

REQUEST FOR PROPOSALS

RFP NUMBER: 0A1158
DATE ISSUED: August 14, 2015

The State of Ohio, through the Department of Administrative Services, for the Ohio Department of Transportation and the Department of Administrative Services is requesting proposals for:

OAKSenterprise

INQUIRY PERIOD BEGINS: August 14, 2015
INQUIRY PERIOD ENDS: October 2, 2015
OPENING DATE: October 9, 2015
OPENING TIME: 1:00 P.M.
OPENING LOCATION: Department of Administrative Services
General Services Division
Bid Desk
4200 Surface Road
Columbus, Ohio 43228-1313

PRE-PROPOSAL CONFERENCE DATE: September 15, 2015

This RFP consists of five parts and twelve attachments, totaling 86 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.

In lieu of taking exceptions to RFP requirements, including but not limited to terms and conditions, scope of work statements, service levels requirements, etc., or providing assumptions that may be unacceptable to the State, offerors are strongly encouraged to use the inquiry process in Part Three of the RFP.



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 Department of Administrative Services, Office of Information Technology is soliciting competitive sealed proposals (“Proposals”) for the extension and implementation of the State’s ERP System (Ohio Administrative Knowledge System (OAKS) for the Ohio Departments of Transportation and Administrative Services (the “Work”). This RFP combines several closely related services needed by the State of Ohio (the “State”). While the State desires a single vendor solution, it is the intent of the State to conduct the evaluation and selection processes in a manner that provides the flexibility for considering multiple vendor solutions for the Work, which may result in multiple contractor awards. If the State elects to award a contract for the Work, contracts with either a single or multiple contractors may result.

If a suitable single vendor solution is made in response to the Work, the State, through the Department of Administrative Services (DAS), may enter into a single or multiple contracts (the “Contract”) to have the selected offeror(s) (the “Contractor”) perform all or part of the Work. Multiple contracts with a single Contractor may be necessary to award portions of the Work at different times within the RFP process. The State believes there may be benefits to awarding the Work to a single Contractor. These benefits will be considered by the State during the evaluation and selection process.

Alternatively, the State may determine that it is in its best interests to award the Work to different Contractors. Therefore, if a suitable offer is made in response to the Supplements of this RFP, the State, through DAS, may enter into separate contract (the “Contract”) to have the selected offeror(s) (the “Contractor”) perform all or part of the Work described within the scope of the Supplements.

All offerors may only submit one Proposal based on the Supplement(s) they are responding to. Submitting multiple Proposals for various combinations of the Work is not acceptable and will result in multiple Proposals not being considered. The State will not subdivide the work at a level lower than as contained in the Supplements to this RFP. 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 each 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, 2017, whichever is sooner. The State may renew this Contract for up to three (3) 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 Department of Administrative Services.

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 of Ohio regularly reviews the applicability of Agency and State Operational systems associated with the support of its applications portfolio to seek opportunities to streamline the State’s operations and business processes around core Financial, HR, Procurement, Planning, Business Intelligence and related functions. The State maintains an asset known as the Ohio Administrative Knowledge System (OAKS) which is based upon PeopleSoft Human Capital Management (HCM) systems, Financial Systems (FIN), Procurement Systems and Enterprise Performance Management (EPM/BI) data warehouses and developed a strategy designed to extend and enhance the current operational capabilities of these systems and their use across all State Agencies.

In conjunction with the State’s review and development of its ongoing strategy, several opportunities have presented themselves that the State has prioritized as beneficial to the State Enterprise. In general these opportunities have been identified due to their ability to:

- Increase the State's capabilities by deploying high impact and cost effective systems and systems management capabilities;
- Differentiate the State wherever possible by providing unique offerings to State employees and State constituencies while providing best-in-class operational performance and capabilities;
- Support the migration of Agency and Enterprise services to a reliable, repeatable and world-class set of operating capabilities, standards and methods that are delivered in a cost effective and predictable manner;
- Create a platform that is designed to drive overall consistency of operations through the leverage of common systems platforms, consistent business processes and deploying/leveraging best practices wherever possible; and
- Work with the State contemporary IT standards such as ITIL, software and testing Capabilities Maturity Model (CMM) and structured software development/implementation methodologies to ensure overall quality, operational agility, and alignment while supporting future requirements of the State in a reliable and cost-effective manner.

In keeping with the aforementioned strategy, and in consultation and partnership with a multi-Agency set of constituents, the State has identified a program called OAKSenterprise that is designed to extend the use and usefulness of the OAKS asset to the Ohio Department of Transportation, a combined State Procurement and IT Planning and Governance model for the DAS Office of Information Technology (OIT) and the DAS General Services Division (GSD) and a collective of Agencies that have enterprise Grants requirements. This RFP is designed for the State to:

- Increase the use and usefulness of the OAKS Enterprise Application Solution
- Include high value functionality that drives efficiency for cumbersome, complex and high value business functions
- Address common enterprise functions not currently covered via a centralized solution to drive Agency standards and consistency

Objectives. 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 (listed in RFP priority order):

- Migrate core Finance, HR, Procurement, Project Management and other functions of the Ohio Department of Transportation (ODOT) to OAKS or an integrated operating model that has OAKS and ODOT specific systems as its foundation while retiring obsolete ODOT systems
- Fortify the Procurement and Source to Pay capabilities of the State for DAS based acquisitions (via OIT and GSD) through the design and implementation of technology, processes and business practices
- Consolidate a variety of manual and semi-automated Grants Management capabilities for large Cabinet Agencies into an Enterprise Grants capability based on contemporary technology and repeatable business processes while fostering a more "Grant Friendly" environment for Grant applicants to seek and manage their activities
- Leverage existing State/OAKS business processes and configurations for all elements (as appropriate) and migrate new user groups to existing OAKS functions, capabilities and State processes;
- Extend existing capabilities to suit new constituents and users through the configuration or adaptation of existing OAKS business and processes;
- Implement new business and process functions and technology where OAKS (PeopleSoft) is either not implemented or not ideally suited to purpose and better solutions are available to address the State's requirements.

The State is committed to improving the number of minority-owned enterprises that do business with the State of Ohio. A "minority-owned enterprise" is an individual, partnership, corporation or joint venture of any kind that is owned and controlled by U. S. Citizens and residents of Ohio, who are and have held themselves out as members of the following socially and economically disadvantaged groups: Blacks, American Indians, Hispanics and Asians.

While it is not a condition of award of the RFP, the offeror must use its best efforts to seek and set aside work for Ohio certified minority business enterprises (MBEs). The MBE must be certified by the Ohio Department of Administrative Services pursuant to ORC 123.151. For more information regarding MBE and MBE certification requirements please refer to the DAS Equal Opportunity Division Web site at:

<http://das.ohio.gov/Divisions/EqualOpportunity/MBEEDGECertification.aspx>

In addition, to search for Ohio MBE-Certified Providers, utilize the following search routine published on the DAS Equal Opportunity Division website:

- Select “MBE Certified Providers” as the EOD Search Area selection;
- On the subsequent screen, at minimum, select the appropriate Procurement Type, e.g., “Information Technology Service” as a search criterion;
- Select “Search”; and
- A list of Ohio MBE Certified Service Providers will be displayed.

Overview of the Project's Scope of Work. The scope of the Work is provided in greater detail within the five (5) Supplements to this RFP.

Commercial Software Licensing. As part of the Project, the Contractor must license or arrange for the licensing of certain commercial software products (“Commercial Software”) to the State. Commercial Software is software sold in the marketplace in substantial quantities in a substantially unaltered form from one transaction to another and that is maintained through a support program that includes regular updates and new releases. It may also include freeware, such as GNU software, if made generally available in the marketplace, even though such does not precisely meet the above definition. It does not include shells, subroutines, and similar stock bits of software that are not made generally available to the marketplace but that the offeror or others routinely incorporate into otherwise custom work. The offerors proposed software product is considered a key application (“Key Commercial Software”). It must meet the above definition for Commercial Software, and the offeror must offer to license it or arrange for the licensing of it to the State through a license agreement substantially in the form of Attachment Ten to this RFP. Other Commercial Software necessary for the offeror to complete the Project, if awarded the Contract, may be licensed to the State under the terms of Attachment Four or the applicable software marketer’s standard commercial license, if the terms of that license are acceptable to the State, or if the State and the software marketer negotiate acceptable changes to the commercial license.

Offeror’s Proposed Hardware and Software Environment Requested. Certain aspects of the State’s ODOT Migration to OAKS with Enhanced Functionality (Supplement 1), DAS, GSD/OIT Enterprise Procurement (Supplement 2) and Enterprise Grants Management Platform (Supplement 3) are designated as **optional** and may not be included in the award of the Contract at the discretion of the State. The State may consider other procurement alternatives available (e.g., State price contracts or other means). These include:

- Procurement of all offeror proposed hardware required to operate the offeror’s proposed solution (e.g., Supplement 1, 2 and/or 3) in applicable environments.
- Procurement of all offeror proposed environmental software (e.g., operating system software, system software tools/utilities, database software, etc.) required to operate the offeror’s proposed solution (e.g., Supplement 1, 2 and/or 3) in applicable environments.
- Procurement of all offeror proposed on-going maintenance for hardware and environmental software (e.g., operating system software, system software tools/utilities, database software, etc.) required to operate the offeror’s proposed solution (e.g., Supplement 1, 2 and/or 3) in applicable environments.

Note: The offeror’s MBE set-aside costs will be evaluated as a percentage (%) based on the offeror’s proposed project management activities and project total costs. The Bill of Materials (BOM) elements, including proposed hardware, environmental software and application solution software costs will not be a component in the evaluation of MBE set-aside percentage.

Calendar of Events. The schedule for the RFP process and the Work is given below. The State may change this schedule at any time. 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: August 14, 2015
Inquiry Period Begins: August 14, 2015
Pre-Proposal Conference Date: September 15, 2015, at 9:30 a.m.
Inquiry Period Ends: October 2, 2015, at 8:00 a.m.
Proposal Due Date: October 9, 2015 at 1:00 p.m.

Estimated Dates

Award Date: December, 2015

Estimated Work Dates

Work Begins: January, 2015

There are references in this RFP to the Proposal due date. Unless it is clearly provided to the contrary in this RFP, 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 twelve (12) 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 Offeror Certification Form
- Attachment Seven Offeror Profile Summary
- Attachment Eight Standard Affirmation and Disclosure Form (EO 2011-2012K)
- Attachment Nine Supplement 1 – Cost Summary Workbook
- Attachment Ten Supplement 2 – Cost Summary Workbook
- Attachment Eleven Supplement 3 – Cost Summary Workbook
- Attachment Twelve Master Contract for Software Licensing

Supplements:

- Supplement 0 OAKSenterprise Opportunity Overview, OAKS Governance, OAKS Operating Environment, Other Details Pertinent to this Overall Procurement
- Supplement 1 ODOT Migration to OAKS with Enhanced Functionality
- Supplement 2 DAS, GSD/OIT Enterprise Procurement
- Supplement 3 Enterprise Grants Management Platform
- Supplement 4 State Security, Privacy and Data Handling Requirements

Exhibits:

- Exhibit 1 RFP Documents and Supplements exhibit includes, Base RFP document (in Word format), RFP Attachments 9, 10 and 11 (Cost Workbooks in Excel format), and Supplements 0, 1, 2, 3 and 4 in Word format (9 files in a single ZIP file)
- Exhibit 2 ODOT Exhibits and Reference Materials
 - Exhibit 2a – Business Intelligence(single ZIP file, multiple folders & files)
 - Exhibit 2b – Capital Program Delivery (single ZIP file, multiple folders & files)
 - Exhibit 2c – Facilities Management (single ZIP file, single folder, multiple files)
 - Exhibit 2d – Financial Management (single ZIP file, multiple folders & files)
 - Exhibit 2e – General Information (single ZIP file, single folder, multiple files)
 - Exhibit 2f – Human Capital Management (single ZIP file, multiple folders & files)
 - Exhibit 2g – Procure to Pay (single ZIP file, single folder, multiple files)
- Exhibit 3 ODOT Requirements Matrices in Excel format, (19 files as a single ZIP file) as contained in Supplement 1
- Exhibit 4 Enterprise Procurement Requirements Matrix as contained in Supplement 2 and Enterprise Grants Management Requirements Matrix as contained in Supplement 3 in Excel format (2 files as a single ZIP file)

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:

Ms. Roni Rowe
Acquisition Analyst
Office of Information Technology
Acquisition Management Office
30 East Broad Street, 39th Floor
Columbus, Ohio 43215

During the performance of the Work, a State representative (the "Work Representative") will represent the State and be the primary contact for the Work. The State will designate the Work Representative 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.

The State does not consider questions asked during the inquiry period through the inquiry process as exceptions to the terms and conditions of this RFP.

Pre-Proposal Conference. The State will hold a Pre-Proposal Conference on Tuesday, September 15, 2015, at 9:30 a.m., in the Lobby Hearing room, of the Rhodes State Office Tower, 30 E. Broad Street, Columbus, Ohio

43215. The purpose of this conference is to discuss the RFP and the Work with prospective offerors and to allow them to ask questions arising from their initial review of this RFP.

Attendance at the Pre-Proposal Conference is not a prerequisite to submitting a Proposal.

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 any time 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 due date for Proposals, 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 interest. 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 one originally signed technical section and ten copies of the technical section, and the package with the cost section also must be sealed and contain two complete copies of the cost section of the Proposal. Further, the offeror must mark the outside of each package with either "**OAKSenterprise RFP – Technical Proposal**" or "**OAKSenterprise RFP – Cost Summary**," as appropriate.

This RFP may result in the partial award of the work contained in the Supplements to this RFP. All offerors must clearly mark the outside of each package with one (and only one) of the following:

1. **OAKSenterprise Supplement 1 Response – Ohio Department of Transportation (ODOT) Migration to OAKS with Enhanced Functionality**
2. **OAKSenterprise Supplement 2 Response – Enterprise Procurement**
3. **OAKSenterprise Supplement 3 Response – Enterprise Grants**
4. Any combination of the aforementioned Supplements as an **OAKSenterprise Integrated Response** which should be labeled as to include the Supplements that the offeror is responding to.

All offerors are subject to the security, privacy and data handling requirements of Supplement 4, regardless of the selected response option.

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 1:00 p.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:

Department of Administrative Services
Attn: Bid Desk
4200 Surface Road
Columbus, Ohio 43228

Bid Desk Main Phone Number: 614-466-5090

The State may reject any Proposals or unsolicited modifications 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 Bid Desk accepts packages between the hours of 7:30 A.M. to 5:00 P.M. Monday through Friday, excluding State Holidays. No deliveries will be accepted before or after these hours without prior arrangements. Offerors must allow sufficient time 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 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 it is not subject to an unresolved Finding under Section 9.24 at the time of its submission. Additionally, the offeror warrants it will notify the Department of Administrative Services 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 it believes is not in its interest 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 offerors submit will become the property of the State and may be returned only at the State's option. Offerors should not include any confidential information in a Proposal or other material submitted as part of the evaluation process. 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 interest 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 may have its Proposal rejected by the State. Further, any offeror that submits multiple Proposals for each of these options may have all of 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.

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 of this RFP, or that the State determines is excessive in price or otherwise not in the State's interest 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. Requests 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 interest. 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 interest. 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 it 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 Work 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 interest, 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. But 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 requirement 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, provided the State does not plan to reissue the RFP. If the State plans to reissue the RFP, the Contract file will not be available until the subsequent RFP process is completed. 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, remove the offeror's Proposal from further consideration, 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 interest and has not changed the award date.

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. The offeror must sign and return the two originals to the Procurement Representative. The State also will issue two originals of any Master Contract(s) for Software Licensing (Master Contract(s)) to the Contractor. If the licensor under any such Master Contract is not the offeror, the offeror will be responsible for coordinating execution of the document by the licensor and returning it to the State with the two originally signed copies of the Contract. The Contract and any Master 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 15 business days after the State issues a purchase order, or on a mutually agreed start date, under the Contract. If the State awards a Contract pursuant to this RFP, and the Contractor is unable or unwilling to begin the Work, 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 Contractor's failure to perform under the Contract.

Contract. If this RFP results in a Contract award, the Contract will consist of:

1. The one page Contract (Attachment Five) in its final form; and
2. The 0A1158 OAKSenterprise Contract dated _____, 2015 which includes Attachment Four, Attachments, Supplements and the Cost Proposal Workbooks dated _____, 2015.

The Contract is the result of and includes agreed upon changes to the RFP its attachments and supplements including any written amendments to the RFP, any materials incorporated by reference in the RFP, the Contractor's Proposal, and written, authorized amendments and clarifications to the Contractor's Proposal. It also includes any purchase orders and change orders issued under the Contract.

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.

Any Master Contract for Software Licensing will be a separate agreement and not part of the Contract, but the State may require the incorporation into the Master Contract of any representations regarding the performance, features, and functions of the Key Commercial Software made in the RFP.

ATTACHMENT ONE: EVALUATION CRITERIA

Mandatory Requirements. The first table lists this RFP's mandatory requirements for each Supplement of this RFP. If the offeror's Proposal meets all the mandatory requirements of a Supplement, the offeror's Proposal may be included in the next part of the technical evaluation phase for those Supplement(s) as described in the next table.

Mandatory Requirements – Supplement 1 (OAKSenterprise – ODOT)	Reject	Accept
The offeror, as the prime Contractor, must have performed and completed a PeopleSoft major systems implementation or upgrade project using a PeopleSoft 9.0 or higher version HCM Suite for at least one State, Local or Federal Agency, or Global Fortune 500 company with at least 5,000 employees.		
The offeror, as the prime Contractor, must have performed and completed a PeopleSoft major systems implementation or upgrade project using a PeopleSoft 9.0 or higher version FIN Suite for at least one State, Local or Federal Agency, or Global Fortune 500 company with at least \$1B in revenue.		
The offeror, or proposed Sub-Contractor(s), must have performed and completed a systems implementation or upgrade project using any offeror proposed software packages for at least one State, Local or Federal Department of Transportation Agency for anything other than the PeopleSoft FIN and HCM modules.		
Mandatory Requirements – Supplement 2 (OAKSenterprise – Enterprise Procurement)	Reject	Accept
The offeror, as the prime Contractor, must have performed and completed a PeopleSoft major systems implementation or upgrade project using a PeopleSoft 9.0 or higher version FIN Suite for at least one State, Local, Higher Education, Federal Procurement Agency or Global Fortune 500 Company with at least 1,000 employees (in the company) in a procurement function.		
The offeror, or proposed Sub-Contractor(s), must have performed and completed a Systems Implementation or upgrade project using the offeror proposed software packages for at least one State, Local, Higher Education, Federal Procurement Agency or Global Fortune 500 Company within the procurement function.		
Mandatory Requirements – Supplement 3 (OAKSenterprise – Enterprise Grants Management)	Reject	Accept
<p>The offeror must meet one of the following mandatory requirements:</p> <ol style="list-style-type: none"> 1. If the offeror is proposing a PeopleSoft Enterprise Grants module based solution, then the offeror, as the Prime Contractor, must have performed and completed a PeopleSoft systems implementation or upgrade project using a PeopleSoft 9.0 or higher version Enterprise Grants Module Suite for at least one State, Local, Higher Education or Federal Agency with at least 500 Grant Recipients. 2. If the offeror is proposing a non-PeopleSoft Enterprise Grants solution, then the offeror, or proposed Sub-Contractor(s), must have performed and completed a systems implementation or upgrade project using the offeror proposed software grants management packages for at least one State, Local, Higher Education or Federal Agency with at least 500 Grant Recipients. 		

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:

Supplement 1 Ohio Department of Transportation (ODOT) Migration to OAKS with Enhanced Functionality					
Scored Criteria	Weight	Does Not Meet	Partially Meets	Meets	Exceeds
Offeror Proposed Key Personnel and Team The quality of the offeror's proposed Project team to deliver the Projects as defined and required in Supplement 1 including the quality of the offeror's proposed Project team and ongoing Project delivery capacity will impact the success of the Projects. Therefore, each team member's experience, education, and skills will be considered in assigning a score in this area. (Section 12)	90	0	2	5	7
Project Implementation Statement of Work Solution - The quality and content of the offeror's Project Work Plan, Microsoft Project schedule and Staffing Plan & Time Commitment information for defined elements of Supplement 1 will be critical aspects of the State's review. The narrative project work plan, project schedule and staffing plan are to be consistent and complementary and must be presented in an appropriate level of detail. This area of the offeror's proposal must clearly demonstrate that the offeror will be prepared to quickly undertake and successfully complete the required tasks across all phases of the project. (Section 13)	25	0	2	5	7
Budget and Financial Management The offeror's proposed approach and solution to deliver the requirements contained in Supplement 1, Section 3.1 in its entirety, inclusive of requirements matrices and integration or extension of OAKS	60	0	2	5	7
Project Accounting The offeror's proposed approach and solution to deliver the requirements contained in Supplement 1, Section 3.2 in its entirety, inclusive of requirements matrices and integration or extension of OAKS	70	0	2	5	7
Human Capital Management The offeror's proposed approach and solution to deliver the requirements contained in Supplement 1, Section 4.0 in its entirety, inclusive of requirements matrices and integration or extension of OAKS	35	0	2	5	7
Procure to Pay The offeror's proposed approach and solution to deliver the requirements contained in Supplement 1, Section 5.0 in its entirety, inclusive of requirements matrices and integration or extension of OAKS	35	0	2	5	7
Capital Program Delivery The offeror's proposed approach and solution to deliver the requirements contained in Supplement 1, Section 6.0 in its entirety, inclusive of requirements matrices and integration or extension of OAKS	80	0	2	5	7
Facilities Management The offeror's proposed approach and solution to deliver the requirements contained in Supplement 1, Section 7.0 in its entirety, inclusive of requirements matrices and integration or extension of OAKS	35	0	2	5	7
Business Intelligence and Management Reporting The offeror's proposed approach and solution to deliver the requirements contained in Supplement 1, Section 8.0 in its entirety, inclusive of requirements matrices and integration or extension of OAKS/BI	35	0	2	5	7

Supplement 1 Ohio Department of Transportation (ODOT) Migration to OAKS with Enhanced Functionality					
Scored Criteria	Weight	Does Not Meet	Partially Meets	Meets	Exceeds
Systems and Process Interface Solution - The approach, delivery and completeness of the solution will be considered as well as adherence and utilization of State standard or required integration methods inclusive or data, systems, processes and support of the solution to be implemented during the project. Phased elimination, retirement, reuse and better integration of existing State systems (as required) will be considered in this evaluation area. Section 9.0	35	0	2	5	7
Data Conversion Solution – The quality, approach, methods and coverage of the conversion of State data from existing systems and data stores to the Proposed operating environment, systems and reporting elements of the solution Section 10	35	0	2	5	7
Organizational Change Management offeror tools, techniques, and methodologies to implement the required Organizational Change Management Work contained in Section 11 of Supplement 1 in its entirety with consideration for offeror Tools/Techniques as proposed and demonstrated, Offeror Methodologies as proposed and demonstrated, offeror Demonstrated Experience with Department of Transportation Applications and Processes, effective use and applicability to the DOT space in the context of a system and business process change program.	35	0	2	5	7
Project Management Methodology and Standards Adherence and ability to deliver the overall project to State Project Management standards and requirements as contained in Supplement 1, Section 13 in its entirety	25	0	2	5	7
Post Implementation and Production Support/Transition the Offerors proposed scope, role and support of the successful transition of the system(s) to production/live use and ability to support resolution of defects in the period following this introduction and handoff to the State for ongoing operation and maintenance. Sections 14-15	35	0	2	5	7
Adherence to State Delivery Service Level Standards to the extent that the offeror demonstrates a complete and coherent solution to achieving Development Lifecycle Service Level Agreements including the content, clarity and quality of the offeror’s proposal response to Section 16 of Supplement 1 in its entirety will be considered in assigning a score in this area.	35	0	2	5	7
Adherence to State Security, Privacy and Data Handling Requirements - The quality and completeness of the offeror applied to adherence to State Security and Privacy, IT Computing and Data Handling requirements as defined in Supplement 4 of this RFP.	35	0	2	5	7
Total Available Points	700				

Supplement 1 Evaluation Scoring Formula. The evaluation team will rate the Proposals that meet the Mandatory Requirements based on the following criteria and respective weights.

Criteria	Percentage
Technical Proposal	70%
Cost Summary	20%
MBE Set-aside	10%

The State is committed to making more State contracts, services, benefits and opportunities available to minority business enterprises (MBE). To foster this commitment, the State included an MBE Set-aside component in the Evaluation Scoring Formula (shown above) of this RFP.

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 Supplement 1 Technical Proposal will receive 700 points. The remaining offerors will receive a percentage of the maximum points available based upon the following formulas:

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

The offeror with the lowest proposed Not-To-Exceed Fixed Price will receive 200 points. The remaining offerors will receive a percentage of the maximum cost points available based upon the following formula:

Cost Summary Points = (Lowest Not-To-Exceed Fixed Price/Offeror's Not-To-Exceed Fixed Price) x 200

The offeror with the highest proposed MBE Set-aside Cost percentage will receive 100 points respectively. The remaining offerors will receive a percentage of the maximum MBE Set-aside points available based upon the following formula:

MBE Set-aside Points = (Highest MBE Set-aside Cost Percentage/Offeror's MBE Set-aside Cost Percentage) x 100

Total Points Score: The total points score is calculated using the following formula:

Total Points = Technical Proposal Points + Cost Summary Points + MBE Set-aside Points

Supplement 2 Enterprise Procurement Requirements					
Scored Criteria	Weight	Does Not Meet	Partially Meets	Meets	Exceeds
Offeror Proposed Key Personnel and Team - The quality of the offeror's proposed Project team to deliver the Projects as defined and required in Supplement 2 including the quality of the offeror's proposed Project team and ongoing Project delivery capacity will impact the success of the Projects. Therefore, each team member's experience, education, and skills will be considered in assigning a score in this area.	75	0	2	5	7
Project Implementation Statement of Work Solution - The quality and content of the offeror's Project Work Plan, Microsoft Project schedule and Staffing Plan & Time Commitment information for defined elements of Supplement 2 will be critical aspects of the State's review. The narrative project work plan, project schedule and staffing plan are to be consistent and complementary and must be presented in an appropriate level of detail. This area of the offeror's proposal must clearly demonstrate that the offeror will be prepared to quickly undertake and successfully complete the required tasks across all phases of the project.	75	0	2	5	7
Procurement Implementation and Operating Environment Requirements - The offeror's proposed approach and solution to deliver the requirements contained in Supplement 2, Section 3.1 thru 3.7, inclusive of requirements matrix.	65	0	2	5	7
Integration and Data Conversion Requirements - The offeror's proposed approach and solution to deliver the requirements contained in Supplement 2, Section 3.8 in its entirety,	50	0	2	5	7
Organization Change Management,/Communications and User Training Requirements - Offeror tools, techniques, and methodologies to implement the required Organizational Change Management Work contained in Section 4 of Supplement 2 in its entirety with consideration for offeror Tools/Techniques as proposed and demonstrated, offeror Methodologies as proposed and demonstrated,	50	0	2	5	7
Project Phasing, Project Management and Contractor Delivery Requirements Adherence and ability to deliver the overall project to State Project Management standards and requirements as contained in Supplement 2, Sections 5.1 thru 5.25.	25	0	2	5	7
Project Completion, Knowledge Transfer, Documentation, Post Implementation and Production Support/Transition Offerors proposed scope, role and support of the successful transition of the system(s) to production/live use and ability to support resolution of defects in the period following this introduction and handoff to the State for ongoing operation and maintenance as contained in Supplement 2 , Sections 5.26 thru 5.28.	10	0	2	5	7

Supplement 2 Enterprise Procurement Requirements					
Scored Criteria	Weight	Does Not Meet	Partially Meets	Meets	Exceeds
Adherence to State Delivery Service Level Standards to the extent that the offeror demonstrates a complete and coherent solution to achieving Development Lifecycle Service Level Agreements including the content, clarity and quality of the offeror's proposal response to Section 6 of Supplement 2 in its entirety will be considered in assigning a score in this area.	25	0	2	5	7
Adherence to State Security, Privacy and Data Handling Requirements - The quality and completeness of the offeror applied to adherence to State Security and Privacy, IT Computing and Data Handling requirements as defined in Supplement 6 of this RFP.	25	0	2	5	7
Total Available Points	400				

Supplement 2 Evaluation Scoring Formula. The evaluation team will rate the Proposals that meet the Mandatory Requirements based on the following criteria and respective weights.

<i>Criteria</i>	<i>Percentage</i>
Technical Proposal	70%
Cost Summary	20%
MBE Set-aside	10%

The State is committed to making more State contracts, services, benefits and opportunities available to minority business enterprises (MBE). To foster this commitment, the State included an MBE Set-aside component in the Evaluation Scoring Formula (shown above) of this RFP.

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 Supplement 2 Technical Proposal will receive 700 points. The remaining offerors will receive a percentage of the maximum points available based upon the following formulas:

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

The offeror with the lowest proposed Not-To-Exceed Fixed Price will receive 200 points. The remaining offerors will receive a percentage of the maximum cost points available based upon the following formula:

Cost Summary Points = (Lowest Not-To-Exceed Fixed Price/Offeror's Not-To-Exceed Fixed Price) x 200

The offeror with the highest proposed MBE Set-aside Cost percentage will receive 100 points respectively. The remaining offerors will receive a percentage of the maximum MBE Set-aside points available based upon the following formula:

MBE Set-aside Points = (Highest MBE Set-aside Cost Percentage/Offeror's MBE Set-aside Cost Percentage) x 100

Total Points Score: The total points score is calculated using the following formula:

Total Points = Technical Proposal Points + Cost Summary Points + MBE Set-aside Points

Supplement 3 Enterprise Grants Management (EGM) Project					
Scored Criteria	Weight	Does Not Meet	Partially Meets	Meets	Exceeds
Offeror Proposed Key Personnel and Team - The quality of the offeror's proposed Project team to deliver the Projects as defined and required in Supplement 1 including the quality of the offeror's proposed Project team and ongoing Project delivery capacity will impact the success of the Projects. Therefore, each team member's experience, education, and skills will be considered in assigning a score in this area. Supplement 3, Section 7.2	55	0	2	5	7
Project Management and Coordination Services, and Project Delivery, Role and Responsibility Requirements - The quality and content of the offeror's Project Work Plan, Microsoft Project schedule and Staffing Plan & Time Commitment information for defined elements of Supplement 3, Section 9 and 10 will be critical aspects of the State's review. The narrative project work plan, project schedule and staffing plan are to be consistent and complementary and must be presented in an appropriate level of detail. This area of the offeror's proposal must clearly demonstrate that the offeror will be prepared to quickly undertake and successfully complete the required tasks across all phases of the project.	40	0	2	5	7
Grants "to Be" Process and Requirements Matrix - The offeror's proposed approach and solution to deliver the requirements contained in Supplement 3, Sections 4 and 5 in their entirety, inclusive of the requirements matrix.	40	0	2	5	7
Data Conversion Solution – The quality, approach, methods and coverage of the conversion of State data from existing systems and data stores to the Proposed operating environment, systems and reporting elements of the solution in accordance with Section 6 of Supplement 3.	20	0	2	5	7
Organizational Change Management - Offeror tools, techniques, and methodologies to implement the required Organizational Change Management Work contained in Section x of Supplement 3 in its entirety with consideration for offeror Tools/Techniques as proposed and demonstrated, offeror Methodologies as proposed and demonstrated, offeror Demonstrated Experience with Federal, State or Higher Education Grants Applications and Management Processes. ,	35	0	2	5	7
Project Management Methodology and Standards - Adherence and ability to deliver the overall project to State Project Management standards and requirements as contained in Supplement 3, Section 11 in its entirety	25	0	2	5	7
Project Completion Activities, Final Documentation and Post Implementation - Support The offerors proposed scope, role and support of the successful transition of the system(s) to production/live use and ability to support resolution of defects in the period following this introduction and handoff to the State for ongoing operation and maintenance in accordance with Supplement 3, Section 12.	35	0	2	5	7

Supplement 3 Enterprise Grants Management (EGM) Project					
Scored Criteria	Weight	Does Not Meet	Partially Meets	Meets	Exceeds
Adherence to State Delivery Service Level Standards to the extent that the offeror demonstrates a complete and coherent solution to achieving Development Lifecycle Service Level Agreements including the content, clarity and quality of the offeror's proposal response to Section 14 of Supplement 3 in its entirety will be considered in assigning a score in this area.	25	0	2	5	7
Adherence to State Security, Privacy and Data Handling Requirements - The quality and completeness of the offeror applied to adherence to State Security and Privacy, IT Computing and Data Handling requirements as defined in Supplement 4 of this RFP.	25	0	2	5	7
Total Available Points	300				

Supplement 3 Evaluation Scoring Formula. The evaluation team will rate the Proposals that meet the Mandatory Requirements based on the following criteria and respective weights.

Criteria	Percentage
Technical Proposal	70%
Cost Summary	20%
MBE Set-aside	10%

The State is committed to making more State contracts, services, benefits and opportunities available to minority business enterprises (MBE). To foster this commitment, the State included an MBE Set-aside component in the Evaluation Scoring Formula (shown above) of this RFP.

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 Supplement 3 Technical Proposal will receive 700 points. The remaining offerors will receive a percentage of the maximum points available based upon the following formulas:

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

The offeror with the lowest proposed Not-To-Exceed Fixed Price will receive 200 points. The remaining offerors will receive a percentage of the maximum cost points available based upon the following formula:

Cost Summary Points = (Lowest Not-To-Exceed Fixed Price/Offeror's Not-To-Exceed Fixed Price) x 200

The offeror with the highest proposed MBE Set-aside Cost percentage will receive 100 points respectively. The remaining offerors will receive a percentage of the maximum MBE Set-aside points available based upon the following formula:

MBE Set-aside Points = (Highest MBE Set-aside Cost Percentage/Offeror's MBE Set-aside Cost Percentage) x 100

Total Points Score: The total points score is calculated using the following formula:

Total Points = Technical Proposal Points + Cost Summary Points + MBE Set-aside 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 Work, but the Contractor must provide overall Work management for the tasks under this Contract, including the day-to-day management of its staff. 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. Throughout the Work effort, the Contractor must employ ongoing management techniques to ensure a comprehensive Work Plan is developed, executed, monitored, reported on, and maintained.

The Contractor must provide a Project Manager for the Work. The Contractor must employ the proposed Project Manager as a regular, fulltime employee on the Proposal submission date and throughout the term of the Contract, including all renewals. Additionally, the Contractor's full-time regular employees must perform at least 30% of the effort required to complete the Work. The Contractor may use its personnel or subcontractor personnel to meet the remaining 70% of the effort.

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, it has performed the associated tasks in a manner that meets the Contract's requirements.

The Contractor must provide all Deliverables to the State Authorized Representative, who will review (or delegate review of) the materials or documents within a reasonable time after receipt, as specified in the Project Plan.

If the State determines that a Deliverable is not in compliance, the State Authorized Representative will note the reason for non-compliance and send notification to the Contractor Account Manager. At no expense to the State, the Contractor then must bring the Deliverable into conformance and re-submit it to the Project Representative within ten business days.

If the State agrees the Deliverable is compliant, the State Authorized Representative will sign a Deliverable Submittal Form and return a copy to the Contractor. In addition, if the State Authorized Representative or designee determines that the State should make a payment associated with the Deliverable, the State Authorized Representative will indicate that the payment should be made on the Deliverable Submittal Form.

The State form authorizing payment and the payment itself do not indicate that the State has accepted the Deliverables associated with the payment. The State's acceptance of the Deliverables that are part of developing the Project is conditioned on a successful performance test upon completion of the Project or Services (if applicable).

General Systems Implementation Standards. The Contractor has and will continue to use its best efforts through quality assurance procedures to ensure there are no viruses or malware or undocumented features in its infrastructure and services and that they do not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent any use of or access to them by the State. Notwithstanding any rights granted under the Agreement or at law, the Contractor hereby waives under any and all circumstances any right it may have or may hereafter have to exercise electronic self-help.

Inconsistencies between Contract and Deliverables. Any terms and conditions that may be incorporated in a User, Operations, Training Document or Guide or Contractor created Deliverable, work product, assumption, responsibility or activity that are inconsistent or conflicts with the Contract, the Contract shall prevail.

The Contractor's Fee Structure. The Contract award(s) will be for a Not-To-Exceed Fixed Price as agreed in the offerors Cost Summary Microsoft Excel® Workbook(s), Attachment Nine (Supplement 1), Attachment Ten (Supplement 2) and Attachment Eleven (Supplement 3) in native format) payable in accordance with an approved statement of work or State approved Interval Deliverable Agreement (IDA).

Project Management Services. Upon receipt of a signed Deliverable Submittal Form indicating the State agrees that monthly Project Management Services have been delivered, are acceptable, and that the Contractor has met appropriate requirements and payment should be made, the Contractor may submit an invoice for the monthly Project Management Services.

The initial scope and project management services under the awarded Contract will be for the project management services as identified in Supplements 1, 2 and 3 and the specific services costs identified in the Cost Summary Workbooks provided as Attachments 9, 10 and 11 in the RFP documents.

The monthly Project Management Services will be paid within 30 days receipt of a valid invoice, noting that the services have been ordered, delivered, and accepted in accordance with the offeror's proposed Project Plan.

Project Deliverables. Upon receipt of a signed Deliverable Submittal Form indicating the State agrees that the Deliverable is compliant, or that the Contractor has met an applicable milestone and payment should be made, the Contractor may submit an invoice for that Deliverable or milestone.

The initial scope and deliverables under the awarded Contract will be for the project deliverables as identified in Supplements 1, 2 and 3 and the specific deliverable costs identified in the Cost Summary Workbooks provided as Attachments 9, 10 and 11 in the RFP documents.

Application (Solution) Software. The State will pay fees related to the OAKSenterprise "solution" application software and any other Commercial Software that it acquires as part of this Contract only on the State's execution of a schedule or other ordering document, delivery of the software F.O.B. to the Project site, acceptance of the software in accordance with the applicable schedule or other ordering document, and receipt of a proper invoice for the software.

Software licenses will be paid within 30 days receipt of a valid invoice, noting that the software license(s) have been ordered, delivered, installed and accepted in the identified environment in accordance with the offeror's proposed Project Plan.

The State will pay ongoing annual maintenance fees for any application software and any other Commercial Software acquired as part of this Contract only on the State's execution of a schedule or other ordering document on an annual basis within 30 days receipt of a valid invoice. At the State's request, the first Support Period may be pro-rated so that the Anniversary Date coincides with the end of the State's Fiscal Year.

Optional Hardware and Related Components. The State will pay fees related to the OAKSenterprise "solution" hardware and related components that it acquires as part of this Contract only on the State's execution of a ordering document, delivery of the hardware and related components F.O.B. to the Project site, acceptance of the hardware and related components in accordance with the applicable ordering document, and receipt of a proper invoice for the hardware and related components.

Hardware and related components will be paid within 30 days receipt of a valid invoice, noting that the hardware and related components have been ordered, delivered, installed and accepted in the identified environment in accordance with the offeror's proposed Project Plan.

The State will pay ongoing annual maintenance fees for any hardware and related components acquired as part of this Contract only on the State's execution of an ordering document on an annual basis within 30 days receipt of a valid invoice. At the State's request, the first Support Period may be pro-rated so that the Anniversary Date coincides with the end of the State's Fiscal Year.

Optional Environmental Software. The State will pay fees related to the OAKSenterprise “solution” environmental software that it acquires as part of this Contract only on the State’s execution of a schedule or other ordering document, delivery of the software F.O.B. to the Project site, acceptance of the software in accordance with the applicable schedule or other ordering document, and receipt of a proper invoice for the software.

Software licenses will be paid within 30 days receipt of a valid invoice, noting that the software license(s) have been ordered, delivered, installed and accepted in the identified environment in accordance with the offeror’s proposed Project Plan.

The State will pay ongoing annual maintenance fees for any environmental software acquired as part of this Contract only on the State’s execution of a schedule or other ordering document on an annual basis within 30 days receipt of a valid invoice. At the State’s request, the first Support Period may be pro-rated so that the Anniversary Date coincides with the end of the State’s Fiscal Year.

MBE Set-aside and Reporting. In the State’s commitment to make more State contracts, services, benefits and opportunities available to minority business enterprises (MBE), the State included in the Evaluation Scoring Formula of this RFP, a provision for the offeror to seek and set aside work for MBE subcontractors. The work set-aside should equate to a minimum of 15% of the offeror’s cost proposal under RFP 0A1158. In seeking bids, the offeror must:

- Utilize a competitive process to which only Ohio certified MBEs may respond;
- Have established criteria by which prospective MBEs will be evaluated including business ability and specific experience related to the work requirements;
- Require the MBE subcontractor to maintain their certification throughout the term of the Contract, including any renewals; and
- Propose the awarded MBE as a subcontractor under RFP 0A1158.

After award of the RFP, the Contractor must submit a quarterly report to the DAS Contract Manager or designee documenting the work performed by and payments made to the MBE subcontractor. These reports must reflect the level of MBE commitment agreed to in the Contract. The reports must be filed at a time and in a form prescribed by the DAS Contract Manager or designee.

Notes:

1. For this RFP Ohio certified MBE’s that are the prime **must** subcontract with an Ohio-certified MBE to meet the above requirement.
2. The offeror’s MBE set-aside costs will be evaluated as a percentage (%) based on the offeror’s proposed project management activities and project total costs. The Bill of Materials (BOM) elements, including proposed hardware, environmental software and application solution software costs will not be a component in the evaluation of MBE set-aside percentage.

Reimbursable Expenses. None.

Bill to Address. The State will provide the bill to address(s) after contract award. The bill to address may vary depending upon the work or services delivered.

Location of Data. The Contractor must perform all work on the Project and keep all State data within the United States, and the State may reject any Proposal that proposes to do any work or make State data available outside the United States. The State also may reject any Proposal for which the Contractor has not submitted the affirmation and disclosure form EXECUTIVE ORDER 2011-12K representing that it will ensure that all work on the Project will be done within the United States and that all State data will remain in the United States. Additionally, the Contractor must provide written notification for approval if at any time the location of work or data changes.

Interval Deliverable Agreement (IDA). The State may use the Interval Deliverable Agreement (IDA) model for work identified during the life of the Contract that cannot be defined to the appropriate level of detail during the RFP process. The Contractor must work with designated State staff to develop the deliverables and identify all work for each IDA. Deliverables or sub-deliverables will be defined prior to the start of each designated interval,

and monitored throughout the designated interval and the life of the Contract. The IDAs will be identified and agreed to at least 30 days in advance of the beginning of the interval. For each IDA, the State and the Contractor will agree, in writing, to specific deliverables, work assignments, sub-deliverables, services to be provided using time and materials, the length of the interval, due dates, and Contractor staffing requirements based on positions and not-to-exceed hourly rates quoted in the Rate Card on the Cost Summary. The IDA is not effective until the State and Contractor have signed the agreement and a purchase order is issued to the Contractor. The agreed upon IDA will be incorporated into the Contract.

The IDA (i.e., specifications, deliverables, work assignments, and due dates) may be amended based upon changing circumstances during a particular interval. An amendment to an IDA must be in writing and signed by both the State and the Contractor prior to performing the work specified in the amendment.

Specific application of standards of performance and acceptance may be defined in an IDA. The information below sets a guide and general rule of thumb for these standards.

If the IDA so indicates, there will be a period for performance testing in a production environment specific to the deliverables identified in the IDA. Prior to the performance period, the State, with the assistance of the Contractor, will perform user acceptance testing. Specifics of the performance period such as the timeframe, resources, support required, entrance and exit performance criteria, and standards of performance will be determined by the State, negotiated with the Contractor and incorporated in the IDA. The performance criteria in the IDA may be supplemented with relevant user manuals, technical materials and related writings, to the extent that the specifications in those writings supplement and refine rather than contradict the performance criteria in the IDA. Acceptance of the Deliverable depends on a successful completion of the performance period defined in this section and the IDA. This section applies to the Deliverables defined in the IDA, and any part of it, as well as replacements or substitutes for the Deliverable after completion of a successful performance period.

If the Deliverable does not meet the standard of performance during the performance period, the State will document the issues in a timely manner and in a useful and relevant form. Until the Contractor has demonstrably corrected all outstanding problems, the performance period will not restart and the Deliverable (or part thereof) will not be accepted. The performance period will continue on a day-by-day basis until the standard of performance and exit criteria are met. The Contractor will not be compensated until the Deliverable is accepted and any additional cost associated with the iterations required to obtain acceptance are the responsibility of the Contractor.

If the work fails to meet the standard of performance and exit criteria during 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 IDA.

The work may have components that can be tested for acceptance individually. If so, there may be acceptance criteria listed in the IDA for each Deliverable that will be independently tested and accepted. But, unless the IDA expressly provides otherwise, the failure of any independently tested component to meet its acceptance criteria will give the State the right to reject the entire Deliverable. Alternatively, if the State determines that it is in the State's interest to reject only the part of the Deliverable that was independently and unsuccessfully tested, it may do so. If the State chooses this option, the State will be entitled to a refund or credit toward the Contractor's Fee.

All IDAs must contain the following information, at a minimum:

- The designated interval length for each IDA.
- Goals and Objectives for the interval.
- Deliverables to be completed or partially completed during the interval. This will include, but not be limited to:
 - Deliverable Name;
 - Description of Deliverable including tasks or milestones to be completed; ○ Detailed acceptance criteria and standards of performance;
 - State dependencies identified by the Contractor for successful completion of the Deliverable; ○ Deliverable Due Date;
 - Risks associated with delays and incomplete Deliverables; and
 - Fixed pricing for each Deliverable based on staffing requirements (services to be performed, identification of Contractor staff resource by name and position, number of hours allocated to the task

for each assigned position, individual hourly rate for each Contractor resource assigned to a task, etc.).

The State may identify tasks and services that will be billed on a time and material basis. The State does not anticipate a need for time and material services for this work, however in the event that time and materials work is appropriate, at the sole discretion of the State, the following information, at a minimum, must be provided in the IDA:

- Name, title, identification of the employer (prime or subcontractor) and number of staff;
- Staff work hours with any known exceptions noted;
- Description of the work to be performed by the Contractor;
- Specific Contractor resources assigned;
- Individual rate for each Contractor resource assigned;
- Projected number of Contractor hours allocated (per resource);
- Dates covered in the work;
- Dependencies;
- Management or staffing issues;
- Standards of performance; and
- Work Breakdown Schedule (WBS) for all work in the IDA.

In addition, the following information may also be required:

- Staffing Issues
- Required work related travel and training.

It is the Contractor's responsibility to provide qualified professionals to meet the goals, tasks, and objectives of each IDA.

The State's intent is for all IDAs to be developed and negotiated in partnership between the State and the Contractor, with each having a vested interest in its success

ATTACHMENT THREE: REQUIREMENTS FOR PROPOSALS

Proposal Format. These instructions describe the required format for a responsive Proposal. The offeror may include any additional information it believes is relevant. The offeror's proposal submission must be submitted using the Microsoft Word version of the RFP to provide an **in-line response** to the RFP. An identifiable tab sheet must precede each section of the 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.

Offeror responses should use a consistent contrasting color (**blue** is suggested to contrast with the black text of this document) to provide their response to each requirement so that the offeror response is readily distinguishable to the State. Below is an example of the required format for responding to the RFP requirements. To aid offerors in the creation of the most favorable depiction of their responses, alternative formats are acceptable that use typefaces, **styles** or **shaded backgrounds**, so long as the use of these formats are consistent throughout the offerors response and readily distinguishable from the baseline RFP. Alterations to the State provided baseline RFP language is strictly prohibited. The State will electronically compare offeror responses to the baseline RFP and deviations or alterations to the State's RFP requirements may result in a rejection of the offeror's Proposal.

To ensure that each Proposal addresses the required sections of the RFP, offerors must address each RFP requirement by section and sub-section heading and provide the offeror's proposed solution or response to the requirement by section and subsection **in-line** using the provided Microsoft Word version of this RFP.

Additionally, offerors must include the entire content of Attachment Four as a single section in their proposal. **Offerors must include a statement at the beginning of the section** indicating that the offeror has read, understands and agrees to the General Terms and conditions contained in Attachment Four.

Illustrative Example: Customers Served in the Widget Space:

Instructions: *The offeror is to describe the customers (i.e., companies, agencies, entities, etc.) served in the Widget domain and the nature of the services provided, as well as the duration of the service.*

Offeror Response: *The Acme Corporation has been in business for over 20 years, Acme is a leading supplier of Widget and Widget based services with clients in a variety of sectors including public (23 states) and private (125 of the Fortune 400).*

Each Proposal must include a response to every request for information in this attachment and Supplement 1, 2 and 3 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.

Offerors are required to page limit their responses to each Supplement to be no longer than twice the State provided page count per Supplement. As offeror responses are to respond in an inline format, and by way of example, Supplement 3 is approximately 48 pages, the offeror's inline response, inclusive of State requirements shall not exceed 96 pages in total. Offerors should choose a similarly sized typeface (generally 10 point for text and 8 point for tables) as are included in the State's requirements and not utilize smaller than 8 point fonts to work under this page limit restriction.

State evaluators read every RFP from front-to-back inclusive of all Attachments, Supplements, Forms and other elements. Offerors are advised to limit offeror marketing statements and positioning to the area(s) of the RFP applicable to those statement(s) and not include duplicative or otherwise repetitive statements throughout its response. This page limit shall not apply to: State mandatory forms, representations and affirmations, response form(s) and other structured forms required under this RFP.

Each Proposal must contain the following **tabbed sections in the in-line response**:

Technical Proposal

1. Cover Letter
2. Vendor Information Form (OBM-5657)

3. Subcontractor Letters
4. Offeror Certification Form
5. MBE Certification
6. Offeror Profile (as it relates to the proposed work)
7. Proposed Solution
 - Supplement 1 Response
 - Supplement 2 Response
 - Supplement 3 Response
 - Supplement 4 Acceptance and Compliance Response (Applies to All Responses)
8. Proof of Insurance
9. Payment Address
10. Legal Notice Address
11. W-9 Form
12. Independent Contractor Acknowledgement
13. Standard Affirmation and Disclosure Form (EO 2011-12K)
14. Attachment 4: General Terms and Conditions Acceptance
15. Attachment 12: Master Contract for Software Licensing

Cost Proposal

Cost Summary - Microsoft Excel Workbook (must be separately sealed, in native Excel format – not PDF)

Cover Letter. The cover letter must be in the form of a standard business letter and must be signed by an individual authorized to legally bind the offeror. The cover letter must include a brief executive summary of the solution the offeror plans to provide. The letter must also have the following:

- a. A statement regarding the offeror's legal structure (e.g., an Ohio corporation), Federal tax identification number, and principal place of business;
- b. A list of the people who prepared the Proposal, including their titles; and
- c. A statement certifying the Contractor is a business entity and will not submit the Independent Contractor/Worker Acknowledgement to the ordering agency.

Vendor Information Form. The offeror must submit a signed and completed Vendor Information Form (OBM-5657). The form is available at: <http://ohiosharedservices.ohio.gov/VendorsForms.aspx>

Subcontractor Letters. 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 address;
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 work the subcontractor will do;
4. A commitment to do the work if the offeror is selected; and
5. A statement that the subcontractor has read and understood the RFP and will comply with the requirements of the RFP.

Offeror Certifications. The offeror must complete Attachment 6, Offeror Certification Form.

MBE Certification. Any offeror proposing an MBE subcontractor certified by the Department of Administrative Services pursuant to ORC 123.151 must provide a copy of their Ohio MBE Certification.

Offeror Profile. Each Supplement Response must include a description of the offeror capability, capacity, and experience in support of the requirements of each Supplement's response. The description should include the date the offeror was established, its leadership, number of employees, number of employees the offeror will engage in tasks directly related to the Project, and any other background information or relevant experience that will help the State gauge the ability of the offeror to fulfill the obligations of the Contract.

The offeror must use the Offeror Profile Summary Forms (Attachment Seven) and fill them out completely to provide the required information. All offerors must demonstrate experience to meet each of the applicable mandatory requirement(s) evaluation criteria by including the offeror mandatory requirement form provided in this RFP. Each offeror must meet the applicable mandatory requirements in the RFP. If an offeror does not meet the applicable 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:

- a) **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. For each reference, the offeror must provide the following information:
- **Contact Information.** The offeror must provide a client contact name, title, phone number, email address, company name, and mailing address. The offeror also must include the same information for an alternate client contact, in case the State cannot reach the primary contact. Failure to provide this information or providing information that is inaccurate or out of date may result in the State not including the reference in the evaluation process or rejecting the offeror's Proposal. The contact information given must be for a person within the client's organization and not a co-worker or a contact within the offeror's organization, subsidiaries, partnerships, etc.
 - **Project Name.** The offeror must provide the name of the project where it obtained the mandatory experience.
 - **Dates of Experience.** The offeror must complete this area with a beginning month and year and an ending month and year to show the length of time the offeror performed the work, not just the length of time the offeror was engaged by the reference.
 - **Description of the Related Service Provided.** The State will not assume that, since the experience requirement is provided at the top of the page, all descriptions on that page relate to that requirement. The offeror must reiterate the experience being described, including the capacity in which the work was performed and the role of the offeror on the Project. It is the offeror's responsibility to customize the description to clearly substantiate the qualification.
 - **Description of how the related service shows the offeror's experience, capability, and capacity to develop the Deliverables and to achieve the milestones within the scope of work of this RFP.**

The offeror must list each project experience separately and completely every time it is referenced, regardless of whether it is on the same or different pages of the form.

THE OFFEROR MAY NOT USE THE EXPERIENCE OR QUALIFICATIONS OF A SUBCONTRACTOR TO MEET ANY OF THE MANDATORY QUALIFICATIONS OR EXPERIENCE. THESE MUST BE FULFILLED EXCLUSIVELY THROUGH THE QUALIFICATIONS AND EXPERIENCE OF THE OFFEROR.

Proposed Solution. The offeror must describe in detail how its proposed solution meets the Work and requirements described in this RFP. The offeror may not simply state that the proposed services will meet or exceed the specified requirements. Instead, the offeror must provide a written narrative that shows that the offeror understands the requirements of this RFP and how the offeror's proposed services meets those requirements.

- All Supplements are being provided as a Microsoft Word and Excel documents through the State's procurement website as a convenience for responding to the RFP. The supplement's content must not be modified. If the content is modified, reformatted or omitted, the offeror's response may be disqualified. As part of their response, Offerors are to provide native Microsoft Word and Excel based documents that comprise the requirements of a Supplement, inclusive of their response as well as Excel based versions of the embedded Requirements Matrices in Excel format as provided. For the avoidance of doubt, Requirements Matrices must be provided both inline (in Microsoft Word) as well as independently (as Microsoft Excel).
- Supplement 4: Security and Privacy is being provided as a Microsoft Word document through the State's procurement website as a convenience for responding to the RFP. The supplement's content must not be modified. If the content is modified, reformatted or omitted, the offeror's response may be disqualified.

The quality and content of the offeror's response to Supplement 4 must demonstrate the quality and completeness applied to adherence to State Security and Privacy, IT Computing and Data Handling requirements as it pertains to the Work requirements in Supplements 1, 2 and 3. Additionally, the offeror's agreement and understanding of Supplement 4 will be a factor in the State's review.

The offeror's response to Supplement 4 must be inserted in this section of the offeror's Proposal response.

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 a 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. A current version of the Internal Revenue's W-9 form is available at <http://www.irs.gov/pub/irs-pdf/fw9.pdf>.

Independent Contractor Acknowledgement Form. Unless the offeror is a "business entity" as that term is defined in ORC. 145.037 ("an entity with five or more employees that is a corporation, association, firm, limited liability company, partnership, sole proprietorship, or other entity engaged in business"), the offeror must complete and submit an originally signed Independent Contractor Acknowledgement form in its entirety. All other copies of a Proposal may contain copies of the Independent Contractor Acknowledgement form. The offeror must indicate on the outside of the binder which Proposal contains the originally signed Independent Contractor Acknowledgement form. A current version of the Independent Contractor Acknowledgement form is available at:

<https://www.opers.org/forms-archive/PEDACKN.pdf>

Standard Affirmation and Disclosure Form (EO 2011-12K). The offeror must complete and sign the Affirmation and Disclosure Form (Attachment) as part of its Proposal. Executive Order 2011-12K is available at:

<http://www.governor.ohio.gov/Portals/0/pdf/executiveOrders/EO%202011-12K.pdf>

Acceptance of Attachment Four – General Terms and Conditions. Offerors must include the entire content of Attachment Four as a single section in their proposal. The offerors must include a statement at the beginning of the section indicating that the offeror has read, understands and agrees to the General Terms and conditions contained in Attachment Four.

Proposed Changes to Attachment Twelve. If the offeror seeks changes to Attachment Twelve, the Master Contract, the offeror must identify those changes, with the precise alternative language the offeror seeks, and include the markup of the Master Contract as an attachment to its Proposal. Generalized objections to the Master Contract's terms and conditions are not acceptable. The State may reject any Proposal with extensive changes to the Master Contract or with changes that the State finds objectionable. Alternatively, the State may seek to negotiate over proposed changes to attempt to make them acceptable to the State. The State, in its sole and exclusive judgment, will determine whether any changes are acceptable and whether any negotiations make the proposed changes acceptable to the State.

Cost Summary. This RFP includes Cost Summary Workbooks in Microsoft Excel® as Attachments Nine (Supplement 1), Ten (Supplement 2) and Eleven (Supplement 3). Offerors may not reformat the State's Cost Summary Workbooks. Each offeror must complete the applicable Cost Summary Workbooks in the exact format provided, since the State may reject any Proposal with a reformatted Cost Summary Workbook or that is not separately sealed. (See: Part Three: General Instructions, Proposal Submittal.)

In addition, offerors must indicate the MBE cost and percentage for each element of the offeror's proposed cost utilizing the Cost Summary Workbooks. The total MBE cost will be the sum of all MBE elements in the Cost Summary Workbooks. The percentage will be the total MBE cost divided by the total offeror proposed cost.

Note: MBE percentage will be calculated based on the offeror's proposed project management services and solution project implementation services.

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

The offeror's total cost for all the Project must be represented as the Not-To-Exceed Fixed Price.

The State will not be liable for or pay any Project 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 and the State's Request for Proposal (collectively, the "RFP Documents") are a part of this Contract and describe the work (the "Project") the Contractor must do and any materials the Contractor must deliver (the "Deliverables") under this Contract. The Contractor must do the Project 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 Project.

The Contractor must consult with the appropriate State representatives and others necessary to ensure a thorough understanding of the Project and satisfactory performance. The State may give instructions to or make requests of the Contractor relating to the Project, 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 Project and will not amend or alter the scope of the Project.

Term. Unless this Contract is terminated or expires without renewal, it will remain in effect until the Project is completed to the satisfaction of the State, including all optional renewal periods for maintenance or continuing commitments, and the Contractor is paid. However, 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, 2017. 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 Project continues, including any optional renewal periods. Termination or expiration of this Contract will not limit the Contractor's continuing obligations with respect to Deliverables that the State paid 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 Project 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 Project. The Contractor must make those deliveries, meet those milestones, and complete the Project 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 termination provision contained below.

The State also may have certain obligations to meet. Those obligations, if any, are also 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 Project. The Contractor must deliver any such notice to both the Project 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 Project. 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 project, and the Contractor must provide any incidental items omitted in the RFP Documents as part of the Contractor's not-to-exceed fixed price. The Contractor also must fully identify, describe, and document all systems that are delivered as a part of the Project. Unless expressly excluded elsewhere in the RFP, all hardware, software, supplies, and other required components (such as documentation, conversion,

training, and maintenance) necessary for the Project to be complete and useful to the State are included in the Project and the not-to-exceed fixed price.

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 "total 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 Project or, in the case of milestone payments or periodic payments of an hourly, daily, weekly, monthly, or annual rate, all relevant parts of the Project 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 Contractor's Implementation Manager (e.g., Contractor's Project Manager), the Contractor's Project executive, the State's Project 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.

Payment of an invoice by the State will not prejudice the State's right to object to or question that or any other invoice or matter in relation thereto. The Contractor's invoice will be subject to reduction for amounts included in any invoice or payment made which are determined by the State not to constitute allowable costs, on the basis of audits conducted in accordance with the terms of this Contract. At the State's sole discretion all payments shall be subject to reduction for amounts equal to prior overpayments to the Contractor.

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 the Project, and then only in accordance with the payment schedule specified in the RFP Documents. The State will withhold all amounts under this section arising from claims or disputes in addition to any retainage specified in the RFP Documents.

The State may pay any part of the not-to-exceed fixed price identified in the RFP documents as being for a license in Commercial Material from a third party in accordance with the applicable license agreement, if the license agreement addresses payment. For all Key Commercial Software with a license agreement substantially in the form of Attachment Twelve, payment of any license or support fees will be governed exclusively by that license agreement.

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 Project 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, liquidated damages or other damages or claims for damages, 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 Project, such will be the sole and exclusive responsibility of the Contractor. Further, 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 Project duplicates the work done or to be done under the other contracts.

Other Contractors. The State may hold other contracts for additional or related work, including among others independent verification and validation (IV&V) work for this Project. 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 this Project. Such cooperation includes expeditiously providing the IV&V contractor with full and complete access to all project 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 Project, the State will obligate the IV&V contractor to a confidentiality provision similar to the Confidentiality Section contained in this Contract. Additionally, the Contractor must include the obligations of this provision in all its contracts with its subcontractors that work on this project.

Subcontracting. The Contractor may not enter into subcontracts related to the Project after award without written approval from the State. Nevertheless, 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 Project. 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 Project 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. Further, 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. 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. Additionally, the Contractor must keep all Project-related records and documents at its principal place of business or at its office where the work was performed.

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 Project. This audit right also applies to the State's duly authorized representatives and any person or organization providing financial support for the Project. State audit rights will apply to those Contractor materials that are required to verify the accuracy of a Contractor invoice to the State inclusive of: Contractor personnel timesheets; Contractor purchased or provided equipment for benefit of the State that will remain in the State's possession; State deliverable acceptance documentation; any required State written approvals as required herein; final Work products and deliverables; any partial or incomplete Work products or deliverables that should the Contractor submit for partial compensation from the State as a result of termination of this contract.

Right to Terminate as a Result of Audit Findings. In the event the State determines that the results of any examination of the Contractor is unsatisfactory per the requirements of the Contract and not remedied within a 90 day period following written notice from the State, the State may terminate this Agreement, in part or in full.

If the Contractor fails to satisfy the requirements of the State with regard to security of information, or if an examination reveals information that would result in a continuing contractual relationship that causes the State to be in violation of any law, the State may terminate this Contract immediately without notice.

If the Contractor fails to satisfy the requirements of the State with regard to matters not related to items contained in the preceding two (2) paragraphs, the State will provide Contractor with notice and an opportunity to cure the

failure within forty-five (45) days. If the failure is not cured by Contractor within such forty-five (45) day period, the State may terminate this Contract without further notice.

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 Project will be done outside Ohio, the laws of the appropriate state(s) where work on the project 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 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 Contractor shall, for each policy required by this Contract, provide the State with 30-days prior written notice of cancellation, material change, or non-renewal, except a 10-days notice of non-payment of premium. 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.

Replacement Personnel. If the RFP Documents contain the names of specific people (e.g., Key Project Personnel) who will work on the Project, 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 Project 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 Project, if doing so is necessary for legal or disciplinary reasons. However, 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 Project 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 Project. 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 Project. 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 Project, 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 in full or in part for cause 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 Project, 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.

The State also may terminate this Contract in full or in part for its convenience and without cause or if the Ohio General Assembly fails to appropriate funds for any part of the Project. If a third party is providing funding for the Project, the State also may terminate this Contract should that third party fail to release any Project funds. The RFP Documents normally identify any third party source of funds for the Project, 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 work on the project 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 Project's completion, any costs incurred in doing the Project 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. However, if the State determines that delivery in that manner would not be in its interest, then the State will 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 Contractor fails to deliver Deliverables or provide satisfactory services, the State has the right to withhold any and all payments due to the Contractor without penalty or work stoppage by the Contractor until such failure to perform is cured.

If the termination is for the convenience of the State, the Contractor will be entitled to the prorated Contract price for deliverables, products or services accepted by the State and not previously paid for provided in that in no event will total payments exceed the amount payable to the Contractor if the Contract had been fully performed. The Contractor will use generally accepted accounting principles and sound business practices in determining all costs claimed, agreed to, or determined under this clause.

The State will have the option of suspending this Contract in full or in part rather than terminating the Project, 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 Project for cause rather than termination for cause, the Contractor will not be entitled to any compensation for any work performed. If the State reinstates the Project 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 Project just as is required by this Section in the case of termination. After suspension of the Project, the Contractor may not perform any work without the consent of the State and may resume 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 Project.

The State may not suspend the Project 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 Project 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 "Project Representative." The Project Representative will review all reports the Contractor makes in the performance of the Project, will conduct all liaison with the Contractor, and will accept or reject the Deliverables and the completed Project. The Project Representative may delegate his responsibilities for individual aspects of the Project to one or more managers, who may act as the Project Representative for those individual portions of the Project.

The Contractor's Implementation Manager under this Contract will be the person identified on the RFP Documents as the "Implementation Manager." The Implementation Manager will be the Contractor's liaison with the State under this Contract. The Implementation Manager also will conduct all Project meetings and prepare and submit to the Project 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 Implementation 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 Project.

Project 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 work with 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 Project. The Contractor must coordinate the successful execution of the Project and direct all Project activities on a day-to-day basis, with the advice and consent of the Project Representative. The Contractor will be responsible for all communications regarding the progress of the Project and will discuss with the Project Representative any issues, recommendations, and decisions related to the Project.

If any part of the Project 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 Project Representative certifying that installation is complete and the Project, 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 Project 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 Project and maintaining them throughout the duration of this Contract.

Changes. The State may make reasonable changes within the general scope of the Project. 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 Project, 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 Project, 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 Project 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 Project, 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 Department of Administrative Services 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 Project or replacing one part of the Project with the change, the State will get a credit for the work no longer required under the original scope of the Project. 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 Project, 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 Contractor Acknowledgement. It is fully understood and agreed that Contractor is an independent contractor and is not an agent, servant, or employee of the State of Ohio or the Ohio Department of Administrative Services. Contractor declares that it is engaged as an independent business and has complied with all applicable federal, state, and local laws regarding business permits and licenses of any kind, including but not limited to any insurance coverage, workers' compensation, or unemployment compensation that is required in the normal course of business and will assume all responsibility for any federal, state, municipal or other tax liabilities. Additionally, Contractor understands that as an independent contractor, it is not a public employee and is not entitled to contributions from DAS to any public employee retirement system.

Contractor acknowledges and agrees any individual providing personal services under this agreement is not a public employee for purposes of Chapter 145 of the Ohio Revised Code. Unless Contractor is a "business entity" as that term is defined in ORC. 145.037 ("an entity with five or more employees that is a corporation, association, firm, limited liability company, partnership, sole proprietorship, or other entity engaged in business") Contractor shall have any individual performing services under this agreement complete and submit to the ordering agency the Independent Contractor/Worker Acknowledgement found at the following link: <https://www.opers.org/forms-archive/PEDACKN.pdf>

Contractor's failure to complete and submit the Independent/Worker Acknowledgement prior to commencement of the work, service or deliverable, provided under this agreement, shall serve as Contractor's certification that contractor is a "Business entity" as the term is defined in ORC Section 145.037.

Ohio MBE Certification. The MBE must maintain their certification throughout the term of the Contract, including any renewals. Failure to maintain such certification will be considered a breach of the 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.

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 interest 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 Project. 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 Project. 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 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) except as provided in the next paragraph, 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.

Information that may be available publicly through other sources about people that is personal in nature, such as medical records, addresses, phone numbers, social security numbers, and similar things are nevertheless sensitive in nature and may not be disclosed or used in any manner except as expressly authorized in this Contract. Therefore, item (3) in the preceding paragraph does not apply, and the Contractor must treat such information as Confidential Information whether it is available elsewhere or not.

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.

Confidentiality Agreements. When the Contractor performs services under this Contract that require the Contractor's and its subcontractors' personnel to access facilities, data, or systems that the State in its sole discretion deems sensitive, the State may require the Contractor's and its subcontractors' personnel with such access to sign an individual confidentiality agreement and policy acknowledgements, and have a background check performed before accessing those facilities, data, or systems. Each State agency, board, and commission may require a different confidentiality agreement or acknowledgement, and the Contractor's and its subcontractors' personnel may be required to sign a different confidentiality agreement or acknowledgement for each agency. The Contractor must immediately replace any of its or its subcontractors' personnel who refuse to sign a required confidentiality agreement or acknowledgment or have a background check performed.

Ownership of Deliverables. The State owns all Deliverables that the Contractor produces under this Contract, including any software modifications, and documentation, 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.

For Deliverables that include custom materials such as software, scripts, or similar computer instructions developed for the State, the State is entitled to the source material. Scripts and similar functionality may not be locked or otherwise protected from access by the State, unless the State has any passwords or other tools necessary to access the material. Source material must include annotations or comments according to industry standards. Further, the State is entitled to any working papers the Contractor has developed during the performance of the Project that would reasonably assist the State in using the Deliverables that include source materials or that would help the State protect its interests in the Deliverable or update, modify, or otherwise maintain the Deliverable. This also includes all design and architectural materials, such as schemas.

The Contractor may use Confidential Information only as necessary for Contractor's performance under or pursuant to rights granted in this Agreement and for no other purpose. The Contractor's limited right to use Confidential Information expires upon expiration or termination of this Agreement for any reason. The Contractor's obligations of confidentiality and non-disclosure survive termination or expiration for any reason of this Agreement.

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. It does not include Key Commercial Software that will be governed by Attachment Ten, Master Contract, but does include other Commercial Software.

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 the six items below 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.

Key Commercial Software will be covered by a separate Master Contract for Software Licensing, in the form of Attachment Ten. When such a Master Contract is executed, it will be a separate agreement and not part of this Contract, though the Contractor remains responsible for ensuring that the completed Project, including any Key Commercial Software, meets the requirements of this Contract and performs according to the RFP Documents' requirements.

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 and security for the State's data, systems, and networks; (4) the Contractor has good and marketable title to any goods delivered under this Contract and in which title passes to the State; (5) 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 (6) 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 Project 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 Project. 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.

Software Warranty. If this Contract involves software as a Deliverable, then, on acceptance and for 12 months after the date of acceptance of any Deliverable that includes software, the Contractor warrants as to all software developed under this Contract that: (a) the software will operate on the computer(s) for which the software is intended in the manner described in the relevant software documentation, the Contractor's Proposal, and the RFP Documents; (b) the software will be free of any material defects; (c) the Contractor will deliver and maintain relevant and complete software documentation, commentary, and source code; and (d) the source code language used to code the software is readily available in the commercial market, widely used and accepted for the type of programming involved, and support programming in the language is reasonably available in the open market; and (e) the software and all maintenance will be provided in a professional, timely, and efficient manner.

For Commercial Software licensed from a third party that is incorporated into a Deliverable, and for which the State has not approved a separate license agreement governing that Commercial Software's warranties as part of the RFP process, the Contractor represents and warrants that it has done one of the following things: (a) obtained

the right from the third-party licensor to commit to the warranties and maintenance obligations in this Section; (b) obtained a binding commitment from the licensor to make those warranties and maintenance obligations directly to the State; or (c) fully disclosed in the RFP Documents any discrepancies between the requirements of this section and the commitment the third-party licensor has made.

In addition, for Commercial Software that is incorporated into a Deliverable, the Contractor will: (a) maintain or cause the third-party licensor to maintain the Commercial Software so that it operates in the manner described in the RFP Documents (or any attachment referenced in the RFP Documents) and relevant Commercial Software documentation; (b) supply technical bulletins and updated user guides; (c) supply the State with updates, improvements, enhancements, and modifications to the Commercial Software and documentation and, if available, the commentary and the source code; (d) correct or replace the Commercial Software and/or remedy any material programming error that is attributable to the Contractor or the third-party licensee; (e) maintain or cause the third-party licensor to maintain the Commercial Software and documentation to reflect changes in the subject matter the Commercial Software deals with; (f) maintain or obtain a commitment from the third-party licensor to maintain the Commercial Software so that it will properly operate in conjunction with changes in the operating environment in which it is designed to operate.

For purposes of the warranties and the delivery requirements in this Contract, software documentation means well written, readily understood, clear, and concise instructions for the software's users as well as a system administrator. The software documentation will provide the users of the software with meaningful instructions on how to take full advantage of all of the capabilities designed for end users. It also means installation and system administration documentation for a system administrator to allow proper control, configuration, and management of the software. Source code means the uncompiled operating instructions for the software. However, the Contractor will not be obligated to provide source code for Commercial Software unless it is readily available from the licensor. The source code must be provided in the language in which it was written and will include commentary that will allow a competent programmer proficient in the source language to readily interpret the source code and understand the purpose of all routines and subroutines contained within the source code.

Equipment Warranty. If any electrical equipment, mechanical device, computer hardware, telecommunications hardware, or other type of physical machinery ("Equipment") will be a part of any Deliverable, the following warranties apply. The Contractor warrants that the Equipment fully complies with all government environmental and safety standards applicable to the Equipment. The Contractor also warrants for one year from the acceptance date of the Equipment that the Equipment will perform substantially in accordance with specifications described in the RFP Documents, the user manuals, technical materials, and related writings published by the manufacturer for the Equipment. The foregoing warranties will not apply to Equipment that is modified or damaged after title passes to the State.

The Contractor must notify the State in writing immediately upon the discovery of any breach of the warranties given above.

The Contractor must do the following if any Equipment does not meet the above warranties:

- (a) Cause the Equipment to perform as required, or, if that is not commercially practicable, then;
- (b) Grant the State a refund equal to the amount the State paid for the Equipment or, if such has not been individually priced, the manufacturer's suggested retail price for the Equipment.

Except where the Contractor's breach of a warranty makes it not possible for the State to do so, the State will return the affected Equipment to the Contractor in the case of a refund under the previous paragraph.

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. 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

Standards of Performance and Acceptance. There will be a period for performance testing of the completed Project. During the performance period, the State, with the assistance of the Contractor, will perform acceptance testing. The performance period will last up to 90 calendar days, during which time the Project must meet the standard of performance required by the RFP Documents for 30 consecutive calendar days. The performance criteria in the RFP Documents will be supplemented with the relevant user manuals, technical materials, and related writings, to the extent that the specifications in those writings supplement and refine rather than contradict the performance criteria in the RFP Documents. Acceptance of the Project depends on a successful completion of the performance period defined in this section and the RFP Documents. This section applies to the Project, and any part of it, as well as replacements or substitutes for the Project after completion of a successful performance period.

If the Project does not meet the standard of performance during the initial performance period, the State will give the Contractor details about the problems in a timely manner and in a useful and relevant form. Until the Contractor demonstrably corrects all outstanding problems, the second performance period will not start, and the State will not accept the Project (or part thereof). The second performance test will continue on a day-by-day basis until the standard of performance is met for a total of 30 consecutive calendar days or until the 90-day performance period has ended without meeting the standard of performance.

If the Project fails to meet the standard of performance after 90 calendar days from the start of the second 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 may request a correction or replacement of the relevant portion of the Project.

The Project may have components that can be tested for acceptance individually. If that is so, there may be acceptance criteria listed on the RFP Documents for each part of the Project that will be independently tested and accepted. However, unless the RFP Documents expressly provide otherwise, the failure of any independently tested component to meet its acceptance criteria will give the State the right to reject the entire Project. Alternatively, if the State determines that it is in the State's interest to reject only the part of the Project that was independently and unsuccessfully tested, it may do so. If the State chooses this option, the State will be entitled to a refund or credit toward the Contractor's Fee equal to the cost of acquiring a replacement for the rejected component.

The acceptable level of performance for the Project will be 98.5%, unless otherwise specified in the RFP Documents. The performance level for the Project is computed by dividing the sum of the uptime by the number of working hours during the test time. "Uptime" means the total hours, rounded to the nearest quarter hour, during which all components of the Project are operational and all functions of the Project are available to its users. The number of "working hours" means the total number of working hours for the period during which the Project was scheduled to be available to its users. Uptime and downtime will be measured in hours and quarter hours.

The Project "downtime" is that period when any part of the Project is inoperable due to failure of the Project or a particular Deliverable to operate according to the specifications in the RFP Documents, the user documentation, or the published technical specifications. During a period of downtime, the State may use operable components of the Project when that will not interfere with repair of inoperable components of the Project. Downtime will start from the time the State notifies the Project Manager of the inoperable condition of the Project until the Project is returned in proper operating condition.

The Project will not be accepted until the performance period is complete.

Should it be necessary, the State may delay the start of the performance period, but the delay will not exceed 30 consecutive calendar days after the scheduled date for implementation of the Project. Such a delay will not be considered a suspension of work under the Suspension and Termination section of this Contract.

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.

Software Maintenance. If this Contract involves software as a Deliverable, then, during the warranty period, as well as any optional maintenance periods that the State exercises, the Contractor must correct any material programming errors that are attributable to the Contractor within a reasonable period of time. However, the State must notify the Contractor, either orally or in writing, of a problem with the software and provide sufficient information for the Contractor to identify the problem.

The Contractor's response to a programming error will depend upon the severity of the problem. For programming errors that slow the processing of data by a small degree, render minor and non-mandatory functions of the System inoperable or unstable, or require users or administrators to employ workarounds to fully use the software, Contractor will respond to the request for resolution within four business hours. Furthermore, the Contractor must begin working on a proper solution for the problem within one business day, dedicating the resources required to fix the problem. For any defects with more significant consequences, including those that render key functions of the system inoperable or significantly slow processing of data, the Contractor will respond within two business hours of notice. The Contractor also must begin working on a proper solution for the problem immediately after responding and, if requested, provide on-site assistance and dedicate all available resources to resolving the problem.

For software classified as Commercial Software in the Ownership of Deliverables section and for which the State has not signed a separate license agreement, the Contractor must acquire for the State the right to maintenance for one year. That maintenance must be the third-party licensor's standard maintenance program, but at a minimum, that maintenance program must include all, updates, patches, and fixes to the software. It also must include a commitment to keep the software current with the operating environment in which it is designed to function (and, if applicable, the subject matter covered by the software) and to correct material defects in the software in a timely fashion. Additionally, the Contractor must obtain a commitment from the licensor to make maintenance available for the product for at least five years after the first year of maintenance. The Contractor also must obtain a commitment from the licensor to limit increases in the annual Fee for maintenance to no more than 7% annually. If the licensor is unable to provide maintenance during that five-year period, then the licensor must be committed to doing one of the following two things: (a) give the State a *pro rata* refund of the license fee based on a five-year useful life; or (b) release the source code for the software (except third party software) to the State for use by the State solely for the purpose of maintaining the copy(ies) of the software for which the State has a proper license. For purposes of receiving the source code, the State agrees to treat it as confidential and to be obligated to the requirements under the Confidentiality section of this Contract with respect to the source code. That is, with respect to the source code that the State gets under this section, the State will do all the things that the Confidentiality section requires the Contractor to do in handling the State's Confidential Information.

Equipment Maintenance. If this Contract involves Equipment as a Deliverable, then, upon Equipment delivery and for 12 months after acceptance, the Contractor must provide Equipment maintenance to keep the Equipment in or restore the Equipment to good working order. If the State exercises its right to any optional maintenance periods, the Contractor's obligations hereunder will extend to those periods as well. This maintenance must include preventative and remedial maintenance, installation of safety changes, and installation of engineering changes based upon the specific needs of the individual item of Equipment. This maintenance must include the repair, replacement, or exchange deemed necessary to keep the Equipment in good working condition. For purposes of this Contract, Equipment restored to good working condition means Equipment that performs in accordance with the manufacturer's published specifications and the RFP Documents.

The Contractor must exert its best efforts to perform all fault isolation and problem determination attributed to the Equipment covered under this Contract.

The following services are outside the scope of this Contract:

- a. Maintenance to bring the Equipment into compliance with any law, rule, or regulation if such law, rule, or regulation was not in effect on the acceptance date.

- b. Repair and replacement work or increase in maintenance time as a result of damage or loss resulting from casualty or the State's misuse of the Equipment, damage resulting from improper packing or failure to follow prescribed shipping instructions (if such is done by the State), failure of electrical power, air conditioning or humidity control, use of supplies not approved by the original manufacturer of the Equipment as described or included in the Contractor's Proposal, or causes other than ordinary use of the Equipment.
- c. Furnishing supplies or accessories, making specification changes, or adding or removing approved accessories, attachments, or other devices.
- d. Maintenance or any increase in maintenance time resulting from any maintenance or inappropriate connection to other equipment (not done by the Contractor) that results in damage to the Equipment.
- e. Activities required to restore the Equipment to good operating condition if the problem has resulted from someone other than Contractor's authorized service personnel repairing, modifying, or performing any maintenance service on the Equipment.

Equipment Maintenance Standards. This section applies if Equipment will be a Deliverable under this Contract.

The Contractor must complete all remedial Equipment maintenance within eight business hours after notification by the State that maintenance is required. In the case of preventative maintenance, the Contractor must perform such in accordance with the manufacturer's published schedule and specifications. If maintenance is not completed or substitute equipment provided within eight hours after notification by the State, the Contractor will be in default.

All maintenance also must meet any standards contained in the RFP Documents. Failure of the Contractor to meet or maintain these requirements will provide the State with the same rights and remedies specified elsewhere in the RFP Documents for default, except that the Contractor will only have eight hours to remedy the default.

The Contractor must provide adequate staff to provide the maintenance required by this Contract.

Equipment Maintenance Continuity. This section applies if Equipment will be a Deliverable under this Contract.

If the Contractor is unable to provide maintenance services to meet the State's ongoing performance requirements for Equipment delivered under this Contract, and if, in the State's sole opinion, the Contractor is unlikely to resume providing warranty services that meet the State's ongoing performance requirement, the Contractor will be in default. The State then will be entitled to the remedies in the default section of this Contract. However, the State will also be entitled to the following items from the Contractor: (a) all information necessary for the State to perform the maintenance, including logic diagrams, maintenance manuals and system and unit schematics, as modified by the Contractor; and (b) a listing of suppliers capable of supplying necessary spare parts.

Any information in items (a) and (b) above that is rightfully identified by the Contractor as confidential information will be maintained in confidence by the State, except where disclosure to a third party is necessary for the State to continue the maintenance. However, any third party to whom disclosure is made must agree to hold such proprietary information in confidence and to make no further disclosure of it. Further, any such confidential information will be used solely to perform the Contractor's maintenance obligations hereunder and will be returned to the Contractor upon completion of such use.

Principal Period of Maintenance (General). This section applies if software or Equipment will be a Deliverable under this Contract.

The Contractor must make maintenance available twelve working hours per weekday, between 7:00 a.m. and 7:00 p.m. (Columbus, Ohio local time). Travel time and expenses related to remedial and preventive maintenance will not be considered billable but will be included in the Contractor's firm, fixed Fee for the Project during the warranty period and a part of the annual maintenance Fee during later annual maintenance periods.

Maintenance Access (General). This section applies if software or Equipment will be a Deliverable under this Contract.

The Contractor must keep the Project in good operating condition during the warranty period and any annual maintenance period during which the State contracts for continued maintenance. The State will provide the

Contractor with reasonable access to the Project to perform maintenance. All maintenance that requires the Project to be inoperable must be performed outside the State's customary working hours, except when the Project is already inoperable. Preventive or scheduled maintenance will be performed at mutually agreeable times, within the parameters of the manufacturer's published schedule.

Key Maintenance Personnel (General). This section applies if software or Equipment will be a Deliverable under this Contract.

The Contractor must identify all key people responsible for providing maintenance on the Project, furnish the State with a means of identifying these people, furnish the State with their credentials, and notify the State at least 30 calendar days in advance of any reductions in staffing levels of key people at the office serving 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 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 Project 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 and Ethics Compliance Certification. 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 Project 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. The Contractor also must take steps to ensure that such a person does not participate in any action affecting the work under this Contract. However, 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 and will continue to adhere to the requirements of the Ohio ethics laws. The Contractor also certifies that all applicable parties listed in Ohio Revised Code Section 3517.13 are in full compliance with Ohio Revised Code Section 3517.13.

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. The Contractor will comply with all state and federal laws regarding equal employment opportunity and fair labor and employment practices, including Ohio Revised Code Section 125.111 and all related Executive Orders.

Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be submitted to the Department of Administrative Services Equal Opportunity Division to comply with the affirmative action requirements. Affirmative Action Verification Forms and approved Affirmative Action Plans can be found by going to the Ohio Business Gateway at: <http://business.ohio.gov/efiling/>.

Use of MBE and EDGE Vendors. The State encourages Contractor to purchase goods and services from Minority Business Enterprises (MBE) and Encouraging Diversity, Growth, and Equity (EDGE) vendors.

Security & Safety Rules. When using or possessing State data or accessing State networks and systems, the Contractor must comply with all applicable State rules, policies, and regulations regarding data security and integrity. And when on any property owned or controlled by the State, the Contractor must comply with all security and safety rules, regulations, and policies applicable to people on those premises.

Governing the Expenditure of Public Funds on Offshore Services (EO 2011-12K). The Service Provider affirms it has read and understands Executive Order 2011-12K and will abide by those requirements in the performance of this Agreement. Notwithstanding any other terms of this Agreement, the State reserves the right to recover any funds paid for Services the Service Provider performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights or remedies provided the State in this Agreement.

The Service Provider agrees to complete the attached Executive Order 2011-12K Affirmation and Disclosure Form, which is incorporated and becomes a part of this Agreement.

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.

Registration with the Secretary of State. By providing a Charter Number and signature within the Certification Offer Letter, the Contractor attests that the Contractor is:

An Ohio corporation that is properly registered with the Ohio Secretary of State; or

A foreign corporation, not incorporated under the laws of the state of Ohio, but is registered with the Ohio Secretary of State pursuant to Ohio Revised Code Sections 1703.01 to 1703.31, as applicable.

Any foreign corporation required to be licensed under O.R.C. § 1703.01-1703.31, which transacts business in the state of Ohio, without being so licensed, or when its license has expired or been canceled, shall forfeit not less than \$250.00 nor more than ten thousand dollars. No officer of a foreign corporation (<http://codes.ohio.gov/orc/1703.01>) shall transact business in the state of Ohio, if such corporation is required by O.R.C. § 1703.01-1803.31 to procure and maintain a license, but has not done so. Whoever violates this is guilty of a misdemeanor of the fourth degree. Questions regarding registration should be directed to (614) 466-3910, or visit <http://www.sos.state.oh.us> .

**ATTACHMENT FIVE
SAMPLE CONTRACT**

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

AND

(CONTRACTOR)

THIS CONTRACT, which results from RFP 0A####, entitled <RFP Title> , is between the State of Ohio, through the Department of Administrative Services, on behalf of the Ohio Department of <Agency> and _____ (the "Contractor").

The Contract is the result of agreed upon changes to the RFP its attachments and supplements including any written amendments to the RFP, any materials incorporated by reference in the RFP, the Contractor's Proposal, and written, authorized amendments and clarifications to the Contractor's Proposal. It also includes any purchase orders and change orders issued under the Contract.

This Contract consists of:

1. The one page Contract (Attachment Five) in its final form; and
2. The 0A1158 OAKSenterprise Contract dated _____, 2015 which includes Attachment Four, Attachments, Supplements and the Cost Proposal Workbooks dated _____, 2015.

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
DEPARTMENT OF ADMINISTRATIVE SERVICES

SAMPLE – DO NOT FILL OUT

By: _____

By: DAS Director

Title: _____

Title: Director

Date: _____

Date: _____

ATTACHMENT SIX

OFFEROR CERTIFICATION FORM

1. The offeror is not currently subject to an “unresolved” finding for recovery under Revised Code Section 9.24, and the offeror will notify the Procurement Representative any time it becomes subject to such a finding before the award of a Contract arising out of this RFP.
2. The offeror certifies that it will not and will not allow others to perform work for the State of Ohio outside the geographic limitations contained in Attachment Two or take data that belongs to the State of Ohio outside the geographic limitations contained in Attachment Two without express written authorization from the State.
3. The offeror certifies that its responses to the following statements are true and accurate. The offeror’s answers apply to the last seven years. Please indicate yes or no in each column.

Yes/No	Description
	The offeror has had a contract terminated for default or cause.
	The offeror has been assessed any penalties in excess of \$10,000.00, including liquidated damages, under any of its existing or past contracts with any organization (including any governmental entity).
	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 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 under the Contract, and the best interest of the State.

4. The offeror certifies that neither it nor any of its people that may work on or benefit from the Contract through the offeror has a possible conflict of interest (e.g., employed by the State of Ohio, etc.) other than the conflicts identified immediately below:

Potential Conflicts (by person or entity affected)

(Attach an additional sheet if more space is need.)

The State may reject a Proposal in which an actual or apparent conflict is disclosed. And the State may cancel or terminate the Contract for cause if it discovers any actual or apparent conflict of interest that the offeror did not disclose in its Proposal.

5. The offeror certifies that all its and its subcontractors' personnel provided for the Work will have a valid I-9 form on file with the offeror or subcontractor, as appropriate, and will have presented valid employment authorization documents, if they are not United States citizens.
6. The offeror certifies that its regular, fulltime employees will perform at least 30% of the Work.
7. The following is a complete list of all subcontractors, if any, that the offeror will use on the Work, if the State selects the offeror to do the Work:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

The offeror certifies that it has obtained and submitted a subcontractor letter, as required by Attachment Three, for each subcontractor it plans to use to do the Work.

8. The offeror certifies that that any MBE program participants will provide necessary data to ensure program reporting and compliance.

Provide the following information for a contact person who has authority to answer questions regarding the offeror's Proposal:

Name:	
Title:	
Mailing Address:	
Office Phone Number:	
Cell Phone Number:	
Fax Number:	
Email Address:	

Signature

Name

Title

Company Name

Company D-U-N-S Number

**ATTACHMENT SEVEN
OFFEROR PROFILE**

OFFEROR MANDATORY REQUIREMENTS

SUPPLEMENT 3 MANDATORY REQUIREMENT #1:

The offeror must meet **one** of the following mandatory requirements:

1. If the offeror is proposing a **PeopleSoft** Enterprise Grants module based solution, then the offeror, as the Prime Contractor, must have performed and completed a PeopleSoft systems implementation or upgrade project using a PeopleSoft 9.0 or higher version Enterprise Grants Module Suite for at least one State, Local, Higher Education or Federal Agency with at least 500 Grant Recipients.
2. If the offeror is proposing a **non-PeopleSoft** Enterprise Grants solution, then the offeror, or proposed Sub-Contractor(s), must have performed and completed a systems implementation or upgrade project using the offeror proposed software grants management packages for at least one State, Local, Higher Education or Federal Agency with at least 500 Grant Recipients.

Agency/Company/Higher Ed Name:	Contact Name: (Indicate Primary or Alternate) Contact Title:
Agency/Company/Higher Ed Address:	Contact Phone Number: Contact Email Address:
Project Name:	Beginning Date of Expr: / Ending Date of Expr: Month/Year Month/Year
PeopleSoft Enterprise Grants Module/Version:	# of Grant Recipients:
Describe Related Service Provided: Describe how the Related Service shows the offeror's experience, capability, and capacity to meet the requirements and achieve the milestones for this Project:	

ATTACHMENT EIGHT: STANDARD AFFIRMATION AND DISCLOSURE FORM

EXECUTIVE ORDER 2011-12K

Governing the Expenditure of Public Funds on Offshore Services

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

CONTRACTOR/SUBCONTRACTOR AFFIRMATION AND DISCLOSURE:

By the signature affixed to this response, the Bidder/Offeror affirms, understands and will abide by the requirements of Executive Order 2011-12K. If awarded a contract, the Bidder/Offeror becomes the Contractor and affirms that both the Contractor and any of its Subcontractors shall perform no services requested under this Contract outside of the United States.

The Bidder/Offeror shall provide all the name(s) and location(s) where services under this Contract will be performed in the spaces provided below or by attachment. Failure to provide this information may subject the Bidder/Offeror to sanctions, termination or a damages assessment. If the Bidder/Offeror will not be using Subcontractors, indicate "Not Applicable" in the appropriate spaces.

1. Principal location of business of Contractor:

(Address)

(City, State, Zip)

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

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

2. Location where services will be performed by Contractor:

(Address)

(City, State, Zip)

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

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

ATTACHMENT EIGHT

**STANDARD AFFIRMATION AND DISCLOSURE FORM
EXECUTIVE ORDER 2011-12K**

Governing the Expenditure of Public Funds on Offshore Services

CONTINUED

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

(Address)

(Address, City, State, Zip)

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

(Name)

(Address, City, State, Zip)

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

(Address)

(Address, City, State, Zip)

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

(Name)

(Address, City, State, Zip)

**ATTACHMENT NINE
SUPPLEMENT ONE – ODOT MIGRATION TO OAKS WITH ENHANCED FUNCTIONALITY
COST PROPOSAL**

Attachment Nine is included as an electronic form in the Opportunity Description on the State Procurement Website for this RFP. The Cost Proposal is to be submitted in Microsoft Excel workbook in native Excel format – not PDF.

**ATTACHMENT TEN
SUPPLEMENT TWO – DAS, GSD/OIT ENTERPRISE PROCUREMENT
COST PROPOSAL**

Attachment Ten is included as an electronic form in the Opportunity Description on the State Procurement Website for this RFP. The Cost Proposal is to be submitted in Microsoft Excel workbook in native Excel format – not PDF.

**ATTACHMENT ELEVEN
ENTERPRISE GRANTS MANAGEMENT PLATFORM
COST PROPOSAL**

Attachment Eleven is included as an electronic form in the Opportunity Description on the State Procurement Website for this RFP. The Cost Proposal is to be submitted in Microsoft Excel workbook in native Excel format – not PDF.

**ATTACHMENT TWELVE
MASTER CONTRACT FOR SOFTWARE LICENSING (MLA NUMBER [0000000])**

THIS CONTRACT (the "Contract") is between the State of Ohio (the "State"), through the Department of Administrative Services, Investment and Governance Division, with offices at 30 East Broad Street, Columbus, Ohio 43215, and *[Company name of the Contractor]* (the "Contractor"), with offices at *[street address, city, state and zip code for the Contractor]*, and whose Federal Tax ID Number is *[the Contractor's TIN]* and D-U-N-S Number is *[the Contractor's D-U-N-S]*.

BACKGROUND

The State and the Contractor have entered into this Contract to provide the terms and conditions under which the Contractor will grant one or more perpetual, nonexclusive licenses to the State to use certain software that the Contractor publishes or markets (the "Software"). Any such licenses will be described in one or more schedules to this Contract ("Schedules") and will include a license to use the Software's user and technical documentation (the "Documentation"). It also may include a license to use the Software's source code and related material ("Source Code"), if it is so indicated elsewhere in this Contract or on the applicable Schedule. Additionally, this Contract governs the Contractor's obligation to provide the State with assistance troubleshooting the Software and with updates, correction, enhancements, and new releases of the Software ("Support").

PART I: LICENSE AND USE

- 1. Grant of License.** The Contractor grants to the State a nonexclusive, nontransferable, and perpetual license to use the executable code version of the Software identified in each Schedule under this Contract, along with the related Documentation, and if indicated in an applicable Schedule, the Source Code for the Software. The license begins on the date identified in the applicable Schedule as the start date for the license (the "Start Date"). Unless indicated otherwise in this Contract, such use will be limited to use solely for the exercise of any function of State government by any State agency or political subdivision of the State ("Affiliated Entities"). The applicable Schedule governing the license will describe the scope of each license granted to the State in further detail, and the State agrees to limit its use of the Software as described in the applicable Schedule. The State may not republish the Software or the Documentation or distribute it to any third party, unless and only to the extent that this Contract or the scope of license in the applicable Schedule expressly so permits. The State will have a right to use the Software at any of its locations worldwide, subject only to applicable restrictions on export of technology from the US, the scope of license in the applicable Schedule, and the restrictions in this Contract on using the Software in hazardous environments.
- 2. Generated Files.** "Generated Files" are files that the State creates using the Software and in which the State's data or results from the State's instructions are stored. Examples of such files could include, among others, text files generated with a word processor, data tables created with a database engine, and image files created with a graphics application. Applications consisting of instruction sets created with a programming language that the Contractor licensed to the State also would be considered Generated Files. As between the State and the Contractor, the State will own all Generated Files that the State prepares by using the Software, excluding such portions of the Generated Files that consist of embedded portions of the Software. The Contractor or its licensors will retain ownership of any portions of the Software embedded into Generated Files. But the Contractor grants to the State a nonexclusive, royalty-free right to reproduce and distribute to third parties any portions of the Software embedded in any Generated Files that the State creates while using the Software in the manner in which the Software is designed to be used. In the State's distribution of the Generated Files, the State may not use the Contractor's name, logo, or trademarks, except to the extent that such are incorporated in such Generated Files by the design of the Software when used as intended.
- 3. License Restrictions.** The State may not reverse engineer, de-compile, or disassemble any Software for which it is not licensed to use the Software's Source Code. Additionally, the State may not assign, transfer, or redistribute the Software to any party in whole or in part, except as expressly provided by this Contract or the applicable Schedule. It also may not rent, time share, or operate a service bureau with respect to the Software. And the State may not charge a fee to any third party for access to or use of the Software, unless this Contract or the applicable Schedule permits such. (One Affiliated Entity using the Software on behalf of another Affiliated Entity is not the operation of a service bureau for purposes of this Contract, even if the Affiliated Entity charges the other Affiliated Entity for the costs of the service.) Additionally, except as authorized in this Contract or the applicable Schedule, the State may not grant any sublicense to access or use the Software. Notwithstanding the foregoing, and provided they have agreed in writing to honor the terms of this Contract, the State's Affiliated Entities may use the Software in the same manner as the State, subject to the applicable limits on the license and the obligations contained in this Contract. Further, for any Software designed for communications, such as e-commerce applications, or for Web presentations, the State may communicate with third parties using the Software and use the Software for presentations to third parties via the Internet. Additionally, the State engages various contractors to do work for it, and the State may

provide such contractors with access to and use of the Software solely for use on behalf of the State, including in a facilities management, hosting, disaster recovery, or outsourcing arrangement. But the State may not provide access to the Software to any such contractors except for use solely on behalf of the State.

4. **Locking Devices.** Some Software may require the use of a key to prevent unauthorized installation and use of the Software, but the Software may not include expiration codes, "time bombs", or similar devices that can disable the software once a proper key is provided. Further, the software may not contain any routines, functions, or devices that can or are designed to transmit or transfer any data surreptitiously to the Contractor or any other party. Nor may the software contain any routines, functions, or similar devices designed to permit the Contractor or a third party to surreptitiously access data on the State's network or on any of the State's computers. Should the State need assistance with a key or similar device to use the Software within the State's scope of license, the Contractor will assist the State at any time and without charge or fee, regardless of whether such Software is then under Support.
5. **Copies.** In addition to the copies of the Software authorized by the license in the applicable Schedule, the State may make a reasonable number of copies of the Software for backup, archival, disaster recovery, testing, development, and image management purposes. And the State may use these copies for such purposes without paying any additional fee or charge, so long as any such additional copies are not used in a production environment while the production copy or copies of the Software are used for production. No other copies of the Software may be made by or for the State. With respect to the Documentation for any Software, the State may make as many copies of it in either paper-based or electronic form as the State may reasonably require for its own internal purposes. Additionally, the State may incorporate portions of the Documentation in other materials, such as training and reference manuals, provided that such materials are used solely for the internal purposes of the State and the use bears a reasonable nexus to the State's use of the Software. Each copy of the Software or Documentation that the State makes must bear the same copyright and other proprietary notices that appear on the original copy provided to the State. If the Contractor has granted the State a license to use the Source Code for the Software, the State may make a reasonable number of copies of the Source Code, modify it, compile it, and otherwise use it as reasonably necessary to support its licensed use of the Software.
6. **Hazardous Environments.** The State recognizes that some Software may not be designed or intended for use as or with online control equipment or systems in hazardous environments requiring fail-safe performance. This includes equipment or systems such as those used in the operation of nuclear facilities, aircraft navigation, air traffic control, direct life support machines, and munitions. It also includes any other equipment or systems in which the State reasonably can foresee that failure of the Software could lead to death, personal injury, or severe physical or environmental damage. For any Software designated as not intended for hazardous environments in the applicable Schedule, the State may not use or permit the use of the Software in conjunction with any such equipment or systems.
7. **Object Reassignment.** Any Software licensed by the number of items that it may be used on, by, or in conjunction with, such as nodes, computers, users, or sites ("Objects"), may be reassigned to other, similar Objects within the State at any time and without any additional fee or charge. For example, a computer-specific license may be transferred to another computer, a site license may be transferred to another site, and a named user license may be assigned to another user. But any such reassignment must be in conjunction with termination of use by or with the previous Object, if such termination is required to keep the total number of licensed Objects within the scope of the applicable license. Should the State require a special code, a unique key, or similar device to reassign the Software as contemplated by this section, the Contractor will provide such a code, key, or similar device to the State at any time and without a fee or charge, regardless of whether such Software is then under Support. A later section in this Contract governs assignment of the State's license in any Software to a successor in interest.
8. **Upgrades, Updates, and Corrections.** All portions of the Software, including any corrections, patches, service packs, updates, upgrades, and new versions and releases are the property of Contractor, are part of the Software, and are governed by the State's license in the Software. In no event will the Software or any modification of it be deemed a work made for hire, even if the Contractor has made the modification expressly for the State, unless the parties agree otherwise in writing.

PART II: FEES AND PAYMENT

1. **Fees.** The State will pay to the Contractor the fees for licensing the Software identified in each Schedule under this Contract ("License Fees"), as well as all applicable fees for Support of the Software ("Support Fees") that are identified in any Schedule under this Contract. The License Fee for each license is due and payable on the 30th day after the later of the date on which the applicable license starts (the "Start Date") or the date the State receives a proper invoice for the License Fee at the office designated in the applicable purchase order. A Support Fee will be due payable on the 30th day after the later of the date on which the applicable period of Support (the "Support Period") begins or the date the State receives a proper invoice for the

Support Fee at the office designated in the applicable purchase order. The State will not be obligated to acquire or renew Support for any Software unless it issues a purchase order for such.

2. **Taxes.** The State is exempt from all sales, use, excise, property, and similar taxes ("Taxes"). To the extent any Taxes are imposed on the Contractor in connection with this Contract or the Software, the Contractor must pay such Taxes, together with any interest and penalties not properly disputed with the appropriate taxing authority.
3. **Invoices.** The Contractor must submit an original invoice with three copies to the office designated in the purchase order as the "bill to" address. To be a proper invoice, the invoice must include the following information:
 - (1) Name and address of the Contractor, as designated in this Contract.
 - (2) The Contractor's federal tax identification number, as designated in this Contract.
 - (3) The Contractor's invoice remittance address, as designated in this Contract.
 - (4) The purchase order number authorizing the delivery of the Software or Support.
 - (5) A description of what the Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the Software and Support. If the invoice is for Software with multiple installments of the License Fee, the Contractor also must include the payment number (e.g., 11 of 36).

If an invoice does not meet this section's requirements, or if the Contractor fails to give proper notice of a price increase (see the Pricing section below), the State will send the Contractor written notice. The State will send the notice, along with the improper invoice, to the Contractor's address designated for receipt of purchase orders within 15 days. The notice will contain a description of the defect or impropriety and any additional information the Contractor needs to correct the invoice. If such notification has been sent, the payment due date will be 30 days after the State receives a corrected and proper invoice or the applicable Start Date in the Schedule, whichever is later.

The date the State issues a warrant (the State's equivalent to a check) in payment of an invoice will be considered the date payment is made. Without diminishing the Contractor's right to timely payment, the payment will be overdue only if it is not received by the 30th day after the payment's due date. If the State has not issued payment by then, interest will begin to accrue under Ohio Revised Code ("Code") Section 126.30.

4. **Non-Appropriation of Funds.** The State's funds are contingent on the availability of lawful appropriations by the Ohio General Assembly. If the Ohio General Assembly fails to continue funding for the Fees due hereunder, as determined by the Director of the Department of Administrative Services, this Contract will terminate with respect to the Software or Support affected by the non-appropriation as of the date that the funding expires, and the State will have no further obligation to make any payments. This provision will not alter the rights of the State in any Software or to any Support for which the State already has made payment at the time of the non-appropriation.
5. **OBM Certification.** This Contract is subject to Code Section 126.07. All orders and Schedules under this Contract are void until the Director of the Office of Budget and Management for the State certifies that there is a balance in the appropriation available to pay for the order.
6. **Currency.** The State will make all payments under this Contract by warrant (the State's equivalent to a check) in US Dollars, regardless of the location where the Support is provided or the Software is located.
7. **Disputed Amounts.** The parties will resolve any amounts disputed under this Contract expeditiously and in good faith by having the representatives of the parties who signed this Contract enter into informal discussions. Once resolved through the dispute resolution process, the amount must be paid within 30 days of the resolution. If the State disputes any amount under this Contract in good faith, the State may withhold its payment pending resolution notwithstanding anything to the contrary elsewhere in this Contract.
8. **Pricing.** Subject to the limitations in this section, the Contractor may modify its pricing for Software or Support at any time and without notice to the State. But no such change will apply to any Software or Support that the State orders or for which it receives an invoice before the effective date of the change. Nor will any price increase apply to any Software for which the State and the Contractor have entered in to a Price-hold Addendum; the pricing for such Software will be fixed for the term of the price-hold. Additionally, for five years from the date of the State's first license of any Software, the State will be entitled to acquire additional licenses for the same Software at a discount that is equal to the discount extended to the State for the initial license of the Software, even though the list price for the Software may have increased. Such licenses will be granted under the terms contained in this Contract via the execution of a Schedule hereto. Thereafter, the State will not be obligated to pay more than the Contractor's then current, published License Fee for any such Software, less the discount described in the

following sentence. For all additional licenses acquired more than five years after the initial license in the same Software, the State still will be entitled to a discount of █% from the then current list price for the license. Support Fees under this Contract may not increase from one Support Period to the next by more than █ percent for any license in the Software. Further, in no event will the Support Fee the State pays be greater than the fee paid by any other customer of the Contractor for the same type license.

PART III: CONTRACT ADMINISTRATION

- 1. Term.** Once entered into, the term of this Contract will be from the date the duly authorized representative of the State signed it through June 30, 201█. Expiration of this Contract without renewal will not affect any licenses granted to the State before the expiration. It also will not affect the rights and the responsibilities of the parties with respect to such licenses.
- 2. Renewal.** The State may renew this Contract for additional two-year terms, 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 this Contract also is subject to the satisfactory performance of the Contractor and the needs of the State. The State's failure to renew this Contract will not affect any licenses granted to the State before the expiration. It also will not affect the rights and the responsibilities of the parties with respect to such licenses.
- 3. Delivery.** The Contractor must deliver all Software licensed under this Contract to the State F.O.B. at the State's site specified in the applicable Schedule. If the Contractor and the State agree so in writing, the Contractor may deliver any Software licensed under this Contract via electronic transmission over the Internet, provided the Contractor maintains sufficient bandwidth to accommodate delivery in this fashion. Upon physical delivery or successful completion of an electronic transmission, title to any media on which the Software and Documentation are contained and risk of loss of the Software and Documentation will pass to the State.
- 4. Schedules.** For all Software that the State licenses, the Contractor and the State will enter into a written Schedule to this Contract, signed by duly authorized representatives of both parties. The Schedule will describe the Software, the license granted in the Software, and the date the license starts ("Start Date"). It also will identify the License Fee for the license granted, the number of physical copies of the media on which the Software is shipped, and the operating system or systems for which the Software is designed. In addition, the Schedule will identify the Support Fee or the percentage of the License Fee used to calculate the Support Fee. All additional Software that the State seeks to license from the Contractor under this Contract, as well as all additional licenses that the State wishes to acquire in Software already licensed under this Contract, will be subject to the Contractor's prior, written approval in each such case. But the Contractor will consent for any Software that is covered by a Price-hold Addendum. The Contractor also must consent for any Software that is or designed to operate in conjunction with Software already acquired by the State under this Contract, if the Software at issue is generally available to other customers and the State is not in material breach of this Contract.
- 5. Confidentiality.** Each party may disclose to the other written material or oral or other forms of information that it treats as confidential ("Confidential Information"). Title to any Confidential Information one party delivers to the other will remain with the disclosing party or its licensors. Each party agrees to treat any Confidential Information it receives from the other party 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 interest of the other party or its licensors.

The Contractor's Confidential Information may include the Software and Documentation, if the Software and Documentation are the trade secrets of Contractor and marked as such in a reasonable manner. Information of the State that the Contractor must presume to be Confidential Information, regardless of whether it is marked as such, includes any proprietary documentation, materials, flow charts, codes, software, computer instructions, techniques, models, information, diagrams, know-how, data, business records, and business plans. Such also includes files containing personal information about other contractors or employees of the State, such as personnel records, and any material to which an attorney-client, physician-patient, or similar privilege may apply. It also includes any State records that Ohio law excludes from public records disclosure requirements.

Each party agrees not to disclose any Confidential Information of the other to any third parties and to use it solely to meet its obligations under this Contract or as otherwise contemplated under this Contract. Additionally, each party will restrict circulation of Confidential Information within its organization and permit access to it only by people who have a need to know the Confidential Information for the purposes contemplated by this Contract.

Except for Software, Source Code, or Documentation that represents Confidential Information, neither party may incorporate any portion of the other party's Confidential Information into any work or product. With respect to Software, Source Code, or

Documentation that is Confidential Information, the foregoing will not apply to any portion of the Software incorporated into Generated Files by the design of the Software when used as intended. Nor will the foregoing apply to portions of the Documentation that the State incorporates into material such as training and reference manuals in accordance with this Contract's applicable provisions. And the foregoing will not apply to any Source Code properly licensed to the State that the State modifies for use within the scope of its license in the applicable Software. Furthermore, the receiving party must cause all of its personnel who have access to any Confidential Information of the other party to execute a confidentiality agreement incorporating the obligations of this section. Additionally, for any director, officer, employee, partner, agent, or subcontractor of the Contractor ("Contractor Personnel") that require access to the State's premises, the State may require an individual non-disclosure agreement incorporating the terms of this section to reinforce the importance of such obligations. The State may bar any Contractor Personnel who refuse to execute such a non-disclosure agreement from entering the State's facilities.

The receiving party's obligation to maintain the secrecy of the Confidential Information will not apply where it:

- (a) Was already in the receiving party's possession before disclosure by the other party, and the receiving party obtained it without an obligation of confidence;
- (b) Is independently developed by the receiving party;
- (c) Except as provided in the next paragraph, is or becomes publicly available without breach of this Contract;
- (d) Is rightfully obtained by the receiving party from a third party without an obligation of confidence;
- (e) Is disclosed by the receiving party with the written consent of the other party; or
- (f) Is released in accordance with a valid order of a court or governmental agency, provided that the receiving party:
 - (1) Notifies the other party of such order immediately upon receipt of the order; and
 - (2) 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.

Information that may be available publicly through other sources about people that is personal in nature, such as medical records, addresses, phone numbers, social security numbers, and similar things are nevertheless sensitive in nature and may not be disclosed or used in any manner except as expressly authorized in this Contract. Therefore, item (3) in the preceding paragraph does not apply, and the Contractor must treat such information as Confidential Information whether it is available elsewhere or not.

Except for properly licensed Software, Source Code, or Documentation that contains Confidential Information, the receiving party must return or destroy all copies of any Confidential Information when it is no longer needed for the receiving party to perform under this Contract, but in any case, no later than on termination of this Contract. For properly licensed Software, Source Code, and Documentation that represents Confidential Information, the State may retain it for so long as the State has a valid license in it.

The receiving party may disclose Confidential Information to its contractors on a need-to-know basis, but only after they have agreed in writing to be obligated to the requirements of this section.

6. Escrow. Except for Software that the Contractor delivers to the State with its Source Code, the Contractor must escrow the Source Code for all Software with Escrow Associates, LLC (the "Agent") an NCC company under an existing escrow agreement between the State and the Agent. The Agent may release the Source Code to the State on the occurrence of any of the following:

- (a) The Contractor ceases business without a successor in interest that assumes all the Contractor's obligations under this Contract;
- (b) The Contractor files or has filed against it a petition in bankruptcy or similar proceeding that is not dismissed within 60 days;
- (c) The Contractor stops supporting any Licensed Software;
- (d) The State terminates this Contract for cause; or
- (e) The Contractor materially or consistently fails to perform its Support obligations in a timely and professional manner.

The release will apply only to the Source Code for Software affected by the triggering event. The Source Code for the Software will be in the form customarily used by programmers to read and modify such Source Code. It also will include all supporting documentation and annotations reasonably required for productive use of the Source Code by a competent programmer skilled in the programming language in which the Source Code is written. The Contractor will deliver to the Agent

the Source Code for each version or release of the Software that the State acquires. The State will be solely responsible for paying all escrow fees associated with the escrow agreement, and upon any release of Source Code from escrow, the State will treat the material as Confidential Information and use it solely to maintain the Software for its own internal purposes.

The escrow agreement with the Agent is a supplementary agreement to this Contract, within the meaning of Title 11, Section 365(n), of the United States Code, and neither the Contractor nor its trustee in bankruptcy may interfere with the State's license in the Software or right to access any Source Code by virtue of any bankruptcy proceedings.

From time to time, the State may change the company it uses as the Agent. The State will do so only on written notice to the Contractor and will use only a US-based, well-recognized escrow company.

7. 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 Project will be done outside Ohio, the laws of the appropriate state(s) where work on the project 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 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 Contractor shall, for each policy required by this Contract, provide the State with 30-days prior written notice of cancellation, material change, or non-renewal, except a 10-days notice of non-payment of premium. 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.

8. Excusable Delay. Neither party will be liable for any delay in its performance under this Contract 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. For any such excusable delay, the date of performance or delivery will be extended for a period equal to the time lost by reason of the excusable delay. The delayed party must also describe the cause of the delay and what steps it is taking or will take to remove the cause. The delayed party may not rely on a claim of excusable delay to avoid liability for a delay if the party has not taken commercially reasonable steps to mitigate or avoid the delay.

9. Network Security. The Contractor may not connect to the State's internal computer network without the prior, written consent of the State, which the State will reasonably provide if necessary or appropriate for the Contractor to provide Support. But as a condition of connecting to the State's computer network, the Contractor must secure its own connected systems in a

manner consistent with the State's then-current security policies, which the State will provide to the Contractor on request. The State may audit the Contractor's security measures in effect on any such connected systems without notice. The State also may terminate the Contractor's network connections immediately should the State determine that the Contractor's security measures are not consistent with the State's policies or are otherwise inadequate given the nature of the connection or the data or systems to which the Contractor may have access.

- 10. Termination.** This Contract will continue in full force and effect unless terminated according to the terms of this Contract. Either party may terminate this Contract at any time on 30 days prior written notice to the other party or in the event of any default by the other party, which the defaulting party fails to cure within 30 days after written notice. Either party also may terminate this Contract upon any sale of a majority interest in the other party to a third party or if a receiver, liquidator, trustee, or like official is appointed for the other party or any substantial portion of its property. Additionally, either party may terminate this Contract if the other party files or consents to any petition in bankruptcy or other insolvency proceedings or makes any assignment for the benefit of its creditors. Termination of this Contract will not extinguish any of the rights and obligations of a party under this Contract that, by the terms of that right or obligation, continue after the date of termination. And no termination will extinguish any of the rights or obligations that, by their very nature, must continue after termination to give full effect to the purpose of those rights and obligations. Termination of this Contract will not entitle the State to any refund of any License or Support Fee, nor will it extinguish any license or price-hold the State has acquired in any Software before the date of termination, except as provided in the next paragraph.

With or without terminating this Contract in accordance with the paragraph above, on 30 days prior written notice to the State, the Contractor may terminate any license in any Software granted to the State under this Contract. But the Contractor may do so only if the State materially breaches any terms of this Contract with respect to the license or licenses the Contractor seeks to terminate. Such termination notice will be effective 30 days after the State receives it, provided that the State does not cure its breach of this Contract within those 30 days. All Software licenses not affected by the State's breach will remain in place and unaffected by the termination. Any such termination will be in addition to any other remedies the Contractor may have under this Contract for the State's breach.

PART IV: WARRANTIES, LIABILITIES, AND REMEDIES

- 1. Warranties.** The Contractor warrants for one year from the Start Date that the Software will be free of material defects and will function in substantial conformance to its Documentation when used in the operating environment for which it is intended and in accordance with its Documentation. The Contractor also warrants that the Software will be merchantable and fit for the particular purpose for which the State acquired it. Moreover, the Contractor warrants that the Software will be free of viruses at the time of its delivery under this Contract. Additionally, the Contractor warrants that all media on which the Software is delivered to the State will be free from defects for one year after delivery to the State.
- 2. Warranty Exclusions.** The Contractor's warranties with respect to the Software's performance in accordance with its Documentation, its fitness, and its merchantability do not cover any error caused by any change to the Software made by any party other than the Contractor and not at the Contractor's request or otherwise in accordance with this Contract or the Software's Documentation. It also does not cover damage to the Software caused by accident, neglect, or misuse of the Software by any party other than the Contractor or anyone else acting on the Contractor's behalf. Further, the State's use of the Software in an operating environment or in conjunction with a hardware platform that does not meet the Contractor's minimum specifications, as set out in the applicable Schedule or Documentation, may result in errors or failures that are outside the scope of the Contractor's warranty. Additionally, use of the Software in combination with other software, hardware, firmware, data, or technology not licensed or approved by the Contractor in writing may cause failures that also are outside the scope of the Contractor's warranty, provided that the Software is not designed or intended for use with such items.

THE EXPRESS WARRANTIES IN THIS CONTRACT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED.

- 3. Remedies.** The Contractor's entire liability and the State's sole remedy for any breach of the above media warranty is limited to requiring the Contractor to replace the defective media expeditiously and without charge to the State. Furthermore, the Contractor's entire liability and the State's sole remedy for any breach of the above warranties of fitness, merchantability, and against defects in the Software will be limited to the Contractor expeditiously correcting the defect or issue and providing the State with a patch containing the correction. If within the times given below, the Contractor does not provide a replacement copy for defective media or Software containing a virus or fails to deliver a fix for a defect in the Software or a correction solving a fitness or merchantability issue, the Contractor must refund all License Fees paid by the State for the affected the Software. In the case of defective media or Software containing a virus, the Contractor will have 15 days after written notice to provide a replacement. In the case of other defects, merchantability issues, or fitness issues, the Contractor will have 30

days after written notice to deliver a correction that resolves the problem. Upon the Contractor's issuance of a refund, the State will return or destroy all copies of the Software and, upon the Contractor's request, certify in writing that it has done so.

THE FOREGOING REMEDIES ARE THE STATE'S EXCLUSIVE REMEDIES FOR THE WARRANTIES PROVIDED ABOVE.

- 4. Indemnity.** The Contractor will indemnify the State for all direct damages to the State caused by the negligence or willful misconduct of the Contractor. The Contractor also agrees to indemnify, defend, and hold the State harmless from and against all claims, liabilities, demands, losses, expenses (including by way of example only, court costs and experts' and attorneys' fees), and causes of action of every kind and character in favor of any third party caused or arising out of the activities or performance of the Contractor or the Contractor's Personnel. The foregoing obligations do not apply to the extent caused by the State's actual negligence or willful misconduct. Any defense of the State requires and is subject to the approval and consent of the Ohio Attorney General.
- 5. Infringement.** The Contractor will release, protect, indemnify, defend, and hold the State harmless from and against any claims of infringement by any third parties based on the Software, Source Code, or Documentation licensed under this Contract. Any defense of the State requires and is subject to the approval and consent of the Ohio Attorney General and will be at the Contractor's sole cost and expense. Further, the Contractor will indemnify the State for any liability resulting from any such claims, demands, or suits, as well as hold the State harmless for the Contractor's liability, losses, and damages resulting from such. This obligation of defense and indemnification will not apply where the State has modified or misused the Software, Source Code, or Documentation, and the claim or the suit is based on the modification or misuse. The Contractor's obligation to hold the State harmless also will not apply if the claim, suit, liability, or damage arises out of the State's misuse of the Software, Source Code, or Documentation. The State agrees to give the Contractor notice of any such claim as soon as reasonably practicable and to allow the Contractor to control the defense of the any such claim, upon consultation with and the approval of the Office of the State's Attorney General.

If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement or similar claim that is pending actually may succeed, the Contractor will do one of the following four things as soon as reasonably possible to avoid or minimize any interruption of the State's business:

- (a) Modify the offending Software, Source Code, or Documentation so that it is no longer infringing;
- (b) Replace the offending Software, Source Code, or Documentation with an equivalent or better item;
- (c) Acquire the right for the State to use the infringing Software, Source Code, or Documentation as it was intended for the State to use under this Contract; or
- (d) Remove the infringing Software, Source Code, or Documentation and refund the amount the State paid for the Software and the amount of any other Software or item that requires the availability of the infringing Software, Source Code, or Documentation for it to be useful to the State.

- 6. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS CONTRACT, NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES OTHER THAN DIRECT DAMAGES. THIS EXCLUSION OF DAMAGES INCLUDES, BY WAY OF EXAMPLE ONLY, INDIRECT, INCIDENTAL, EXEMPLARY, AND CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. ADDITIONALLY, NEITHER PARTY WILL BE LIABLE FOR DIRECT DAMAGES IN EXCESS OF TWO TIMES THE TOTAL LICENSE AND SUPPORT FEES PAID UNDER THIS CONTRACT OR \$ _____, WHICHEVER IS GREATER. BUT THIS LIMITATION OF LIABILITY WILL NOT LIMIT THE CONTRACTOR'S OBLIGATION TO INDEMNIFY THE STATE UNDER THE INDEMNITY AND INFRINGEMENT PROVISIONS OF THIS CONTRACT FOR DIRECT DAMAGES FROM THE CONTRACTOR'S NEGLIGENCE OR WILLFUL MISCONDUCT. THIS LIMITATION OF LIABILITY ALSO WILL NOT LIMIT THE CONTRACTOR'S OBLIGATIONS UNDER THE INDEMNITY AND INFRINGEMENT SECTIONS OF THIS CONTRACT FOR CLAIMS MADE AGAINST THE STATE FOR INFRINGEMENT OR FOR NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CONTRACTOR, REGARDLESS OF THE NATURE OF THE DAMAGES SOUGHT FOR ANY SUCH CLAIM. THIS LIMITATION OF LIABILITY WILL SURVIVE TERMINATION OF THIS CONTRACT.**

PART V: SOFTWARE SUPPORT

- 1. Support.** Each Support Period will be one year in duration, with the first Support Period beginning on the [first anniversary of the] Start Date for the applicable license. Subsequent Support Periods will begin on each anniversary of the Start Date of the applicable license (the "Anniversary Date"). During each Support Period for which the State has paid the applicable Support Fee, the Contractor will provide the State with telephonic assistance and advice for using the Software. The Contractor also

will provide remote troubleshooting and problem resolution by developing and providing fixes or patches for errors in the Software. As part of the annual Support that the Contractor provides in exchange for the applicable Support Fee, the Contractor also will deliver to the State all service packs for the Software, as well as all updates and new releases and versions of the Software. The annual Support Fee will be calculated as a percentage of the then current License Fee for the applicable Software license. The percentage used to calculate the Support Fee will be provided in the applicable Schedule governing the Software license. The manner in which the Contractor provides Support will be governed by the Contractor's policies and programs described in the applicable Software Documentation or other materials that the Contractor uses to notify its customers generally of such policies. But regardless of the Contractor's policies and programs, unless otherwise agreed in the applicable Schedule, in all cases such Support must comply with the requirements of this Contract. And the Contractor must provide the Support in a competent, professional, and timely manner.

2. **Minimum Availability.** Support for any Software licensed under this Contract must be available for a minimum of five years from the Start Date of the license. Thereafter, for so long as the Contractor makes Support available to other customers, the State will be entitled to participate in that Support under the terms of this Contract and in exchange for the Support Fee identified in the applicable Schedule.
3. **Reductions.** The State may acquire licenses that are based on the number of users, nodes, computers, processors, instances of the Software or other counts of objects covered by a license ("Objects"). In any such cases, the State may request that the Support Fees for a Support Period be calculated based on fewer Objects than included in the previous Support Period, with an appropriate adjustment in the applicable Support Fee. But patches, services packs, updates, and new versions or releases of the Software made available to the State under this Contract for such Software may be applied only to the number of Objects included in the then current Support Period. Nevertheless, the State may continue using any version of the Software that is available at the time Support was reduced on or for the unsupported Objects, provided that such is physically possible based on the Software's configuration. In any case where supported and unsupported Objects cannot be treated separately (e.g., a single server license supporting multiple concurrent connection), the State must limit its use of the Software to the supported number of Objects to take advantage of its reduction rights under this section.
4. **Lapse and Reinstatement.** If the State opts to not renew Support for some or all of the Software licensed by the State under this Contract, the State may subsequently purchase Support for such Software. But it may do so only if the Contractor continues to make it generally available to its customers when the State makes the decision to reacquire Support. Further, any such Support will require, in addition to the Support Fee for the then current Support Period, the payment of the immediately preceding year's Support Fees for that Software, or the applicable instances of it. Notwithstanding anything to the contrary in this Contract, no interest will be due on the Support Fees for the past Support Periods. In conjunction with the reinstatement of Support, the State will be entitled to any patches, service packs, upgrades, and new releases, and versions of the Software issued during the unsupported interval.
5. **Support Parameters.** The State may initiate Support requests for problems it encounters with the Software by telephone, email, Internet, or fax, and the Contractor must maintain lines of communication that support all four forms of communication. The Contractor must make Support available from at least 7:00 a.m. to 7:00 p.m. in each time zone where the Contractor maintains a Support center, and it must do so by staffing its Support function with an adequate number of qualified personnel to handle its traditional volume of calls. Further, the Contractor must maintain at least one Support center in North America with adequate English-speaking Support personnel. Support must be available during the business hours identified above from at least Monday through Friday throughout the Support Period, except for customary holidays. Further, subject to the State's obligation to pay the applicable Support Fees, the Contractor must support both the most recent major release of the Software as well as the immediately preceding major release of Software. The State's technical staff may contact any Support center that the Contractor maintains, and they may choose to do so based on convenience, proximity, service hours, languages spoken, or otherwise.
6. **Incident Classification.** The Contractor must classify and respond to Support calls by the underlying problem's effect on the State. In this regard, the Contractor may classify the underlying problem as critical, urgent, or routine. The guidelines for determining the severity of a problem and the appropriate classification of, and response to, it are described below.

The Contractor must designate a problem as "critical" if the Software is functionally inoperable, the problem prevents the Software from being used in production mode or there is significant potential for data integrity problems. This classification assumes there is no existing patch for the problem. The Contractor must classify a problem as "urgent" if the underlying problem significantly degrades the performance of the Software or materially restricts the State's use of the Software in a production mode. A problem also will be considered urgent if a commonly used feature often generates application errors, causes the Software to freeze, locks up the computer on which the Software is running, or otherwise routinely does not work as intended. Classification of a problem as urgent rather than critical assumes that the State still can conduct business with

the Software. As with the critical classification, the urgent classification assumes there is no existing patch or acceptable workaround procedure for the problem. Finally, the Contractor may classify a Support call as "routine" if the underlying problem is a question on end use or configuration of the Software. It also may be classified as routine when the problem does not materially restrict the State's use of the Software in its production environment, such as when a feature or combination of features generates minor or rare errors. Also, if any problem that otherwise should be classified as critical or urgent can be solved either by a known workaround or an existing patch, the problem may be treated as routine.

The Contractor must apply the above classifications in good faith to each call for Support, and the Contractor must give due consideration to any request by the State to reclassify a problem, taking into account the State's unique business and technical environments and any special needs it may have.

- 7. Incident Response.** The Contractor must respond to critical problems by ensuring that appropriate managerial personnel are made aware of the problem and that they actively track and expedite a resolution. The Contractor must assign Support or development personnel at the appropriate level to the problem, and those personnel must prepare a work plan for the problem's expeditious resolution. The work plan must assume that the Contractor's appropriate staff will work without material interruption until the problem is resolved properly. The Contractor's personnel must maintain daily contact with the State's technical staff to keep the State abreast of efforts being made to solve the problem. The Contractor also must provide the State's technical staff with direct access to the Contractor's Support personnel and product development personnel, if appropriate, who are assigned to the problem. If the resolution of the problem requires a patch, the Contractor will ship the patch electronically as soon as the patch is available.

The Contractor must respond to urgent problems by having its product development and Support personnel work in concert to develop a fix or a workaround. The Contractor's Support personnel must maintain regular contact with the State to keep its technical staff abreast of progress toward a resolution of the problem. The Contractor's Support staff must include the problem in regular status reports to the Contractor's management team. And the Contractor's Support staff must provide the Software patch or workaround procedure as soon as it is available.

The Contractor must respond to routine problems by providing the State with a patch or workaround on a priority basis if the problem is one for which an existing patch or workaround already exists. For newly identified problems falling into this classification, the Contractor's Support personnel must generate a problem report, and the appropriate development or Support personnel then must prioritize the problem in relation to other outstanding product issues. The assigned priority then will govern the problem solving or developmental work needed to address the problem and the schedule for delivering a solution. For routine calls that involve end usage and configuration issues rather than bugs or other technical problems, the Contractor's first or second level Support personnel must provide the State's technical staff with telephonic assistance on a non-priority basis.

- 8. Response Times.** The maximum time that the Contractor takes to respond initially to a Support request may vary based upon the classification of the request. During normal hours of operation for the Contractor's Support function, the Contractor's response time for a critical Support request will be less than one hour. The Contractor's response time for an urgent request must be less than two hours during operating hours. And the Contractor's response time for a routine Support request must be less than four hours during normal operating hours.
- 9. Escalation Process.** Any Support call that is not resolved must be escalated to the Contractor's management under the following parameters. Unresolved problems that are classified as critical must be escalated to the Contractor's Support manager within four hours and to the director level after one day. If a critical problem is not resolved within three days, it must escalate to the corporate officer level and then to the CEO level after five days. The Contractor's Support staff will escalate unresolved urgent problems to its Support manager within three days, to the director level after seven days, and to the corporate officer level after 14 days.
- 10. State Obligations.** To facilitate the Contractor meeting its Support obligations, the State must provide the Contractor with the information reasonably necessary to determine the proper classification of the underlying problem. It also must assist the Contractor as reasonably necessary for the Contractor's Support personnel to isolate and diagnose the source of the problem. Additionally, to assist the Contractor's tracking of Support calls and the resolution of Support issues, the State must make a reasonable effort to use any ticket or incident number that the Contractor assigns to a particular incident in each communication with the Contractor. The State also must install and implement the most recently available Software updates, including service packs and patches, if the Contractor reasonably believes it to be necessary to achieve a satisfactory resolution of a problem.

- 11. Limitations.** The Contractor is not responsible for the resolution of problems caused by the State's use of the Software on hardware that does not meet the minimum specifications set out in the Software's Documentation. The Contractor also is not responsible for resolving problems caused by third party software not approved by the Contractor for use with the Software. Additionally, the Contractor need not resolve problems caused by unauthorized modifications to the Software.
- 12. Updates.** The Contractor must make all Software updates and service packs, as well as new releases and new versions of it, available to the State at no additional charge and as part of its Software Support. The Contractor will notify the State of the availability of any Software updates and new versions and releases on at least a quarterly basis. The Contractor may post patches and updates on the Internet rather than delivering them to the State on physical media. The Contractor must provide Support, including upgrades, service packs, new releases, and new versions, as appropriate, to keep current with changes in the operating systems and critical applications with which the Software is designed to run for a minimum of five years from the date the Software is licensed to the State. For purposes of the last sentence, a "critical application" is any computer program that the Software is specifically designed to work in conjunction with. An example would be Software that requires an Oracle database engine to function. The Oracle database engine would be a critical application for that Software.
- 13. Follow-on Software.** If the Contractor stops supporting or upgrading any Software but then offers or later releases another product that performs substantially similar functions, the State will be entitled to convert its license for the unsupported Software to a license in the new Software. Any such conversion will be without charge to the State, provided only that the State has paid all applicable Support Fees for the unsupported Software since first acquiring it through the time when the Contractor terminated Support.
- 14. Functionality Migration.** If the Contractor eliminates functionality material to the use or performance of any Software licensed under this Contract ("Original Software") and then includes the functionality in a new product ("New Software"), the Contractor must grant the State a license to use the migrated functionality of such New Software, but not to any other functionality in the New Software, if (i) the State is a subscriber to Support for the Original Software at the time the New Software is available and is entitled to receive subsequent releases of the Original Software, and (ii) the New Software is available for the same operating system or technical environment as the Original Software. The license granted to the State for the New Software will be (i) pursuant to the terms and conditions of this Contract and the applicable Schedule governing the Original Software, (ii) subject to the use restrictions and other limitations for the Original Software in this Contract and applicable Schedule, (iii) granted without the payment of additional fees other than fees for Support which would otherwise be due for the Original Software.
- 15. Support Location.** For each Schedule under this Contract, the Contractor must disclose the location(s) where it will perform all Support, the location(s) where any State data applicable to this Contract will be maintained or made available, and the principal place of business for the Contractor and all its subcontractors that may perform Support under this Contract. While performing under this Contract, the Contractor may not change the location(s) where Support is performed or change the location(s) where it maintains or makes the State's data available to a location outside the country of the original location(s) without prior, written approval of the State, which the State is not obligated to provide. Further, each of the Contractor's subcontractors that perform Support under this Contract must agree in writing to and be bound by this and all other provisions of this Contract that inure to the benefit of the State.

PART VI: CONSTRUCTION

- 1. Entire Document.** This Contract will apply to all Software that the State acquires from the Contractor during the term of this Contract, unless the parties expressly agree otherwise in a written document signed by the duly authorized representatives of the parties. Furthermore, this Contract, along with the Schedules and Addenda entered into under it, is the entire agreement between the parties with respect to its subject matter, and it supersedes any previous statements or agreements, whether oral or written.
- 2. Additional Documents.** All terms and conditions contained in any document not signed by both parties, such as a purchase order, invoice, or a click-wrap license, are excluded from this Contract and will have no legal effect.
- 3. Binding Effect.** Subject to the limitations on assignment provided elsewhere in this Contract, this Contract will be binding upon and inure to the benefit of the respective successors and assigns of the State and the Contractor.
- 4. Amendments.** No amendment or modification of any provision of this Contract will be effective unless it is in writing and signed by both parties.

5. **Waiver.** 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 construed as a waiver or a relinquishment of any such term. Either party may at any later time demand strict and complete performance by the other party of such a term.
6. **Severability.** If any provision of this Contract is held by a court of competent jurisdiction to be contrary to applicable law, the remaining provisions of this Contract will remain in full force and effect to the extent that such does not create an absurdity or material injustice.
7. **Plain Meaning.** This Contract must be construed in accordance with the plain meaning of its language and neither for nor against the drafting party.
8. **Headings.** The headings used herein are for the sole sake of convenience and may not be used to interpret any section.
9. **Notices.** For any notice under this Contract to be effective, it must be made in writing and sent to the address of the appropriate party first appearing above, unless that party has notified the other party, in accordance with the provisions of this section, of a new mailing address for notices.
10. **Continuing Obligations.** To the extent necessary to carry out their purpose, the terms of this Contract will survive the termination of this Contract. Some such provisions that require survival to carry out their full intent include the indemnity, warranty, and limitation of liability provisions. Other examples include the confidentiality section, the escrow section, and the grant of Software licenses. Additional provisions include the Support obligations for existing licenses, and the Pricing section with respect to related Software licenses and caps on increases in Support for existing licenses.
11. **Counterparts.** This Contract may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

PART VII: LAW AND COURTS

1. **Compliance with Law.** The parties will comply with all applicable federal, state, and local laws in all endeavors under this Contract.
2. **Export Restrictions.** The State may not directly or indirectly export or transmit the Software or Documentation to any country in violation of any applicable US regulation, order, or statute.
3. **UCITA.** The Uniform Computer Information Transactions Act ("UCITA") will not apply to this Contract. To the extent that UCITA, or any version of it that is adopted by any jurisdiction in any form, is applicable, the parties agree to opt out of it pursuant to the opt-out provisions contained therein. Likewise, the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Contract.
4. **Injunctive Relief.** Nothing in this Contract is intended to limit either party's right to injunctive relief if such is necessary to protect its interests or to keep it whole.
5. **Governing Law.** The laws of Ohio will govern this Contract, excluding its laws dealing with conflict of law, and venue for any disputes will lie exclusively with the appropriate court in Franklin County, Ohio.

PART VIII: MISCELLANEOUS

1. **Conflict of Interest.** No Contractor Personnel may voluntarily acquire any personal interest that conflicts with their responsibilities under this Contract. Further, the Contractor will not knowingly permit any Ohio public official or public employee who has any responsibilities related to this Contract to acquire any 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 will disclose to the State knowledge of any such person who acquires an incompatible or conflicting personal interest related to this Contract. And the Contractor will 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 the person's participation in any such action would not be contrary to the public interest.
2. **Assignment.** Neither party may assign this Contract without the prior, written consent of the other party, which the other party will not withhold unreasonably. Any such assignment, unless otherwise agreed in writing, is contingent on the assignee assuming all the assignor's rights and obligations under this Contract.

- 3. Independent Contractor Acknowledgement.** It is fully understood and agreed that Contractor is an independent contractor and is not an agent, servant, or employee of the State of Ohio or the Ohio Department of Administrative Services. Contractor declares that it is engaged as an independent business and has complied with all applicable federal, state, and local laws regarding business permits and licenses of any kind, including but not limited to any insurance coverage, workers' compensation, or unemployment compensation that is required in the normal course of business and will assume all responsibility for any federal, state, municipal or other tax liabilities. Additionally, Contractor understands that as an independent contractor, it is not a public employee and is not entitled to contributions from DAS to any public employee retirement system.

Contractor acknowledges and agrees any individual providing personal services under this agreement is not a public employee for purposes of Chapter 145 of the Ohio Revised Code. Unless Contractor is a "business entity" as that term is defined in ORC. 145.037 ("an entity with five or more employees that is a corporation, association, firm, limited liability company, partnership, sole proprietorship, or other entity engaged in business") Contractor shall have any individual performing services under this agreement complete and submit to the ordering agency the Independent Contractor/Worker Acknowledgement found at the following link: <https://www.opers.org/forms-archive/PEDACKN.pdf#zoom=80>

Contractor's failure to complete and submit the Independent/Worker Acknowledgement prior to commencement of the work, service or deliverable, provided under this agreement, shall serve as Contractor's certification that contractor is a "Business entity" as the term is defined in ORC Section 145.037.

- 4. Employees.** All Contractor Personnel are employees or contractors 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 the subject matter of this Contract or work performed under this Contract. The Contractor must 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, rule, or regulation 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, and hold the State harmless from and against all claims, losses, liability, demands, fines, and expenses (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 and regular part-time employees of the State. Notwithstanding the foregoing, any defense of the State requires and is subject to the approval and consent of the Ohio Attorney General.
- 5. Publicity.** The Contractor will not advertise or publicize that it is doing business with the State or use this Contract as a marketing or sales tool, unless otherwise agreed to in writing by the State.
- 6. Cancellation.** The State may cancel this Contract without cause and on 30 days written notice or at any time if the General Assembly or any other funding source fails to continue funding. But in the case of any license of Software entered before the effective date of the cancellation, the State will have the right to continue such license after termination on the terms contained in this Contract.
- 7. Deliveries.** All deliveries will be F.O.B. destination.
- 8. Equal Employment Opportunity.** The Contractor will comply with all state and federal laws regarding equal employment opportunity and fair labor and employment practices, including Ohio Revised Code Section 125.111 and all related Executive Orders.

Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be submitted to the Department of Administrative Services Equal Opportunity Division to comply with the affirmative action requirements. Affirmative Action Verification Forms and approved Affirmative Action Plans can be found by going to the Ohio Business Gateway at: <http://business.ohio.gov/efiling/>.

- 9. Drug Free Workplace.** The Contractor must comply with all applicable Ohio laws regarding maintaining a drug-free workplace. The Contractor will make a good faith effort to ensure that all its employees, while working on the State's property, do not possess and will not be under influence of illegal drugs or alcohol or abuse prescription drugs.

10. Ohio Ethics Law and Limits on Political Contributions. The Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of the Ohio ethics laws. The Contractor also certifies that all applicable parties listed in Ohio Revised Code Section 3517.13 are in full compliance with Ohio Revised Code Section 3517.13.

11. Travel Expenses. Any travel or living expenses required by the Contractor to do its obligations under this Contract will be at the Contractor's expense. The State will pay for any additional travel that it requests only with prior, written approval. All additional travel and living expenses that the State requests in addition to what this Contract requires the Contractor to provide at the Contractor's expense will be paid in accordance with the Office of Budget and Management's Travel Rules in Section 126-1-02 of the Ohio Administrative Code.

12. Order of Priority. If there is any inconsistency or conflict between this Contract and any provision of anything incorporated by reference, this Contract will prevail.

13. Record Keeping. The Contractor must keep all financial records in accordance with generally accepted accounting principles consistently applied. The Contractor will file documentation to support each action under this Contract in a manner allowing it to be readily located. And the Contractor will keep all related records and documents at its principal place of business.

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

If any audit reveals any misrepresentation or any overcharge to the State, the State will be entitled to recover damages, as well as the cost of the audit.

15. Ohio Revised Code Section 9.24. Contractor warrants that it is not subject to an unresolved finding for recovery under Ohio Revised Code Section 9.24. If this warranty was false on the date the parties signed 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.

16. Governing the Expenditure of Public Funds on Offshore Services (EO 2011-12K). The Service Provider affirms it has read and understands Executive Order 2011-12K and will abide by those requirements in the performance of this Agreement. Notwithstanding any other terms of this Agreement, the State reserves the right to recover any funds paid for Services the Service Provider performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights or remedies provided the State in this Agreement.

The Service Provider agrees to complete the attached Executive Order 2011-12K Affirmation and Disclosure Form (Attachment Nine of the associated RFP), which is incorporated and becomes a part of this Agreement.

17. Security & Safety Rules. When using or possessing State data or accessing State networks and systems, the Contractor must comply with all applicable State rules, policies, and regulations regarding data security and integrity. And when on any property owned or controlled by the State, the Contractor must comply with all security and safety rules, regulations, and policies applicable to people on those premises.

18. Registration with the Secretary of State. By providing a Charter Number and signature within the Certification Offer Letter, the Contractor attests that the Contractor is:

An Ohio corporation that is properly registered with the Ohio Secretary of State; or

A foreign corporation, not incorporated under the laws of the state of Ohio, but is registered with the Ohio Secretary of State pursuant to Ohio Revised Code Sections 1703.01 to 1703.31, as applicable.

Any foreign corporation required to be licensed under O.R.C. § 1703.01-1703.31, which transacts business in the state of Ohio, without being so licensed, or when its license has expired or been canceled, shall forfeit not less than \$250.00 nor more than ten thousand dollars. No officer of a foreign corporation (<http://codes.ohio.gov/orc/1703.01>) shall transact business in the state of Ohio, if such corporation is required by

O.R.C. § 1703.01-1803.31 to procure and maintain a license, but has not done so. Whoever violates this is guilty of a misdemeanor of the fourth degree. Questions regarding registration should be directed to (614) 466-3910, or visit <http://www.sos.state.oh.us>.

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

FOR THE CONTRACTOR:
CONTRACTOR NAME

FOR STATE OF OHIO
DEPARTMENT OF ADMINISTRATIVE SERVICES

By: _____

By: _____

Name: _____

Name: Director of DAS

Title: _____

Title: Director

Date: _____

Date: _____

PRICE HOLD ADDENDUM NUMBER [0000000.00]

This license addendum ("Addendum") is between the State of Ohio (the "State"), through the Department of Administrative Services, Investment and Governance Division, with offices at 30 East Broad Street, Columbus, Ohio 43215, and *[Company name of the Contractor]* (the "Contractor"), with offices at *[street address, city, state and zip code for the Contractor]*, and is entered into under that certain Master Contract for Software Licensing between the State and the Contractor that is dated *[Date of the Contract]* and numbered [0000000] (the "Contract").

This Addendum does not represent a license of Software. Instead, it provides a price-hold for the Software listed below and permits the State to acquire the Software in exchange for the License Fees and Support Fees listed below. The State is not obligated to license any of the Software listed below, but if it does at any time during the period starting on the date this Addendum is signed and _____ thereafter (Price-hold Period), the State will be entitled to acquire such Software for the Fees specified below. The State may acquire such Software by executing a standard Schedule in the form of that attached to the Contract. The State has the right to acquire some or all of the Software listed below and to acquire the Software in increments during the Price-hold Period using multiple Schedules. Nothing in the Addendum commits the State to any volume of licensing or total expenditure. The State may acquire some, all, or none of the Software in such volumes as it determines during the Price Hold Period.

Software	Copies Delivered	License Type	# of Licenses (E.g., Users)	List License Price	Discount	Actual License Fee*	Support Percentage†	Operating System(s)	Start Date

*The License Fee [] does [] does not include the Support Fee for the first Support Period for each Software license identified above.

† The Support percentage is based on [] list price [] discounted price. Any increase in annual maintenance must be equal to or less that the annual increase in the list price of the Software and is subject to the caps specified in the Contract.

License Descriptions

License Type	Description of License
<i>[Insert License Type]</i>	<i>[Insert License Description]</i>
<i>[Insert License Type]</i>	<i>[Insert License Description]</i>
<i>[Insert License Type]</i>	<i>[Insert License Description]</i>
<i>[Insert License Type]</i>	<i>[Insert License Description]</i>

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

**FOR THE CONTRACTOR:
CONTRACTOR NAME**

**FOR STATE OF OHIO
DEPARTMENT OF ADMINISTRATIVE SERVICES**

By: _____

By: _____

Name: _____

Name: Director of DAS

Title: _____

Title: Director

Date: _____

Date: _____

LICENSE SCHEDULE NUMBER [0000000.00]

This license schedule ("Schedule") is between the State of Ohio (the "State"), through the Department of Administrative Services, Investment and Governance Division, with offices at 30 East Broad Street, Columbus, Ohio 43215 for the beneficial use of *[agency]*, and *[Company name of the Contractor]* (the "Contractor"), with offices at *[street address, city, state and zip code for the Contractor]*, and is entered into under that certain Master Contract for Software Licensing between the State and the Contractor that is dated *[Date of the Contract]* and numbered [0000000] (the "Contract").

Granted Licenses

Software	Copies Delivered	License Type	# of Licenses (E.g., Users)	List License Price	Discount	Actual License Fee*	Support Percentage†	Operating System(s)	Start Date

*The License Fee [] does [] does not include the Support Fee for the first Support Period for each Software license identified above.

† The Support percentage is based on [] list price [] discounted price. Any increase in annual maintenance must be equal to or less than the annual increase in the list price of the Software and is subject to the caps specified in the Contract.

License Descriptions

License Type	Description of License
<i>[Insert License Type]</i>	<i>[Insert License Description]</i>
<i>[Insert License Type]</i>	<i>[Insert License Description]</i>
<i>[Insert License Type]</i>	<i>[Insert License Description]</i>

Location Information

Service Types	Locations
Locations where the Contractor will provide Support:	<i>[Insert Locations]</i>

Locations where the Contractor will provide services or keep the State's data or from which the data may be accessed:	<i>[Insert Locations]</i>
Locations where any subcontractor will provide support or keep the State's data or from which the data may be accessed:	<i>[Insert Locations]</i>

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

**FOR THE CONTRACTOR:
CONTRACTOR NAME**

**FOR STATE OF OHIO
DEPARTMENT OF ADMINISTRATIVE SERVICES**

By: _____

By: _____

Name: _____

Name: Director of DAS

Title: _____

Title: Director

Date: _____

Date: _____