereto agree as follows:

ARTICLE I: NATURE OF CONTRACT

1.1 Contractor shall be employed as an independent contractor, to fulfill the terms of this Agreement. It is specifically understood that the nature of the services to be rendered under this Agreement are of such a personal nature that the Department is the sole judge of the adequacy of such services. The Department thus reserves the right to cancel this Agreement should the Department at any time be dissatisfied with Contractor's performance of its duties under this Agreement.

1.2 The Department enters into this Agreement in reliance upon Contractor's representations that it has the necessary expertise and experience to perform its obligations hereunder, and Contractor warrants that it does possess the necessary expertise and experience.

1.3 Contractor shall perform services and the Department shall not hire, supervise, or pay any assistants to Contractor in its performance under this Agreement. The Department shall not be required to provide any training to Contractor to enable it to perform services required hereunder.

1.4 In the event of a cancellation of this Agreement by the Department, Contractor shall be reimbursed in accordance with Article VI, Termination of Contractor's Services. All provisions of this Agreement relating to "confidentiality" shall remain binding upon Contractor in the event of cancellation.

1.5 The Department may, from time to time, communicate specific instructions and requests to Contractor concerning the performance of the work described in this Agreement. Upon such notice within ten days after receipt of instructions, Contractor shall comply with such instructions and fulfill such requests to the Department's satisfaction. It is expressly understood by the parties that these instructions and requests are for the sole purpose of performing the specific tasks requested to ensure satisfactory completion of the work described in this Agreement. The management of the work, including the exclusive right to control or direct the manner or means by which the work is performed, remains with the Contractor. The Department retains the right to ensure that Contractor's work is in conformity with the terms and conditions of this Agreement. It is fully understood and agreed that Contractor is an independent contractor and neither Contractor nor its personnel shall at any time, or for any purpose, be considered as agents, servants, or employees of the Department or the State of Ohio.

ARTICLE II: SCOPE OF SERVICES

2.1 Contractor shall provide professional consulting services to the Department as follows:

2.1.1 Contractor shall provide _____.

2.1.2 Contractor shall provide _____.

2.1.3 Contractor shall provide _____.

2.2 The Department shall be responsible for _____.

2.3 Contractor shall not discuss with or disclose to any third party any information or material obtained pursuant to its obligations under this Agreement without the prior written consent of the Department.

2.4 Contractor agrees that it shall furnish and use materials, tools, equipment and supplies necessary for the satisfactory performance of the work described in this Agreement.

ARTICLE III: TIME OF PERFORMANCE

3.1 The services as stated in Article II, Scope of Services, shall be commenced on _____ and concluded on or before _____.

3.2 This Agreement shall remain in effect until the work described in Article II, Scope of Services, is completed to the satisfaction of the Department and until Contractor is paid in accordance with Article IV, Payment, or until terminated as provided for in Article VI, Termination of Contractor's Services, whichever is sooner. This Agreement shall be completed no later than the ____ day of _____.

3.3 The Department may renew this Agreement on the same terms and conditions by giving written notice prior to expiration. As the current General Assembly cannot commit a future General Assembly to expenditure, such renewal shall not extend beyond the expiration of the biennium in which this Agreement is effective.

3.4 It is expressly agreed by the parties that none of the rights, duties, and obligations herein shall be binding on either party if award of this Agreement would be contrary to the terms of Ohio Revised Code (hereinafter "O.R.C.") Section 3517.13, O.R.C. Section 127.16, or O.R.C. Chapter 102.

ARTICLE IV: PAYMENT

4.1 The Department shall pay Contractor a maximum of _____ _____Dollars ($_____) for the services rendered pursuant to this Agreement.

4.2 The total amount due was computed according to the following cost schedule:

-
-
-
-

4.3 Under no circumstances shall the total amount due or payable to Contractor under this Agreement exceed a total amount of _____Dollars ($_____).

4.4 Contractor shall not be reimbursed for travel, lodging or any other expenses incurred in the performance of this Agreement.

4.5 The Department as an agency of the State of Ohio is exempt from federal, state and local taxes and shall not be liable for any taxes under this Agreement.

4.6 Contractor further agrees to the specific termination, sanction and damage provisions applicable to Executive Order 2010-09S as set out in Article XXXII of this agreement.

4.7 Contractor shall submit a proper invoice for the costs incurred consistent with Section 4.2 above, and each invoice shall contain a description of the services performed and total hours worked. Upon receipt and approval of the invoice by the Department, a voucher for payment shall be processed

4.8 **(Optional)** The Department and Contractor acknowledge that the Department has applied to _____ for funds for payment for this work. If the Department does not receive the funds requested from _____ for this work, this Agreement shall be null and void.

ARTICLE V: CERTIFICATION OF FUNDS

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

ARTICLE VI: TERMINATION OF CONTRACTOR'S SERVICES

6.1 The Department may, at any time prior to the completion of services by Contractor under this Agreement, suspend or terminate this Agreement with or without cause by giving written notice to Contractor.

6.2 Contractor, upon receipt of notice of suspension or termination, shall cease work on the suspended or terminated activities under this Agreement, suspend or terminate all subcontracts relating to the suspended or terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and, if requested by the Department, furnish a report, as of the date of receipt of notice of suspension or termination, describing the status of all work under this Agreement, including, without limitation, results, conclusions resulting therefrom, and any other matters the Department requires.

6.3 Contractor shall be paid for services rendered up to the date Contractor received notice of suspension or termination, less any payments previously made, provided Contractor has supported such payments with detailed factual data containing services performed and hours worked. In the event of suspension or termination, any payments made by the Department for which Contractor has not rendered services shall be refunded.

6.4 In the event this Agreement is terminated prior to its completion, Contractor, upon payment as specified, shall deliver to the Department all work products and documents which have been prepared by Contractor in the course of providing services under this Agreement. All such materials shall become and remain the property of the Department, to be used in such manner and for such purpose as the Department may choose.

6.5 Contractor agrees to waive any right to, and shall make no claim for, additional compensation against the Department by reason of suspension or termination.

6.6 Contractor may terminate this Agreement upon 30 days prior written notice to the Department.

6.7 Contractor further agrees to the specific termination, sanction and damage provisions applicable to Executive Order 2010-09S as set out in Article XXXII of this agreement.

ARTICLE VII: RELATIONSHIP OF PARTIES

7.1 The Department and the Contractor agree that, during the term of this Agreement, Contractor shall be engaged by the Department solely on an independent contractor basis, and Contractor shall therefore be responsible for all Contractor's business expenses, including, but not limited to, employees' wages and salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage, if any.

7.2 Contractor agrees to comply with all applicable federal, state and local laws in the conduct of the work hereunder.

7.3 While Contractor shall be required to render services described hereunder for the Department during the term of this Agreement, nothing herein shall be construed to imply, by reason of Contractor's engagement hereunder on an independent contractor basis, that the Department shall have or may exercise any right of control over Contractor with regard to the manner or method of Contractor's performance of services hereunder.

7.4 Except as expressly provided herein, neither party shall have the right to bind or obligate the other party in any manner without the other party's prior written consent.

ARTICLE VIII: RECORD KEEPING

8.1 During performance of this Agreement and for a period of three years after its completion, Contractor shall maintain auditable records of all charges pertaining

to this Agreement and shall make such records available to the Department as the Department may reasonably require.

ARTICLE IX: RELATED AGREEMENTS

9.1 The work contemplated in this Agreement is to be performed by Contractor, who may subcontract without the Department's approval for the purchase of articles, supplies, components, or special mechanical services that do not involve the type of work or services described in Article II, Scope of Services, but which are required for its satisfactory completion. Contractor shall not enter into other subcontracts without prior written approval of the Department. All work subcontracted shall be at Contractor's expense.

9.2 Contractor shall bind its subcontractors to the terms of this Agreement, so far as applicable to the work of the subcontractor, and shall not agree to any provision which seeks to bind the Department to terms inconsistent with, or at variance from, this Agreement.

9.3 Contractor warrants that it has not entered into, nor shall it enter into, other agreements, without prior written approval of the Department, to perform substantially identical work for the State of Ohio such that the product contemplated hereunder duplicates the work called for by the other agreements.

9.4 Contractor shall furnish to the Department a list of all subcontractors, their addresses, tax identification numbers, and the dollar amount of each subcontract.

9.5 Contractor shall comply with the specific requirements of Executive Order 2010-09S as set out in Article XXXI of this agreement.

ARTICLE X: CONFLICTS OF INTEREST AND ETHICS COMPLIANCE

10.1 No personnel of Contractor or member of the governing body of any locality or other public official or employee of any such locality in which, or relating to which, the work under this Agreement is being carried out, and who exercise any functions or responsibilities in connection with the review or approval of this Agreement or carrying out of any such work, shall, prior to the completion of said work, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of said work.

10.2 Any such person who acquires an incompatible or conflicting personal interest, on or after the effective date of this Agreement, or who involuntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his or her interest to the Department in writing. Thereafter, he or she shall not participate in any action affecting the work under this Agreement, unless the

Department shall determine in its sole discretion that, in the light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

10.3 In accordance with Executive Order 2007-01S, Contractor, by acceptance of the purchase order, certifies (1) Contractor has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands Ohio ethics and conflict of interest laws, and (3) will take no action inconsistent with those laws and this order. Contractor understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of this Agreement and may result in the loss of other contracts with the State of Ohio up to and including disbarment. Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of Ohio ethics laws. Executive Order 2007-01S is available at www.governor.ohio.gov, click on Governor's Office and then on Executive Orders.

ARTICLE XI: NONDISCRIMINATION OF EMPLOYMENT

11.1 Pursuant to O.R.C. Section 125.111, Contractor agrees that Contractor, any subcontractor, and any person acting on behalf of Contractor or a subcontractor, shall not discriminate, by reason of race, color, religion, sex, age, national origin, or disability against any citizen of this state in the employment of any person qualified and available to perform the work under this Agreement.

11.2 Contractor further agrees that Contractor, any subcontractor, and any person acting on behalf of Contractor or a subcontractor shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement on account of race, color, religion, sex, age, national origin, or disability.

11.3 Contractor shall comply with all state and federal laws regarding equal employment opportunity, including Ohio Revised Code Section 125.111 and all related Executive Orders.

Before a contract can be awarded or renewed, Contractor shall submit an Affirmative Action Program Verification Form to the DAS Equal Opportunity Division to comply with the affirmative action requirements. An Affirmative Action Program Verification Form can be completed by using the State of Ohio's electronic filing process at the Ohio Business Gateway at http://business.ohio.gov/.

11.4 Contractor understands that the Department encourages Contractor and its subcontractors to purchase goods and services from certified Minority Business Enterprise (hereinafter "MBE") and Encouraging Diversity, Growth, and Equity (hereinafter "EDGE") vendors when available.

ARTICLE XII: RIGHTS IN DATA AND COPYRIGHTS/PUBLIC USE

12.1 The Department shall have unrestricted authority to reproduce, distribute and use (in whole or in part) any reports, data or materials prepared by Contractor pursuant to this Agreement. No such documents or other materials produced (in whole or in part) with funds provided to Contractor by the Department shall be subject to copyright by Contractor in the United States or any other country.

12.2 Contractor agrees that all deliverables hereunder shall be made freely available to the general public to the extent permitted or required by law.

ARTICLE XIII: LIABILITY

13.1 Contractor agrees to indemnify and to hold the Department and the State of Ohio harmless and immune from any and all claims for injury or damages arising from this Agreement which are attributable to Contractor's own actions or omissions or those of its trustees, officers, agents, employees, subcontractors, suppliers, third parties utilized by Contractor, or joint venturers while acting under this Agreement. Such claims shall include any claims made under the Fair Labor Standards Act or under any other federal or state law involving wages, overtime, or employment matters and any claims involving patents, copyrights, and trademarks.

13.2 Contractor shall bear all costs associated with defending the Department and the State of Ohio against any claims.

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

13.4 Contractor further agrees that Contractor shall be liable for all direct damages due to the fault or negligence of Contractor.

13.5 **(Optional)** Contractor shall purchase and maintain liability insurance pursuant to Exhibit A, attached hereto and incorporated herein. *(If liability insurance is to be carried by Contractor, attach and initial Exhibit A.]*

ARTICLE XIV: COMPLIANCE WITH LAWS

14.1 Contractor, in the execution of duties and obligations under this Agreement, agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances.

ARTICLE XV: DRUG FREE WORKPLACE

15.1 Contractor agrees to 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 none of its employees or permitted subcontractors engaged in the work being performed hereunder purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs in any way.

ARTICLE XVI: CAMPAIGN CONTRIBUTIONS

16.1 Contractor hereby certifies that all applicable parties listed in Division (I)(3) or (J)(3) of O.R.C. Section 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of O.R.C. Section 3517.13.

ARTICLE XVII: ENTIRE AGREEMENT/WAIVER

17.1 This Agreement contains the entire agreement between the parties hereto concerning the subject matter of the Agreement and shall not be modified, amended or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto.

This Agreement supersedes any and all previous agreements, whether written or oral, between the parties concerning the subject matter of the Agreement.

17.2 A waiver by any party of any breach or default by the other party under this Agreement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

ARTICLE XVIII: NOTICES

18.1 All notices, consents, and communications hereunder shall be given in writing, shall be deemed to be given upon receipt thereof, and shall be sent to the addresses first set forth above.

ARTICLE XIX: HEADINGS

19.1 The headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.

ARTICLE XX: SEVERABILITY

20.1 The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the

remaining provisions and any partially enforceable provision shall, to be extent enforceable in any jurisdiction, nevertheless be binding and enforceable.

ARTICLE XXI: CONTROLLING LAW

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

ARTICLE XXII: SUCCESSORS AND ASSIGNS

22.1 This Agreement and any rights, duties, or obligations hereunder may not be assigned or transferred in whole or in part by Contractor, without the prior written consent of the Department. Contractor shall comply with the specific assignment/delegation provisions applicable to Executive Order 2010-09S as set out in Article XXXI of this agreement.

ARTICLE XXIII: REMEDIES

23.1 The parties to this Agreement retain the right to use all administrative, contractual, legal or other remedies given under this Agreement. The election of one or more remedies by any party to this Agreement shall not constitute a waiver of the right to pursue other available remedies.

ARTICLE XXIV: LOBBYING

24.1 By signing this Agreement, Contractor certifies that it is in compliance with Sections 121.60 to 121.69 of the Ohio Revised Code and Contractor agrees that failure to comply shall be considered as a material breach of this Agreement.

ARTICLE XXV: NATIONAL LABOR RELATIONS ACT

25.1 By signing this Agreement, Contractor certifies that it is not on the most recent list concerning persons with uncollected unfair labor practice contempt of court findings established pursuant to Section 121.23 of the Ohio Revised Code, by the Secretary of State.

ARTICLE XXVI: NOTIFICATION OF UNAUTHORIZED RELEASE OF PERSONAL INFORMATION IN COMPUTERIZED DATABASES

26.1 Contractor agrees that it will contact, at Contractor's cost, individuals residing in Ohio if unencrypted or unredacted personal information about those individuals, that is included in computerized data owned or licensed by Contractor, is accessed and acquired by unauthorized persons pursuant to the applicable provisions of

Sections 1345.51, 1347.01, 1347.12, 1349.19, 1349.191 and 1349.192 of the Ohio Revised Code.

ARTICLE XXVII: FEDERAL EXCLUDED PARTIES LIST SYSTEM

27.1 If an agency of the United States Government is the source of the funds for this Agreement, Contractor represents and warrants that it or any person acting on behalf of Contractor is not included on the federal Excluded Parties List System ("EPLS") operated by the General Services Administration and described in 48 C.F.R. 9.404. If this warranty is found to be false, this Agreement is void *ab initio* and Contractor shall immediately repay to the Department any funds paid under this Agreement.

ARTICLE XXVIII: FINDINGS FOR RECOVERY

28.1 Contractor warrants that it is not subject to an "unresolved" finding for recovery under O.R.C. Section 9.24. If this warranty is found to be false, this Agreement is void *ab initio* and Contractor shall immediately repay to the Department any funds paid under this Agreement.

ARTICLE XXIX: DEBARMENT

29.1 Contractor represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either O.R.C. Section 153.02 or O.R.C. Section 125.25. If this representation and warranty is found to be false, this Agreement is void *ab initio* and Contractor shall immediately repay to the Department any funds paid under this Agreement.

ARTICLE XXX: DECLARATION REGARDING MATERIAL ASSISTANCE/NONASSISTANCE TO A TERRORIST ORGANIZATION

30.1 Contractor hereby represents and warrants to the Department that it has not provided any material assistance, as that term is defined in O.R.C. Section 2909.33(C), to any organization identified by and included on the United States Department of State Terrorist Exclusion List and, if required by law to complete the certification described in O.R.C. Section 2909.33(C), that it has truthfully answered "no" to every question on the "Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization." Contractor further represents and warrants that it has completed or will complete such certification, if required by law, to the Ohio Office of Budget and Management through the State of Ohio's electronic filing process at the Ohio Business Gateway at http://business.ohio.gov/ prior to execution of this Agreement. If these representations and warranties are found to be false, this Agreement is void *ab*

initio and Contractor shall immediately repay to the Department any funds paid under this Agreement.

ARTICILE XXXI: COMPLIANCE WITH EXECUTIVE ORDER 2007-09S

31.1 Pursuant to the requirements of Executive Order 2007-09S, public dollars provided under this Agreement shall not be spent by Contractor on food-related purchases. A copy of Executive Order 2007-09S is available at the following website: (http://www.governor.ohio.gov/Default.aspx?tabid=93).

ARTICLE XXXII: COMPLIANCE WITH EXECUTIVE ORDER 2010-09S

32.1 Executive Order Requirements: The Contractor affirms to have read and understands Executive Order 2010-09S issued by Ohio Governor Ted Strickland 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. The Executive Order is provided as an attachment and also is available at the following website: (http://www.governor.ohio.gov/Default.aspx?tabid=1495).

The Contractor also affirms, understands, and agrees to immediately notify the State of any change or shift in the location(s) of services performed by the Contractor or its subcontractors under this Contract, and no services shall be changed or shifted to a location(s) that are outside of the United States.

32.2 Termination, Sanction, Damages: If Contractor or any of its subcontractors 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. The State is not obligated to pay and shall not pay for such services. If Contractor or any of its subcontractors perform any such services, Contractor shall immediately return to the State all funds paid for those services. The State may also recover from the Contractor all costs associated with any corrective action the State may undertake, including but not limited to an audit or a risk analysis, as a result of the Contractor performing services outside the United States.

The State may, at any time after the breach, terminate the Contract, upon written notice to the Contractor. The State 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.

If the State determines that actual and direct damages are uncertain or difficult to ascertain, the State in its sole discretion may recover a payment of liquidated damages in the amount of one percent of the value of the Contract.

The State, in its sole discretion, may provide written notice to Contractor of a breach and permit the Contractor to cure the breach. Such cure period shall be no longer than 21 calendar days. During the cure period, the State may buy substitute services from a third party and recover from the Contractor any costs associated with acquiring those substitute services.

Notwithstanding the State permitting a period of time to cure the breach or the Contractor's cure of the breach, the State does not waive any of its rights and remedies provided the State in this Contract, including but not limited to recovery of funds paid for services the Contractor performed outside of the United States, costs associated with corrective action, or liquidated damages.

32.3 Assignment/Delegation: The Contractor will not assign any of its rights, nor delegate any of its duties and responsibilities under this Contract, without prior written consent of the State. Any assignment or delegation not consented to may be deemed void by the State.

ARTICLE XXXIII: EXECUTION

33.1 This Agreement is not binding upon the Department unless executed in full.

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

OHIO DEPARTMENT OF INSURANCE

Mary Jo Hudson
Superintendent

By: _____
(Signature)

_____
(Printed Name)

_____
(Title)

Date: _____

By: _____
(Signature)

_____
(Printed Name)

_____
(Title)

Date: _____

ATTACHMENT

TED STRICKLAND
GOVERNOR
STATE OF OHIO

Executive Order 2010-09S

Banning the Expenditure of Public Funds for Offshore Services

1. Ohio's Economic Vitality Necessitates Constant Vigilance in State Job Creation Efforts. State officials and employees must at all times remain passionately focused on initiatives that will create and retain jobs in the United States in general and in Ohio, in particular, and must do so especially during Ohio's continuing efforts to recover from the recent global recession.

2. No Public Funds Should be Spent on Services Provided Offshore. Allowing public funds to pay for offshore services undermines economic development objectives and any such offshore services carry unacceptable quality and security risks.

   a. The Purchase of Offshore Services with Public Funds Undermines Economic Development and Other Job Creation and Retention Objectives. The expenditure of public funds for services provided offshore deprives Ohioans and other Americans critical employment opportunities. It also undermines efforts to attract businesses to Ohio and retain them in Ohio, initiatives in which the State has invested heavily.

   b. The Purchase of Offshore Services Has Unacceptable Business Consequences. The use of offshore service providers could pose unacceptable data security, and thus privacy and identity theft risks. There are pervasive service delivery problems with offshore providers, including dissatisfaction with the quality of their services and with the fact that services are being provided offshore. It is difficult and expensive to detect illegal activity and contract violations and to pursue legal recourse for poor performance or data security

violations. The State's use of offshore service providers ill-serves the people of Ohio who are the primary consumers of the services provided by the State.

3. **Ohio's Policy Has Been – and Must Continue To Be – That Public Funds Should Not Be Spent on Services Provided Offshore.** Throughout my Administration, procurement procedures have been in place that restrict the purchase of offshore services. Despite these requirements, federal stimulus funds were recently used to purchase services from a domestic company which ultimately provided some of those services offshore. This incident was unacceptable and has caused me, through this Order, to redouble my commitment to ensure that public funds are not expended for offshore services.

4. **Additional Steps Will Ensure that Public Funds Are Not Spent on Services Provided Offshore.** In order to ensure that the State of Ohio makes no expenditures for services provided offshore, I hereby order the following:

   a. No Cabinet Agency, Board or Commission (Executive Agency) shall enter into any contract which uses any funds within its control to purchase services which will be provided outside the United States. This Order applies to all funds in the custody of an Executive Agency, be they from state, federal, philanthropic or private sources. It applies to all purchases of service made directly by an Executive Agency and services provided by sub-contractors of those providing services purchased by an Executive Agency.

   b. This Executive Order will be personally provided, by the Director, Chair or other chief executive official of each Executive Agency, to the Chief Procurement Officer or other individual at that entity responsible for contracts for services.

   c. The Department of Administrative Services, through Ohio's Chief Procurement Officer (OCPO), shall have in place, by August 31, 2010, procedures to ensure all of the following:

      i. All agency procurement officers, or the person with equivalent duties at each Executive Agency (APOs), have standard language in all Executive Agency contracts which:

         (a) Reflect this Order's prohibition on the purchase of offshore services.

         (b) Require service providers or prospective service providers to:

(i) Affirm that they understand and will abide by the requirements of this Order.

(ii) Disclose the location(s) where all services will be performed by any contractor or subcontractor.

(iii) Disclose the locations(s) where any state data associated with any of the services they are providing, or seek to provide, will be accessed, tested, maintained, backed-up or stored.

(iv) Disclose any shift in the location of any services being provided by the contractor or any subcontractor.

(v) Disclose the principal location of business for the contractor and all subcontractors who are supplying services to the state under the proposed contract.

ii. All APOs are ensuring that all quotations, statements of work, and other such proposals for services affirm this Order's prohibition on the purchase of offshore services and include all of this Order's disclosure requirements.

(a) Any such proposal for services lacking the affirmation and disclosure requirements of this Order will not be considered.

(b) Any such proposal where the performance of services is proposed to be provided at a location outside the United States by the contractor or any sub-contractor, will not be considered.

iii. All procurement manuals, directives, policies, and procedures reflect the requirements of this Order.

iv. All APOs have adequate training which addresses the terms of this Order.

5. **Exceptions.** Nothing in this Order is intended to contradict any state or federal law. In addition, this Order does not apply to:

a. Services necessary to support the efforts of the Department of Development Global Markets Division to attract jobs and business to the State of Ohio, including incidental services for the support of trade missions, payment of international staff, and services necessary for the operation of international offices.

b. Academic, instructional, educational, research or other services necessary to support the international missions of Ohio's public colleges and universities.

6. I signed this Executive Order on August 6, 2010 in Columbus, Ohio and it will not expire unless rescinded.

Ted Strickland

Ted Strickland, Governor

ATTEST:

Jennifer Brunner, Secretary of State

EXHIBIT B

DEPARTMENT OF ADMINISTRATIVE SERVICES

STANDARD AFFIRMATION AND DISCLOSURE FORM

EXECUTIVE ORDER 2010-09S

Banning the Expenditure of Public Funds on Offshore Services

All of the following provisions must be included in all invitations to bid, requests for proposals, state term schedules, multiple award contracts, requests for quotations, informal quotations and statements of work. This information is to be submitted as part of the response to any of the procurement methods listed.

CONTRACTOR/SUBCONTRACTOR AFFIRMATION AND DISCLOSURE:

By the signature affixed to this response, the Bidder/Offeror affirms, understands and will abide by the requirements of Executive Order 2010-09S issued by Ohio Governor Ted Strickland. If awarded a contract, the Bidder/Offeror becomes the Contractor and affirms that both the Contractor and any of its subcontractors shall perform no services requested under this Contract outside of the United States. The Executive Order is attached and is available at the following website: (http://www.governor.ohio.gov/Default.aspx?tabid=1495).

The Bidder/Offeror shall provide all the name(s) and location(s) where services under this Contract will be performed in the spaces provided below or by attachment. Failure to provide this information as part of the response will deem the Bidder/Offeror not responsive and no further consideration will be given to the response. Bidder/Offeror's offering will not be considered. If the Bidder/Offeror will not be using subcontractors, indicate "Not Applicable" in the appropriate spaces.

1. Principal location of business of Contractor:

   _____ _____
   (Address) (City, State, Zip)

   Name/Principal location of business of subcontractor(s):

   _____ _____
   (Name) (Address, City, State, Zip)

   _____ _____
   (Name) (Address, City, State, Zip)

2. Location where services will be performed by Contractor:

   _____ _____
   (Address) (City, State, Zip)

   Name/Location where services will be performed by subcontractor(s):

(Name) (Address, City, State, Zip)

(Name) (Address, City, State, Zip)

3. Location where state data will be stored, accessed, tested, maintained or backed-up, by Contractor:

(Address) (Address, City, State, Zip)

Name/Location(s) where state data will be stored, accessed, tested, maintained or backed-up by subcontractor(s):

(Name) (Address, City, State, Zip)

(Name) (Address, City, State, Zip)

(Name) (Address, City, State, Zip)

(Name) (Address, City, State, Zip)

(Name) (Address, City, State, Zip)

4. Location where services to be performed will be changed or shifted by Contractor:

(Address) (Address, City, State, Zip)

Name/Location(s) where services will be changed or shifted to be performed by subcontractor(s):

(Name) (Address, City, State, Zip)

(Name) (Address, City, State, Zip)

(Name) (Address, City, State, Zip)

(Name) (Address, City, State, Zip)

(Name)

(Address, City, State, Zip)