

# REQUEST FOR PROPOSALS

RFP NUMBER: 0A07004  
DATE ISSUED: March 22, 2007

The State of Ohio, through the Office of Information Technology, Investment and Governance Division is requesting proposals for:

## Microsoft Large Account Reseller(s)

INQUIRY PERIOD BEGINS: March 22, 2007  
INQUIRY PERIOD ENDS: April 12, 2007  
OPENING DATE: April 19, 2007  
OPENING TIME: 11:00 A.M.  
OPENING LOCATION: Office of Information Technology  
Contract Management Bid Room  
30 East Broad Street, 40th Floor  
Columbus, Ohio 43215

This RFP consists of five parts and 13 attachments, totaling 72 consecutively numbered pages. Supplements also are attached to this RFP with a beginning header page and an ending trailer page. Please verify that you have a complete copy.



## PART ONE: EXECUTIVE SUMMARY

**Purpose.** This is a Request for Competitive Sealed Proposals ("RFP") under Sections 125.071 and 125.18 of the Ohio Revised Code (the "Revised Code") and Section 123:5-1-8 of the Ohio Administrative Code (the "Administrative Code"). The Office of Information Technology is soliciting competitive sealed proposals ("Proposals") from Microsoft-designated Large Account Resellers (LAR) to establish Agreement enrollments which will provide Microsoft software and services to agencies of the State of Ohio and local Ohio governments (the "Work"), and this RFP is the result of that request.

If a suitable offer is made in response to this RFP, the State of Ohio (the "State"), through the Office of Information Technology, may enter into a contract (the "Contract") to have the selected offeror (the "Contractor") perform all or part of the Work. This RFP provides details on what is required to submit a Proposal for the Work, how the State will evaluate the Proposals, and what will be required of the Contractor in performing the Work.

This RFP also gives the estimated dates for the various events in the submission process, selection process, and performance of the Work. While these dates are subject to change, prospective offerors must be prepared to meet them as they currently stand.

Once awarded, the term of the Contract will be from the award date until the Work is completed to the satisfaction of the State and the Contractor is paid or June 30, 2007, whichever is sooner. The State may renew this Contract for up to 2 years and 2 additional one-year term(s), subject to and contingent on the discretionary decision of the Ohio General Assembly to appropriate funds for this Contract in each new biennium. Any such renewal of all or part of the Contract also is subject to the satisfactory performance of the Contractor and the needs of the Office of Information Technology.

**The State may reject any Proposal if the offeror fails to meet a deadline in the submission or evaluation phases of the selection process or objects to the dates for performance of the Work or the terms and conditions in this RFP.**

### **Background.**

The State and Microsoft Corporation have entered into Agreements that permit all entities of State and local Ohio government ("Affiliates") to procure Microsoft products and services at the lowest possible prices. The State has also entered into an Academic Agreement with Microsoft, which is available to State agencies and local entities who qualify under the Microsoft Academic guidelines. Affiliates and Microsoft Corporation may agree to provide Premier Support Services and Microsoft Consulting Services under the Contract resulting from this RFP.

Actual product prices will be established by this RFP and the resulting Contract with the LAR offeror(s) that submits the most favorable response to this RFP. This pricing will be available to any Affiliates, regardless of the size of the Affiliates or the volume of products procured. To take advantage of this pricing, each Affiliate would establish its own Agreement enrollment with the Contractor. Price changes and amendments are posted on the State's procurement website monthly identifying new/revised product pricing.

The Contractor must pay the State a share of the sales transacted under this Contract. The Contractor must remit the revenue share in US dollars within 30 days after the end of the quarterly reporting period. The revenue share that the Contractor must pay equals .0075 of the total quarterly sales reported. The revenue share is included in the prices reflected on Exhibit I and reflected in the total amount charged to ordering activities, and the Contractor may not add a surcharge to orders under this Contract to cover the cost of the revenue share.

The intent of this RFP is to establish a contract with no more than 2 LAR's and in some cases, Microsoft Corporation to sell Microsoft products and services at discounted pricing to Affiliates. To contractually allow the sale of these Microsoft products and services to agencies and government entities at reduced

governmental and educational pricing, and provide related terms and conditions, the State of Ohio has established the following agreements with Microsoft Corporation that are all currently in effect through September 30, 2009. These include, but are not limited to:

1. **Microsoft Enterprise Agreement (State and Local Government)**

- a. **Purpose** – Allows Affiliates to acquire one or more Microsoft platform product(s) for all qualified desktops throughout their enterprise.
- b. **Specifics** - Software assurance **MUST** be obtained for each software license ordered. This coverage provides the right to upgrade to, and run, the latest version of that product made available during the covered period that is through September 30, 2009 with membership in Microsoft's Software Assurance Membership program. Special benefits that may involve additional terms and conditions are available to members.
- c. **Eligibility** – All Affiliates may enroll in the Enterprise Agreement program. Upon acceptance, they must comply with the terms of their enrollment and the terms of the Enterprise Agreement enrollment incorporated by reference in that enrollment. Microsoft reserves the right to refuse to accept an enrollment if they have a business reason for doing so. Renewals on existing products, additional enterprise product purchases, and product and pricing under special circumstances are also available.
- d. **Cost** - Affiliates saved from forty-six to fifty-seven percent (46–57%) using Enterprise Agreement instead of shrink wrap or open government pricing. This information is based on purchasing data available during the past five years.
- e. **Benefit** - This agreement offers the most cost effective option when all qualified desktop platform products and upgrade coverage are needed.

2. **Microsoft Select Agreement (State and Local Government)**

- a. **Purpose** - Allows Affiliates to acquire one or more Microsoft application, server and system software products and services for one or more qualified desktops, servers, and systems owned by their enterprise. Software assurance **MAY** or **MAY NOT** be acquired for any software purchased using this Select Agreement.
- b. **Specifics** – Offers the flexibility to selectively acquire Microsoft application, server and system software products with or without requiring the acquisition of corresponding software assurance for a product.
- c. **Eligibility** – All Affiliates may enroll in the Select Agreement program. Upon acceptance, they must comply with the terms of their enrollment and the terms of the Select Agreement enrollment incorporated by reference in that enrollment. Microsoft reserves the right to refuse to accept an enrollment if they have a business reason for doing so. Renewals on existing products, additional product purchases, and product and pricing under special circumstances are also available.
- d. **Cost** – Since the State of Ohio is considered a single organization by Microsoft Corp. the lowest pricing, that is level D, is offered to all state agencies and government entities. State agencies and government entities saved from thirty to forty-one percent (30–41%) using Select Agreement instead of shrink wrap or open government pricing. This information is based on purchasing data available during the past five years.
- e. **Benefit** - This agreement offers the most cost effective option for acquiring Microsoft application, server and system software with the flexibility of single or multiple quantities and optional software assurance.

Two other services are offered under the Microsoft Select Agreement. These are:

- **Premier Support** – Microsoft Corporation provides and LAR's may pass through Microsoft Premier Support services to Affiliates. These services include technical staff, problem resolution, visits, subscriptions, and workshops in hourly, daily or individual increments depending on the support type with pricing specified. Terms and conditions for Microsoft Premier Support Services are provided in the Microsoft Master Services Agreement – State and Local (NON-STANDARD) referenced below.

- **Microsoft Consulting Services (MCS)** – Microsoft Corporation provides and LAR's may pass through Microsoft Consulting Services (MCS) to State of Ohio agencies and government entities. These include hourly rates for a variety of MCS consultants and technicians with pricing specified. Terms and conditions for Microsoft Consulting Services are provided in the Microsoft Master Services Agreement – State and Local (NON-STANDARD) referenced below.

3. **Microsoft Master Services Agreement (State and Local – Nonstandard)**

- Purpose** – Provides primary set of contractual terms and conditions that cover all services acquired by Affiliates from Microsoft Corporation.
- Specifics** – Provides product support, consulting and other services under the terms and conditions of this master agreement and any statement of services including Microsoft Consulting Services and Premier Support in the Microsoft Select Agreement. Areas addressed but not limited to are restrictions on use, method of purchase/billing, confidentiality, warranties, liability and termination.
- Eligibility** – All Affiliates acquiring Microsoft services are able to use this Master Services Agreement.
- Cost** – The cost for Microsoft services is specific to each statement of services established between a state agency or government entity and Microsoft Corporation.
- Benefit** – Establishes structural and legal framework under which Microsoft Corporation services are performed for Affiliates.

4. **Microsoft Academic Agreement (United States commercial and state & local only)**

- Purpose** - Allows educationally eligible Affiliates to acquire one or more Microsoft application, server and system software products and services for one or more qualified desktops, servers, and systems owned by their enterprise at extremely low pricing. Software assurance MAY or MAY NOT be acquired for any software purchased using this Academic Agreement.
- Specifics** - Offers the flexibility to selectively acquire Microsoft application, server and system software products with or without requiring the acquisition of corresponding software assurance for a product.
- Eligibility** – Any Affiliate that is a qualified educational user meeting Microsoft's criteria to become an eligible education customer may enroll in the Academic Agreement program. Upon acceptance, they must comply with the terms of their enrollment and the terms of the Academic Agreement enrollment incorporated by reference in that enrollment. Microsoft reserves the right to refuse to accept an enrollment if they have a business reason for doing so. Renewals on existing products, additional product purchases, and product and pricing under special circumstances are also available.
- Cost** – Pricing is extremely low for qualifying educational institutions
- Benefit** - This agreement provides eligible education customers with affordable pricing for Microsoft products and services.

LAR's who qualify by Microsoft Corporation to sell Microsoft products and services to state and local governments and eligible education customers are called resellers or large account resellers (LARS).

**Overview of the Work's Scope.** The scope of the Work is provided in Attachment Two of this RFP. This section only gives a summary of the Work. If there is any inconsistency between this summary and the attachment's description of the Work, the attachment will govern.

The Contractor must establish Select or Enterprise Enrollments with any Affiliate that seeks to participate in the program and provide the goods and services called for in this RFP.

**Objectives.** It is the State's objective to select one or two Contractors from which Affiliates may procure Microsoft products via individual Select, Enterprise, or Academic Select Enrollments. Selection of a second LAR will be at the sole discretion of the State. Additionally, the State has the following objectives that it wants the Work to fulfill, and it will be the Contractor's obligation to ensure that the Work meets these objectives:

- To establish uniform product pricing at the lowest possible level, which can be used by all enrollees regardless of purchasing volume.
- To assure that all enrollees receive necessary administrative and support services from the Contractor.
- To provide instruction and guidance to state agencies and local entities in developing an understanding of Microsoft pricing and licensing for various products and services.
- To establish the availability of Microsoft Consulting Services at competitive rates.
- To establish the availability of Premier Support services.
- To adhere to the Microsoft Master Services Agreement.

**Mandatory Requirement Overview.**

Mandatory Requirement	Does Not Meet	Meets
<b>Offeror Mandatory Experience Requirements</b>		
Offeror must be a certified Microsoft LAR (proof required).	<b>Reject</b>	<b>Accept</b>

**Calendar of Events.** The schedule for the RFP process and the Work is given below. The State may change this schedule at anytime. If the State changes the schedule before the Proposal due date, it will do so through an announcement on the State Procurement Website’s question and answer area for this RFP. The Website announcement will be followed by an amendment to this RFP, also available through the State’s Procurement Website. After the Proposal due date and before the award of the Contract, the State will make schedule changes through the RFP amendment process. Additionally, the State will make changes in the Work schedule after the Contract award through the change order provisions in the General Terms and Conditions Attachment to this RFP. It is each prospective offeror’s responsibility to check the Website question and answer area for this RFP for current information regarding this RFP and its Calendar of Events through award of the Contract.

**Dates:**

Firm Dates

RFP Issued: March 22, 2007  
 Inquiry Period Begins: March 22, 2007  
 Inquiry Period Ends: April 12, 2007, at 8:00 a.m.  
 Proposal Due Date: April 19, 2007, at 11:00 a.m.

Estimated Dates

Award Date: May 2007

Estimated Work Dates

Work Begins: May 2007

There are references in this RFP to the Proposal due date. Unless it is clearly provided to the contrary in this RFP, that any such reference means the date and time (Columbus, Ohio local time) that the Proposals are due and not just the date.

**PART TWO: STRUCTURE OF THIS RFP**

**Organization.** This RFP is organized into five parts and has 13 attachments. The parts and attachments are listed below. There also may be one or more supplements to this RFP listed below.

**Parts:**

- Part 1 Executive Summary
- Part 2 Structure of this RFP
- Part 3 General Instructions
- Part 4 Evaluation of Proposals
- Part 5 Award of the Contract

**Attachments:**

- Attachment One Evaluation Criteria
- Attachment Two Work Requirements and Special Provisions
- Attachment Three Requirements for Proposals
- Attachment Four General Terms and Conditions
- Attachment Five Sample Contract
- Attachment Six Contractor Performance Form
- Attachment Seven Offeror Profile Summary
- Attachment Eight Microsoft Consulting Services Agreement
- Attachment Nine Special Select Enrollment
- Attachment Ten Amendment to Select Agreement
- Attachment Eleven Amendment to Enterprise Agreement
- Attachment Twelve Amendment to Premier Support Services Agreement
- Attachment Thirteen Cost Summary

**Supplements:**

- Supplement One W-9 Form

**PART THREE: GENERAL INSTRUCTIONS**

The following sections provide details on how to get more information about this RFP and how to respond to it. All responses must be complete and in the prescribed format.

**Contacts.** The following person will represent the State during the RFP process:

Procurement Representative:

Cyrus Carter  
Acquisition Analyst  
Office of Information Technology  
Acquisition Management Office  
30 East Broad Street, 39<sup>th</sup> Floor  
Columbus, Ohio 43215

During the performance of the Work, a State representative (the "Contract Representative") will represent the Office of Information Technology and be the primary contact for the Work. The State will designate the Contract Representative in writing after the Contract award.

**Inquiries.** Offerors may make inquiries regarding this RFP anytime during the inquiry period listed in the Calendar of Events. To make an inquiry, offerors must use the following process:

- Access the State's Procurement Website at <http://procure.ohio.gov/>;
- From the Navigation Bar on the left, select "**Find It Fast**";

- Select “Doc/Bid/Schedule #” as the Type;
- Enter the RFP number found on the first page of this RFP (the RFP number begins with zero followed by the letter “A”);
- Click the “Find It Fast” button;
- On the document information page, click the “Submit Inquiry” button;
- On the document inquiry page, complete the required “Personal Information” section by providing:
  - First and last name of the prospective offeror’s representative who is responsible for the inquiry,
  - Name of the prospective offeror,
  - Representative’s business phone number, and
  - Representative’s email address;
- Type the inquiry in the space provided including:
  - A reference to the relevant part of this RFP,
  - The heading for the provision under question, and
  - The page number of the RFP where the provision can be found; and
- Click the “Submit” button.

An offeror submitting an inquiry will receive an immediate acknowledgement that the State has received the inquiry as well as an email acknowledging receipt. The offeror will not receive a personalized response to the question nor notification when the State has answered the question.

Offerors may view inquiries and responses on the State’s Procurement Website by using the “Find It Fast” feature described above and by clicking the “View Q & A” button on the document information page.

The State usually responds to all inquiries within three business days of receipt, excluding weekends and State holidays. But the State will not respond to any inquiries received after 8:00 a.m. on the inquiry end date.

**Amendments to the RFP.** If the State revises this RFP before the Proposals are due, it will announce any amendments on the State Procurement Website.

Offerors may view amendments by using the “Find It Fast” function of the State’s Procurement Webpage (described in the Inquiries Section above) and then clicking on the amendment number to display the amendment.

When an amendment to this RFP is necessary, the State may extend the Proposal due date through an announcement on the State Procurement Website. The State may issue amendment announcements anytime before 5:00 p.m. on the day before Proposals are due, and it is each prospective offeror’s responsibility to check for announcements and other current information regarding this RFP.

After the Proposal due date, the State will distribute amendments only to those offerors whose Proposals are under active consideration. When the State amends the RFP after the Proposals due date, the State will permit offerors to withdraw their Proposals within five business days after the amendment is issued. This withdrawal option will allow any offeror to remove its Proposal from active consideration should the offeror feel that the amendment changes the nature of the transaction so much that the offeror’s Proposal is no longer in its interests. Alternatively, the State may allow offerors that have Proposals under active consideration to modify their Proposals in response to the amendment.

If the State allows offerors to modify their Proposals in response to an amendment, the State may limit the nature and scope of the modifications. Unless otherwise provided in the State’s notice, offerors must make any modifications or withdrawals in writing and submit them to the State within five business days after the amendment is issued at the address and in the same manner required for the submission of the original Proposals. If this RFP provides for a negotiation phase, this submission procedure will not apply to changes negotiated during that phase. The State may reject any modification that is broader in scope

than the State has authorized in the announcement of the amendment and treat it as a withdrawal of the offeror's Proposal.

**Proposal Submittal.** Each offeror must submit a technical section and a cost section as part of its total Proposal before the opening time on the Proposal due date. The offeror must submit the technical section as a separate package from the cost section of its Proposal, and each section must be submitted in its own separate, opaque package. The package with the technical section of the Proposal must be sealed and contain five complete and signed copies of the technical section of the Proposal, and the package with the cost section also must be sealed and contain two complete and signed copies of the cost section of the Proposal. Further, the offeror must mark the outside of each package with either "Microsoft Select Agreement for the State of Ohio RFP – Technical Proposal" or "Microsoft Select Agreement for the State of Ohio RFP #0A07004 – Cost Summary," as appropriate.

Included in each sealed package, the offeror also must provide an electronic copy of everything contained within the package on CD-ROM in Microsoft Office, Microsoft Project, and Adobe Acrobat format, as appropriate. If there is a discrepancy between the hard copy and the electronic copy of the Proposal, the hard copy will control, and the State will base its evaluation of the offeror's Proposal on the hard copy.

Proposals are due no later than 11:00 a.m. on the Proposal due date. Proposals submitted by email, fax, or other electronic means are not acceptable, and the State may reject them. Offerors must submit their Proposals to:

Office of Information Technology  
Contract Management Bid Room  
30 East Broad Street, 40<sup>th</sup> Floor  
Columbus, Ohio 43215

The State may reject any Proposals or unsolicited modifications that it receives after the deadline. An offeror that mails its Proposal must allow for adequate mailing time to ensure its timely receipt. Offerors also must allow for potential delays due to increased security. The Ohio Building Authority has stationed x-ray equipment on the Rhodes Tower loading dock and uses it to x-ray in-coming deliveries and mail. Loading dock hours are from 7:00 am to 5:00 pm, Monday through Friday, excluding State holidays. No deliveries will be accepted before or after these hours without prior arrangements. Further, all deliveries to Rhodes Tower must be made through the loading dock, where they will be scanned and tagged. Any visitors attempting to bring packages through the Rhodes Tower lobby that cannot be opened for inspection will be redirected to the loading dock to have their packages scanned and tagged. Offerors must allow sufficient time for this additional security process, since the State may reject late Proposals regardless of the cause for the delay.

Each offeror must carefully review the requirements of this RFP and the contents of its Proposal. Once opened, Proposals cannot be altered or withdrawn, except as allowed by this RFP.

By submitting a Proposal, the offeror acknowledges that it has read this RFP, understands it, and agrees to be bound by its requirements. The State is not responsible for the accuracy of any information regarding this RFP that was gathered through a source other than the inquiry process described in the RFP.

Revised Code Section 9.24 prohibits the State from awarding a contract to any entity against whom the Auditor of State has issued a finding for recovery (a "Finding"), if the Finding is unresolved at the time of the award. This also applies to renewals of contracts. By submitting a Proposal, the offeror warrants that it is not subject to an unresolved Finding under Section 9.24 at the time of its submission. Additionally, the offeror warrants that it will notify the Office of Information Technology in writing immediately upon becoming subject to such an unresolved Finding after submitting its Proposal and before the award of a Contract under this RFP. Should the State select the offeror's Proposal for award of a Contract, this warranty of immediate written notice will apply during the term of the Contract, including any renewals or extensions. Further, the State may treat any unresolved Finding against the Contractor that prevents a

renewal of the Contract as a breach, in accordance with the provisions of Attachment Four, General Terms and Conditions.

The State may reject any Proposal if the offeror takes exception to the terms and conditions of this RFP, includes unacceptable assumptions or conditions in its Proposal, fails to comply with the procedure for participating in the RFP process, or fails to meet any requirement of this RFP. The State also may reject any Proposal that it believes is not in its interests to accept and may decide not to award a contract to any or all of the offerors responding to this RFP.

Offerors may not prepare or modify their Proposals on State premises.

All Proposals and other material that offerors submit will become the property of the State and may be returned only at the State's option. Offerors should not include any proprietary information in a Proposal or other material submitted as part of the evaluation process, because the State will have the right to use any materials or ideas submitted in any Proposal without compensation to the offeror. Additionally, all Proposals will be open to the public after the State has awarded the Contract.

The State will retain all Proposals, or a copy of them, as part of the Contract file for at least three years. After the three-year retention period, the State may return, destroy, or otherwise dispose of the Proposals and any copies of them.

**Waiver of Defects.** The State may waive any defects in any Proposal or in the submission process followed by an offeror, but the State will only do so if it believes that it is in the State's interests and will not cause any material unfairness to other offerors.

**Multiple or Alternate Proposals.** The State will not accept multiple Proposals from a single offeror or any alternative solutions or options to the requirements of this RFP. Additionally, any offeror that disregards a requirement in this RFP simply by proposing an alternative to it will have submitted a defective Proposal that the State may reject. Further, any offeror that submits multiple Proposals may have all its Proposals rejected.

**Changes to Proposals.** The State will allow modifications or withdrawals of Proposals only if the State receives them before the Proposal due date. No modifications or withdrawals will be permitted after the due date, except as authorized by this RFP.

**Proposal Instructions.** Each Proposal must be organized in an indexed binder ordered in the same manner as the response items are ordered in the applicable attachments to this RFP. The requirements for a Proposal's contents and formatting are contained in the attachments to this RFP. The State wants clear and concise Proposals, but offerors must answer questions completely and meet all the RFP's requirements.

The State is not liable for any costs an offeror incurs in responding to this RFP or from participating in the evaluation process, regardless of whether the State awards the Contract through this process, decides not to go forward with the Work, cancels this RFP for any reason, or contracts for the Work through some other process or through another RFP.

**Location of Data.** Unless the State agrees otherwise in writing, the selected offeror and its subcontractors must do the Work and keep all State data at the location(s) disclosed in the offeror's Proposal. Additionally, if Attachment Two contains any restrictions on where the Work may be done or where any State data may be kept, the State may reject any Proposal that proposes to do any Work or make State data available outside of those geographic restrictions.

#### PART FOUR: EVALUATION OF PROPOSALS

**Disclosure of Proposal Contents.** The State will seek to open the Proposals in a manner that avoids disclosing their contents. Additionally, the State will seek to keep the contents of all Proposals

confidential until the Contract is awarded. But the State will prepare a registry of Proposals that contains the name of each offeror. The public may inspect that registry after the State opens the Proposals.

**Rejection of Proposals.** The State may reject any Proposal that is not in the required format, does not address all the requirements of this RFP, objects to the terms or conditions, or that the State determines is excessive in price or otherwise not in the State's interests to accept. In addition, the State may cancel this RFP, reject all the Proposals, and seek to do the Work through a new RFP or other means.

**Evaluation of Proposals Generally.** The evaluation process may consist of up to six distinct phases:

1. Initial review;
2. Technical evaluation;
3. Evaluation of costs;
4. Request for more information;
5. Determination of responsibility; and
6. Contract Negotiations.

The State may decide whether phases four and six are necessary, and the State may rearrange the order in which it proceeds with the phases. The State also may add or remove sub-phases to any phase at any time, if the State believes doing so will improve the evaluation process.

**Clarifications and Corrections.** During the evaluation process, in the State's sole discretion, it may request clarifications from any offeror under active consideration and may give any offeror the opportunity to correct defects in its Proposal, if the State believes doing so would not result in an unfair advantage for the offeror, and it is in the State's interests. The State may reject any clarification that is non-responsive or broader in scope than what the State requested. If the State does so, or if the offeror fails to respond to the request for clarification, the State then may request a corrected clarification, consider the offeror's Proposal without the clarification, or disqualify the offeror's Proposal.

Corrections and clarifications must be completed off State premises.

**Initial Review.** The State will review all Proposals for their format and completeness. The State normally rejects incomplete or incorrectly formatted Proposals, though it may waive any defects or allow an offeror to submit a correction, if the State believes doing so would not result in an unfair advantage for the offeror and it is in the State's interests. Further, if the Auditor of State does not certify a Proposal due to lateness, the State will not open it. After the initial review, the State will forward all timely, complete, and properly formatted Proposals to an evaluation team, which the Procurement Representative will lead.

**Technical Evaluation.** The State will evaluate each Proposal that the Procurement Representative has determined is timely, complete, and properly formatted. The evaluation will be scored according to the requirements identified in this RFP, including the requirements in Attachment One. Other attachments to this RFP may further refine these requirements, and the State has a right to break these requirements into components and weight any components of a requirement according to their perceived importance.

The State also may have the Proposals or portions of them reviewed and evaluated by independent third parties or various State personnel with experience that relates to the Work or to a criterion in the evaluation process. Additionally, the State may seek reviews from end users of the Work or the advice or evaluations of various State personnel that have subject matter expertise or an interest in the Work. The State may adopt or reject any recommendations it receives from such reviews and evaluations or give them such weight as the State believes is appropriate.

During the technical evaluation, the State will calculate a point total for each Proposal that it evaluates. At the sole discretion of the State, it may reject any Proposal receiving a significant number of zeros for sections in the technical portions of the evaluation. The State may select those offerors submitting the highest rated Proposals for the next phase. The number of Proposals that advance to the next phase will be within the State's discretion, but regardless of the number of Proposals selected, they always will be the highest rated Proposals from this phase.

At any time during this phase, in the State's sole discretion, it may ask an offeror to correct, revise, or clarify any portions of its Proposal.

The State will document all major decisions and make these a part of the Contract file, along with the evaluation results for each Proposal considered.

**Requirements.** Attachment One provides requirements the State will use to evaluate the Proposals, including any mandatory requirements. If the offeror's Proposal meets all the mandatory requirements, the offeror's Proposal may be included in the next phase of the evaluation, which will consider other requirements described in a table in Attachment One.

In the case of any requirements for a team of people the offeror is proposing, the offeror must submit a team to do the Work that collectively meets all the team requirements. But the experience of multiple candidates may not be combined to meet a single requirement. Further, previous experience of the candidate submitted for a Contract Manager position may not be used to meet any other team member requirements. Each candidate proposed for the Work team must meet at least one of the requirements.

This RFP asks for responses and submissions from offerors, most of which represent components of the requirements in Attachment One. While each requirement represents only a part of the total basis for a decision to award the Contract to an offeror, a failure by an offeror to make a required submission or meet a mandatory requirement normally will result in a rejection of that offeror's Proposal. The value assigned above to each requirement is only a value used to determine which Proposal is the most advantageous to the State in relation to the other Proposals that the State received. It is not a basis for determining the importance of meeting that requirement.

If the State does not receive any Proposal that meets all the mandatory requirements, the State may cancel this RFP. Alternatively, if the State believes it is in its interests, the State may continue to consider the highest-ranking Proposals despite their failure to meet all the mandatory requirements. In doing this, the State may consider one or more of the highest-ranking Proposals. However, the State may not consider any lower-ranking Proposals unless all Proposals ranked above it are also considered, except as provided below.

In any case where no Proposal meets all the mandatory requirements, it may be that an upper ranking Proposal contains a failure to meet a mandatory requirement that the State believes is critical to the success of the RFP's objectives. When this is so, the State may reject that Proposal and consider lower ranking Proposals. Before doing so, the State may notify the offeror of the situation and allow the offeror an opportunity to cure its failure to meet that mandatory requirement.

If the offeror cures its failure to meet a mandatory requirement that the State has deemed critical to the success of the RFP's objectives, the State may continue to consider the offeror's Proposal. But if the offeror is unwilling or unable to cure the failure, its Proposal may be rejected. The State then may continue to consider the other remaining Proposals, including, if the State so chooses, Proposals that ranked lower than the rejected Proposal.

**Cost Evaluation.** Once the technical merits of the Proposals are considered, the State may consider the costs of one or more of the highest-ranking Proposals. But it is within the State's discretion to wait until after any interviews, presentations, and demonstrations to evaluate costs. Also, before evaluating the technical merits of the Proposals, the State may do an initial review of costs to determine if any Proposals should be rejected because of excessive cost. And the State may reconsider the excessiveness of any Proposal's cost at any time in the evaluation process.

The State may select one or more of the Proposals for further consideration in the next phase of the evaluation process based on the price performance formula contained in Attachment One. The Proposal(s) selected for consideration in the next phase always will be the highest-ranking Proposal(s) based on this analysis. That is, the State may not move a lower-ranking Proposal to the next phase

unless all Proposals that rank above it also are moved to the next phase, excluding any Proposals that the State disqualifies because of excessive cost or other irregularities.

If the State finds that it should give one or more of the highest-ranking Proposals further consideration, the State may move the selected Proposals to the next phase. The State alternatively may choose to bypass any or all subsequent phases and make an award based solely on its scoring of the preceding phases, subject only to its review of the highest-ranking offeror's responsibility, as described below.

**Requests for More Information.** The State may require some offerors to interview, make a presentation about their Proposals, or demonstrate their products or services. If the presentations, demonstrations, or interviews are held as part of the technical evaluation phase, all offerors that have Proposals under evaluation may participate. Alternatively, if the presentations, demonstrations, or interviews are held after the technical evaluation, the State normally will limit them to one or more of the highest ranking offerors. The State normally will limit such presentations, demonstrations, and interviews to areas in which it seeks further information from the highest ranking offeror or offerors. Typically, these discussions provide an offeror with an opportunity to do one or more of the following:

- Clarify its Proposal and ensure a mutual understanding of the Proposal's content;
- Showcase its approach to the Work; and
- Demonstrate the professionalism, qualifications, skills, and work knowledge of its proposed candidates.

The State will schedule the presentations, demonstrations, and interviews at its convenience and discretion. The State will determine the scope and format of any such presentations, demonstrations, and interviews and may record them. Additionally, if the State moves more than one offeror to this phase, the scope and format of these presentations, demonstrations, and interviews may vary from one offeror to the next, depending on the particular issues or concerns the State may have with each offeror's Proposal.

The State normally will not rank interviews, demonstrations, and presentations. Rather, if the State conducts the interviews, demonstrations, or presentations as part of the technical evaluation, the State may use the information it gathers during this process in evaluating the technical merits of the Proposals. If the State holds the demonstrations, presentations, or interviews only for one or more of the top-ranking offerors after the evaluation phase, the State may decide to revise its existing Proposal evaluations based on the results of this process.

**Determination of Responsibility.** The State may review the background of one or more of the highest-ranking offerors and its or their key team members and subcontractors to ensure their responsibility. For purposes of this RFP, a key team member is a person that an offeror identifies by name in its Proposal as a member of its proposed team. The State will not award the Contract to an offeror that it determines is not responsible or that has proposed candidates or subcontractors to do the Work that are not responsible. The State's determination of an offeror's responsibility may include the following factors: experience of the offeror and its key team members and subcontractors, its and their past conduct on previous contracts, past performance on previous contracts, ability to execute this Contract properly, and management skill. The State may make this determination of responsibility based on the offeror's Proposal, reference evaluations, a review of the offeror's financial ability, and any other information the State requests or determines is relevant.

Some of the factors used in determining an offeror's responsibility, such as reference checks, may also be used in the technical evaluation of Proposals in phase two of the evaluation process. In evaluating those factors in phase two, the weight the State assigns to them, if any, for purposes of the technical evaluation will not preclude the State from rejecting a Proposal based on a determination that an offeror is not responsible. For example, if the offeror's financial ability is adequate, the value, if any, assigned to the offeror's relative financial ability in relation to other offerors in the technical evaluation phase may or may not be significant, depending on the nature of the Work. If the State believes the offeror's financial ability is inadequate, the State may reject the offeror's Proposal despite its other merits.

The State may make a responsibility determination at any time during the evaluation process, but it typically will do so only once it has evaluated the technical merits and costs of the Proposals. The State always will review the responsibility of an offeror selected for an award before making the award, if it has not already done so earlier in the evaluation process. If the State determines that the offeror selected for award is not responsible, the State then may go down the line of remaining offerors, according to rank, and determine responsibility with the next highest-ranking offeror.

**Reference Checks.** As part of the State's determination of an offeror's responsibility, the State may conduct reference checks to verify and validate the offeror's and its proposed candidates' and subcontractors' past performance. Reference checks that indicate poor or failed performance by the offeror or a proposed candidate or subcontractor may be cause for rejection of the offeror's Proposal. Additionally, the State may reject an offeror's Proposal as non-responsive if the offeror fails to provide requested reference contact information.

The State may consider the quality of an offeror's and its candidates' and subcontractors' references as part of the technical evaluation phase, as well as in the State's determination of the offeror's responsibility. The State also may consider the information it receives from the references in weighing any requirements contained in the technical evaluation phase, if that information is relevant to the requirement. In checking an offeror's or any of its proposed candidates' or subcontractors' references, the State will seek information that relates to the offeror's previous contract performance. This may include performance with other governmental entities, as well as any other information the State deems important for the successful operation and management of the Work and a positive working relationship between the State and the offeror. In doing this, the State may check references other than those provided in the offeror's Proposal. The State also may use information from other sources, such as third-party reporting agencies.

**Financial Ability.** Part of State's determination of an offeror's responsibility may include the offeror's financial ability to perform the Contract. This RFP may expressly require the submission of audited financial statements from all offerors in their Proposals, but if this RFP does not make this an express requirement, the State still may insist that an offeror submit audited financial statements for up to the past three years, if the State is concerned that an offeror may not have the financial ability to carry out the Contract. Also, the State may consider financial information other than the information that this RFP requires as part of the offeror's Proposal, such as credit reports from third-party reporting agencies.

**Contract Negotiations.** The final phase of the evaluation process may be contract negotiations. It is entirely within the discretion of the State whether to permit negotiations. An offeror must not submit a Proposal assuming that there will be an opportunity to negotiate any aspect of the Proposal, and any Proposal that is contingent on the State negotiating with the offeror may be rejected. The State is free to limit negotiations to particular aspects of any Proposal or the RFP, to limit the offerors with whom the State negotiates, and to dispense with negotiations entirely. If negotiations are held, they will be scheduled at the convenience of the State, and the selected offeror or offerors must negotiate in good faith.

The State may limit negotiations to specific aspects of the RFP or the offeror's Proposal. Should the evaluation result in a top-ranked Proposal, the State may limit negotiations to only that offeror and not hold negotiations with any lower-ranking offeror. If negotiations are unsuccessful with the top-ranked offeror, the State then may go down the line of remaining offerors, according to rank, and negotiate with the next highest-ranking offeror. Lower-ranking offerors do not have a right to participate in negotiations conducted in such a manner.

If the State decides to negotiate simultaneously with more than one offeror, or decides that negotiations with the top-ranked offeror are not satisfactory and therefore negotiates with one or more of the lower-ranking offerors, the State then will determine if an adjustment in the ranking of the offerors with which it held negotiations is appropriate based on the negotiations. The Contract award, if any, then will be based on the final ranking of offerors, as adjusted.

Auction techniques that reveal one offeror's price to another or disclose any other material information derived from competing Proposals are prohibited. Any oral modification of a Proposal will be reduced to writing by the offeror as described below.

Following negotiations, the State may set a date and time for the offeror(s) with which the State conducted negotiations to submit a best and final Proposal. If negotiations were limited and all changes were reduced to signed writings during negotiations, the State need not require a best and final Proposal.

If best and final Proposals are required, they may be submitted only once, unless the State determines that it is in the State's interest to conduct additional negotiations. In such cases, the State may require another submission of best and final Proposals. Otherwise, discussion of or changes in the best and final Proposals will not be allowed. If an offeror does not submit a best and final Proposal, the State will treat that offeror's previous Proposal as its best and final Proposal.

The State usually will not rank negotiations and normally will hold them only to correct deficiencies in or enhance the value of the highest-ranked offeror's Proposal.

From the opening of the Proposals to the award of the Contract, everyone evaluating Proposals on behalf of the State will seek to limit access to information contained in the Proposals solely to those people with a need to know the information. The State also will seek to keep this information away from other offerors, and the State may not tell one offeror about the contents of another offeror's Proposal in order to gain a negotiating advantage.

Before the award of the Contract or cancellation of the RFP, any offeror that seeks to gain access to the contents of another offeror's Proposal may be disqualified from further consideration.

Negotiated changes will be reduced to writing and become a part of the Contract file, which will be available for public inspection after award of the Contract or cancellation of the RFP. Unless the State agrees otherwise in writing, the offeror must draft and sign the written changes and submit them to the State within five business days. If the State accepts the changes, the State will give the offeror written notice of the State's acceptance, and the negotiated changes to the successful offer will become a part of the Contract.

**Failure to Negotiate.** If an offeror fails to provide the necessary information for negotiations in a timely manner, or fails to negotiate in good faith, the State may terminate negotiations with that offeror and seek such other remedies as may be available in law or in equity.

## **PART FIVE: AWARD OF THE CONTRACT**

**Contract Award.** The State plans to award the Contract based on the schedule in the RFP, if the State decides the Work is in its best interests and has not changed the award date.

Under Ohio's anti-terrorism legislation, effective April 14, 2006, the selected offeror must complete a Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization to certify that the offeror has not provided material assistance to any terrorist organization listed on the Terrorist Exclusion List. The form and the Terrorist Exclusion List are available on the Ohio Homeland Security Website. The form must be submitted with the offeror's Proposal. If an offeror answers yes or fails to answer any question on the form, the State may not award the Contract to that offeror. The offeror may request the Department of Public Safety to review such a denial of an award. More information concerning this law is available at: <http://www.homelandsecurity.ohio.gov>.

Included with this RFP, as Attachment Five, is a sample of the Contract for the RFP. The State will issue two originals of the Contract to the Contractor proposed for award. That offeror must sign and return the two originals to the Procurement Representative. The Contract will bind the State only when the State's duly authorized representative signs all copies and returns one to the Contractor with an award letter, the State issues a purchase order, and all other prerequisites identified in the Contract have occurred.

The Contractor must begin work within ten business days after the State issues a purchase order under the Contract. If the State awards a Contract pursuant to this RFP, and the Contractor is unable or unwilling to begin the Work within the time specified above, the State may cancel the Contract, effective immediately on notice to the Contractor. The State then may return to the evaluation process under this RFP and resume the process without giving further consideration to the originally selected Proposal. Additionally, the State may seek such other remedies as may be available to the State in law or in equity for the selected offeror's failure to perform under the Contract.

**Contract.** If this RFP results in a Contract award, the Contract will consist of this RFP, including all attachments, written amendments to this RFP, the Contractor's accepted Proposal, and written, authorized amendments to the Contractor's Proposal. It also will include any materials incorporated by reference in the above documents and any purchase orders and change orders issued under the Contract. The form of the Contract is included as a one-page attachment to this RFP, but it incorporates all the documents identified above. The general terms and conditions for the Contract are contained in Attachment Four to this RFP. If there are conflicting provisions between the documents that make up the Contract, the order of precedence for the documents is as follows:

1. This RFP, as amended;
2. The documents and materials incorporated by reference in the RFP;
3. The Contractor's Proposal, as amended, clarified, and accepted by the State; and
4. The documents and materials incorporated by reference in the Contractor's Proposal.

Notwithstanding the order listed above, change orders and amendments issued after the Contract is executed may expressly change the provisions of the Contract. If they do so expressly, then the most recent of them will take precedence over anything else that is part of the Contract. To be binding on the State, a duly authorized representative of the Office of Information Technology must sign any change order under or amendment to the Contract.

## ATTACHMENT ONE: EVALUATION CRITERIA

**Mandatory Requirements.** The first table lists this RFP's mandatory requirements. If the offeror's Proposal meets all the mandatory requirements, the offeror's Proposal may be included in the next part of the technical evaluation phase described in the next table.

Mandatory Requirements	Does Not Meet	Meets
<b>Offeror Mandatory Experience Requirement</b>		
Offeror must be a recognized Microsoft LAR (proof required).	<b>Reject</b>	<b>Accept</b>

**Scored Criteria.** In the technical evaluation phase, the State will rate the technical merits of the Proposals based on the following requirements and the weight assigned to each requirement:

Criteria	Weight	Maximum Allowable Points
Tech Requirements	70%	700
Proposal Cost	30%	300
<b>Total</b>	<b>100%</b>	<b>1000</b>

The following table lists the Proposal requirements that will be evaluated and scored.

Scored Criteria	Weight	Does Not Meet	Meets	Exceeds	Greatly Exceeds
Offeror Profile	10	0	5	7	9
Offeror Experience (Offeror Profile Summary Forms)					
The offeror must have a minimum of 24 months experience as a LAR in servicing Microsoft Enterprise and Select Agreements in state government in the past three years.	10	0	5	7	9
The offeror must have a minimum of 24 months experience as a LAR in servicing Microsoft Academic Agreements in state government in the past three years.	10	0	5	7	9
The offeror must have a local /Ohio presence for servicing local/Ohio Select, Enterprise or Academic Agreement accounts.	10	0	5		
Within the past 5 years, the offeror must have a minimum of 24 months experience providing comprehensive account management services similar to those described in this RFP to its Select, Enterprise and Academic customers.	10	0	5	7	9
Account Management and Value-added Services Plan	10	0	5	7	9

**Price Performance Formula.**

The offeror's Cost Score will be based upon the sum of the weighted offeror discount percentage for Application, Server and System Pool products on Level D pricing for the Microsoft Enterprise and Select Agreements and Level A pricing for the Microsoft Academic Agreement.

In the tables below are the weights that will be applied to the proposed discount percentage.

**Microsoft Enterprise and Select Agreements Level D Pricing**

Criteria	Weight
Offeror discount on Application Pool products	45%
Offeror discount on Server Pool products	30%
Offeror discount on System Pool products	25%
<b>Total %</b>	<b>100%</b>

**Microsoft Academic Agreement Level A Pricing**

Criteria	Weight
Offeror discount on Application Pool products	45%
Offeror discount on Server Pool products	30%
Offeror discount on System Pool products	25%
<b>Total %</b>	<b>100%</b>

**EXAMPLE:**

**Microsoft Enterprise and Select Agreements Level D Pricing**

Criteria	Weight	Offeror Discount%	Weighted Offeror Discount %
Offeror discount on Application Pool products	45%	15%	+0.0675
Offeror discount on Server Pool products	30%	12%	+0.0360
Offeror discount on System Pool products	25%	20%	+0.0500
<b>Offeror's Cost Score for Level D Pricing</b>			<b>0.1535</b>

**Microsoft Academic Agreement Level A Pricing**

Criteria	Weight	Offeror Discount%	Weighted Offeror Discount %
Offeror discount on Application Pool products	45%	25%	+0.1125
Offeror discount on Server Pool products	30%	20%	+0.0600
Offeror discount on System Pool products	25%	25%	+0.0625
<b>Offeror's Cost Score for Level A Pricing</b>			<b>+0.2350</b>

To ensure the scoring ratio is maintained, the State will use the following formulas to adjust the points awarded to each offeror.

The offeror with the highest point total for the Technical Proposal will receive 700 points. The remaining offerors will receive a percentage of the maximum points available based upon the following formula:

Technical Proposal Points = (Offeror's Technical Proposal Points/Highest Number of Technical Proposal Points Obtained) x 700

In considering costs, the offeror proposing the highest discount (percentage mark-up or mark-down) from Microsoft's discounted pricing to the State will receive 300 points. The remaining offeror will receive a percentage of the maximum cost points available based upon the formula below. The State will calculate the offeror's cost points after the offeror's total technical points are determined. The offeror's cost points are calculated using the following formulas:

Total Offeror Cost Score = Offeror's Cost Score for Level D + Offeror's Cost Score for Level A

Cost Points = (Total Offeror's Cost Score) / (Highest Total Offeror's Cost Score) \* 300

The total points score is calculated using the following formula:

Total Points = Technical Proposal Points + Cost Points

## **ATTACHMENT TWO: WORK REQUIREMENTS AND SPECIAL PROVISIONS**

### **PART ONE: WORK REQUIREMENTS**

This attachment describes the Work and what the Contractor must do to get the job done. It also describes what the Contractor must deliver as part of the completed Work (the "Deliverables"). Additionally, it gives a detailed description of the Work's schedule.

#### **Scope of Work.**

The State will provide oversight for the Contract, but the Contractor must provide the Microsoft products, account management services and value-added services; pass through Premier support services; and coordinate the use of Microsoft consulting services under this Contract. The Contractor also must assist the State with coordinating assignments for State staff, if any, involved in the Work. Additionally, the Contractor must provide all administrative support for its staff and activities.

The Contractor must provide a Contract Manager. The Contractor must employ the proposed Contract Manager as a regular, fulltime employee on the Proposal submission date and throughout the term of the Contract, including all renewals of it.

Below are special provisions for the scope of work.

#### **I. SPECIAL PROVISIONS**

- A. **Select Agreement.** The State has entered into a Microsoft State and Local Government Select Agreement (MSLI) v.5.1 that is valid through September 30, 2009 and sets product pricing at Level D.
- B. **Select Enrollment.** The State's Affiliates can establish Select enrollments with the LAR under the terms and conditions of the State's amended Select Agreement and the LAR's Contract resulting from this RFP.

Enrollees may purchase products from all pools, at the discounts established by this RFP and Contract, regardless of the volume of products the enrollee purchases.

Select enrollees will not be required to acquire licenses equivalent to the standard requisite number of points during the term of the enrollment. However, product media must be provided under the following conditions:

- 1. Affiliates that do not expect to acquire licenses equivalent to the standard requisite number of points during the term of the enrollment can execute a Special Enrollment, which has been created by Microsoft Corporation and is included in this RFP as Attachment Five. The LAR must provide these enrollees with World Wide Fulfillment media for the software products ordered, the cost of which will be paid by the enrollee.
- 2. Affiliates who execute the standard enrollment expect to acquire licenses equivalent to, or greater than, the standard requisite number of points during the term of the enrollment, and those enrollees must receive the standard Select CD-ROM kits, as provided for by the enrollment.

Enrollees will receive all services included in the Contract, regardless of the size of the enrollee or the volume of products acquired.

- C. **Enterprise Agreement.** Pursuant to the State's Microsoft Agreement, the State's Affiliates may establish Enterprise Agreements with the LAR. The Enterprise Agreement must be accompanied by an executed amendment to the Enterprise Agreement, which is included in this RFP as Attachment Eleven.

- D. **Enterprise Enrollment.** The State's Affiliates can establish Enterprise enrollments with the LAR under the terms and conditions of the State's amended Select Agreement, the amended Enterprise Agreement, and the LAR's Contract resulting from this RFP. Enterprise enrollees must meet Microsoft's standard requirement for the minimum number of qualified desktops.
- E. **Academic Agreement.** The State's Affiliates can establish Academic enrollments with the LAR under terms and conditions of the State's amended Academic Select Agreement and the LAR's Contract resulting from this RFP. Pricing is set at Level A for the Academic Select Agreement.
- F. **Software Product Pricing.**
1. The Contract will establish unit pricing for all Microsoft products in all product pools, for both standard perpetual licenses as well as for Upgrade Advantage licenses.
  2. The prices will be based upon the percentage discounted from the Microsoft ERP prices. Offerors must propose discounts for each product pool.
  3. If Microsoft Corporation introduces new products, the discounts established by this RFP and Contract will be applied to new product prices to determine product pricing under the State's Select Agreement.
- G. **Microsoft Corporation Consultants.** Microsoft Consulting services will be acquired directly from Microsoft under this Contract. The Contractor may be asked to coordinate engagements with the agency and Microsoft consulting if necessary at no additional cost to the State.
1. MCS Practice Manager
  2. MCS Principle Consultant
  3. MCS Managing Consultant
  4. MCS Architectural Consultant
  5. MCS Senior Consultant
  6. MCS Consultant
  7. MCS Associate Consultant
  8. MCS Technician V
  9. MCS Technician IV
  10. MCS Technician III
  11. MCS Technician II
  12. MCS Technician I
  13. MCS Technician
- H. **Premier Support.** The Contractor must pass through Premier Support Services to enrollees who desire the services, using standard Microsoft pricing based on the service configuration required by the enrollee. The Contractor must use the Microsoft Master Premier Support Services Agreement – State & Local, as well as the amendment to the agreement, which is included in this RFP as Attachment Twelve.
- I. **Account Management Services. Services to be provided by the LAR must include, at least, the following:**
1. Orientation and planning sessions with individual Affiliates regarding enrollment benefits, terms and conditions, service elements;
  2. Direct sales to Affiliates;
  3. Provision of media to enrollees for products ordered by the affiliate;
  4. Enrollee and savings reports;
  5. Work directly with enrollees to satisfy compliance verification requirements;
  6. Ad hoc reporting;

7. Availability of a Select/Enterprise/Academic licensing expert that can be contacted by telephone;
8. Internet access to account information;
9. Provide training on products and services available via Select and Academic agreements;
10. Provide training and support for the Microsoft Volume Licensing Service (MVLS) website.
11. Establish a web site for the State of Ohio and Affiliates that includes, but is not limited to, communication of account information and reports.
12. Value added services (e.g. training and instruction on licensing of products and services, announcement on new products and their uses, presentations etc.)

**Contractor Responsibilities and Deliverables.** The Contractor must meet all RFP requirements for the Work and complete all Work satisfactorily.

**Meeting Attendance and Reporting Requirements.** The Contractor's management approach for the Contract must adhere to the following meeting and reporting requirements:

- Immediate Reporting - The Contract Manager or a designee must immediately report any staffing changes for the Work to the State's Contract Representative (see: Attachment Four: Part Two: Replacement Personnel).
- Attend Status Meetings - The Contract Manager and other Work team members must attend status meetings with the State's Contract Representative and other people deemed necessary to discuss Work issues. The State's Contract Representative will schedule these meetings, which will follow an agreed upon agenda and allow the Contractor and the State to discuss any issues that concern them.
- Provide Status Reports - The Contractor must provide written status reports to the State's Contract Representative at least one full business day before each status meeting.
- The Contractor's proposed format and level of detail for the status report is subject to the State's approval.
- Prepare Monthly, Quarterly and Annual Enrollee Reports - In addition to standard reports to enrollees, the Contractor must provide the State with monthly, quarterly and annual reports of individual and aggregate enrollee acquisitions, including Affiliate enrollees. The report must include, if applicable, a notice of any price level adjustments that may be permitted under the terms of Section 5 of the Select Agreement. This report must be submitted to:

Contract Management Administrator  
Office of Information Technology  
Investment and Governance Division  
30 East Broad Street, 39<sup>th</sup> Floor  
Columbus, Ohio 43266-0409.

The Contractor must submit the enrollee report to the State's Contract Representative by the fifth business day following the end of each monthly, quarterly and annual reporting period.

- Prepare Monthly, Quarterly and Annual Savings Reports - The Contractor must provide the State with monthly, quarterly and annual savings reports. The report must describe the savings realized by the State under the Contract when compared to commercial shrink wrap and open (General Services Administration) pricing. This report must be submitted to:

Contract Management Administrator  
Office of Information Technology  
Investment and Governance Division  
30 East Broad Street, 39<sup>th</sup> Floor  
Columbus, Ohio 43266-0409.

The Contractor must submit the savings report to the State's Contract Representative by the fifth business day following the end of each monthly, quarterly and annual reporting period.

**Work Hours and Conditions.** Unless otherwise noted the State's work hours are 8:00 AM to 5:00 PM Eastern Time, Monday through Friday, except official State holidays.

## **PART TWO: SPECIAL PROVISIONS**

**Submittal of Deliverables.** The Contractor must perform its tasks in a timely and professional manner that produces Deliverables that fully meet the Contract's requirements. And the Contractor must provide the Deliverables no later than the due dates the Contract requires. At the time of delivery of a written Deliverable, the Contractor must submit an original and one copy of each Deliverable, plus an electronic copy. The Contractor must provide the electronic copy in a file format acceptable to the State.

By submitting a Deliverable, the Contractor represents that, to the best of its knowledge, it has performed the associated tasks in a manner that meets the Contract's requirements.

**The Contractor's Fee Structure.** The Contractor must submit the invoice for the products ordered and delivered and the services delivered and accepted to the requesting affiliate. The products must be provided at the proposed percentages of price discounts or markups indicated in the Cost Summary and the services must be at the rates indicated in the Cost Summary for Microsoft Consulting Services.

**Reimbursable Expenses.** None.

**Bill to Address.** Invoices must be submitted to the Affiliate enrollees.

### **Revenue Share Reporting Address:**

Office of Information Technology  
OIT Business Office  
30 East Broad Street, 39<sup>th</sup> Floor  
Columbus, Ohio 43215 - 3414

### **Revenue Share Payment Address:**

Department of Administrative Services  
Office of Finance  
30 East Broad Street, Suite 4060  
Columbus, Ohio 43215 – 3414

**Location of Data.** None.

## ATTACHMENT THREE: REQUIREMENTS FOR PROPOSALS

**Proposal Format.** Each Proposal must include sufficient data to allow the State to verify the total cost for the Work and all of the offeror's claims of meeting the RFP's requirements. Each Proposal must respond to every request for information in this attachment, whether the request requires a simple "yes" or "no" or requires a detailed explanation. Simply repeating the RFP's requirement and agreeing to comply may be an unacceptable response and may cause the Proposal to be rejected.

These instructions describe the required format for a responsive Proposal. The offeror may include any additional information it believes is relevant. An identifiable tab sheet must precede each section of a Proposal, and each Proposal must follow the format outlined below. All pages, except pre-printed technical inserts, must be sequentially numbered. Any material deviation from the format outlined below may result in a rejection of the non-conforming Proposal.

Each Proposal must contain the following:

- Cover Letter
- Certification
- Location of Data
- Offeror Profile
- Contractor Performance
- Offeror Profile Summary Form
- Time Commitment
- Assumptions
- Account Management and Value-added Services Plan
- Support Requirements
- Conflict of Interest Statement
- Proof of Insurance
- Payment Address
- Legal Notice Address
- W-9 Form
- Declaration Regarding Terrorist Organizations
- Cost Summary (must be separately sealed)

**Cover Letter.** The offeror must include a cover letter in the form of a standard business letter that provides an executive summary of the solution the offeror plans to provide, and an individual authorized to legally bind the offeror must sign the letter. The letter also must include the following:

- a. A statement regarding the offeror's legal structure (e.g., an Ohio corporation), federal tax identification number, D-U-N-S number, and principal place of business;
- b. A list of the people who prepared the offeror's Proposal, including their titles;
- c. The name, phone number, fax number, email address, and mailing address of a contact person who has authority to answer questions regarding the Proposal;
- d. A list of all subcontractors, if any, that the offeror will use on the Work, if the State selects the offeror to do the Work;
- e. For each proposed subcontractor, the offeror must attach a letter from the subcontractor, signed by someone authorized to legally bind the subcontractor, with the following included in the letter:
  1. The subcontractor's legal status, federal tax identification number, D-U-N-S number, and principal place of business;
  2. The name, phone number, fax number, email address, and mailing address of a person who is authorized to legally bind the subcontractor to contractual obligations;
  3. A description of the part of the Work the subcontractor will do;
  4. A commitment to do the part of the Work if the offeror is selected;
  5. A statement that the subcontractor has read and understands the RFP and will comply with the requirements of the RFP; and

- 6. A statement that the subcontractor will maintain any permits, licenses, and certifications required to perform its portion of the Work;
- f. A statement that the offeror's Proposal meets all the requirements of this RFP for the Work;
- g. A statement that the offeror has not taken any exception to the terms and conditions in this RFP;
- h. A statement that the offeror does not assume there will be an opportunity to negotiate any aspect of its Proposal;
- i. A statement that the offeror will comply with all federal and Ohio laws, rules, and regulations;
- j. A statement that the offeror is proposing a Contract Manager who is a regular, fulltime employee of the offeror;
- k. A statement that the offeror will not substitute, at Work start-up, personnel for those evaluated by the State, except when a candidate's unavailability is no fault of the offeror (e.g. the candidate resigns, is deceased, etc.); and
- l. A statement that the offeror is not now subject to an "unresolved" finding for recovery under Revised Code Section 9.24 and that the offeror will notify the State anytime it becomes subject to such a finding before the award of a Contract arising out of this RFP.

**All offerors must submit a response that contains an affirmative statement using the language in paragraphs a through m above.**

**Certification.** Each Proposal must include the following certification on company letterhead signed by an individual authorized to legally bind the offeror:

(Insert offeror's name) affirms that, if awarded the Contract, it will be the prime Contractor on the Work.

(Insert offeror's name) affirms that it will not and will not allow others to perform work for the State of Ohio outside of any geographic restrictions in the RFP or at any location not disclosed in its proposal without express written authorization from the Contract Representative. (Insert offeror's name) also affirms that it will not and will not allow others take data that belongs to the State of Ohio outside any geographic restrictions in the RFP or any locations disclosed in its proposal without express written authorization from the Contract Representative.

(Insert offeror's name) affirms that all personnel provided for the Work will have a valid I-9 form on file with (Insert offeror's name) and will have presented valid employment authorization documents, if they are not United States citizens.

(Insert offeror's name) affirms that any small business program participants will provide necessary data to ensure program reporting and compliance.

(Insert offeror's name) is and will remain during performance of the Contract a separate and independent enterprise from the State of Ohio and the Office of Information Technology. (Insert offeror's name) has a full opportunity to find other business opportunities and has made a significant investment in its business. Moreover, (insert offeror's name) will retain sole and absolute control over the manner and means of carrying out its obligations and activities under the Contract. The Contract will not create any joint employment relationship between (insert offeror's name), any of its personnel, its subcontractors, or their personnel and the State of Ohio and the Office of Information Technology.

(Insert offeror's name) affirms that the people supplied under the Contract are either (1) employees of (insert offeror's name), with (insert offeror's name) withholding all appropriate taxes, deductions, and contributions required under law, or (2) independent contractors to (insert offeror's name).

(Insert offeror's name) affirms that it has obtained a written acknowledgement from its independent contractors that they are and will remain separate and independent enterprises from the State of Ohio and the Office of Information Technology for all purposes, including the application of the Fair Labor Standards Act, Social Security Act, Federal Unemployment Tax Act, Federal Insurance Contributions

Act, the Internal Revenue Code, Ohio tax law, worker's compensation law, and unemployment insurance law.

**Location of Data.** As part of its Proposal, the offeror must disclose the following:

1. The location(s) where the offeror and its subcontractors will perform all services;
2. The location(s) where the offeror and its subcontractors will maintain or make any State data applicable to the Contract available; and
3. The offeror's and its subcontractors' principal places of business.

**Offeror Profile.** Each Proposal must include a profile of the offeror's capability, capacity, and relevant experience providing services similar to the Work. The profile also must include the offeror's legal name, address, telephone number, and fax number; home office location; date established; ownership (such as public firm, partnership, or subsidiary); firm leadership (such as corporate officers or partners); number of employees; number of employees the offeror will engage in tasks directly related to the Work; and any other background information that will help the State gauge the ability of the offeror to fulfill the obligations of the Contract.

**Contractor Performance.** The offeror must complete Attachment Six, Contractor Performance Form.

**Offeror Profile Summary Form.** This RFP includes an Offeror Profile Summary Form as an attachment. The offeror must use this form and fill it out completely to provide the required information.

**The Offeror Profile Summary Form contained in this document has been customized for the applicable offeror requirements. (Refer to Attachment Seven.) Each page of the form may contain minor variations. If an offeror elects to duplicate the form electronically, the offeror must carefully review each page of the form to ensure that it has been copied accurately. Failure to duplicate the form exactly may lead to the rejection of the offeror's Proposal.**

Each offeror must meet all the mandatory requirements in the RFP. If an offeror does not meet all the mandatory requirements, the State may reject the offeror's Proposal as non-responsive.

The various sections of the Offeror Profile Summary Forms are described below:

**Mandatory Experience and Qualifications.** The offeror must complete this section to demonstrate that it has the experience needed to meet the RFP's mandatory requirements. (Refer to Attachment Seven.)

**Required Experience and Qualifications.** The offeror must complete this section to demonstrate that it meets the requirements for experience. (Refer to Attachment Seven.) For each reference, the offeror must provide the information in the same manner as described under Attachment Seven.

**THE OFFEROR MAY NOT USE THE EXPERIENCE OR QUALIFICATIONS OF A SUBCONTRACTOR TO MEET ANY OF THE ABOVE MANDATORY QUALIFICATIONS OR EXPERIENCE. THESE MUST BE FULFILLED EXCLUSIVELY THROUGH THE QUALIFICATIONS AND EXPERIENCE OF THE OFFEROR. If the offeror seeks to meet any of the other qualifications and experience through a subcontractor, the offeror must identify the subcontractor by name in the appropriate part of the Offeror Profile Summary Form, in Attachment Seven to this RFP, for each reference.**

**Time Commitment.** The offeror must submit a statement and a chart that clearly indicate the time commitment of the proposed Contract Manager and the offeror's proposed team members for the Work. The offeror also must include a statement indicating to what extent, if any, the Contract Manager may work on other tasks or assignments unrelated to the Work during the term of the Contract. The State may reject any Proposal that commits the proposed Contract Manager or any proposed personnel to other assignments during the term of the Work, if the State believes that any such commitment may be detrimental to the offeror's performance.

**Assumptions.** The offeror must list all the assumptions the offeror made in preparing the Proposal. If any assumption is unacceptable to the State, the State may reject the Proposal. No assumptions may be included regarding negotiation, terms and conditions, or requirements.

**Account Management and Value-added Services Plan.** The State encourages responses that demonstrate a thorough understanding of the nature of the Work and what the Contractor must do to get the Work done properly. To this end, the offeror must submit a Plan that the offeror will use to provide the required account management and value-added services described in the scope of work. The Plan must include detail sufficient to give the State an understanding of how the offeror's knowledge and approach will:

- Manage the Work;
- Guide Work execution;
- Document planning assumptions and decisions;
- Facilitate communication among stakeholders; and
- Define key management review as to content, scope, and schedule.

**Support Requirements.** The offeror must describe the support it wants from the State other than what the State has offered in this RFP. Specifically, the offeror must address the following:

- Nature and extent of State support required in terms of staff roles, percentage of time available, and so on;
- Assistance from State staff and the experience and qualification levels required; and
- Other support requirements.

The State may not be able or willing to provide the additional support the offeror lists in this part of its Proposal. The offeror therefore must indicate whether its request for additional support is a requirement for its performance. If any part of the list is a requirement, the State may reject the offeror's Proposal, if the State is unable or unwilling to meet the requirements.

**Conflict of Interest Statement.** Each Proposal must include a statement indicating whether the offeror or any people that may work on or benefit from the Work through the offeror have a possible conflict of interest (e.g., employed by the State of Ohio, etc.) and, if so, the nature of that conflict. The State may reject a Proposal in which an actual or apparent conflict is disclosed. The State also may terminate the Contract for cause if it discovers any actual or apparent conflict of interest that the offeror did not disclose in its Proposal.

**Proof of Insurance.** The offeror must provide the certificate of insurance required by Attachment Four. The policy may be written on an occurrence or claims made basis.

**Payment Address.** The offeror must give the address to which the State should send payments under the Contract.

**Legal Notice Address.** The offeror must give the name, title, and address to which the State should send legal notices under the Contract.

**W-9 Form.** The offeror must complete the attached W-9 form in its entirety. The offeror must submit at least one originally signed W-9. All other copies of a Proposal may contain copies of the W-9. The offeror must indicate on the outside of the binder which Proposal contains the originally signed W-9.

**Declaration Regarding Terrorist Organizations.** The offeror must complete a Declaration Regarding Material Assistance/Non-assistance to Terrorist Organizations in its entirety. The offeror must submit at least one originally signed copy of this form, which should be included with the offeror's originally signed Proposal. All other copies of the offeror's Proposal may contain copies of this form. The form is available at: <http://www.homelandsecurity.ohio.gov>.

**Cost Summary.** This RFP includes a Cost Summary Form provided as an attachment. Offerors may not reformat this form. Each offeror must complete the Cost Summary Form in the exact format provided,

since the State may reject any Proposal with a reformatted Cost Summary Form or that is not separately sealed. (See: Part Three: General Instructions, Proposal Submittal.)

The Cost Summary Form must not include exceptions, additional terms and conditions, or assumptions.

**The State will not be liable for or pay any Work costs that the offeror does not identify in its Proposal.**

## ATTACHMENT FOUR: GENERAL TERMS AND CONDITIONS

### PART ONE: PERFORMANCE AND PAYMENT

**Statement of Work.** The selected offeror's proposal (the "Proposal") and the State's Request for Proposals (the "RFP"), which are collectively referred to as the "RFP Documents", are a part of this contract (the "Contract") and describe the work (the "Work") the selected offeror (the "Contractor") must do and any materials the Contractor must deliver (the "Deliverables") under this Contract. The Contractor must do the Work in a professional, timely, and efficient manner and must provide the Deliverables in a proper fashion. The Contractor also must furnish its own support staff necessary for the satisfactory performance of the Work.

The Contractor must consult with the appropriate State representatives and others necessary to ensure a thorough understanding of the Work and satisfactory performance. The State may give instructions to or make requests of the Contractor relating to the Work, and the Contractor must comply with those instructions and fulfill those requests in a timely and professional manner. Those instructions and requests will be for the sole purpose of ensuring satisfactory completion of the Work and will not amend or alter the scope of the Work.

**Term.** Unless this Contract is terminated or expires without renewal, it will remain in effect until the Work is completed to the satisfaction of the State and the Contractor is paid. But the current General Assembly cannot commit a future General Assembly to an expenditure. Therefore, this Contract will automatically expire at the end of each biennium, the first of which is June 30, 2009. The State may renew this Contract in the next biennium by issuing written notice to the Contractor of the decision to do so. This expiration and renewal procedure also will apply to the end of any subsequent biennium during which the Work continues, subject to the State's approval. Termination or expiration of this Contract will not limit the Contractor's continuing obligations with respect to Deliverables that the State pays for before or after termination or limit the State's rights in such.

The State's funds are contingent upon the availability of lawful appropriations by the Ohio General Assembly. If the General Assembly fails to continue funding for the payments and other obligations due as part of this Contract, the State's obligations under this Contract will terminate as of the date that the funding expires without further obligation of the State.

The Work has a completion date that is identified in the RFP Documents. The RFP Documents also may have several dates for the delivery of Deliverables or reaching certain milestones in the Work. The Contractor must make those deliveries, meet those milestones, and complete the Work within the times the RFP Documents require. If the Contractor does not meet those dates, the Contractor will be in default, and the State may terminate this Contract under the Suspension and Termination Section contained in Part II of this Attachment Four.

But the State also may have certain obligations to meet. Those obligations, if any, also are listed in the RFP Documents. If the State agrees that the Contractor's failure to meet the delivery, milestone, or completion dates in the RFP Documents is due to the State's failure to meet its own obligations in a timely fashion, then the Contractor will not be in default, and the delivery, milestone, and completion dates affected by the State's failure to perform will be extended by the same amount of time as the State's delay. The Contractor may not rely on this provision unless the Contractor has in good faith exerted reasonable management skill to avoid an extension and has given the State meaningful written notice of the State's failure to meet its obligations within five business days of the Contractor's realization that the State's delay may impact the Work. The Contractor must deliver any such notice to both the Contract Representative and Procurement Representative and title the notice as a "Notice of State Delay." The notice must identify any delay in detail, as well as the impact the delay has or will have on the Work. Unless the State decides, in its sole and exclusive judgment, that an equitable adjustment in the Contractor's Fee is warranted in the case of an extended delay, an extension of the Contractor's time to perform will be the Contractor's exclusive remedy for the State's delay. Should the State determine that an equitable adjustment in the Contractor's Fee is warranted, the equitable adjustment will be handled as

a Change Order under the Changes Section of this Contract, and the extension of time and equitable adjustment will be the exclusive remedies of the Contractor for the State's delay.

The State seeks a complete solution to what the Work is intended to accomplish, and the Contractor must provide any incidental items omitted in the RFP Documents as part of the Contractor's not-to-exceed fixed price. All required components and processes for the Work to be complete and useful to the State are included in the Work and the not-to-exceed fixed price, unless the RFP expressly provides otherwise.

**Compensation.** In consideration of the Contractor's promises and satisfactory performance, the State will pay the Contractor the amount(s) identified in the RFP Documents (the "Fee"), plus any other expenses identified as reimbursable in the RFP Documents. In no event, however, will payments under this Contract exceed the "not-to-exceed" amount in the RFP Documents without the prior, written approval of the State and, when required, the Ohio Controlling Board and any other source of funding. The Contractor's right to the Fee is contingent on the complete and satisfactory performance of the Work or, in the case of milestone payments or periodic payments of an hourly, daily, weekly, monthly, or annual rate, all relevant parts of the Work tied to the applicable milestone or period. Payment of the Fee also is contingent on the Contractor delivering a proper invoice and any other documents the RFP Documents require. An invoice must comply with the State's then current policies regarding invoices and their submission. The State will notify the Contractor in writing within 15 business days after it receives a defective invoice of any defect and provide the information necessary to correct the defect.

The Contractor must send all invoices under this Contract to the "bill to" address in the RFP Documents or in the applicable purchase order.

The State will pay the Contractor interest on any late payment, as provided in Section 126.30 of the Ohio Revised Code (the "Revised Code"). If the State disputes a payment for anything covered by an invoice, within 15 business days after receipt of that invoice, the State will notify the Contractor, in writing, stating the grounds for the dispute. The State then may deduct the disputed amount from its payment as a nonexclusive remedy. If the Contractor has committed a material breach, in the sole opinion of the State, the State also may withhold payment otherwise due to the Contractor. Both parties will attempt to resolve any claims of material breach or payment disputes through discussions among the Contract Manager, the Contractor's executive responsible for the Work, the Contract Representative, and the State Contract Management Administrator. The State will consult with the Contractor as early as reasonably possible about the nature of the claim or dispute and the amount of payment affected. When the Contractor has resolved the matter to the State's satisfaction, the State will pay the disputed amount within 30 business days after the matter is resolved. The State has no obligation to make any disputed payments until the matter is resolved, and the Contractor must continue its performance under this Contract pending resolution of the dispute or claim.

If the State has already paid the Contractor on an invoice but later disputes the amount covered by the invoice, and if the Contractor fails to correct the problem within 30 calendar days after written notice, the Contractor must reimburse the State for that amount at the end of the 30 calendar days as a nonexclusive remedy for the State. On written request from the Contractor, the State will provide reasonable assistance in determining the nature of the problem by giving the Contractor reasonable access to the State's facilities and any information the State has regarding the problem.

If the RFP Documents provide for any retainage, the State will withhold from each invoice paid the percentage specified in the RFP Documents as retainage. The State will pay the retainage only after the State has accepted all the Work and then only in accordance with the payment schedule specified in the RFP Documents.

**Reimbursable Expenses.** The State will pay all reimbursable expenses identified in the RFP Documents, if any, in accordance with the terms in the RFP Documents and, where applicable, Section 126.31 of the Revised Code. The Contractor must assume all expenses that it incurs in the performance of this Contract that are not identified as reimbursable in the RFP Documents.

In making any reimbursable expenditure, the Contractor always must comply with the more restrictive of its own, then current internal policies for making such expenditures or the State's then current policies. All reimbursable travel will require the advance written approval of the State's Contract Representative. The Contractor must bill all reimbursable expenses monthly, and the State will reimburse the Contractor for them within 30 business days of receiving the Contractor's invoice.

**Right of Offset.** The State may set off the amount of any Ohio tax liability or other obligation of the Contractor or its subsidiaries to the State, including any amounts the Contractor owes to the State under this or other contracts, against any payments due from the State to the Contractor under this or any other contracts with the State.

**Certification of Funds.** None of the rights, duties, or obligations in this Contract will be binding on the State, and the Contractor will not begin its performance, until all the following conditions have been met:

- (a) All statutory provisions under the Revised Code, including Section 126.07, have been met;
- (b) All necessary funds are made available by the appropriate State entities;
- (c) If required, the Controlling Board of Ohio approves this Contract; and
- (d) If the State is relying on federal or third-party funds for this Contract, the State gives the Contractor written notice that such funds are available.

**Employment Taxes.** All people furnished by the Contractor (the "Contractor Personnel") are employees or subcontractors of the Contractor, and none are or will be deemed employees or contractors of the State. No Contractor Personnel will be entitled to participate in, claim benefits under, or become an "eligible employee" for purposes of any employee benefit plan of the State by reason of any work done under this Contract. The Contractor will pay all federal, state, local, and other applicable payroll taxes and make the required contributions, withholdings, and deductions imposed or assessed under any provision of any law and measured by wages, salaries, or other remuneration paid by or which may be due from the Contractor to the Contractor Personnel. The Contractor will indemnify, defend (with the consent and approval of the Ohio Attorney General), and hold the State harmless from and against all claims, losses, liability, demands, fines, and expense (including court costs, defense costs, and redeemable attorney fees) arising out of or relating to such taxes, withholdings, deductions, and contributions with respect to the Contractor Personnel. The Contractor's indemnity and defense obligations also apply to any claim or assertion of tax liability made by or on behalf of any Contractor Personnel or governmental agency on the basis that any Contractor Personnel are employees or contractors of the State, that the State is the "joint employer" or "co-employer" of any Contractor Personnel, or that any Contractor Personnel are entitled to any employee benefit offered only to eligible regular fulltime or regular part-time employees of the State.

**Sales, Use, Excise, and Property Taxes.** The State is exempt from any sales, use, excise, and property tax. To the extent sales, use, excise, or any similar tax is imposed on the Contractor in connection with the Work, such will be the sole and exclusive responsibility of the Contractor. And the Contractor will pay such taxes, together with any interest and penalties not disputed with the appropriate taxing authority, whether they are imposed at the time the services are rendered or a later time.

## **PART TWO: WORK AND CONTRACT ADMINISTRATION**

**Related Contracts.** The Contractor warrants that the Contractor has not and will not enter into any contracts without written approval of the State to perform substantially identical services for the State, such that the Work under this Contract duplicates the work done or to be done under the other State contracts.

**Other Contractors.** The State may hold other contracts for additional or related work, including among others independent verification and validation (IV&V) efforts for the Work. The Contractor must fully cooperate with all other contractors and State employees and coordinate its Work with such other contractors and State employees as may be required for the smooth and efficient operation of all related or additional work. The Contractor may not act in any way that may unreasonably interfere with the work of any other contractors or the State's employees. Further, the Contractor must fully cooperate with any IV&V contractor assigned to the Work. Such cooperation includes expeditiously providing the IV&V

contractor with full and complete access to all Work product, records, materials, personnel, meetings, and correspondence as the IV&V contractor may request. If the State assigns an IV&V contractor to the Work, the State will obligate the IV&V contractor to a confidentiality provision similar to the Confidentiality Section contained in this Contract. The Contractor must include the obligations of this provision in all its contracts with its subcontractors for the Work.

**Subcontracting.** The Contractor may not enter into subcontracts related to the Work after award without written approval from the State. But the Contractor will not need the State's written approval to subcontract for the purchase of commercial goods that are required for satisfactory completion of the Work. All subcontracts will be at the sole expense of the Contractor unless expressly stated otherwise in the RFP Documents.

The State's approval of the use of subcontractors does not mean that the State will pay for them. The Contractor will be solely responsible for payment of its subcontractor and any claims of subcontractors for any failure of the Contractor or any of its other subcontractors to meet the performance schedule or performance specifications for the Work in a timely and professional manner. The Contractor must hold the State harmless for and must indemnify the State against any such claims.

The Contractor assumes responsibility for all Deliverables whether it, a subcontractor, or third-party manufacturer produces them in whole or in part. Further, the Contractor will be the sole point of contact with regard to contractual matters, including payment of all charges resulting from the Contract. And the Contractor will be fully responsible for any default by a subcontractor, just as if the Contractor itself had defaulted.

If the Contractor uses any subcontractors, each subcontractor must have a written agreement with the Contractor. That written agreement must incorporate this Contract by reference. The agreement also must pass through to the subcontractor all provisions of this Contract that would be fully effective only if they bind both the subcontractor and the Contractor. Among such provisions are the limitations on the Contractor's remedies, the insurance requirements, record keeping obligations, and audit rights. Some sections of this Contract may limit the need to pass through their requirements to subcontracts to avoid placing cumbersome obligations on minor subcontractors. But this exception is applicable only to sections that expressly provide an exclusion for small-dollar subcontracts. Should the Contractor fail to pass through any provisions of this Contract to one of its subcontractors and the failure damages the State in any way, the Contractor must indemnify the State for the damage.

**Record Keeping.** The Contractor must keep all financial records in accordance with generally accepted accounting principles consistently applied. The Contractor also must file documentation to support each action under this Contract in a manner allowing the documentation to be readily located. And the Contractor must keep all Work-related records and documents at its principal place of business or at its office where the work was performed.

In addition, the Contractor must keep a separate account for the Work (the "Work Account"). All payments made from the Work Account may be only for obligations incurred in the performance of this Contract and must be supported by contracts, invoices, vouchers, and any other data needed to audit and verify the payments. All payments from the Work Account must be for obligations incurred only after the effective date of this Contract, unless the State has given specific written authorization for making prior payments from the Work Account.

**Audits.** During the term of this Contract and for three years after the payment of the Contractor's Fee, on reasonable notice, and during customary business hours, the State may audit the Contractor's records and other materials that relate to the Work. This audit right also applies to the State's duly authorized representatives and any person or organization providing financial support for the Work.

Unless it is impracticable to do so, the Contractor must keep all records related to this Contract in a single location, either at the Contractor's principle place of business or its place of business where the work was done. If this is not practical, the Contractor must assume the cost of collecting, organizing, and relocating the records and any technology needed to access the records to the Contractor's office nearest

Columbus, Ohio whenever the State or anyone else with audit rights requests access to the Contractor's Work records. The Contractor will do so with all due speed, not to exceed ten business days.

If any audit reveals any material deviation from the Work's specifications, any misrepresentation, or any overcharge to the State, the State will be entitled to recover damages, as well as the cost of the audit.

For each subcontract in excess of \$25,000.00, the Contractor must require its subcontractors to agree to the requirements of this section and the record-keeping section. Subcontracts with smaller amounts involved need not meet this requirement, but the Contractor may not artificially break up contracts with its subcontractors to take advantage of this exclusion.

**Insurance.** The Contractor must provide the following insurance coverage at its own expense throughout the term of this Contract:

- (a) Workers' compensation insurance, as required by Ohio law, and if some of the Work will be done outside Ohio, the laws of the appropriate state(s) where any portion of the Work will be done. The Contractor also must maintain employer's liability insurance with at least a \$1,000,000.00 limit.
- (b) Commercial General Liability insurance coverage for bodily injury, personal injury, wrongful death, and property damage. The defense cost must be outside of the policy limits. Such policy must designate the State of Ohio as an additional insured, as its interest may appear. The policy also must be endorsed to include a blanket waiver of subrogation. At a minimum, the limits of the insurance must be:

- \$ 2,000,000 General Aggregate
- \$ 2,000,000 Products/Completed Operations Aggregate
- \$ 1,000,000 Per Occurrence Limit
- \$ 1,000,000 Personal and Advertising Injury Limit
- \$ 100,000 Fire Legal Liability
- \$ 10,000 Medical Payments

The policy must be endorsed to provide the State with 30-days prior written notice of cancellation or material change to the policy. And the Contractor's Commercial General Liability must be primary over any other insurance coverage.

- (c) Commercial Automobile Liability insurance with a combined single limit of \$500,000.
- (d) Professional Liability insurance covering all staff with a minimum limit of \$1,000,000 per incident and \$3,000,000 aggregate. If the Contractor's policy is written on a "claims made" basis, the Contractor must provide the State with proof of continuous coverage at the time the policy is renewed. If for any reason the policy expires, or coverage is terminated, the Contractor must purchase and maintain "tail" coverage through the applicable statute of limitations.

The certificate(s) must be in a form that is reasonably satisfactory to the State as to the contents of the policies and the quality of the insurance carriers. All carriers must have at least an "A-" rating by A.M. Best.

**State Personnel.** During the term of this Contract and for one year after completion of the Work, the Contractor may not hire or otherwise contract for the services of any State employee involved directly or indirectly with the Work.

**Replacement Personnel.** If the RFP Documents contain the names of specific people who will do the Work, then the quality and professional credentials of those people were material factors in the State's

decision to enter into this Contract. Therefore, the Contractor must use all commercially reasonable efforts to ensure the continued availability of those people. Also, the Contractor may not remove those people from the Work without the prior, written consent of the State, except as provided below.

The Contractor may remove a person listed in the RFP Documents from the Work, if doing so is necessary for legal or disciplinary reasons. But the Contractor must make a reasonable effort to give the State 30 calendar days' prior, written notice of the removal.

If the Contractor removes a person listed in the RFP Documents from the Work for any reason other than those specified above, the State may assess liquidated damages in the amount of [\$1,500.00] for every day between the date on which the individual was removed and the date that this Contract is terminated or the individual's qualified replacement, selected in accordance with the process identified in this section, starts performing on the Work. The State also may provide the Contractor with written notice of its default under this section, which the Contractor must cure within 30 days. Should the Contractor fail to cure its default within the 30 day cure period, this Contract will terminate immediately for cause, and the State will be entitled to damages in accordance with the Suspension and Termination Section of this Contract due to the termination. Should the State assess liquidated damages or otherwise be entitled to damages under this provision, it may offset these damages from any Fees due under this Contract.

The Contractor must have qualified replacement people available to replace any people listed in the RFP Documents by name or identified as a key individual on the Work. When the removal of a listed person is permitted under this Section, or if a person becomes unavailable, the Contractor must submit the resumes for two replacement people to the State for each person removed or who otherwise becomes unavailable. The Contractor must submit the two resumes, along with such other information as the State may reasonably request, within five business days after the decision to remove a person is made or the unavailability of a listed person becomes known to the Contractor.

The State will select one of the two proposed replacements or will reject both of them within ten business days after the Contractor has submitted the proposed replacements to the State. The State may reject the proposed replacements for any legal reason. Should the State reject both replacement candidates due to their failure to meet the minimum qualifications identified in the RFP Documents, or should the Contractor fail to provide the notice required under this Section or fail to provide two qualified replacement candidates for each removed or unavailable person, the Contractor will be in default and the cure period for default specified elsewhere in this Contract will not apply. In any such case, the State will have the following options:

- (a) The State may assess liquidated damages in the amount of [\$1,500.00] for every day between the date on which the Contractor failed to provide the applicable notice, failed to provide the two replacement candidates, or the date the State rejected all candidates for cause and the date on which the Contractor affects a cure or the Contract expires without renewal or is terminated.
- (b) The State may terminate this Contract immediately for cause and without any cure period.

Should the State exercise its option under item (a) above, it nevertheless will be entitled anytime thereafter to exercise its option under item (b) above. Additionally, should the State terminate this Contract under this provision, it will be entitled to damages in accordance with the Suspension and Termination Section of this Contract due to the termination. Should the State assess liquidated damages or otherwise be entitled to damages under this provision, it may offset these damages from any Fees due under this Contract.

The State may determine that the proposed replacement candidates meet the minimum qualifications of this Contract and still substantially reduce the value the State perceived it would receive through the effort of the original individual(s) the Contractor proposed and on whose credentials the State decided to enter into this Contract. Therefore, the State will have the right to reject any candidate that the State determines may provide it with diminished value.

Should the State reject both proposed candidates for any legal reason other than their failure to meet the minimum qualifications identified in the RFP Documents, the State may terminate this Contract for its convenience.

The State has an interest in providing a healthy and safe environment for its employees and guests at its facilities. The State also has an interest in ensuring that its operations are carried out in an efficient, professional, legal, and secure manner. Therefore, the State will have the right to require the Contractor to remove any individual involved in the Work, if the State determines that any such individual has or may interfere with the State's interests identified above. In such a case, the request for removal will be treated as a case in which an individual providing services under this Contract has become unavailable, and the Contractor must follow the procedures identified above for replacing unavailable people. This provision also applies to people that the Contractor's subcontractors engage, if they are listed by name or as a key person in the RFP Documents.

**Suspension and Termination.** The State may terminate this Contract if the Contractor defaults in meeting its obligations under this Contract and fails to cure its default within the time allowed by this Contract, or if a petition in bankruptcy (or similar proceeding) has been filed by or against the Contractor. The State also may terminate this Contract if the Contractor violates any law or regulation in doing the Work, or if it appears to the State that the Contractor's performance is substantially endangered through no fault of the State. In any such case, the termination will be for cause, and the State's rights and remedies will be those identified below for termination for cause.

On written notice, the Contractor will have 30 calendar days to cure any breach of its obligations under this Contract, provided the breach is curable. If the Contractor fails to cure the breach within 30 calendar days after written notice, or if the breach is not one that is curable, the State will have the right to terminate this Contract immediately on notice to the Contractor. The State also may terminate this Contract in the case of breaches that are cured within 30 calendar days but are persistent. "Persistent" in this context means that the State has notified the Contractor in writing of the Contractor's failure to meet any of its obligations three times. After the third notice, the State may terminate this Contract on written notice to the Contractor without a cure period if the Contractor again fails to meet any obligation. The three notices do not have to relate to the same obligation or type of failure. Some provisions of this Contract may provide for a shorter cure period than 30 calendar days or for no cure period at all, and those provisions will prevail over this one. If a particular section does not state what the cure period will be, this provision will govern.

Moreover, the State may terminate this Contract for its convenience and without cause or if the Ohio General Assembly fails to appropriate funds for any part of the Work. If a third party is providing funding for the Work, the State also may terminate this Contract should that third party fail to release any funds for the Work. The RFP Documents normally identify any third party source of funds for the Work, but an absence of such in the RFP Documents will not diminish the State's rights under this section.

The notice of termination, whether for cause or without cause, will be effective as soon as the Contractor receives it. Upon receipt of the notice of termination, the Contractor must immediately cease all activity on the Work and take all steps necessary to minimize any costs the Contractor will incur related to this Contract. The Contractor also must immediately prepare a report and deliver it to the State. The report must be all-inclusive and must detail the Work completed at the date of termination, the percentage of the Work's completion, any costs incurred in doing the Work to that date, and any Deliverables completed or partially completed but not delivered to the State at the time of termination. The Contractor also must deliver all the completed and partially completed Deliverables to the State with its report. But if the State determines that delivery in that manner would not be in its interest, then the State may designate a suitable alternative form of delivery, which the Contractor must honor.

If the State terminates this Contract for cause, the State will be entitled to cover for the Work by using another Contractor on such commercially reasonable terms as the State and the covering contractor may agree. The Contractor will be liable to the State for all costs related to covering for the Work to the extent that such costs, when combined with payments already made to the Contractor for the Work before termination, exceed the costs that the State would have incurred under this Contract. The Contractor

also will be liable for any other direct damages resulting from its breach of this Contract or other action leading to termination for cause.

If the termination is for the convenience of the State, the Contractor will be entitled to compensation for any Work that the Contractor has performed before the termination. Such compensation will be the Contractor's exclusive remedy in the case of termination for convenience and will be available to the Contractor only once the Contractor has submitted a proper invoice for such, with the invoice reflecting the amount that the State determines it owes to the Contractor. The State will make that determination based on the lesser of the percentage of the Work completed or the hours of work performed in relation to the estimated total hours required to perform all the Work.

The State will have the option of suspending rather than terminating the Work, if the State believes that doing so would better serve its interests. In the event of a suspension for the convenience of the State, the Contractor will be entitled to receive payment for the work performed before the suspension. In the case of suspension of the Work rather than termination for cause, the Contractor will not be entitled to any compensation for any work performed. If the State reinstates the Work after suspension for cause, rather than terminating this Contract after the suspension, the Contractor may be entitled to compensation for work performed before the suspension, less any damage to the State resulting from the Contractor's breach of this Contract or other fault. Any amount due for work before or after the suspension for cause will be offset by any damage to the State from the default or other event giving rise to the suspension.

In the case of a suspension for the State's convenience, the State will calculate the amount of compensation due to the Contractor for work performed before the suspension in the same manner as provided in this section for termination for the State's convenience. The Contractor will not be entitled to compensation for any other costs associated with a suspension for the State's convenience, and the State will make no payment under this provision to the Contractor until the Contractor submits a proper invoice. If the State decides to allow the Work to continue rather than terminating this Contract after the suspension, the State will not be required to make any payment to the Contractor other than those payments specified in this Contract and in accordance with the payment schedule specified in this Contract for properly completed Work.

Any notice of suspension, whether with or without cause, will be effective immediately on the Contractor's receipt of the notice. The Contractor will prepare a report concerning the Work just as is required by this Section in the case of termination. After suspension of the Work, the Contractor may not perform any Work without the consent of the State and may resume the Work only on written notice from the State to do so. In any case of suspension, the State retains its right to terminate this Contract rather than to continue the suspension or resume the Work. If the suspension is for the convenience of the State, then termination of the Contract will be a termination for convenience. If the suspension is with cause, the termination will also be for cause.

The State may not suspend the Work for its convenience more than twice during the term of this Contract, and any suspension for the State's convenience may not continue for more than 30 calendar days. If the Contractor does not receive notice to resume or terminate the Work within the 30-day suspension, then this Contract will terminate automatically for the State's convenience at the end of the 30 calendar day period.

Any default by the Contractor or one of its subcontractors will be treated as a default by the Contractor and all of its subcontractors. The Contractor will be solely responsible for satisfying any claims of its subcontractors for any suspension or termination and must indemnify the State for any liability to them. Notwithstanding the foregoing, each subcontractor must hold the State harmless for any damage caused to them from a suspension or termination. They must look solely to the Contractor for any compensation to which they may be entitled.

**Representatives.** The State's representative under this Contract will be the person identified in the RFP Documents or in a subsequent notice to the Contractor as the "Contract Representative." The Contract Representative will review all reports the Contractor makes in the performance of the Work, will conduct

all liaison with the Contractor, and will accept or reject the Deliverables and the completed Work. The Contract Representative may delegate his or her responsibilities for individual aspects of the Work to one or more managers, who may act as the Contract Representative for those individual portions of the Work.

The Contractor's Contract Manager under this Contract will be the person identified on the RFP Documents as the "Contract Manager." The Contract Manager will be the Contractor's liaison with the State under this Contract. Additionally, the Contract Manager will conduct all Work meetings and prepare and submit to the Contract Representative all reports, plans, and other materials that the RFP Documents require from the Contractor.

Either party, upon written notice to the other party, may designate another representative. However, the Contractor may not replace the Contract Manager without the approval of the State if that person is identified in the RFP Documents by name or as a key individual on the Work.

**Work Responsibilities.** The State will be responsible for providing only those things, if any, expressly identified in the RFP Documents. If the State has agreed to provide facilities or equipment, the Contractor, by signing this Contract, warrants that the Contractor has either inspected the facilities and equipment or has voluntarily waived an inspection and will use the equipment and facilities on an "as is" basis.

The Contractor must assume the lead in the areas of management, design, and development of the Work. The Contractor must coordinate the successful execution of the Work and direct all Work activities on a day-to-day basis, with the advice and consent of the Contract Representative. The Contractor will be responsible for all communications regarding the progress of the Work and will discuss with the Contract Representative any issues, recommendations, and decisions related to the Work.

If any part of the Work requires installation on the State's property, the State will provide the Contractor with reasonable access to the installation site for the installation and any site preparation that is needed. After the installation is complete, the Contractor must complete an installation letter and secure the signature of the Contract Representative certifying that installation is complete and the Work, or applicable portion of it, is operational. The letter must describe the nature, date, and location of the installation, as well as the date the Contract Representative certified the installation as complete and operational.

Unless otherwise provided in the RFP Documents, the Contractor is solely responsible for obtaining all official permits, approvals, licenses, certifications, and similar authorizations required by any local, state, or federal agency for the Work and maintaining them throughout the duration of this Contract.

**Changes.** The State may make reasonable changes within the general scope of the Work. The State will do so by issuing a written order under this Contract describing the nature of the change ("Change Order"). Additionally, if the State provides directions or makes requests of the Contractor without a change order, and the Contractor reasonably believes the directions or requests are outside the specifications for the Work, the Contractor may request a Change Order from the State. The parties will handle such changes as follows: The Contractor will provide pricing to the State. The State will execute a Change Order once it and the Contractor have agreed on the description of and specifications for the change, as well as any equitable adjustments that need to be made in the Contractor's Fee or the performance schedule for the work. Then within five business days after receiving the Change Order, the Contractor must sign it to signify agreement with it.

If a change causes an increase in the cost of, or the time required for, the performance of the Work, the Contractor must notify the State in writing and request an equitable adjustment in its Fee, the delivery schedule, or both before the Contractor signs the Change Order. If the Contractor claims an adjustment under this section in connection with a change to the Work not described in a written Change Order, the Contractor must notify the State in writing of the claim within five business days after the Contractor is notified of the change and before work on the change begins. Otherwise, the Contractor will have waived the claim. In no event will the State be responsible for any increase in the Fee or revision in any delivery schedule unless the State expressly ordered the relevant change in writing and the Contractor has

complied with the requirements of this section. Provided the State has complied with the procedure for Change Orders in this section, nothing in this clause will excuse the Contractor from proceeding with performance of the Work, as changed.

Where an equitable adjustment to the Contractor's Fee is appropriate, the State and the Contractor may agree upon such an adjustment. If the State and the Contractor are unable to agree, either party may submit the dispute to the senior management of the Contractor and the senior management of the State's Office of Information Technology for resolution. If within 30 calendar days following referral to senior management, the claim or dispute has not been resolved, the Contractor must submit its actual costs for materials needed for the change (or estimated amount if the precise amount of materials cannot be determined) and an estimate of the hours of labor required to do the work under the Change Order. The Contractor must break down the hours of labor by employee position, and provide the actual hourly pay rate for each employee involved in the change. The total amount of the equitable adjustment for the Change Order then will be made based on the actual cost of materials (or estimated materials) and actual rate for each person doing the labor (based on the estimated hours of work required to do the change). Labor rates will be increased by 25% to cover benefits and taxes. The equitable adjustment for the Change Order then will be set based on this amount, plus 15% to cover overhead and profit. This amount will be the not-to-exceed amount of the Change Order. If the change involves removing a requirement from the Work or replacing one part of the Work with the change, the State will get a credit for the work no longer required under the original scope of the Work. The credit will be calculated in the same manner as the Contractor's Fee for the change, and the not-to-exceed amount will be reduced by this credit.

The Contractor is responsible for coordinating changes with its subcontractors and adjusting their compensation and performance schedule. The State will not pay any subcontractor for the Change Order. If a subcontractor will perform any work under a Change Order, that work must be included in the Contractor's not-to-exceed amount and calculated in the same manner as the Contractor's equitable adjustment for the portion of the work the Contractor will perform. The Contractor will not receive an overhead percentage for any work a subcontractor will do under a Change Order.

If the RFP Documents provide for the retainage of a portion of the Contractor's Fee, all equitable adjustments for Change Orders also will be subject to the same retainage, which the State will pay only on completion and acceptance of the Work, as provided in the RFP Documents.

**Excusable Delay.** Neither party will be liable for any delay in its performance that arises from causes beyond its control and without its negligence or fault. The delayed party must notify the other promptly of any material delay in performance and must specify in writing the proposed revised performance date as soon as practicable after notice of delay. In the event of any such excusable delay, the date of performance or of delivery will be extended for a period equal to the time lost by reason of the excusable delay. The delayed party also must describe the cause of the delay and what steps it is taking to remove the cause. The delayed party may not rely on a claim of excusable delay to avoid liability for a delay if the delayed party has not taken commercially reasonable steps to mitigate or avoid the delay. Things that are controllable by the Contractor's subcontractors will be considered controllable by the Contractor, except for third-party manufacturers supplying commercial items and over whom the Contractor has no legal control.

**Independent Status of the Contractor.** The parties are independent of one another, and the Contractor's Personnel may act only in the capacity of representatives of the Contractor and not as representatives of the State. Further, the Contractor's Personnel will not be deemed for any purpose to be employees, representatives, or agents of the State. The Contractor assumes full responsibility for the actions of the Contractor's Personnel while they are performing under this Contract and will be solely responsible for paying the Contractor's Personnel (including withholding, and paying income taxes and social security, workers' compensation, disability benefits and the like). The Contractor may not commit, and is not authorized to commit, the State in any manner. The Contractor's subcontractors will be considered the agents of the Contractor for purposes of this Contract.

**Publicity.** The Contractor may not advertise or publicize that it is doing business with the State or use this Contract or the Contractor's relationship with the State as a marketing or sales tool, unless the State agrees otherwise in writing.

**Political Subdivisions.** Ohio political subdivisions, such as Ohio cities, counties, and townships ("Political Subdivisions"), may rely on this Contract. Whenever a Political Subdivision relies on this Contract to issue a purchase order, the Political Subdivision will assume the rights and responsibilities of the State under this Contract for purposes of its order, and, as to the Political Subdivision's order, this Contract will be between the Contractor and the Political Subdivision. The Contractor must look solely to the Political Subdivision for performance, including but not limited to payment, and must hold the State harmless with regard to such orders and the Political Subdivision's performance. But the State will have the right to terminate this Contract and seek such remedies on termination as this Contract provides should the Contractor fail to honor its obligations under an order from a Political Subdivision. Nothing in this Contract requires the Contractor to accept an order from a Political Subdivision, if the Contractor reasonably believes that the Political Subdivision is or will be unable to perform its obligations in relation to that order.

### **PART THREE: OWNERSHIP AND HANDLING OF INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION**

**Confidentiality.** The State may disclose to the Contractor written material or oral or other information that the State treats as confidential ("Confidential Information"). Title to the Confidential Information and all related materials and documentation the State delivers to the Contractor will remain with the State. The Contractor must treat such Confidential Information as secret, if it is so marked, otherwise identified as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of the public, other contractors, potential contractors with the State, or individuals or organizations about whom the State keeps information. By way of example, information must be treated as confidential if it includes any proprietary documentation, materials, flow charts, codes, software, computer instructions, techniques, models, information, diagrams, know-how, trade secrets, data, business records, or marketing information. By way of further example, the Contractor also must treat as confidential materials such as police and investigative records, files containing personal information about individuals or employees of the State, such as personnel records, tax records, and so on, court and administrative records related to pending actions, any material to which an attorney-client, physician-patient, or similar privilege may apply, and any documents or records excluded by Ohio law from public records disclosure requirements.

The Contractor may not disclose any Confidential Information to third parties and must use it solely to do the Work. The Contractor must restrict circulation of Confidential Information within its organization and then only to people in the Contractor's organization that have a need to know the Confidential Information to do the Work. The Contractor will be liable for the disclosure of such information, whether the disclosure is intentional, negligent, or accidental, unless otherwise provided below.

The Contractor will not be liable for any unintentional disclosure of Confidential Information that results despite the Contractor's exercise of at least the same degree of care as it normally takes to safeguard its own secrets, except when the Contractor's procedures are not reasonable given the nature of the Confidential Information or when the disclosure nevertheless results in liability to the State.

The Contractor will not incorporate any portion of any Confidential Information into any work or product, other than a Deliverable, and will have no proprietary interest in any of the Confidential Information. Furthermore, the Contractor must cause all of its Personnel who have access to any Confidential Information to execute a confidentiality agreement incorporating the obligations in this section.

The Contractor's obligation to maintain the confidentiality of the Confidential Information will not apply where such: (1) was already in the Contractor's possession before disclosure by the State, and such was received by the Contractor without obligation of confidence; (2) is independently developed by the

Contractor; (3) is or becomes publicly available without breach of this Contract; (4) is rightfully received by the Contractor from a third party without an obligation of confidence; (5) is disclosed by the Contractor with the written consent of the State; or (6) is released in accordance with a valid order of a court or governmental agency, provided that the Contractor (a) notifies the State of such order immediately upon receipt of the order and (b) makes a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production. The Contractor must return all originals of any Confidential Information and destroy any copies it has made on termination or expiration of this Contract.

The Contractor may disclose Confidential Information to its subcontractors on a need-to-know basis, but the Contractor first must obligate them to the requirements of this section.

**Ownership of Deliverables.** The State owns all Deliverables that the Contractor produces under this Contract, with all rights, title, and interest in all intellectual property that come into existence through the Contractor's custom work being assigned to the State. Additionally, the Contractor waives any author rights and similar retained interests in custom-developed material. The Contractor must provide the State with all assistance reasonably needed to vest such rights of ownership in the State. The Contractor will retain ownership of all tools, methods, techniques, standards, and other development procedures, as well as generic and preexisting shells, subroutines, and similar material incorporated into any custom Deliverable ("Pre-existing Materials"), if the Contractor provides the non-exclusive license described in the next paragraph.

The Contractor may grant the State a worldwide, non-exclusive, royalty-free, perpetual license to use, modify, and distribute all Pre-existing Materials that are incorporated into any custom-developed Deliverable rather than grant the State ownership of the Pre-existing Materials. The State may distribute such Pre-existing materials to third parties only to the extent required by governmental funding mandates. The Contractor may not include in any custom Deliverable any intellectual property unless such has been created under this Contract or qualifies as Pre-existing Material. If the Contractor wants to incorporate any Pre-existing Materials into a custom Deliverable, the Contractor must first disclose that desire to the State in writing and seek the State's approval for doing so in advance. The State will not be obligated to provide that approval, unless the Contractor disclosed its intention to do so in the RFP Documents. On the Contractor's request, the State will incorporate into any copies of a custom Deliverable any proprietary notice that the Contractor included with the original copy, if that notice is reasonably necessary to protect the Contractor's interest in any Pre-existing Materials contained in the custom Deliverable.

Subject to the limitations and obligations of the State with respect to Pre-existing Materials, the State may make all custom Deliverables available to the general public without any proprietary notices of any kind.

**License in Commercial Material.** As used in this section, "Commercial Material" means anything that the Contractor or a third party has developed at private expense, is commercially available in the marketplace, subject to intellectual property rights, and readily copied through duplication on magnetic media, paper, or other media. Examples include written reports, books, pictures, videos, movies, computer programs, and computer source code and documentation.

Any Commercial Material that the Contractor intends to deliver as a Deliverable must have the scope of the license granted in such material disclosed in the RFP Documents or as an attachment referenced in the RFP Documents, if that scope of license is different from the scope of license contained in this section for Commercial Materials.

Except for Commercial Material that is software ("Commercial Software"), if the Commercial Material is copyrighted and published material, then the State will have the rights permitted under the federal copyright laws for each copy of the Commercial Material delivered to it by the Contractor.

Except for Commercial Software, if the Commercial Material is patented, then the State will have the rights permitted under the federal patent laws for each copy of the Commercial Material delivered to it by the Contractor.

Except for Commercial Software, if the Commercial Material consists of trade secrets, then the State will treat the material as confidential. In this regard, the State will assume all obligations with respect to the Commercial Material that the Contractor assumes under the Confidentiality section of this Contract with respect to the State's Confidential Information. Otherwise, the State will have the same rights and duties permitted under the federal copyright laws for each copy of the Commercial Material delivered to it by the Contractor, whether or not the material is copyrighted when delivered to the State.

For Commercial Software, the State will have the rights in items (1) through (6) of this section with respect to the software. The State will not use any Commercial Software except as provided in items (1) through (6) of this section or as expressly stated otherwise in this Contract. The Commercial Software may be:

- (1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any State installation to which such computer or computers may be transferred;
- (2) Used or copied for use in or with a backup computer for disaster recovery and disaster recovery testing purposes or if any computer for which it was acquired is inoperative;
- (3) Reproduced for safekeeping (archives) or backup purposes;
- (4) Modified, adapted, or combined with other computer software, but the modified, combined, or adapted portions of the derivative software incorporating any of the Commercial Software will be subject to same restrictions set forth in this Contract;
- (5) Disclosed to and reproduced for use on behalf of the State by support service contractors or their subcontractors, subject to the same restrictions set forth in this Contract; and
- (6) Used or copied for use in or transferred to a replacement computer.

Commercial Software delivered under this Contract is licensed to the State without disclosure restrictions unless it is clearly marked as confidential or secret. The State will treat any Commercial Software that is marked as confidential or secret as Confidential Information to the extent that such is actually the case.

#### **PART FOUR: REPRESENTATIONS, WARRANTIES, AND LIABILITIES**

**General Warranties.** The Contractor warrants that the recommendations, guidance, and performance of the Contractor under this Contract will: (1) be in accordance with sound professional standards and the requirements of this Contract and without any material defects; and (2) unless otherwise provided in the RFP Documents, be the work solely of the Contractor. The Contractor also warrants that: (1) no Deliverable will infringe on the intellectual property rights of any third party; and (2) the Contractor's work and the Deliverables resulting from that work will be merchantable and fit for the particular purposes described in the RFP Documents.

Additionally, with respect to the Contractor's activities under this Contract, the Contractor warrants that: (1) the Contractor has the right to enter into this Contract; (2) the Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform the contemplated services; (3) the Contractor will observe and abide by all applicable laws and regulations, including those of the State regarding conduct on any premises under the State's control; (4) the Contractor has good and marketable title to any goods delivered under this Contract and in which title passes to the State; (5) all hardware, software, firmware, and similar devices and materials provided under this Contract will be designed to operate without regard to the turning of a century and process dates in a manner that takes into account dates occurring before and after the turning of a century; (6) the Contractor has the right and ability to grant the license granted in any Deliverable in which title does not pass to the State; and (7) the Contractor is not subject to any unresolved findings of the Auditor of State under Revised Code Section 9.24 and will not become subject to an unresolved finding that prevents the extension or renewal of this Contract.

The warranties regarding material defects, merchantability, and fitness are one-year warranties. All other warranties will be continuing warranties. If any portion of the Work fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor must correct such failure with all due speed or

must refund the amount of the compensation paid for such portion of the Work. The Contractor also must indemnify the State for any direct damages and claims by third parties based on a breach of these warranties. This obligation of indemnification will not apply where the State has modified or misused the Deliverable and the claim is based on the modification or misuse. The State will give the Contractor notice of any such claim as soon as reasonably practicable. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor must do one of the following things: (1) modify the Deliverable so that it is no longer infringing; (2) replace the Deliverable with an equivalent or better item; (3) acquire the right for the State to use the infringing Deliverable as it was intended for the State to use under this Contract; or (4) remove the Deliverable and refund the amount the State paid for the Deliverable and the amount of any other Deliverable or item that requires the availability of the infringing Deliverable for it to be useful to the State.

**GENERAL EXCLUSION OF WARRANTIES. THE CONTRACTOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, OTHER THAN THOSE EXPRESS WARRANTIES CONTAINED IN THIS CONTRACT.**

**Indemnity for Property Damage and Bodily Injury.** The Contractor must indemnify the State for all liability and expense resulting from bodily injury to any person (including injury resulting in death) and damage to tangible or real property arising out of the performance of this Contract, provided that such bodily injury or property damage is due to the negligence or other tortious conduct of the Contractor, its employees, agents, or subcontractors. The Contractor will not be responsible for any damages or liability to the extent caused by the negligence or willful misconduct of the State, its employees, other contractors, or agents.

**Limitation of Liability.** Neither party will be liable for any indirect, incidental, or consequential loss or damage of the other party, including but not limited to lost profits, even if the parties have been advised, knew, or should have known of the possibility of such damages. Additionally, neither party will be liable to the other for direct or other damages in excess of two times the not-to-exceed fixed price of this Contract or \$3,000,000.00, whichever is greater. The limitations in this paragraph do not apply to any obligation of the Contractor to indemnify the State against claims made against it or for damages to the State caused by the Contractor's negligence or other tortious conduct.

**PART FIVE: ACCEPTANCE AND MAINTENANCE**

**Acceptance.** There will be no formal acceptance procedure unless the RFP Documents expressly provide otherwise. If the RFP Documents do not provide otherwise, the acceptance procedure will be an informal review by the Contract Representative to ensure that each Deliverable and the Work as a whole comply with the requirements of this Contract. The Contract Representative will have up to 30 calendar days to do this. No formal letter of acceptance will be issued, and passage of the 30 calendar days will imply acceptance, though the State will issue a notice of noncompliance if a Deliverable or the Work as a whole does not meet the requirements of this Contract. If the Contract Representative issues a letter of noncompliance, then the Contractor will have 30 calendar days to correct the problems listed in the noncompliance letter. If the Contractor fails to do so, the Contractor will be in default without a cure period. If the Contract Representative has issued a noncompliance letter, the Deliverables or the Work as a whole will not be accepted until the Contract Representative issues a letter of acceptance indicating that each problem noted in the noncompliance letter has been cured. If the problems have been fixed during the 30 day period, the Contract Representative will issue the acceptance letter within 15 calendar days.

If the Work fails to meet the standard of performance after 90 calendar days from the start of the performance period, the Contractor will be in default and will not have a cure period. In addition to all other remedies the State may have under this Contract, the State will have the right to request correction or replacement of the relevant portion of the Work.

**Passage of Title.** Title to any Deliverable will pass to the State only on acceptance of the Deliverable. All risk of loss, regardless of the cause, will remain with the Contractor until title to the Deliverable passes to the State.

## **PART SIX: CONSTRUCTION**

**Entire Document.** This Contract is the entire agreement between the parties with respect to its subject matter and supersedes any previous statements or agreements, whether oral or written.

**Binding Effect.** This Contract will be binding upon and inure to the benefit of the respective successors and assigns of the State and the Contractor.

**Amendments – Waiver.** No change to any provision of this Contract will be effective unless it is in writing and signed by both parties. The failure of either party at any time to demand strict performance by the other party of any of the terms of this Contract will not be a waiver of those terms. Waivers must be in writing to be effective, and either party may at any later time demand strict performance.

**Severability.** If any provision of this Contract is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Contract will remain in full force and effect to the extent that such does not create an absurdity.

**Construction.** This Contract will be construed in accordance with the plain meaning of its language and neither for nor against the drafting party.

**Headings.** The headings used herein are for the sole sake of convenience and may not be used to interpret any section.

**Notices.** For any notice under this Contract to be effective, it must be made in writing and sent to the address of the appropriate contact provided elsewhere in the Contract, unless such party has notified the other party, in accordance with the provisions of this section, of a new mailing address. This notice requirement will not apply to any notices that this Contract expressly authorized to be made orally.

**Continuing Obligations.** The terms of this Contract will survive the termination or expiration of the time for completion of Work and the time for meeting any final payment of compensation, except where such creates an absurdity.

**Time.** Unless otherwise expressly provided, any reference in this document to a number of days for an action or event to occur means calendar days, and any reference to a time of the day, such as 5:00 p.m., is a reference to the local time in Columbus, Ohio.

## **PART SEVEN: LAW AND COURTS**

**Compliance with Law.** The Contractor must comply with all applicable federal, state, and local laws while performing under this Contract.

**Drug-Free Workplace.** The Contractor must comply with all applicable state and federal laws regarding keeping a drug-free workplace. The Contractor must make a good faith effort to ensure that all the Contractor's Personnel, while working on state property, will not have or be under the influence of illegal drugs or alcohol or abuse prescription drugs in any way.

**Conflicts of Interest.** None of the Contractor's Personnel may voluntarily acquire any personal interest that conflicts with their responsibilities under this Contract. Additionally, the Contractor may not knowingly permit any public official or public employee who has any responsibilities related to this Contract or the Work to acquire an interest in anything or any entity under the Contractor's control, if such an interest would conflict with that official's or employee's duties. The Contractor must disclose to the State knowledge of any such person who acquires an incompatible or conflicting personal interest related to this Contract. And the Contractor must take steps to ensure that such a person does not participate in

any action affecting the work under this Contract. But this will not apply when the State has determined, in light of the personal interest disclosed, that person's participation in any such action would not be contrary to the public interest.

**Ohio Ethics Law and Limits on Political Contributions.** The Contractor certifies that it is currently in compliance with and will continue to adhere to the requirements of the Ohio ethics law, Revised Code Chapter 102. The Contractor further acknowledges that it has read the requirements of Revised Code Section 3517.13 regarding limitations on political contributions as a basis for eligibility to participate in State contracts and certifies that it and the listed individuals and business associates are in compliance with Section 3517.13 and will remain in compliance for the duration of this Contract and for one year following the conclusion of this Contract.

**Unresolved Finding for Recovery.** If the Contractor was subject to an unresolved finding of the Auditor of State under Revised Code Section 9.24 on the date the parties sign this Contract, the Contract is void. Further, if the Contractor is subject to an unresolved finding of the Auditor of State under Revised Code Section 9.24 on any date on which the parties renew or extend this Contract, the renewal or extension will be void.

**Equal Employment Opportunity.** During the Work, the Contractor must not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age, or Vietnam-era veteran status ("Protected Status"). The Contractor must ensure that applicants for employment and employees are treated without regard to their Protected Status.

The Contractor must post notices with the provisions of this section in conspicuous places that are available to employees and applicants and must state in all solicitations and advertisements for employees that it is an equal opportunity employer.

**Injunctive Relief.** Nothing in this Contract is intended to limit the State's right to injunctive relief, if such is necessary to protect its interests or to keep it whole.

**Assignment.** The Contractor may not assign this Contract or any of its rights or obligations under this Contract without the prior, written consent of the State. The State is not obligated to provide its consent to any proposed assignment.

**Governing Law.** This Contract will be governed by the laws of Ohio, and venue for any disputes will lie exclusively with the appropriate court in Franklin County, Ohio.

**ATTACHMENT FIVE  
SAMPLE CONTRACT**

**A CONTRACT BETWEEN  
THE OFFICE OF INFORMATION TECHNOLOGY  
ON BEHALF OF THE**

\_\_\_\_\_  
**AND**

\_\_\_\_\_  
**(CONTRACTOR)**

**THIS CONTRACT**, which results from RFP «CONTRACT\_ID», entitled \_\_\_\_\_, is between the State of Ohio, through the Office of Information Technology, on behalf of \_\_\_\_\_, and \_\_\_\_\_ (the "Contractor").

This Contract consists of this RFP, including all attachments, written amendments to this RFP, the Contractor's Proposal, and written, authorized amendments to the Contractor's Proposal. It also includes any materials incorporated by reference in the above documents, any purchase orders, and Change Orders issued under the Contract. The form of the Contract is this one page attachment to the RFP, which incorporates by reference all the documents identified above. The General Terms and Conditions for the Contract are contained in another attachment to the RFP. If there are conflicting provisions among the documents that make up the Contract, the order of precedence for the documents is as follows:

1. This RFP, as amended;
2. The documents and materials incorporated by reference in the RFP;
3. The Contractor's Proposal, as amended, clarified, and accepted by the State; and
4. The documents and materials incorporated by reference in the Contractor's Proposal.

Notwithstanding the order listed above, Change Orders and amendments issued after the Contract is executed may expressly change the provisions of the Contract. If they do so expressly, then the most recent of them will take precedence over anything else that is part of the Contract.

This Contract has an effective date of the later of \_\_\_\_\_, 20\_\_\_\_, or the occurrence of all conditions precedent specified in the General Terms and Conditions.

**TO SHOW THEIR AGREEMENT**, the parties have executed this Contract as of the dates below.

CONTRACTOR

STATE OF OHIO  
OFFICE OF INFORMATION TECHNOLOGY

**SAMPLE – DO NOT FILL OUT**

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

By: R. Steve Edmonson

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

Title: Director, Office of Information Technology  
State Chief Information Officer

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

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

**ATTACHMENT SIX**

**CONTRACTOR PERFORMANCE FORM**

The offeror must provide the following information for the past seven years. Please indicate yes or no in each column.

Yes/No	Description
	The offeror has had a contract terminated for default or cause. If so, the offeror must submit full details, including the other party's name, address, and telephone number.
	The offeror has been assessed any penalties in excess of \$10,000, including liquidated damages, under any of its existing or past contracts with any organization (including any governmental entity). If so, the offeror must provide complete details, including the name of the other organization, the reason for the penalty, and the penalty amount for each incident.
	The offeror was the subject of any governmental action limiting the right of the offeror to do business with that entity or any other governmental entity.
	Trading in the stock of the company has ever been suspended with the date(s) and explanation(s).
	The offeror, any officer of the offeror, or any owner of a 20% interest or greater in the offeror has filed for bankruptcy, reorganization, a debt arrangement, moratorium, or any proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding.
	The offeror, any officer of the offeror, or any owner with a 20% interest or greater in the offeror has been convicted of a felony or is currently under indictment on any felony charge.

If the answer to any item above is affirmative, the offeror must provide complete details about the matter. While an affirmative answer to any of these items will not automatically disqualify an offeror from consideration, at the sole discretion of the State, such an answer and a review of the background details may result in a rejection of the offeror's Proposal. The State will make this decision based on its determination of the seriousness of the matter, the matter's possible impact on the offeror's performance on the Work, and the best interests of the State.

**ATTACHMENT SEVEN  
OFFEROR PROFILE SUMMARY**

**OFFEROR MANDATORY REQUIREMENTS**

<b>Mandatory Criteria</b>	<b>Does Not Meet</b>	<b>Meets</b>
<b>Offeror Mandatory Experience Requirements</b>		
Offeror must be a recognized Microsoft LAR (proof required).	<b>Reject</b>	<b>Accept</b>

**ATTACHMENT SEVEN  
OFFEROR PROFILE SUMMARY**

**OFFEROR REQUIREMENTS  
CONTINUED**

OFFEROR: \_\_\_\_\_

**REQUIREMENT:**

1. The offeror must have a minimum of 24 months experience as a LAR in servicing Microsoft Enterprise and Select Agreements in state government in the past three years.

State Government Entity:	Contact:
Address:	Phone Number:
Beginning Date of Agreement:	Ending Date of Agreement:
Pricing Level D? Y/N   If not, what level?	Number of License Points acquired:
Premier Support Provided? Y/N	Value of Premier Support Agreement: \$
MCS Consulting Provided? Y/N	Value of MCS Services Provided: \$
Were there Affiliate enrollees? Y/N	Number of Affiliate enrollees:
Additional information (optional)	

State Government Entity:	Contact:
Address:	Phone Number:
Beginning Date of Agreement:	Ending Date of Agreement:
Pricing Level D? Y/N   If not, what level?	Number of License Points acquired:
Premier Support Provided? Y/N	Value of Premier Support Agreement: \$
MCS Consulting Provided? Y/N	Value of MCS Services Provided: \$
Were there Affiliate enrollees? Y/N	Number of Affiliate enrollees:
Additional information (optional)	

State Government Entity:	Contact:
Address:	Phone Number:
Beginning Date of Agreement:	Ending Date of Agreement:
Pricing Level D? Y/N   If not, what level?	Number of License Points acquired:
Premier Support Provided? Y/N	Value of Premier Support Agreement: \$
MCS Consulting Provided? Y/N	Value of MCS Services Provided: \$
Were there Affiliate enrollees? Y/N	Number of Affiliate enrollees:
Additional information (optional)	

**--Duplicate Form as Needed--**

**ATTACHMENT SEVEN  
OFFEROR PROFILE SUMMARY**

**OFFEROR REQUIREMENTS  
CONTINUED**

OFFEROR: \_\_\_\_\_

**REQUIREMENT:**

- The offeror must have a minimum of 24 months experience as a LAR in servicing Microsoft Academic Agreements in state government in the past three years.

State Government Entity:	Contact:
Address:	Phone Number:
Beginning Date of Services:	Ending Date of Services:
Premier Support Provided? Y/N	Value of Premier Support Agreement: \$
Describe specific services provided	
Additional information (optional)	

State Government Entity:	Contact:
Address:	Phone Number:
Beginning Date of Services:	Ending Date of Services:
Premier Support Provided? Y/N	Value of Premier Support Agreement: \$
Describe specific services provided	
Additional information (optional)	

State Government Entity:	Contact:
Address:	Phone Number:
Beginning Date of Services:	Ending Date of Services:
Premier Support Provided? Y/N	Value of Premier Support Agreement: \$
Describe specific services provided	
Additional information (optional)	

**--Duplicate Form as Needed--**

**ATTACHMENT SEVEN  
OFFEROR PROFILE SUMMARY  
OFFEROR REQUIREMENTS  
CONTINUED**

OFFEROR: \_\_\_\_\_

**REQUIREMENT:**

- 3. The offeror must have a local /Ohio presence for servicing local/Ohio Select, Enterprise or Academic Agreement accounts.

If applicable, the offeror must describe the offeror's organization that currently services Microsoft Select/Enterprise accounts in the local/Ohio region, and its ability to provide custom services to the individual accounts.	
Offeror currently has open Select/Enterprise agreements in Ohio. Y / N	If yes, how many?
Description of offeror's organization currently servicing Ohio accounts:	
Description of offeror's ability to provide custom services to individual enrollees/Affiliates:	

**--Duplicate Form as Needed--**

**ATTACHMENT SEVEN  
OFFEROR PROFILE SUMMARY**

**OFFEROR REQUIREMENTS  
CONTINUED**

OFFEROR: \_\_\_\_\_

**REQUIREMENT:**

4. Within the past 5 years, the offeror must have a minimum of 24 months experience providing comprehensive account management services similar to those described in this RFP to its Select, Enterprise and Academic customers.

Company/Government Entity:	Contact:
Address:	Phone Number:
Beginning Date of Agreement:	Ending Date of Agreement:
Pricing Level D? Y/N   If not, what Level?	Number of License Points acquired:
Premier Support Provided? Y/N	Value of Premier Support Agreement: \$
MCS Consulting Provided? Y/N	Value of MCS Services Provided: \$
Were there Affiliate enrollees? Y/N	Number of Affiliate enrollees:
Additional information (optional)	

Company/Government Entity:	Contact:
Address:	Phone Number:
Beginning Date of Agreement:	Ending Date of Agreement:
Pricing Level D? Y/N   If not, what Level?	Number of License Points acquired:
Premier Support Provided? Y/N	Value of Premier Support Agreement: \$
MCS Consulting Provided? Y/N	Value of MCS Services Provided: \$
Were there Affiliate enrollees? Y/N	Number of Affiliate enrollees:
Additional information (optional)	

Company/Government Entity:		Contact:
Address:		Phone Number:
Beginning Date of Agreement:		Ending Date of Agreement:
Pricing Level D? Y/N	If not, what Level?	Number of License Points acquired:
Premier Support Provided? Y/N		Value of Premier Support Agreement: \$
MCS Consulting Provided? Y/N		Value of MCS Services Provided: \$
Were there Affiliate enrollees? Y/N		Number of Affiliate enrollees:
Additional information (optional)		

**--Duplicate Form as Needed--**

**ATTACHMENT EIGHT  
MICROSOFT CONSULTING SERVICES AGREEMENT**

Services Agreement Number



**MICROSOFT CONSULTING SERVICES AGREEMENT- STATE OF OHIO**

This MICROSOFT CONSULTING SERVICES AGREEMENT-STATE OF OHIO, STATE & LOCAL is entered into between the following agency and Microsoft affiliate as of the effective date identified below. If different from the main contact information, any notices must be addressed to the contact and locations outlined in the notices section below. We will notify you in writing if our address information changes. You must notify us in writing if your address changes.

Agency Name	Name and address of contracting Microsoft affiliate
Street Address and/or post office box	Street Address and/or post office box
City and State / Province	City and State / Province
Country and Postal Code	Country and Postal Code
Contact Name	
Phone Number	Phone Number
Fax Number	Fax Number
<b>Email Address</b>	Email Address @Microsoft.com
For the Attention of:	For the Attention of:
	<b>The agreement and attached documents should be sent to the above address for approval and processing.</b>
<b>Agency Notices Information (if different than above)</b>	<i>All NOTICES should have Copy To:</i> Microsoft Corporation, Law and Corporate Affairs
Agency Name	
Street Address and/or post office box	One Microsoft Way
City and State / Province	Redmond, WA
Country and Postal Code	USA 98052
Contact Name	
Phone Number	
Fax Number	

	425-936-7329
Email Address	@Microsoft.com
For the Attention of:	For the Attention of: Services Attorney

This agreement consists of (1) this cover page, (2) the attached terms and conditions, and (3) any work order entered into under this agreement.

By signing below, you represent that the information you provide on this and each of the attached forms is accurate.

<b>Name of Agency (Entity Name):</b>	<b>Name of contracting Microsoft affiliate:</b>
By:	By:
<i>(Signature)</i>	<i>(Signature)</i>
Name:	Name:
<i>(Printed)</i>	<i>(Printed)</i>
Title:	Title:
<i>(Printed)</i>	<i>(Printed)</i>
Date:	Effective Date:

**MICROSOFT CONSULTING SERVICES AGREEMENT- STATE OF OHIO**  
**TERMS AND CONDITIONS**

**1. Definitions.** In this agreement, “you” means, as the context requires, the agency that has signed this agreement with us or the affiliate that signs a work order; “we” or “us” means, as the context requires, the Microsoft entity that has signed this agreement or the affiliate that signs a work order; “affiliates” means (i) with regard to you, any government agency, department, instrumentality, division, unit or other office that is supervised by or is part of you, or which supervises you or of which you are a part; together with, as mandated by law, any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality located within your jurisdiction and geographic boundaries, provided that a state and its affiliates shall not, for purposes of this definition, be considered to be affiliates of the federal government and its affiliates; and (ii) with regard to us, legal entities that we own, which own us, or which are under common ownership with us; and (iii) “service deliverables” means computer code and related materials we provide to you when performing consulting services; and (iv) “work order” means a fully executed agreement containing, at a minimum, the written specifications of consulting services to be performed, required deliverables, and applicable fees.

**2. Services.** We agree to provide consulting services under the terms and conditions of this agreement. The precise scope of the services will be specified in work orders entered into under this agreement. You or any of your affiliates can enter into work orders under this agreement with our local affiliate. Our ability to deliver the services depends upon your full and timely cooperation, as well as the accuracy and completeness of any information you provide. This agreement does not obligate either of us or any of our affiliates to enter into any work order.

Notwithstanding any other terms and conditions in this agreement, you and each affiliate shall be responsible for compliance with the terms of the agreement only with respect to the work orders to which you or your affiliates are a party or under which you or the affiliate participates. However, neither you nor any affiliate shall be responsible for compliance with any agreement or work order to which you or the affiliate is not a party or under which you or the affiliate does not participate. The parties intend that local affiliates, e.g., counties, boroughs, cities, towns, townships, municipalities, special purpose districts, or other similar types of local government instrumentalities, and any agency, department, division, unit or other office of such local affiliates, will enter into work orders separate from the State of Ohio work orders; however, you and your affiliates assume responsibility for ensuring this is the case.

**3. Fees and expenses.** You agree to pay us the fees described in each work order, subject to the following provisions:

**a. Payments and Invoices.**

Payments under this Agreement will be due on the 30th calendar day after the later of:

- (1) The date of actual receipt of a proper invoice in the office designated to receive the invoice, or
- (2) The date the Deliverable(s) is/are accepted in accordance with the terms of this agreement.

The date of the warrant issued in payment will be considered the date payment is made.

Without diminishing the foregoing payment rights and obligations, the payment will be overdue if it is not received by the 30th day after the later of:

- (1) The date of actual receipt of a proper invoice in the office designated to receive the invoice, or
- (2) The date the Deliverable(s) is/are accepted in accordance with the terms of the Agreement.

If a payment is overdue, then interest will be paid under the provisions of Section 126.30 of the Ohio Revised Code ("Code").

Invoices must be submitted in an original and three copies to the office designated in the purchase order as the "bill to address". A proper invoice must include the following information and/or attached documentation:

- (1) Name and address of Microsoft as designated in the Agreement or this Amendment.
- (2) Federal Tax Identification Number of Microsoft as designated in this Amendment or the Agreement.
- (3) Invoice remittance address as designated in the Agreement.
- (4) The purchase order number authorizing the delivery of the Deliverable(s).
- (5) Description of the Deliverable(s) actually delivered or rendered as specified in the purchase order. If the invoice is for a lease, the payment number (e.g., 1 of 36) must also be indicated.

If an invoice contains a defect or impropriety or if notification of a price increase was not given as required by this agreement, State will send Microsoft written notice along with the improper invoice within 15 calendar days after receipt of the defective invoice. The notice will contain a description of the problem(s) with the invoice and the information necessary to correct the problem(s). Once State has sent Microsoft notice regarding a defective invoice, the required payment date will be 30 days after receipt of a proper invoice or product acceptance whichever is later. State may not be considered to be in default for an overdue payment unless and until State has failed to make payment within 61 days after receipt of a proper invoice.

State will not be liable for any delay in its performance, including payment obligations, that arises from causes beyond its control.

**b. Taxes.** State is exempt from all state and local taxes. State does not agree to pay any such taxes.

**c. Travel.** Any travel or per diem required by Microsoft to carry out its obligations under the Agreement will be at Microsoft's expense. Any additional travel, requested by State in writing, will be paid by State only with prior written approval. All additional travel and per diem will be paid in accordance with Section 126.02 of the Ohio Administrative Code. State will not be responsible for any living expenses incurred by Microsoft.

**4. Ownership of deliverables.** The Deliverables we provide shall become your property. You, and any person, agency or instrumentality providing financial assistance for the work performed shall have an unrestricted right to reproduce, distribute, modify, maintain and use the Deliverables, for their intended purpose, and we shall not obtain copyright, patent or other proprietary protection for the Deliverables, provided, however, that we shall reserve our rights in all methods, pre-existing work, software and data used to prepare such Deliverables.

**5. Restrictions on use.** You may not transfer licenses to, or sublicense, service deliverables to the U.S. Government. You acknowledge that software licensed under this agreement is of U.S. origin. You agree to comply with all applicable international and national laws that apply to these products, including the U.S. Export Administration Regulations, as well as end-user, end-use and country destination restrictions issued by U.S. and other governments. For additional information on exporting Microsoft products, see <http://www.microsoft.com/exporting/>.

## **6. Confidentiality.**

**a. Confidential information.** Confidential information means information marked or otherwise identified in writing by a party as proprietary or confidential or that, under the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary or confidential. It includes non-public information regarding either party's products, features, marketing and promotions, and the negotiated terms of our agreements.

Confidential information does not include information which: (i) the recipient developed independently; (ii) the recipient knew before receiving it under the relevant agreement; (iii) is or subsequently becomes publicly available or is received from another source, in both cases other than by a breach of an obligation of confidentiality; or (iv) information that is considered a "Record" under the Ohio Public Records Law and such information or record is not exempted from disclosure by operation of another applicable law

**b. Use of confidential information.** For a period of five years after disclosure, neither party will use the other's confidential information without the other's written consent except in furtherance of this business relationship or disclose the other's confidential information except (i) to obtain advice from legal or financial consultants, or (ii) if compelled by law, in which case the disclosing party will use its best efforts to give the other party notice of the requirement so that the disclosure can be contested.

You and we will take reasonable precautions to safeguard each other's confidential information. Such precautions will be at least as great as those we each take to protect our own confidential information. You and we will disclose each other's confidential information to our employees or consultants only on a need-to-know basis and subject to the confidentiality obligations imposed here. When confidential information is no longer necessary to perform any obligation under any of the agreements, each of us will return it to the other or destroy it at the other's request.

Notwithstanding any other provision of this Section 6, you may disclose the terms and conditions of this agreement in accordance with the requirements of your public records law.

**c. Retained rights.** You and we are free to develop products independently without the use of the other's confidential information. Neither you nor we are obligated to restrict the future work assignments of people who have had access to confidential information. In addition, these people are free to use the information that they remember related to information technology, including ideas, concepts, know-how or techniques, so long as they do not disclose confidential information of the other party in violation of this agreement. This use shall not grant either party any rights under the other's copyrights or patents and does not require payment of royalties or separate license.

You or we may provide suggestions, comments or other feedback to the other with respect to the other's confidential information. Feedback is voluntary and the receiving party is not required to hold it in confidence. The receiving party will not disclose the source of feedback without the providing party's consent. Feedback may be used for any purpose without obligation of any kind.

**d. Cooperation in the event of disclosure.** Each of us will immediately notify the other upon discovery of any unauthorized use or disclosure of confidential information and will cooperate in any reasonable way to help the other regain possession of the confidential information and prevent further unauthorized use.

**e. Knowledge base.** We may use any technical information we derive from providing the services relating to problem resolution, troubleshooting, product functionality enhancements and fixes, for our knowledge base. We agree not to identify you or disclose any of your confidential information in any item in the knowledge base.

## **7. Warranties.**

**a. Services.** We warrant that all services will be performed using generally accepted industry standards and practices.

**b. No other warranties.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, OTHER THAN THOSE IDENTIFIED EXPRESSLY IN THIS SECTION, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE PRODUCTS, SERVICE DELIVERABLES, RELATED MATERIALS AND SERVICES EXCEPT AS FOLLOWS: IF WE HAVE BEEN ENGAGED UNDER THE SCOPE OF WORK IN THE WORK ORDER TO DESIGN SOMETHING TO MEET A PARTICULAR NEED FOR THE STATE, THEN WE WARRANT THAT OUR WORK WILL MEET THE STATED PURPOSE FOR THAT WORK..

WE WILL NOT BE LIABLE FOR ANY SERVICES OR PRODUCTS PROVIDED BY THIRD PARTY VENDORS, DEVELOPERS OR CONSULTANTS IDENTIFIED OR REFERRED TO YOU BY US UNLESS SUCH THIRD PARTY PRODUCTS OR SERVICES ARE PROVIDED UNDER THIS AGREEMENT BETWEEN YOU AND US.

**8. Defense of infringement claim.** We will defend you against any claim by an unaffiliated third party that any service deliverable infringes its copyright, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent). You must notify us promptly in writing of the claim and give us sole control over our defense or settlement of any claim covered by this Section 8 of the Agreement alleging that any service deliverable of ours infringes an unaffiliated third-party's copyright and you will withhold control over your own defense or settlement. You agree to provide Microsoft with reasonable assistance in defending the claim, and Microsoft will reimburse you for reasonable out of pocket expenses that you incur in providing that assistance.

Our obligations will not apply to the extent that the claim or adverse final judgment is based on (i) specifications you provide to us for the service deliverables; (ii) code or materials provided by you as part of service deliverables; (iii) your running of the service deliverables after we notify you to discontinue running due to such a claim; (iv) your combining the service deliverables with a non-Microsoft product, data or business process; (v) use of, or access to, the service deliverables by any person or entity other than an employee of you or one of your affiliates; or (vi) your altering the service deliverables. You will be completely responsible for any costs and damages arising from any claims or lawsuits that result from these actions.

If we receive information concerning an infringement claim related to a service deliverables, we may, at our expense and without obligation to do so, either (i) procure for you the right to continue to run the allegedly infringing service deliverable, or (ii) modify the service deliverable or replace it with a functional equivalent, to make it non-infringing, in which case you will stop running the allegedly infringing product or service deliverable immediately. If, as a result of an infringement claim, your use of a service deliverable is enjoined by a court of competent jurisdiction, we will use commercially reasonable efforts to either procure the right to continue its use, replace it with a functional equivalent, or modify it to make it non-infringing.

If any other type of third party claim is brought against you regarding our intellectual property, you must notify us promptly in writing. We may, at our option, choose to treat these claims as being covered by this section.

## **9. Limitation of liability.**

**a. Limitation.** There may be situations in which you have a right to claim damages or payment from us. Except as otherwise specifically provided in this paragraph, whatever the legal basis for your claim, our liability will be limited, to the maximum extent permitted by applicable law, to direct damages up to the amount you have paid during the term of this agreement for the services giving rise to the claim. In the case of our responsibilities with respect to third party patent or copyright infringement claims, our obligation to defend such claims will not be subject to the preceding limitation, but our liability to pay damages resulting from any final adjudication (or settlement to which we consent) will be. In the case of free product or code you are authorized to redistribute to third parties without separate payment to Microsoft, our total liability to you will not exceed US\$5000. The limitations contained in this paragraph will not apply with respect to Microsoft's obligations under Section 6 (confidentiality).

**b. No liability for certain damages.** To the maximum extent permitted by applicable law, neither party nor any of its affiliates or suppliers will be liable for any indirect damages (including, without limitation, consequential, special or incidental damages, damages for loss of profits or revenues, business interruption, or loss of business information) arising in connection with any agreement, product or service, even if advised of the possibility of such damages or if such possibility was reasonably foreseeable. This exclusion of liability does not apply to either party's liability to the other for violation of its confidentiality obligation or of the other party's intellectual property rights.

**c. Application.** The limitations on and exclusions of liability for damages in this agreement apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory.

## **10. Term and termination.**

**a. Term and Certification of Funds and Non-Appropriation.** The Agreement is subject to Section 126.07 of the Code. That section provides that orders under an agreement with State are not valid or enforceable until the director of the Office of Budget and Management certifies that there is a balance in the applicable appropriation not already obligated to pay existing obligations.

State's funds are contingent on the availability of lawful appropriations by the Ohio General Assembly. If the Ohio General Assembly fails at any time to continue funding for any payments due under the Agreement, the Agreement will terminate as of the date that the funding expires. After that, State will have no further obligation.

Additionally, since the current Ohio General Assembly cannot commit a future General Assembly to an expenditure, regardless of the term of the Agreement specified in the actual Agreement itself, the Agreement will automatically expire at the end of the current biennium, which is June 30, 2001. The State, however, may renew this Agreement in the next biennium by issuing written notice to the Microsoft of the decision to do so. This expiration and renewal procedure will also apply to the end of any subsequent biennium during which the term of the Agreement continues.

As State's funds are contingent upon lawful appropriations by the Ohio General Assembly, any obligation in the Agreement for State to indemnify Microsoft or satisfy any liability of State is subject to and contingent upon the discretionary decision of the Ohio General Assembly to appropriate funds to satisfy that liability.

**b. Termination.** You may terminate this agreement or any services description for convenience by giving us 30 days written notice. Either party may terminate this agreement or any services description if the other party is in material breach or default of any obligation that is not cured within 30 days notice of such breach. You agree to pay all fees for services performed and expenses incurred prior to termination. Termination of this agreement will terminate all outstanding services descriptions.

**11. Survival.** The provisions regarding warranty, limitation of liability, confidentiality, fees and expenses, obligations on termination or expiration, ownership and license, and miscellaneous of this agreement, and any provisions specified as surviving in a work order, survive any termination or expiration of this agreement or any work order.

**12. Insurance.** At all times when we will be performing services on your premises, we will have the following insurance coverage:

**a. Commercial general liability** covering bodily injury and property damage liability with a limit of not less than \$1,000,000 each occurrence;

**b. Workers' compensation** (or maintenance of a legally permitted and governmentally approved program of self-insurance) covering our employees under applicable workers' compensation laws for work-related injuries suffered by our employees;

**c. Employer's liability** with limits of not less than \$1,000,000 each accident; and

**d. Software errors and omissions liability** covering damages arising out of negligent acts, errors, or omissions in the performance of this agreement, with a limit of liability of not less than \$2,000,000 each claim.

We will provide you with certificates of insurance evidencing this coverage on request.

**13. Miscellaneous.**

**a. Entire agreement.** The documents identified on the cover page of this agreement constitute our entire agreement concerning the subject matter hereof, and supersede any other prior and contemporaneous communications. The terms of these documents shall control in the following order: (i) this agreement, and (ii) any

work order. The terms of any purchase order or any general terms and conditions you or your affiliates maintain, other than those mandatory terms required by statute or regulation, do not apply. This agreement can be changed only by an amendment signed by both parties.

**b. Independent contractor; subcontractors.** We provide our services as an independent contractor, and will be responsible for any and all social security, unemployment, workers' compensation and other withholding taxes for all of our employees. We may use subcontractors to perform services, in which case we will be responsible for the performance of those subcontractors.

**c. Notices.** All notices, authorizations, and requests given or made in connection with this agreement, including notice of termination of this agreement, must be sent by post, express courier, facsimile, or email to the addresses and numbers indicated in the cover page to this agreement. Notices will be deemed delivered on the date shown on the postal return receipt or on the courier, facsimile or email confirmation of delivery.

**d. Assignment.** Neither party may assign this agreement or any work order without the written consent of the other.

**e. Severability.** If a court holds any provision of this agreement to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect and the parties will amend the agreement to give effect to the stricken clause to the maximum extent possible.

**f. Waiver.** No waiver of any breach of this agreement shall be a waiver of any other breach, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

**g. Force majeure.** To the extent that either party's performance is prevented or delayed, either totally or in part, for reasons beyond that party's control, then that party will not be liable, so long as it resumes performance as soon as practicable after the reason preventing or delaying performance no longer exists.

**h. Note on Java support.** The products, fixes or service deliverables may contain support for programs written in Java. Java technology is not fault tolerant and is not designed, manufactured, or intended for use or resale as online control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of Java technology could lead directly to death, personal injury, or severe physical or environmental damage. Sun Microsystems, Inc. has contractually obligated Microsoft to make this disclaimer.

**i. Limitations on actions.** Except for any different period required by applicable law, any action arising under this agreement must be brought within two years from the date of discovery.

**j. Applicable law; dispute resolution.** The terms of this agreement will be governed by the laws of your state, without giving effect to its conflict of law provisions. This choice of law does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction. Disputes relating to this agreement will be subject to applicable mandatory dispute resolution statutes and regulations of your state.

**k. Cost or pricing data.** We will not, under any circumstances, accept work that would require the submission of cost or pricing data.

**l. Obligation in lieu of indemnity.** In lieu of any obligation by you to indemnify us under this agreement or a service description, you agree that you shall be completely responsible for any and all costs and damages arising from any claim, lawsuit, or other action to which your indemnity obligation would otherwise apply, subject to, as applicable, and contingent upon the discretionary decision of the Ohio General Assembly to appropriate funds to satisfy such costs or damages

**m. English language governs.** The parties have requested that this agreement be drawn up in English; les parties ont exigé que cette entente soit rédigée en anglais.

**n. Laws, courts, interpretation.** We will comply with all laws of Ohio regarding equal employment opportunity, including but not limited to Section 125.111 of the Code, and all related Executive Orders of the Governor of Ohio.

We agree to comply with all applicable Ohio laws regarding maintaining a drug-free workplace. We will make a good faith effort to ensure that all Microsoft's employees, while working on your property, will not have or be under the influence of illegal drugs or alcohol or abuse prescription drugs in any way.

We certify that we are currently in compliance and will continue to adhere to the requirements of Ohio ethics law in Sections 102.03 and 102.04 of the Code.

We affirm that, as applicable to us, no party listed in Division (I) or (J) of Section 3517.13 of the Code or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of \$1,000.00 to the Governor or to his campaign committees.

**o. Use of Name.** We will not use State's name or the name of the state of Ohio in any marketing material or as a business reference.

**ATTACHMENT NINE  
SPECIAL SELECT ENROLLMENT**

*For Microsoft Internal Use Purposes*

Enrollment Number  
 Select Agreement Expiration Date  
**Reseller must complete the following:**  
 Select Agreement Number


*NOT FOR USE WITH THE MICROSOFT BUSINESS AGREEMENT*

**MICROSOFT STATE AND LOCAL GOVERNMENT SELECT ENROLLMENT**

This MICROSOFT STATE AND LOCAL GOVERNMENT SELECT ENROLLMENT is entered into between the following entities as of the effective date identified below. If different from the main contact information, any notices must be addressed to the contact and locations outlined in the notices section below. We will notify you in writing if our address information changes. You must notify us in writing if your address changes.

Customer Name	Name and address of contracting Microsoft affiliate MSLI, GP
Street Address and/or post office box	Street Address and/or post office box 6100 Neil Road Suite 210
City and State / Province	City and State / Province Reno, NV
Country and Postal Code	Country and Postal Code USA 89511-1137
Contact Name	
Phone Number	Phone Number 775-823-5600
Fax Number	Fax Number 775-826-7287
Email Address	Email Address Selquest@ microsoft.com
For the Attention of:	For the Attention of: Dept. 551, Volume Licensing
<b>Customer Notices Information (if different from above)</b>	<b>The enrollment and attached documents should be sent to the above address for approval and processing.</b>
Customer Name	<b>All NOTICES should have Copy To:</b> Microsoft Corporation, Law and Corporate Affairs
Street Address and/or post office box	One Microsoft Way
City and State / Province	Redmond, WA
Country and Postal Code	USA 98052
Contact Name	
Phone Number	
Fax Number	425-936-7329
Email Address	@Microsoft.com
For the Attention of:	For the Attention of: Volume Licensing Attorney

Terms used in this enrollment shall have the meanings assigned to them in the State and Local Government Select Agreement identified above. By signing this enrollment, you represent and warrant that:

- a. You have read and understood the State and Local Government Select Agreement identified above, including any addenda and amendments to that agreement (specifically including but not limited to the current version of the product use rights), and agree to be bound by those terms.
- b. You are the entity which signed the State and Local Government Select Agreement identified above or its affiliate.
- c. *You do not expect to acquire licenses equivalent to at least 500 points during the term of this enrollment and will not receive a free Select kit. If you would like to receive shipments of CD-ROM kits you may order them through your reseller for a fee.*

This enrollment consists of (1) this cover page, (2) the Shipping Information Form, (3) the Reseller Information Form, and (4) the Product List. By signing below you agree that you are bound by the terms of the State and Local Government Select Agreement identified above and the product use rights applicable to products ordered under this enrollment.

By signing below, you also represent that the information that you provide on each of the attached forms is accurate.

<b>Name of Customer (Entity Name):</b>	<b>Name of contracting Microsoft affiliate:</b>
	<b>MSLI, GP</b>
By:	By:
<i>(Signature)</i>	<i>(Signature)</i>
Name:	Name:
<i>(Printed)</i>	<i>(Printed)</i>
Title:	Title:
<i>(Printed)</i>	<i>(Printed)</i>
Date:	Effective Date:

### Shipping Information Form

License confirmations will be shipped to the following address.

License Confirmation Ship-to Information *(If different from address on the cover page)*

Customer Name	Customer Contact Email Address
Street Address	Customer Contact Language <i>(If different than language of this enrollment)</i>
City and State / Province	
Country and Postal Code	
Contact Name	Microsoft Account Manager Name
Phone Number	Microsoft Office Location
Fax Number	Microsoft Contact Email Address <i>(if applicable)</i>

**ATTACHMENT TEN  
AMENDMENT TO SELECT AGREEMENT**

**Reseller Information Form**

*(Reseller should complete the following sections.)*

**Reseller Headquarter Information**

Reseller Company Name
Headquarters Street Address and/or post office box
City and State / Province and Postal
Country Code
Contact Name
Phone Number
Fax Number
Email Address

**The undersigned confirms that the Reseller information is correct.**

Name of Reseller:
By:
<i>(Signature)</i>
Name:
<i>(Printed)</i>
Title:
<i>(Printed)</i>
Date:

**AMENDMENT No. 1  
TO  
MICROSOFT STATE AND LOCAL GOVERNMENT SELECT AGREEMENT**

This amends the Microsoft State and Local Government Select Agreement identified above between the State of Ohio and MSLI, GP (the "agreement") All terms used but not defined in this amendment will have the meanings assigned to such terms in the agreement

**I. Amendment**

1. The first paragraph of Section 2 of the agreement is hereby amended and restated as follows:

**2. Select license program.** Upon entering into this agreement, you and your affiliates may submit enrollments that allow enrolled affiliates to license certain products at volume price levels Enrolled affiliates can sublicense to affiliates which do not enter into an enrollment, in order to allow them to share the benefits of this agreement. Enrolled affiliates may not acquire licenses under this agreement for the use or benefit of any person or entity other than affiliates. Each enrollment will expire on the expiration or earlier termination of this agreement. *Notwithstanding any other terms and conditions in this agreement, you and each enrolled affiliate shall be responsible for compliance with the terms of this agreement, and the compliance of your or the enrolled affiliate's respective sublicensees, only with respect to your or the enrolled affiliate(s) enrollment. However, neither you nor any affiliate shall be responsible for compliance with any enrollment to which you or the affiliate is not a party or under which your or the affiliate does not participate. The parties intend that local affiliates, e.g., counties, boroughs, cities, towns, townships, municipalities, special purpose districts, or other similar types of local government instrumentalities, and any agency, department,, division , unit or other office of such local affiliates, will submit an enrollment or enrollments separate from the State of Ohio enrollment(s); however you and your affiliates assume responsibility for ensuring this is the case.*

2. Section 2c of the agreement is hereby amended and restated in its entirety as follows:

**c. Terms of use.** You and any affiliate may run the products for which an enrolled affiliate orders corresponding licenses in a timely manner. In place of a copy of the version licensed, you and your affiliates may run a copy of any prior version of the same product, subject to the product use rights applicable to the version licensed. Use of any product that you license from us is governed by product use rights specific to each product and version and by the terms of this agreement. The product use rights applicable to any version of any product released on or before the date of an enrollment will be the product use rights in effect on the enrollment date for that product and version. The product use rights applicable to a version or product released after the date of an enrollment will be the product use rights for that version or product in effect on the date of commercial release under the Select License program. In place of a copy of the language version licensed, you and your affiliates may run a copy of any other language version, provided that the language version you or your affiliate wish to run is available under Microsoft Select at the same or a lower price compared to the product and language on the issue date identified in the license confirmation. *In lieu of your obligation to indemnify Microsoft under various provisions of the product use rights, you agree that you will be responsible for any costs and damages arising from any claim or actions to which your indemnity obligation would otherwise apply subject to and contingent upon the discretionary decision of the Ohio General Assembly to appropriate funds to satisfy such costs at damages.*

SA 5.1 S&L Amendment (North America)(English)

3. Section 9 paragraph 1 of the agreement is hereby amended and restated in its entirety as follows:

**9. Defense of infringement claim.** We will defend you against any claim by an unaffiliated third party that any product infringes its patent or copyright, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent). You must notify us promptly in writing of the claim and give us sole control over our defense or settlement of any claim covered by this Section 9 alleging that any product of ours infringes an unaffiliated third-party's patent or copyright and you will withhold control over your own defense or settlement. You agree to provide us with reasonable assistance in defending the claim, and we will reimburse you for reasonable Out of pocket expenses that you incur in providing that assistance.

4. Section 10a of the agreement is hereby amended and restated in its entirety as follows:

**a. Limitation.** There may be situations in which you have a right to claim damages or payment from us. Except as otherwise specifically provided in this paragraph, whatever the legal basis for your claims, our liability will be limited, to the maximum extent permitted by applicable law, to direct damages up to the amount you have paid during the term of this agreement for the product(s) giving rise to the claim. In the case of our responsibilities with respect to third party patent or copyright infringement claims, our obligation to defend such claims will not be subject to the preceding limitation, but our liability to pay damages resulting from any final adjudication (or settlement to which we consent) will be. In the case of free product or code you are authorized to redistribute to third parties without separate payment to Microsoft, our total liability to you will not exceed US\$5000. The limitations contained in this paragraph will not apply with respect to our obligations under Section 8 (confidentiality).

5. Section 13g of the agreement is hereby amended and restated in its entirety as follows:

**g. Limitations on actions.** Except for any different period required by applicable law, any action arising under this agreement must be brought within two years from the date of discovery.

**II, Effect of Amendment.**

Except as specifically amended by this amendment, all provisions of the agreement identified above shall remain unchanged and in full force and effect. When this amendment is fully executed, you will receive a confirming copy.

You must execute and return two (2) copies of this amendment to the below address on or before May 3, 2001 in order for the terms and conditions of this amendment to apply.

MSLI, GP  
Attn: Dept. 551, Volume Licensing  
6100 Neil Road, Suite 210  
Reno, NV 89511-1137

**Company:** \_\_\_\_\_

**Name of Company**

**By** \_\_\_\_\_

**Name, Title**

**Date**

**Contracting Microsoft Affiliate:**

**MSLI, GP**

**Name of contracting Microsoft affiliate**

**By** \_\_\_\_\_

**Name, Title**

**Date**

SA 5.J S&L Amendment (North America) (English)

**ATTACHMENT ELEVEN  
AMENDMENT TO ENTERPRISE AGREEMENT**

*To be completed by Microsoft*  
Microsoft Select Agreement Number


**AMENDMENT NO. 1  
TO  
MICROSOFT STATE AND LOCAL GOVERNMENT ENTERPRISE AGREEMENT**

This amends the Microsoft State and Local Government Enterprise Agreement identified above between the State of Ohio and MSLI, GP (the “agreement”). All terms used but not defined in this amendment will have the meanings assigned to such terms in the agreement.

**I. Amendment**

1. Section 2a of the agreement is hereby amended and restated in its entirety as follows:

**a.** Terms of use. Use of any product that you license from us is governed by product use rights specific to each product and version and by the terms of this agreement. For any version released on or before the date of the enrollment, the product use rights in effect on the enrollment date for that product and version will apply. For a later version or product, the product use rights in effect on the date of commercial release under the Enterprise Agreement program will apply. We will provide you with a copy of the applicable product use rights, or will make them available to you either by publication on the World Wide Web at a site we identify to you or by some other reasonable means. You acknowledge that you have access to the World Wide Web. We do not transfer any ownership rights in any licensed product and we reserve all rights not expressly granted. *In lieu of your obligation to indemnify Microsoft under various provisions of the product use rights, you agree that you will be responsible for any costs and damages arising from any claim or actions to which your indemnity obligation would otherwise apply subject to and contingent upon the discretionary decision of the Ohio General Assembly to appropriate funds to satisfy such costs or damages.*

2. Section 10 paragraph 1 of the agreement is hereby amended and restated in its entirety as follows:

**10. Defense of infringement claim.** We will defend you against any claim by an unaffiliated third party that any product infringes its patent or copyright, and will pay the amount of any resulting adverse final judgement (or settlement to which we consent). You must notify us promptly in writing of the claim and give us sole control over our defense or settlement *of any claim covered by this Section 10 alleging that any product of ours infringes an unaffiliated third-party's patent or copyright and you will withhold control over your own defense or settlement.* You agree to provide us with reasonable assistance in defending the claim, and we will reimburse you for reasonable out of pocket expenses that you incur in providing that assistance.

3. Section 11a of the agreement is hereby amended and restated in its entirety as follows:

**a.** Limitation. There may be situations in which you have a right to claim damages or payment from us. Except as otherwise specifically provided in this paragraph, whatever the legal basis for your claim, our liability will be limited, to the maximum extent permitted by applicable law, to direct damages up to the amount you have paid *during the term of this agreement* for the product(s) giving

rise to the claim. In the case of our responsibilities with respect to third party patent or copyright infringement claims, our obligation to defend such claims will not be subject to the

*EA 5.1 S&L AMENDMENT – (NORTH AMERICA)(ENGLISH)*

preceding limitation, but our liability to pay damages resulting from any final adjudication (or settlement to which we consent) will be. In the case of free product or code you are authorized to redistribute to third parties without separate payment to Microsoft, our total liability to you will not exceed US\$5000. The limitations contained in this paragraph will not apply with respect to our obligations under Section 8 (confidentiality).

4. Section 14g of the agreement is hereby amended and restated in its entirety as follows:

**g. Limitations on actions.** Except for any different period required by applicable law, any action arising under this agreement must be brought within two years from the date *of discovery*.

**II. Effect of Amendment.**

Except as specifically amended by this amendment, all provisions of the agreement identified above shall remain unchanged and in full force and effect. When this amendment is fully executed, you will receive a confirming copy.

You must execute and return two (2) copies of this amendment to the below address on or before July 31, 2001 in order for the terms and conditions of this amendment to apply.

MSLI, GP  
 Attn: Dept. 551, Volume Licensing  
 6100 Neil Road, Suite 210  
 Reno, NV 89511-1137

<b>Company:</b>	<b>Contracting Microsoft Affiliate:</b>
_____	<b>MSLI, GP</b>
<b>Name of Company</b>	<b>Name of contracting Microsoft affiliate</b>
By _____	By _____
<b>Name, Title</b>	<b>Name, Title</b>
_____	_____
<b>Date</b>	<b>Date</b>
_____	_____

*EA 5.1 S&L AMENDMENT – (NORTH AMERICA)(ENGLISH)*

**ATTACHMENT TWELVE  
AMENDMENT TO PREMIER SUPPORT SERVICES AGREEMENT**

Microsoft Services Agreement Number \_\_\_\_\_

**AMENDMENT No. 1  
TO  
MICROSOFT MASTER PREMIER SUPPORT SERVICES AGREEMENT – STATE & LOCAL**

This amends the Microsoft Master Premier Support Service Agreement – State & Local, identified above between the State of Ohio and Microsoft Corporation (the “agreement”). All terms used but not defined in this amendment will have the meanings assigned to such terms in the agreement.

**I. Amendment.** The following provisions will supersede anything to the contrary contained in the Agreement

1. Section 2, **Support services.** of the agreement is hereby amended and restated as follows:

**2. Support Services.** We agree to provide product support services under the terms and conditions of this agreement. The precise scope of the services will be specified in services descriptions entered into under this agreement. You or any of your affiliates can enter into services descriptions under this agreement with our local affiliate. Our ability to deliver the services depends upon your full and timely cooperation, as well as the accuracy and completeness of any information you provide. This agreement does not obligate either of us or any of our affiliates to enter into any work order or services description. *Notwithstanding any other terms and conditions in this agreement, you and each Affiliate shall be responsible for compliance with the terms of the agreement only with respect to the service descriptions to which you or your affiliates are a party or under which you or the Affiliate participates. However, neither you nor any Affiliate shall be responsible for compliance with any services description to which you or the Affiliate is not a party or under which you or the Affiliate does not participate. The parties intend that local affiliates, e.g., counties, boroughs, cities, towns, townships, municipalities, special purpose districts, or other similar types of local government instrumentalities, and any agency, department, division, unit or other office of such local affiliates, will enter services descriptions separate from the State of Ohio services description(s); however, you and your affiliates assume responsibility for ensuring this is the case.*

2. Section 3, **Fees and expenses.** of the agreement is hereby amended and restated in its entirety as follows:

**3. Fees and expenses.** You agree to pay us the fees described in each services description, *subject to the following provisions:*

**a. Travel.** Any travel or per diem required by Microsoft to carry out its obligations under the Agreement will be at Microsoft's expense. Any additional travel, requested by State in writing, will be paid by State only with prior written approval. All additional travel and per diem will be paid in accordance with Section 126.02 of the Ohio Administrative Code. State will not be responsible for any living expenses incurred by Microsoft.

**b. Payments and Invoices.** Payments under this Agreement will be due on the 30th calendar day after the date of actual receipt of a proper invoice in the office designated to receive the invoice.

*The date of the warrant issued in payment will be considered the date payment is made.*

*Without diminishing the foregoing payment rights and obligations, the payment will be overdue if it is not received by the 30th day after the later of:*

- (1) *The date of actual receipt of a proper invoice in the office designated to receive the invoice, or*
- (2) *The date the service(s) is/are accepted in accordance with the terms of the Agreement.*

*If a payment is overdue, then interest will be paid under the provisions of Section 126.30 of the Ohio Revised Code ("Code").*

*Invoices must be submitted in an original and three copies to the office designated in the purchase order as the "bill to address". A proper invoice must include the following information and/or attached documentation:*

- (1) *Name and address of Microsoft as designated in the Agreement or this Amendment.*
- (2) *Federal Tax Identification Number of Microsoft as designated in this Amendment or the Agreement.*

- (3) Invoice remittance address as designated in the Agreement.
- (4) The purchase order number authorizing the delivery of the service(s).
- (5) Description of the service(s) actually delivered or rendered as specified in the purchase order. If the invoice is for a lease, the payment number (e.g., 1 of 36) must also be indicated.

If an invoice contains a defect or impropriety or if notification of a price increase was not given as required by this Amendment, State will send Microsoft written notice along with the improper invoice within 15 calendar days after receipt of the defective invoice. The notice will contain a description of the problem(s) with the invoice and the information necessary to correct the problem(s). Once State has sent Microsoft notice regarding a defective invoice, the required payment date will be 30 days after receipt of a proper invoice or product acceptance whichever is later. State may not be considered to be in default for an overdue payment unless and until State has failed to make payment within 61 days after receipt of a proper invoice.

State will not be liable for any delay in its performance, including payment obligations, that arises from causes beyond its control.

**c. Taxes.** State is exempt from all state and local taxes. State does not agree to pay any such taxes.

3. Section 7a, **Confidential Information**, paragraph 2 of the agreement is hereby amended and restated in its entirety as follows:

Confidential information does not include information which: (i) the recipient developed independently; (ii) the recipient knew before receiving it under the relevant agreement; or (iii) is or subsequently becomes publicly available or is received from another source, in both cases other than by a breach of an obligation of confidentiality. The description of the types of information which shall not be deemed "Confidential Information" is expanded to include information that is considered a "Record" under the Ohio Public Records Law and such information or record is not exempted from disclosure by operation of another applicable law.

4. Section 9, **Defense of Infringement Claim**, paragraph 1 of the agreement is hereby amended and restated in its entirety as follows:

**9. Defense of infringement claim.** We will defend you against any claim by an unaffiliated third party that any service deliverable infringes its copyright, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent). You must notify us promptly in writing of the claim and give us sole control over our defense or settlement of any claim covered by Section 9 of the Agreement alleging that any service deliverable of ours infringes an unaffiliated third-party's copyright and you will withhold control over your own defense or settlement. State agrees to provide Microsoft with reasonable assistance in defending the claim, and Microsoft will reimburse State for reasonable out of pocket expenses that State incurs in providing that assistance.

5. Section 10a, **Limitation**, of the agreement is hereby amended and restated in its entirety as follows:

**a. Limitation.** There may be situations in which you have a right to claim damages or payment from us. Except as otherwise specifically provided in this paragraph, whatever the legal basis for your claim, our liability will be limited, to the maximum extent permitted by applicable law, to direct damages up to the amount you have paid during the term of this agreement for the services giving rise to the claim. In the case of our responsibilities with respect to third party patent or copyright infringement claims, our obligation to defend such claims will not be subject to the preceding limitation, but our liability to pay damages resulting from any final adjudication (or settlement to which we consent) will be. In the case of free product or code you are authorized to redistribute to third parties without separate payment to Microsoft, our total liability to you will not exceed US\$5000. The limitations contained in this paragraph will not apply with respect to Microsoft's obligations under Section 7 (confidentiality).

6. Section 11, **Term and termination**, of the agreement is hereby amended and restated in its entirety as follows:

**11. Term and termination.**

**a. Term and Certification of Funds and Non-Appropriation.** The Agreement is subject to Section 126.07 of the Code. That section provides that orders under an agreement with State are not valid or enforceable until the director of the Office of Budget and Management certifies that there is a balance in the applicable appropriation not already obligated to pay existing obligations.

State's funds are contingent on the availability of lawful appropriations by the Ohio General Assembly. If the Ohio General Assembly fails at any time to continue funding for any payments due under the Agreement, the Agreement will terminate as of the date that the funding expires. After that, State will have no further obligation.

Additionally, since the current Ohio General Assembly cannot commit a future General Assembly to an expenditure, regardless of the term of the Agreement specified in the actual Agreement itself, the Agreement will automatically expire at the end of the current biennium, which is June 30, 2001. The State, however, may renew this Agreement in the next biennium by issuing written notice to the Microsoft of the decision to do so. This expiration and renewal procedure will also apply to the end of any subsequent biennium during which the term of the Agreement continues.

As State's funds are contingent upon lawful appropriations by the Ohio General Assembly, any obligation in the Agreement for State to indemnify Microsoft or satisfy any liability of State is subject to and contingent upon the discretionary decision of the Ohio General Assembly to appropriate funds to satisfy that liability.

**b. Termination.** You may terminate this agreement or any services description for convenience by giving us 30 days written notice. Either party may terminate this agreement or any services description if the other party is in material breach or default of any obligation that is not cured within 30 days notice of such breach. You agree to pay all fees for services performed and expenses incurred prior to termination. Termination of this agreement will terminate all outstanding services descriptions.

7. Section 14.i, **Limitations on actions**, of the Agreement is hereby amended and restated in its entirety as follows:

**i. Limitations on actions.** Except for any different period required by applicable law, any action arising under this Agreement must be brought within two years from the date of discovery.

8. Section 14.l, **Obligation in lieu of indemnity**, of the Agreement is hereby amended and restated in its entirety as follows:

**l. Obligation in lieu of indemnity.** In lieu of any obligation by you to indemnify us under this agreement or a service description, you agree that you shall be completely responsible for any and all costs and damages arising from any claim, lawsuit, or other action to which your indemnity obligation would otherwise apply, *subject to and contingent upon the discretionary decision of the Ohio General Assembly to appropriate funds to satisfy such costs or damages.*

9. Section 14, **Miscellaneous**, of the agreement is hereby amended to include the following provisions:

**n. Laws, courts, interpretation.** Microsoft will comply with all laws of Ohio regarding equal employment opportunity, including but not limited to Section 125.111 of the Code, and all related Executive Orders of the Governor of Ohio.

Microsoft agrees to comply with all applicable Ohio laws regarding maintaining a drug-free workplace. Microsoft will make a good faith effort to ensure that all Microsoft's employees, while working on State's property, will not have or be under the influence of illegal drugs or alcohol or abuse prescription drugs in any way.

Microsoft certifies that Microsoft is currently in compliance and will continue to adhere to the requirements of Ohio ethics law in Sections 102.03 and 102.04 of the Code.

Microsoft affirms that, as applicable to Microsoft, no party listed in Division (I) or (J) of Section 3517.13 of the Code or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of \$1,000.00 to the Governor or to his campaign committees.

**m. Use of Name.** Microsoft will not use State's name or the name of the state of Ohio in any marketing material or as a business reference.

If there is any inconsistency or conflict between this Amendment and the Agreement or anything incorporated by reference in the Agreement or this Amendment, this Amendment will prevail.

## **II. Effect of Amendment.**

Except as specifically amended by this agreement, all provisions of the agreement identified above shall remain unchanged and in full force and effect. When this amendment is fully executed, you will receive a confirming copy.

You must execute and return two (2) copies of this amendment to the below address on or before \_\_\_\_\_, 2001, in order for the terms and conditions of this amendment to apply.

Microsoft Corporation  
 Attn: Margaret Gardiner  
 Microsoft  
 One Microsoft Way, BP 10076  
 Redmond, Washington 98052-6399  
 Fax: 425-704-4864

<b>Customer:</b>	<b>Contracting Microsoft Affiliate:</b>
<b>Name of Company</b>	<b>Name of contracting Microsoft affiliate</b>
<b>By</b> _____	<b>By</b> _____
<b>Name, Title</b>	<b>Name, Title</b>
<b>Date</b>	<b>Date</b>

**ATTACHMENT THIRTEEN**

**COST SUMMARY**

Offeror must use the Microsoft Enterprise and Select Agreements Level D Pricing, and Microsoft Academic Agreement Level A Pricing tables below to itemize its proposed discounts on software products. The State seeks the deepest discounts on software. Microsoft Consulting services will be acquired directly from Microsoft under this Contract at the rates described in the table below.

Microsoft Enterprise and Select Agreements Level D Pricing

<b>Criteria</b>	<b>Weight</b>	<b>Offeror Discount%</b>	<b>Weighted Offeror Discount %</b>
Offeror discount on Application Pool products	45%		
Offeror discount on Server Pool products	30%		
Offeror discount on System Pool products	25%		
<b>Offeror's Cost Score for Level D Pricing</b>			

Microsoft Academic Agreement Level A Pricing

<b>Criteria</b>	<b>Weight</b>	<b>Offeror Discount%</b>	<b>Weighted Offeror Discount %</b>
Offeror discount on Application Pool products	45%		
Offeror discount on Server Pool products	30%		
Offeror discount on System Pool products	25%		
<b>Offeror's Cost Score for Level A Pricing</b>			

Microsoft Consulting Services

<b>Consultant Types</b>	<b>Microsoft Hourly Rate</b>
1. MCS Practice Manager	\$331.00
2. MCS Principle Consultant	\$289.00
3. MCS Managing Consultant	\$289.00
4. MCS Architectural Consultant	\$296.00
5. MCS Senior Consultant	\$255.00
6. MCS Consultant	\$230.00
7. MCS Associate Consultant	\$188.00
8. MCS Technician V	\$251.00
9. MCS Technician IV	\$221.00
10. MCS Technician III	\$197.00
11. MCS Technician II	\$162.00
12. MCS Technician I	\$142.00
13. MCS Technician	\$100.00