

## REQUEST FOR PROPOSALS

**RFP NUMBER:** 0A1159  
**DATE ISSUED:** September 2, 2015

The State of Ohio, through the Department of Administrative Services, for the Office of Information Technology within the Department of Administrative Services is requesting proposals for:

**Ohio Department of Medicaid – MMIS Procurement Support Services**

**INQUIRY PERIOD BEGINS:** September 2, 2015  
**INQUIRY PERIOD ENDS:** September 21, 2015  
**OPENING DATE:** September 30, 2015  
**OPENING TIME:** 1:00 P.M.  
**OPENING LOCATION:** Department of Administrative Services  
Bid Desk  
4200 Surface Road  
Columbus, Ohio 43228-1313

This RFP consists of five Parts and 10 Attachments, totaling 53 consecutively numbered pages. Five Supplements also are attached to this RFP. 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 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 (“DAS”), on behalf of the Ohio Department of Medicaid (ODM) is soliciting competitive sealed proposals (“Proposals”) for the consulting services and expertise in support of its Medicaid Management Information Systems (“MMIS”) procurement initiative (the “Work”).

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

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

Once awarded, the term of the Contract will be from the award date until the Work is completed to the satisfaction of the State and the Contractor is paid or June 30, 2017 whichever is sooner. The State may renew this Contract for up to one 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 the 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 State.

**Procurement Restriction.** Any Contractor or subcontractor awarded as a result of this RFP are precluded from submitting a proposal as the prime contractor or acting as a subcontractor on any subsequent RFP related to the design, development, implementation, maintenance for a new Ohio MMIS system. Additionally, the Contractor agrees not to respond to other procurement solicitations where there is a clear conflict of interest based on the work the Contractor completed as a result of this Contract. If the Contractor believes a conflict of interest may exist, the Contractor must consult with the State to confirm if such a conflict exists.

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

**Background.** ODM serves as the single State agency responsible for the administration of the Medical Assistance (“Medicaid”) Program. ODM has an annual benefits budget of about \$15 billion (SFY 2015), serves more than 2.7 million Ohio residents, and has more than 92,000 providers supporting the program. The current MMIS is a real-time multi-payer system and is designed to process about 64 million claims annually.

The current MMIS, the Medicaid Information Technology System (“MITS”), went live in August 2011 and replaced a mainframe claims system that was then more than twenty years old.

MITS processes and adjudicates fee for service Medicaid claims. In addition to fee for service, ODM contracts with five managed care plans and these plans receive a per-member-per-month (“PMPM”) capitation rate. The corresponding managed care claims are paid directly by the managed care plans and not adjudicated in MITS, but MITS does process the associated encounter data. In addition to claims adjudication, MITS is used to verify Provider eligibility and Providers enrollment in Medicaid and has supported the implementation of a five-year limit on provider agreements and the revalidation process.

ODMs current MMIS contract will expire in 2017; with optional renewals through 2021. MITS touches several other systems and the future MMIS will interface with these systems as well. These include, but are not limited to, the Eligibility and Enrollment system (“Ohio Benefits”), the Decision Support System, and the Comprehensive Assessment and Case Management System, Linking Ohioans to Information, Services, and Supports (“LOTISS”).

**Objectives.** The objective of this RFP is to obtain a Contractor to assist in ODM’s procurement and adoption of a new MMIS. The term MMIS is being used broadly to cover all the functions of the MITA 3.0 business model along

with other components with which it integrates such as Decision Support Systems, Pharmacy Benefit Management Systems, Eligibility and Enrollment systems, etc.

The Contractor will analyze current MMIS solutions and MMIS vendors with a focus on how their systems can support and fulfill current and proposed ODM priorities as outlined below and further detailed in Supplement 3.

1. ODM's Medicaid Information Technology Architecture (MITA) 3.0 assessment results
2. ODM's guiding principles
3. ODM's current and anticipated policy directives
4. ODM's current and anticipated staffing and business objectives
5. Ohio's State Innovation Model ("SIM") objectives
6. Ohio Health Transformation's ("OHT") guiding principles

**Overview of the Work's Scope.** The ODM MMIS procurement support services will consist of three phases to be completed by the Contractor:

- Phase 1: Gather market information on MMIS solutions and align them with ODM priorities;
- Phase 2: Assist with the development of a RFP process to select a MMIS implementation Contractor;
- Phase 3: Support the State in the MMIS proposal evaluation and selection process.

**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:	September 2, 2015
Inquiry Period Begins:	September 2, 2015
Inquiry Period Ends:	September 21, 2015, at 8:00 a.m.
Proposal Due Date:	September 30, 2015, at 1:00 p.m.

Estimated Dates

Award Date:	November 16, 2015
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Estimated Work Dates

Work Begins:	November 30, 2015
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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 10 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:**

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| 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 Mandatory Requirements                         |
| Attachment Eight | Offeror Requirements                                   |
| Attachment Nine  | Standard Affirmation and Disclosure Form (EO 2011-12K) |
| Attachment Ten   | Cost Proposal  |

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| Supplement One   | ODM-MMIS Procurement Support Services      |
| Supplement Two   | State Security and Privacy Requirements    |
| Supplement Three | ODM and OHT Guiding Principles             |
| Supplement Four  | Data Sharing and Confidentiality Agreement |

## 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:

Margaret Owens  
OIT Procurement Analyst  
Office of Information Technology  
Acquisition Management Office  
30 East Broad Street, 39<sup>th</sup> Floor  
Columbus, Ohio 43215

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

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

- Access the State's Procurement Website at <http://procure.ohio.gov/>;
- From the Navigation Bar on the left, select "**Find It Fast**";
- Select "Doc/Bid/Schedule #" as the Type;
- Enter the RFP number found on the first page of this RFP (the RFP number begins with zero followed by the letter "A");
- Click the "Find It Fast" button;
- On the document information page, click the "Submit Inquiry" button;
- On the document inquiry page, complete the required "Personal Information" section by providing:
  - First and last name of the prospective offeror's representative who is responsible for the inquiry,
  - Name of the prospective offeror,
  - Representative's business phone number, and
  - Representative's email address;
- Type the inquiry in the space provided including:
  - A reference to the relevant part of this RFP,
  - The heading for the provision under question, and
  - The page number of the RFP where the provision can be found; and
- Click the "Submit" button.

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

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

The State usually responds to all inquiries within three business days of receipt. 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.

**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 technical section may not exceed a total of 250 8.5 by 11-inch numbered pages (250 single sided or 125 double sided pages). Offeror’s Proposal may include 11 by 17-inch or 8 by 14-inch pages, but an 11 by 17-inch or 8 by 14-inch page will count as two pages. All pages must have 1-inch (or more) margins at the top, bottom, left and right sides of each page and with text in at least 10-point font size. A smaller font size may be used for graphics and Microsoft Project WBS text. Tables of contents, tables of figures, tab sheets, page dividers, or state-required supplements and state-required attachments such as the profile summaries do not count toward the 250-page limit. Attachment Two contains an indication of whether each required section of the Proposal is included or excluded from the page limitation count.

The package with the technical section of the Proposal must be sealed and contain one originally signed technical section and eight (8) copies of the technical section, and the package with the cost section also must be sealed and contain one (1) complete copy of the cost section of the Proposal in a native Microsoft Excel (XLS) format. Further, the offeror must mark the outside of each package with either RFP – MMIS Procurement Support Services Technical Proposal or “RFP – MMIS Procurement Support Services Cost Proposal,” as appropriate.

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

Proposals are due no later than 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  
I.T. Procurement Services  
Attn: Bid Room  
4200 Surface Road  
Columbus, Ohio 43228

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 Room 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 will have submitted a defective Proposal that the State may reject. Further, any offeror that submits multiple Proposals may have all its Proposals rejected.

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

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

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

## **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. Offeror's that fail to achieve a technical evaluation point total in excess of seventy percent (70%) of the maximum available points may not be evaluated in the next phase of the evaluation process. 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. 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 offeror proposed for award. The offeror must sign and return the two originals to the Procurement Representative. The Contract will bind the State only when the State's duly authorized representative signs all copies and returns one to the Contractor with an award letter, the State issues a purchase order, and all other prerequisites identified in the Contract have occurred.

The Contractor must begin work within 15 business days after the State issues a purchase order, or on a mutually agreed state date, under the Contract. If the State awards a Contract pursuant to this RFP, and the Contractor is unable or unwilling to perform 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 Components.** If this RFP results in a Contract award, the Contract will consist of:

1. The one-page Contract (Attachment Five) in its final form;
2. Department of Medicaid – MMIS Procurement Support Services RFP response dated \_\_\_\_\_, 20## which includes Attachment Four, Attachments, Supplements, the Cost Workbook and additional Contract Appendices dated \_\_\_\_\_, 20##;
3. The applicable Purchase Order.

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.

## ATTACHMENT ONE:

### EVALUATION CRITERIA

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

Mandatory Requirement	Reject	Accept
Experience with similar MMIS projects for State Medicaid Agencies or managed care plans including experience developing RFPs for a MMIS or claims payment system within the past 5 years.		
Experience developing Business and Technical requirements for MMIS procurement projects for State Medicaid agencies or for claims payment procurement projects for managed care plans within the past 5 years.		

**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.

Scored Criteria	Weight	Does not Meet	Partially Meets	Meets	Exceeds
Experience with similar MMIS projects for State Medicaid Agencies or managed care plans including experience developing RFPs for a MMIS or claims payment system within the past 5 years	4			4	7
Experience developing Business and Technical requirements for MMIS procurement projects for State Medicaid agencies or for claims payment procurement projects for managed care plans within the past 5 years	4			4	7
Within the past 5 years, experience on a minimum of two projects with business transformation analysis and alignment analysis and recommendations for State Medicaid agencies or managed care plans;	5	0	1	4	7
Within the past 5 years, experience on minimum of two projects using and knowledge of the Seven Conditions and Standards, with specific focus on the Medicaid Information Technology Architecture (MITA) project being executed by the Centers for Medicare and Medicaid Services (CMS) and the MITA business model. Additional consideration will be given to vendors who have worked with a state to develop a MITA state self-assessment (SS-A)	6	0	1	4	7
Within the past 5 years, experience on a minimum of two projects with Medicaid Management Information System (MMIS) acquisitions and fiscal agent agreements in other Medicaid State Agencies	6	0	1	4	7

Scored Criteria	Weight	Does not Meet	Partially Meets	Meets	Exceeds
Within the past 5 years, experience on a minimum of two projects that demonstrate familiarity and experience with current and future MMIS products and services being offered by the vendor community across the United States and determining, at a high level, how these systems comply with the Seven Conditions and Standards	5	0	1	4	7
Staffing Capabilities	10	0	1	4	7
Project Plan	5	0	1	4	7
Supplement 1 - Phase1	10	0	1	4	7
Supplement 1 - Phase 2	15	0	1	4	7
Supplement 1 - Phase 3	5	0	1	4	7

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

Criteria	Percentage
Technical Proposal	55%
Cost Proposal	35%
MBE Set-aside in Activities	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 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 Technical Proposal will receive 550 points. The remaining offerors will receive a percentage of the maximum points available based upon the following formula:

$$\text{Technical Proposal Points} = (\text{Offeror's Technical Proposal Points} / \text{Highest Number of Technical Proposal Points Obtained}) \times 550$$

The offeror with the lowest proposed Not-To-Exceed Fixed Price will receive 350 points. The remaining offerors will receive a percentage of the maximum cost points available based upon the following formula:

$$\text{Cost Summary Points} = (\text{Lowest Not-To-Exceed Fixed Price} / \text{Offeror's Not-To-Exceed Fixed Price}) \times 350$$

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

$$\text{MBE Set-aside Points} = (\text{Highest MBE Set-aside Cost Percentage} / \text{Offeror's MBE Set-aside Cost Percentage}) \times 100$$

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

$$\text{Total Points} = \text{Technical Proposal Points} + \text{Cost Summary Points} + \text{MBE Set-aside Points}$$

## ATTACHMENT TWO: WORK REQUIREMENTS AND SPECIAL PROVISIONS

### PART ONE: WORK REQUIREMENTS

This attachment describes the Project and what the Contractor must do to get the job done.

**Contractor Responsibilities and Deliverables.** The Contractor must meet all RFP requirements for the Project and complete all work satisfactorily as specified in:

Supplement 1: ODM-MMIS Procurement Support; and  
Supplement 2: Security and Privacy.

### PART TWO: SPECIAL PROVISIONS

**Work Hours and Conditions.** The State shall be available to participate in the Services and Project during normal business hours Monday through Friday (generally 8:00 a.m. to 5:00 p.m.) during non-State holidays. The offeror shall indicate, as part of its response, any dependencies on the State by way of work location, hours outside those indicated or any other project delivery work, location or conditions requirements.

**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 and the specific services costs identified in the Cost Summary.

**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.

**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 MBEs. The work set aside should equate to a minimum of 15% of the offeror's cost proposal for those activities associated with Activities contained in this RFP. 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 to maintain their certification throughout the term of the Contract, including any renewals; and
- Propose the awarded MBE as a subcontractor under RFP 0A1159.

After award of the RFP, the Contractor must submit a quarterly report to the ODM Contract Manager or designee documenting the work performed by and payments made to the MBE. 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 ODM Contract Manager or designee.

1. For this RFP, Ohio certified MBE's that are the prime contractor **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.

**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 required 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 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.

## 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.

The technical section may not exceed a total of 250 8.5 by 11-inch numbered pages (250 single sided or 125 double sided pages). Offeror's Proposal may include 11 by 17-inch or 8 by 14-inch pages, but an 11 by 17-inch or 8 by 14-inch page will count as two pages. All pages must have 1-inch (or more) margins at the top, bottom, left and right sides of each page and with text in at least 10-point font size. A smaller font size may be used for graphics and Microsoft Project WBS text. Tables of contents, tables of figures, tab sheets, page dividers, or state-required supplements and state-required attachments such as the profile summaries do not count toward the 250-page limit. Attachment Two contains an indication of whether each required section of the Proposal is included or excluded from the page limitation count.

Offeror responses must 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 Scope of Work (Supplement One) and required sections of the Proposal format (Attachment Three), 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 and Supplement 2 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.

### **Example of acceptable in-line section response (in italics below):**

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

**Offeror Response:** Offeror describes how it will address the Assumptions section within the Proposal.

Each Proposal must respond to every request for information in this attachment and Supplement 1, 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.

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

\*\* Excluded from the 250-page limit.

### **Technical Proposal**

- Cover Letter

- Vendor Information Form (OBM-5657)\*\*
- Subcontractor Letters\*\*
- Offeror Certification Form\*\*
- MBE Certification\*\*
- Mandatory Requirements
- Offeror Organization Overview and Requirements
- Supplement Responses:
  - Supplement 1: ODM-MMIS Procurement Support
  - Supplement 2: Security and Privacy (Contractor indication of acceptance and compliance)
- Staffing Capabilities
- Assumptions
- Project Plan
- Support Requirements\*\*
- Proof of Insurance\*\*
- Payment Address \*\*
- Legal Notice Address\*\*
- W-9 Form\*\*
- Independent Contractor Acknowledgement Form\*\*
- Standard Affirmation and Disclosure Form (EO 2011-12K)\*\*
- Affirmative Action
- Acceptance of Attachment Four – General Terms and Conditions Acceptance

#### **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:

1. A statement regarding the offeror's legal structure (e.g., an Ohio corporation), Federal tax identification number, and principal place of business;
2. A list of the people who prepared the Proposal, including their titles; and
3. The name, address, e-mail, phone number, and fax number of a contact person who has authority to answer questions regarding the Proposal.

**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 Six, 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.

**Mandatory Requirements.** All offerors must demonstrate experience to meet all of the mandatory requirements identified below by providing the requested documentation or completing the Mandatory Requirement pages provided in Attachment Seven that summarizes the relevant experience to verify how the offeror meets the requirement. **Offerors may duplicate the forms as needed for up to, but not more than, four references for each requirement. If more than four references are provided, only the first four listed will be used for scoring.**

**Offeror Organization Overview and Requirements.** The offeror must provide an organizational overview. The description must 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. Each Proposal must include a description of the offeror's capability, capacity, experience in the industry and any other background information that will help the State gauge the ability of the offeror to fulfill the obligations of the Contract.

If the offeror has audited financial statements, it must provide them for the past three years. If the offeror's most recently completed fiscal year is not yet audited, the previous three years may be acceptable. If the offeror has no audited financial records, it may submit its financial statements for the last three years without an auditor's certification.

All offerors must demonstrate experience to meet the offeror requirements identified in this RFP by providing the requested documentation or completing the offeror Requirement pages provided in Attachment Eight that summarizes the relevant experience to verify how the offeror meets the requirement. **Offerors may duplicate the forms as needed for up to, but not more than, four references for each requirement. If more than four references are provided, only the first four listed will be used for scoring.**

**Supplement Responses.** 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.

- Supplement 1- ODM-MMIS Procurement Support requirements 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. As part of their response, Offerors are to provide native Microsoft Word documents that comprise the requirements of a Supplement, inclusive of their response.

The offeror must demonstrate a complete and coherent solution to Supplement 1 pertaining to the requirements. This area of the offeror's proposal must clearly demonstrate the offeror will be prepared to quickly undertake and successfully complete the required services, activities, and Deliverables.

The offeror's response to Supplement 1 must be inserted in this section of the offeror's proposal response.

- Supplement 2 - Security and Privacy, State IT Computing Policy and State Data Handling Requirements is being provided as a Microsoft Word document through the State's procurement website as a convenience for responding to the RFP. Offerors must include the entire content of Supplement 2 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 Requirements contained in Supplement 2. The supplement's content must not be modified. If the content is modified, reformatted or omitted, the offeror's response may be disqualified.

The offeror's response to Supplement 2 must be inserted in this section of the offeror's Proposal response.

**Staffing Capabilities.** The offeror must provide qualified staff to perform the activities described in this RFP and maintain appropriate staffing levels throughout the term of the Contract. All core project personnel will be available on-site. ODM reserves the right to approve all project personnel assigned to the contract and any changes in such personnel throughout the life of the contract. This will include, but is not limited to, review and approval of all staff resumes.

The offeror's response must include the following information:

- An organizational chart including any subcontractors and key management and administrative personnel assigned to this project.
- A minimum of two references for each named Key Project Personnel;
- A contingency plan that shows the ability to add more staff if needed to ensure meeting the Project's due date(s); and
- The number of people onsite at State location(s) at any given time to allow the State to plan for the appropriate workspace.
- A statement that clearly indicates the time commitment of the proposed candidate. The offeror also must include a statement indicating to what extent, if any, the proposed candidate may work on other projects during the term of the Contract. The State may reject any Proposal that commits the proposed candidate to other projects during the term of the Project, if the State believes that any such commitment may be detrimental to the offeror's performance.

In addition, the offeror's proposal must identify all Key Project Personnel who will provide services as part of the resulting Contract. The State has identified the Project Manager as a key position in Supplement 1. The State expects that the proposed named Key Project Personnel will be available as proposed to work on the Project. Resumes for the proposed candidates must be provided for all proposed Key Project Personnel. Representative resumes are **NOT** acceptable. The resumes will be used to supplement the descriptive narrative provided by the offeror regarding their proposed Project team.

The resume (2-page limit per resume) of the proposed Key Project Personnel must include:

1. Proposed Candidate's Name;
2. Proposed role on this Project;
3. Listings of completed projects (a minimum of two references for each named Key Project Personnel) that are comparable to this Project or required similar skills based on the person's assigned role/responsibility on this Project. Each project listed should include at a minimum the beginning and ending dates, client/company name for which the work was performed, client contact information for sponsoring Directors, Managers or equivalent level position (name, phone number, email address, company name, etc.), project title, project description, and a detailed description of the person's role/responsibility on the project.
4. Education
5. Professional Licenses/Certifications/Memberships
6. Employment History.

In addition to providing a resume, the offeror must provide a detailed narrative highlighting why the proposed Key Project Personnel possesses the necessary experience, education, training and professional certifications to successfully perform their assigned role/responsibility on the Project.

**Assumptions.** The offeror must list all the assumptions the offeror made in preparing the Proposal. If any assumption is unacceptable to the State, the State may at its sole discretion request that the offeror remove the assumption or choose to reject the Proposal. No assumptions may be included regarding the outcomes of negotiation, terms and conditions, or requirements. Assumptions must be provided as part of the offeror response as a stand-alone response section that is inclusive of all assumptions with reference(s) to the section(s) of the RFP that the assumption is applicable to. Offerors must not include assumptions elsewhere in their response.

**Project Plan.** The State encourages responses that demonstrate a thorough understanding of the nature of the Work and what the Contractor must do to get the Work done properly. To this end, the offeror must submit a Project Plan that the offeror will use to create a consistent and coherent management plan for the Work. The Project Plan must include detail sufficient to give the State an understanding of how the offeror's knowledge and approach will:

- Manage the Project;
- Guide Project execution;
- Document planning assumptions and decisions;
- Facilitate communication among stakeholders;
- Define key management review as to content, scope, and schedule; and
- Provide a baseline for progress measurement and Project control.

At a minimum, the offeror's Project Plan must include the following:

- High level description of how the offeror will guide Project execution;
- Work breakdown structure as a baseline. The work breakdown structure must show the elements at a level of detail that demonstrates the offeror's understanding of the effort required to do the work and define who is assigned responsibility for each Deliverable within the work breakdown structure with the appropriate staff loading;
- Project schedule for all Project Deliverables, tasks and milestones;
- Who is assigned responsibility for each Deliverable within the work breakdown structure to the level at which control will be exercised;
- Performance measurement baselines for technical scope and schedule;
- Major milestones and target date(s) for each milestone that are consistent with this RFP's dates;
- Description of the offeror's proposed organization(s) and management structure responsible for fulfilling the Contract's requirements and supporting the Work, in terms of oversight and control;
- Definition of the review processes for each milestone and Deliverable (e.g. mandatory design review) and a description of how the parties will conduct communication and status review;
- Description of the Project issue resolution process including an escalation plan; and
- If the offeror chooses to use Subcontractors, this part of the offeror's Proposal must describe its approach to managing its subcontractors effectively.

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

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

The State will provide the following resources in support of the Contractor to complete the work:

- Office space for Contractor staff;
- Standard office equipment, excluding personal computers or laptops;
- Access to Conference rooms, photocopier, telephone with voicemail and internet connectivity; and
- Document repository (SharePoint) for storage and dissemination of Deliverables.

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

**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 will 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 Nine) 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>

**Affirmative Action.** Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be completed using:

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

Approved Affirmative Action Plans can be found by going to the Equal Opportunity Department's Web site:

<http://eodreporting.oit.ohio.gov/searchAffirmativeAction.aspx> .

Copies of approved Affirmative Action plans must be supplied by the offeror as part of its Proposal or inclusion of an attestation to the fact that the offeror has completed the process and is pending approval by the EOD office.

**Acceptance of Attachment Four – General Terms and Conditions.** 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.

**Cost Proposal.** This RFP includes Cost Summary Workbooks in Microsoft Excel® as Attachment 10. Offerors may not reformat the State's Cost Summary Workbook. Offerors may not reformat the State's Cost Summary Workbook. Each offeror must complete the applicable Cost Summary Workbook 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 Workbook. The total MBE cost will be the sum of all MBE elements in the Cost Summary Workbook. 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 Phase 1 and Phase 2 project services.

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

The offeror's cost for Project Management, Phase 1, and Phase 2 must be represented as the not-to-exceed fixed price.

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

## ATTACHMENT FOUR: GENERAL TERMS AND CONDITIONS

### PART ONE: PERFORMANCE AND PAYMENT

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

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

**Term.** Unless this Contract is terminated or expires without renewal, it will remain in effect until the Work is completed to the satisfaction of the State and the Contractor is paid. But the current General Assembly cannot commit a future General Assembly to an expenditure. Therefore, this Contract will automatically expire at the end of each fiscal year or biennium, the first of which is June 30, 2017. The State may renew this Contract in the next fiscal year or 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 term during which the Work continues, subject to the State's approval. Termination or expiration of this Contract will not limit the Contractor's continuing obligations with respect to Deliverables that the State pays for before or after termination or limit the State's rights in such.

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

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

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

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

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

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

The State will pay the Contractor interest on any late payment, as provided in Section 126.30 of the Ohio Revised Code (the "Revised Code"). If the State disputes a payment for anything covered by an invoice, within 15 business days after receipt of that invoice, the State will notify the Contractor, in writing, stating the grounds for the dispute. The State then may deduct the disputed amount from its payment as a nonexclusive remedy. If the Contractor has committed a material breach, in the sole opinion of the State, the State also may withhold payment otherwise due to the Contractor. Both parties will attempt to resolve any claims of material breach or payment disputes through discussions among the Work Manager, the Contractor's executive responsible for the Work, the Work 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 all the Work 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.

**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 Work 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.

Reimbursable Expenses shall not include expenses incurred by employees and consultants in connection with the services including but not limited to airfare, parking, car rental, hotel, meals and tips associated with travel, increased insurance premiums resulting from additional insurance coverage(s) requested by the State, printing, plotting, and courier and overnight delivery expenses. Expenses of this nature are to be included in the Contractor's proposal as part of the proposed fee structure and (if applicable) hourly proposed rate of Contractor personnel.

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

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

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

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

**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

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

## PART TWO: WORK AND CONTRACT ADMINISTRATION

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

**Other Contractors.** The State may hold other contracts for additional or related work, including among others independent verification and validation (IV&V) efforts for the Work. The Contractor must fully cooperate with all other contractors and State employees and coordinate its Work with such other contractors and State employees as may be required for the smooth and efficient operation of all related or additional work. The Contractor may not act in any way that may unreasonably interfere with the work of any other contractors or the State's employees. Further, the Contractor must fully cooperate with any IV&V contractor assigned to the Work. Such cooperation includes expeditiously providing the IV&V contractor with full and complete access to all Work product, records, materials, personnel, meetings, and correspondence as the IV&V contractor may request. If the State assigns an IV&V contractor to the Work, the State will obligate the IV&V contractor to a confidentiality provision similar to the Confidentiality Section contained in this Contract. The Contractor must include the obligations of this provision in all its contracts with its subcontractors for the Work.

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

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

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

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

**Record Keeping.** The Contractor must keep all financial records in accordance with generally accepted accounting principles consistently applied. The Contractor also must file documentation to support each action under this Contract in a manner allowing the documentation to be readily located. And the Contractor must keep all Work-related records and documents at its principal place of business or at its office where the work was performed. Should the Contractor deem for confidentiality obligations to other customers that these records be maintained separately from other customer records, the Contractor is permitted to maintain and keep these records separate.

**Audits.** During the term of this Contract and for three years after the payment of the Contractor's Fee, on reasonable notice and during customary business hours, the State may audit the Contractor's records and other

materials that relate to the Work provided by the Contractor to the State. This audit right also applies to the State's duly authorized representatives and any person or organization providing financial support for the Work. State audit rights shall 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 shall 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 thirty (30) days. If the failure is not cured by Contractor within such thirty (30) 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 Work will be done outside Ohio, the laws of the appropriate state(s) where any portion of the Work will be done. The Contractor also must maintain employer's liability insurance with at least a \$1,000,000.00 limit.
- (b) Commercial General Liability insurance coverage for bodily injury, personal injury, wrongful death, and property damage. The defense cost must be outside of the policy limits. Such policy must designate the State of Ohio as an additional insured, as its interest may appear. The policy also must be endorsed to include a 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 ten (10) day 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 who will do the Work, then the quality and professional credentials of those people were material factors in the State's decision to enter into this Contract. Therefore, the Contractor must use all commercially reasonable efforts to ensure the continued availability of those people. Also, the Contractor may not remove those people from the Work without the prior, written consent of the State, except as provided below.

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

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

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

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

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

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

The State may determine that the proposed replacement candidates meet the minimum qualifications of this Contract and still substantially reduce the value the State perceived it would receive through the effort of the original individual(s) the Contractor proposed and on whose credentials the State decided to enter into this

Contract. Therefore, the State will have the right to reject any candidate that the State determines may provide it with diminished value.

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

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

**Suspension and Termination.** The State may terminate this Contract, 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 Work, or if it appears to the State that the Contractor's performance is substantially endangered through no fault of the State. In any such case, the termination will be for cause, and the State's rights and remedies will be those identified below for termination for cause.

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

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

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

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

that the State would have incurred under this Contract. The Contractor also will be liable for any other direct damages resulting from its breach of this Contract or other action leading to termination for cause.

If the 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 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 rather than terminating the Work, if the State believes that doing so would better serve its interests. In the event of a suspension for the convenience of the State, the Contractor will be entitled to receive payment for the work performed before the suspension. In the case of suspension of the Work 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 Work after suspension for cause, rather than terminating this Contract after the suspension, the Contractor may be entitled to compensation for work performed before the suspension, less any damage to the State resulting from the Contractor's breach of this Contract or other fault. Any amount due for work before or after the suspension for cause will be offset by any damage to the State from the default or other event giving rise to the suspension.

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

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

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

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

**Representatives.** The State's representative under this Contract will be the person identified in the RFP Documents or in a subsequent notice to the Contractor as the "Work Representative." The Work Representative will review all reports the Contractor makes in the performance of the Work, will conduct all liaison with the Contractor, and will accept or reject the Deliverables and the completed Work. The Work Representative may delegate his or her responsibilities for individual aspects of the Work to one or more managers, who may act as the Work Representative for those individual portions of the Work.

The Contractor's Work Manager under this Contract will be the person identified on the RFP Documents as the "Work Manager." The Work Manager will be the Contractor's liaison with the State under this Contract. Additionally, the Work Manager will conduct all Work meetings and prepare and submit to the Work 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 Work Manager without the approval of the State if that person is identified in the RFP Documents by name or as a key individual on the Work.

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

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

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

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

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

If a change causes an increase in the cost of, or the time required for, the performance of the Work, the Contractor must notify the State in writing and request an equitable adjustment in its Fee, the delivery schedule, or both before the Contractor signs the Change Order. If the Contractor claims an adjustment under this section in connection with a change to the Work not described in a written Change Order, the Contractor must notify the State in writing of the claim within five business days after the Contractor is notified of the change and before work on the change begins. Otherwise, the Contractor will have waived the claim. In no event will the State be responsible for any increase in the Fee or revision in any delivery schedule unless the State expressly ordered the relevant change in writing and the Contractor has complied with the requirements of this section. Provided the State has complied with the procedure for Change Orders in this section, nothing in this clause will excuse the Contractor from proceeding with performance of the Work, as changed.

Where an equitable adjustment to the Contractor's Fee is appropriate, the State and the Contractor may agree upon such an adjustment. If the State and the Contractor are unable to agree, either party may submit the dispute to the senior management of the Contractor and the senior management of the State's Office of Information Technology for resolution. If within 30 calendar days following referral to senior management, the

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

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

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

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

**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 Work. The Contractor must restrict circulation of Confidential Information within its organization and then only to people in the Contractor's organization that have a need to know the Confidential Information to do the Work. The Contractor will be liable for the disclosure of such information, whether the disclosure is intentional, negligent, or accidental, unless otherwise provided below.

The Contractor will not 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 of Information.** The parties agree that they shall not use any information, systems, or records made available to either party for any purpose other than to fulfill the obligations specified herein, and specifically agree to comply with state and federal confidentiality laws, rules, and regulations applicable to programs under which this Agreement is funded, specifically Title 7 of the Code of Federal Regulations, section 246.26 (d). The terms of this paragraph shall be included in any subcontracts executed by either party for work under this Agreement.

The parties assure that they:

- will maintain applicant and participant confidentiality and not release or allow access to data and information in full or in part to any third person party or program;
- will not present or publish data and information in a manner in which any individual can be identified; and
- will not attempt to link or permit others to link data or information with individually identified records in another database, file, or other information source.

**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 confidential 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.

**Return of State Data.** 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.

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

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

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

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

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

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

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

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

For Commercial Software, the State will have the rights in items (1) through (6) of this section with respect to the software. The State will not use any Commercial Software except as provided in 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.

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

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

Additionally, with respect to the Contractor's activities under this Contract, the Contractor warrants that: (1) the Contractor has the right to enter into this Contract; (2) the Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform the contemplated services; (3) the Contractor will observe and abide by all applicable laws and regulations, including those of the State regarding conduct on any premises under the State's control; (4) the Contractor has good and marketable title to any goods delivered under this Contract and in which title passes to the State; (5) 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 Work fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor must correct such failure with all due speed or must refund the amount of the compensation paid for such portion of the Work. The Contractor also must indemnify the State for any direct damages and claims by third parties based on a breach of these warranties. This obligation of indemnification will not apply where the State has modified or misused the Deliverable and the claim is based on the modification or misuse. The State will give the Contractor notice of any such claim as soon as reasonably practicable. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor must do one of the following things: (1) modify the Deliverable so that it is no longer infringing; (2) replace the Deliverable with an equivalent or better item; (3) acquire the right for the State to use the infringing Deliverable as it was intended for the State to use under this Contract; or (4) remove the Deliverable and refund the amount the State paid for the Deliverable and the amount of any other Deliverable or item that requires the availability of the infringing Deliverable for it to be useful to the State.

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

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

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

## **PART FIVE: ACCEPTANCE AND MAINTENANCE**

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

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

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

## PART SIX: CONSTRUCTION

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

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

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

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

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

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

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

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

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

**Time is of the Essence.** The Contractor hereby acknowledges that time is of the essence for performance under this Contract unless otherwise agreed to in writing by the parties.

## PART SEVEN: LAW AND COURTS

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

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

**Conflicts of Interest.** None of the Contractor's Personnel may voluntarily acquire any personal interest that conflicts with their responsibilities under this Contract. Additionally, the Contractor may not knowingly permit any public official or public employee who has any responsibilities related to this Contract or the Work to acquire an interest in anything or any entity under the Contractor's control, if such an interest would conflict with that official's

or employee's duties. The Contractor must disclose to the State knowledge of any such person who acquires an incompatible or conflicting personal interest related to this Contract. And the Contractor must take steps to ensure that such a person does not participate in any action affecting the work under this Contract. But this will not apply when the State has determined, in light of the personal interest disclosed, that person's participation in any such action would not be contrary to the public interest.

**Ohio Ethics Law and Limits on Political Contributions.** The Contractor certifies that it is currently in compliance 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.

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

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

**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.

**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, but not limited to 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 DAS 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 Equal Opportunity Departments web site: <http://www.das.ohio.gov/Eod/AEEEO.htm>

**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.

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

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

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

**ATTACHMENT FIVE:  
SAMPLE CONTRACT**

**A CONTRACT BETWEEN  
THE OFFICE OF INFORMATION TECHNOLOGY  
ON BEHALF OF THE  
OHIO DEPARTMENT OF MEDICAID  
AND**

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

**THIS CONTRACT**, which results from RFP 0A1159, entitled Department of Medicaid – MMIS Procurement Support Services, is between the State of Ohio, through the Department of Administrative Services, on behalf of the Ohio Department of Medicaid and \_\_\_\_\_ (the "Contractor").

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.

This Contract consists of:

1. The one-page Contract (Attachment Five) in its final form;
2. Department of Medicaid – MMIS Procurement Support Services response dated \_\_\_\_\_, 20## which includes Attachment Four, Attachments, Supplements, the Cost Workbook and additional Contract Appendices dated \_\_\_\_\_, 20##;
4. The applicable Purchase Order.

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

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

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

CONTRACTOR

STATE OF OHIO  
OFFICE OF INFORMATION TECHNOLOGY

**SAMPLE – DO NOT FILL OUT**

By: (signature name)

By: Robert Blair

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 and Supplement One or take data that belongs to the State of Ohio outside the geographic limitations contained in Attachment Two and Supplement One 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:

<b>Potential Conflicts (by person or entity affected)</b>

(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.

Please 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: MANDATORY REQUIREMENTS

**MANDATORY REQUIREMENT:** Experience with similar MMIS projects for State Medicaid Agencies or managed care plans including experience developing RFPs for a MMIS or claims payment system within the past 5 years.

**Offerors may duplicate the forms as needed for up to, but not more than, four references for each requirement. If more than four references are provided, only the first four listed will be used for scoring.**

<b>Customer Name:</b>	<b>Contact Name:</b> (Indicate Primary or Alternate)	
<b>Customer Address:</b>	<b>Contact Title:</b>	
<b>Project Name:</b>	<b>Contact Phone Number:</b>	<b>Contact Email Address:</b>
<b>Beginning Date of Experience:</b> <small>Month/Year</small>	<b>Ending Date of Experience:</b> <small>Month/Year</small>	
<p><b>Provide a detailed description of experience performing similar work as this RFP for State Medicaid Agencies or managed care plans. Describe experience developing RFPs for a MMIS or claims payment system; include details about the RFP release, vendor selection, and resulting contract. The project narrative should describe, at minimum, the scope of work, the vendor's role and work completed by the vendor, and the project outcome.</b></p>		





## ATTACHMENT EIGHT: OFFEROR REQUIREMENTS

**REQUIREMENT:** Within the past 5 years, experience on minimum of two projects using and knowledge of the Seven Conditions and Standards, with specific focus on the Medicaid Information Technology Architecture (MITA) project being executed by the Centers for Medicare and Medicaid Services (CMS) and the MITA business model. Additional consideration will be given to vendors who have worked with a state to develop a MITA state self-assessment (SS-A)

**Offerors may duplicate the forms as needed for up to, but not more than, four references for each requirement. If more than four references are provided, only the first four listed will be used for scoring.**

<b>Customer Name:</b>	<b>Contact Name:</b> (Indicate Primary or Alternate)	
	<b>Contact Title:</b>	
<b>Customer Address:</b>	<b>Contact Phone Number:</b>	
	<b>Contact Email Address:</b>	
<b>Project Name:</b>	<b>Beginning Date of Experience:</b> <small>Month/Year</small>	<b>Ending Date of Experience:</b> <small>Month/Year</small>
<p><b>Provide a detailed description of experience performing similar work as this RFP for that demonstrate use and knowledge of the Seven Conditions and Standards. Description must include what tasks were performed with a specific focus on MITA. Additionally provide details regarding any MITA state self-assessment. The project narrative should describe, at minimum, the scope of work, the vendor's role and work completed by the vendor, and the project outcome.</b></p>		





**ATTACHMENT NINE:  
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 NINE - CONTINUED**

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

Governing the Expenditure of Public Funds on Offshore Services

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 TEN:  
OFFEROR COST PROPOSAL**

Offerors must use the electronic Cost Proposal form attached to this RFP. No changes may be made to the cost proposal formulas. Submission must be in excel format and not as a PDF.

# SUPPLEMENT 1

## ODM-MMIS Procurement Support Services

Offerors are to respond to each section in this Supplement.

### Part 1: KEY DATE AND SERVICE SETUP/ESTABLISHMENT REQUIREMENTS

As part of their response, offerors are to provide an indication of the following dates:

- Completion of Phase 1
- Completion of Phase 2
- Completion of Phase 3

Dates may be stated from date of contract execution (i.e. 6 months after contract execution). All tasks in this RFP must be completed by June 30, 2017.

### Part 2: SCOPE OF WORK

Contract services for the consulting and expertise in support of its Medicaid Management Information Systems (MMIS) procurement initiative.

The ODM MMIS procurement initiative will consist of three phases to be completed by the Contractor:

1. Project Management
2. Phase 1: Gather market information on MMIS solutions and align them with ODM priorities;
3. Phase 2: Develop and oversee the review of requirements for the MMIS solution;
4. Phase 3: Support ODM in the MMIS vendor evaluation and selection process.

## 1.0 Project Management

The Contractor will provide overall project management for this Scope of Work including but not limited to the following requirements:

1. Manage the project per the Project Management Institute's (PMI) Project Management Standards as published in the Project Management Body of Knowledge (PMBOK);
2. Manage the Contractor project team and their assignments;
3. Provide a single point of contact with ODM for the project;
4. Collaborate with ODM and other stakeholders to gather necessary information and to achieve consensus during the preparation of the deliverables outlined for Phases 1, 2, and 3;
5. Manage both draft and final deliverables for the project;
6. Use ODM SharePoint as the site for collaboration and storage of all project documents

Throughout all phases, the vendor must review reports and deliverables with a focus on trends in health information technology.

In addition, the Contractor is responsible for:

**Kick Off Meeting.** The Contractor, in conjunction with State staff, must plan and conduct a Project kickoff meeting.

The Contractor in collaboration with the State will initiate the project with a mobilization effort for the first 15 days of the project, followed by the project kick-off event. This effort will focus on planning, processes, and project methodology. The goal will be to discuss and evaluate the Contractor's proposed practices, methodologies and recommendations and ensure Contractor's understanding of their commitment to

deliver the proposed solution for the project. The Contractor must also work with the State on establishing acceptance criteria prior to submitting a deliverable.

The Contractor in conjunction with the State must develop and deliver a presentation to the sponsors, key stakeholders and core project team after the mobilization effort. At a minimum, the presentation must include a high level overview of the following:

- Project scope and schedule;
- Goals of the Project;
- Methodology, approach, and tools to achieve the goals;
- Roles, responsibilities, and team expectations;
- Tasks, Deliverables, Milestones and significant work products; and
- Contract content review.

**Manage Staff.** The State will provide oversight for the Project, but the Contractor must provide overall Project 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 Project. Additionally, the Contractor must provide all administrative support for its staff and activities.

**Update and Maintain Project Plan.** Throughout the Project, the Contractor must employ ongoing management techniques to ensure a comprehensive Project Plan is agreed to and baselined, executed, monitored, reported on, and maintained. The Project Plan must allow sufficient time for the State's staff to review all deliverables.

The Project Plan submitted with the Contractor's proposal must be updated and submitted in electronic and paper form to the State for approval no later than 10 days after the mobilization effort described above. The revised Project Plan will become the Contractor's plan to implement the Contractor's solution. The Project Plan must include planned Tasks, Deliverables, Milestones and significant work products with measurable outcomes. The schedule must indicate dependencies, duration, dates and resources for completing each Task, Deliverable, and Milestone.

The Project Plan must include a more detailed level for the upcoming six month planning period. The Project Plan must be updated on an ongoing basis with a more detailed view on a mutually agreed upon time interval. Throughout the Project, the Project Plan must be maintained on an ongoing basis by the Contractor and updated weekly. Timeline variances must be reported to the State immediately along with a written strategy to mitigate the variances and ensure the completion of the proposed milestones

**Project Review Check Point.** Upon completion of the baselined Project Plan and on a quarterly basis throughout the Project, the Contractor, in conjunction with State Project team staff, must deliver a presentation to the State. At a minimum, the presentation must address any known State or Contractor issues or concerns, including but not limited to the following:

- Project scope, budget and schedule;
- Any changes to Key named resources assigned to the Project;
- Project readiness including key issues and risk from their current status;
- Project Status including variance from baseline for key milestones, tasks, deliverables (Significant work products) and project closure;
- Methodology, approach, and tools to achieve the Project goals (inventory and status of completeness and agreement for documented project management and implementation approaches. I.e., Project management plan, communication plan, requirements traceability, implementation approach and methodology); and
- Roles, responsibilities, and team expectations.

Upon completion of the presentation, the State will immediately assess the health of the project and determine next steps for moving forward with the Project, within one week of the meeting, which may include the following:

- Continue the Project;
- Terminate the Contract; or
- Suspend the Contract.

See Suspension and Termination language in Attachment Four for remedies for failure to deliver the proposed work.

Note: There may be additional Project Reviews conducted by the State on an as needed basis throughout the term of the Contract to assess Project health and ensure the Project is progressing successfully.

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

- Immediate Reporting - The Project Manager or a designee must immediately report any staffing changes for the Project to the State's Representative.
- Attend Status Meetings - The Project Manager and other Project team members must participate in status meetings with the State Representative and other people deemed necessary to discuss Project issues. The State Representative will schedule these meetings, which will follow an agreed upon agenda and allow the Contractor and the State to discuss any issues that concern them. These meetings will be scheduled based upon need and may be conducted as a conference call.
- The Contractor must provide the following detailed monthly report as agreed to by the Contractor and State. The report must, at a minimum, include:
  - Status of planned tasks, identifying tasks not on schedule and a resolution plan to return them to the schedule;
  - Problems encountered, proposed solutions, and actual resolution;
  - Results of any testing;
  - Tasks to be accomplished the following two weeks;
  - Deliverable and Tasks status, with percentage completed and if ahead or behind schedule;
  - Proposed changes to the work plan;
  - Identification of Contractor staff assigned to specific project activities;
  - Planned absences of Contractor project staff and their return date;
  - Notification of staffing changes; and
  - Provided electronically in a .pdf or other mutually agreed upon format with signed hard copies mailed.
- The Contractor is required to report incidents involving state data immediately to the State Project Manager and the ODM Chief Information Security Officer.
- Immediate notification of any issues, concerns, or problems that impact or delay the project or potentially prohibit completion of the project and how the Contractor intends to resolve them.

**Change Request Review and Approval Process.** The Contractor must provide a change request review and approval process. The process will address documenting, analyzing, approving and tracking scope changes for the duration of the Project per the Changes section (Attachment Four, Part Two). Under no circumstances are changes to be implemented without State review and approval. Should a material change be identified (i.e., items that will change the overall project budget, delivery timeframes or other aspects of the project pertinent to delivering the anticipated business benefit to the State), change requests are required to be submitted to the State in writing for approval by the State. Any change request that results in a Contract amendment will be formally processed and approved by DAS in consultation with ODM.

The required project management deliverables are:

1. Project Plan and Schedule;
2. Project Budget;
3. Project Status Reports\* (Monthly to Steering Committee, Weekly to State Project Manager)
4. Project Change Process
5. Issues Log;
6. Other PMBOK documents as required;
7. Risk List and Risk Response Log.

\*The status reports and routine project schedule updates do not require a Deliverable review cycle and are not part of the Deliverable payment described in the Contractor's Fee Structure. The initial updated project schedule and any re-base lined project schedules will follow the formal approval process.

## 2.0 Phase 1

The focus of Phase 1 is to gather market information on MMIS current and emerging solutions and collaborate with State stakeholders to align them with ODM priorities.

### Phase 1 Overview

During Phase 1 the vendor will assist ODM by providing an evaluation of the various MMIS business and operation models in use today and those expected to be in use over the next ten years. The evaluation shall include MMIS management approaches and an analysis of the MMIS provider competitive landscape. This evaluation will summarize MMIS procurement options available to ODM including strengths, weaknesses, cost benefit analysis, recommendations, and justification for each option. This evaluation shall also align the various ODM, OHT, and SIM objectives and provide a roadmap for resolution of the various ODM business inhibitors including those that are identified during this phase.

During Phase 1, ODM expects the successful bidder to arrange one or more MMIS vendor demonstration days where potential vendors may provide informed demonstrations of their current products and future evolution plans to directly address how they may meet ODM's current and future needs. Optionally, ODM may also request that the contractor develop and issue an RFI to gain further information on possible solutions.

### Key Tasks for Phase 1

The key tasks in Phase 1 are:

1. Collaborate with key State stakeholders to achieve consensus on ODM objectives for the procurement of a new MMIS. Consider:
  - o ODM and OHT guiding principles,
  - o The State Innovation Model (SIM),
  - o ODM Medicaid Information Technology (MITA) 3.0 State Self-Assessment Results,
  - o CMS Seven Conditions and Standards,
  - o ODM policy directives and staffing and business objectives,
  - o Interviews with key ODM staff from executive leadership, Medicaid policy, program operations, and IT areas;
2. Based upon the ODM State Self-Assessment and interviews with key ODM staff, document the business needs and objectives for the entire Ohio Medicaid enterprise, including an analysis of which current ODM tasks a fiscal agent could perform;
3. Evaluate current MMIS and health care management system solutions and trends along with their associated business models, including:
  - o Available and emerging vendor solutions that may compete for the ODM MMIS contract, including modular solutions where the different modules might be procured from multiple vendors or systems integrators,
  - o Innovative and user-friendly DSS and data analytic products and services, and how they might integrate with existing State DSSs,
  - o Applicable technologies and trends;

4. Based on discussions with ODM, at ODM's discretion, produce, issue, and evaluate responses from an RFI to vendors identified in Task 2 above;
5. Assess the impact of various MMIS business models upon the ODM organization, including:
  - o State dedicated and vendor operated systems,
  - o State dedicated and State operated systems,
  - o Fiscal agent models,
  - o Cloud-based solutions,
  - o Collaborative options with other states;
6. Assess the benefits to the Medicaid program that would be achieved by the adoption of a new MMIS;

### **Deliverables for Phase 1**

1. MMIS vendor demonstrations by top vendors based on Tasks 2 and 3 above (no more than two per day) on site at ODM where vendors can showcase and demonstrate their MMIS solutions;
2. Complete an Alignment report. This is a detailed report that aligns ODM, OHT, SIM priorities and MITA 3.0 SSA Results as they:
  - Relate to a new MMIS
  - Are supported by a new MMIS
  - Are ultimately fulfilled through the procurement of a new MMIS
  - Are ultimately fulfilled by the successful adoption of a new MMIS
3. Complete an Industry Trends report. This is an evaluation of current MMIS industry trends and business models as they relate to the Alignment Report.
4. Complete an Organizational Impact report. This evaluation will include an analyses of the best utilization of human capital resources within the various areas.
5. Complete an MMIS Tasks report. This is an evaluation and assessment of ODM tasks that could be completed by the MMIS, or are completed by other states MMIS systems, including functions that are not currently being utilized by ODM. It is informed, in part, by the activities completed in the Alignment report, Industry Trends report, and Organizational Impact report.
6. Complete an Evaluation Report which must include:
  - o High-level business objectives for an MMIS solution, based on Tasks 1 and 2 above;
  - o Proven industry MMIS solutions and business models, including national innovative models and collaborative options with other states;
  - o Innovative and user-friendly DSS and data analytics products and services available together with or separately from the MMIS itself;
  - o How each MMIS solution would allow ODM to mature along the MITA Maturity Model (MMM) for the Business, Information, and Technical areas;
  - o An evaluation of the current MMIS providers and their ability to meet ODM's needs as outlined in the Alignment report, Industry Trends report, Organizational Impact report, and MMIS Tasks report.
  - o A cost/benefit analysis for each MMIS solution and associated business model, including:
    - Whether and how it could meet ODM current and future needs from a price/performance perspective; and
    - Consideration of various contracting, leasing, or purchasing options along with their advantages and disadvantages.

## **3.0 Phase 2**

### **Key Tasks for Phase 2**

1. Based on the results of Phase 1, develop and oversee the review of requirements for the MMIS solution including:
  - o Key business and technical requirements that align with State of Ohio objectives and the MITA framework,
  - o Integration requirements,
  - o Requirements specific to ODM that must be met by any MMIS solution,

- CMS requirements to support increasing levels of MITA maturity, and to achieve and continually advance compliance with the 7 Conditions and Standards,
  - Overall system performance requirements,
  - Requirements for proposed business models,
  - Alignment of these requirements with ODM, OHT, and SIM initiatives;
2. Establish a project plan and a timeline for the MMIS procurement process including:
    - Agreement with the State on the requirement repository template,
    - Dates for completion and internal review of the RFP, posting, bidders conference, proposals due date, evaluation, selection, and contracting;
  3. Work collaboratively with ODM and DAS to complete and internally review the RFP;

### **Deliverables for Phase 2**

1. MMIS requirements to be included in the RFP;
2. Project plan for the procurement process;

## **4.0 Phase 3**

In order to provide the State flexibility regarding the amount of effort and duties performed during Phase 3, the Contractor will complete work in phase 3 on a time and material basis as directed by the State. The Contractor may be required to complete some or all of these activities during Phase 3 of the Contract.

### **Key Tasks for Phase 3**

Support the State in:

1. Posting the RFP;
2. Documenting the results of the bidders conference;
3. Facilitating the review, evaluation and scoring of the proposals;
4. Analyzing the top three vendor proposals;
5. Contracting with the selected vendor;

### **Deliverables for Phase 3**

1. Analysis of how requirements will be fulfilled by the top three ODM scored vendor proposals and develop a Fulfillment Analysis report;
2. Statistical analysis of the success rate that the top three vendors will be likely to achieve in the implementation of the alignment with CMS, ODM, and OHT objectives and Health Information Technology industry trends and develop a Success Rate Analysis report;
3. Analysis of human capital resource impact of chosen vendor proposals and develop a Human Capital Resource Impact report;
4. Assist the State during Contract negotiation that may be required for the selected MMIS implementation contract.

## **Contractor Role and Responsibilities**

The following Contractor role and responsibilities are critical to the success of the Project. At a minimum, the Contractor's staffing plan must include name for the following key Project personnel.

### **Contractor Project Manager**

Role: The Contractor Project Manager (PM) must provide project management for the term of the Project.

Responsibilities:

- Creates and Manages the Project Plan and Schedule
- Manages the Contractor Project Team Members

- Liaison between State and Contractor Resources
- Initiates Quality Assurance Processes to monitor the Project
- Manages issues and risks
- Point of escalation for Project issues
- Manages the deliverable acceptance process

The Contractor must propose the team best suited to the work described in this RFP. The Contractor should demonstrate how each individual is qualified for their role and how the proposed team can provide the objectives and deliverables identified in this RFP.

The preferred experience for the proposed project team includes:

- Experience with analysis of trends in Information Technology as it relates to: Health Care service delivery, Health Care services payment, and Consumer Health Care Interfaces
- Experience managing large-scale MMIS or fiscal agent project initiatives in a State Medicaid environment (e.g. a claims payment system);
- Knowledge and experience of the Seven Conditions and Standards and MITA framework; MITA 3.0 background preferred;
- Knowledge and experience of State Medicaid program and operations; Ohio Medicaid knowledge preferred.
- Experience Facilitating and leading the integration of a MMIS including defining a long-term solution vision, strategy and roadmap supporting the State's business mission and initiatives;
- Experience Facilitating the analysis and development of a MMIS vision and strategic plan for a State Medicaid agency;
- Experience with technical architecture analysis, design, and planning involving large, complex IT systems, one of which is a claims payment or MMIS system
- Knowledge and familiarity with innovative, forward-looking technologies
- Experience with data architecture, business intelligence, and data analytics
- Experience creating a RFP to procure or re-procure a claims payment system or MMIS

The Contractor is required to be onsite a minimum of 4 days a week.

## Submittal of Deliverables

The Contractor must perform its tasks in a timely and professional manner that produces Deliverables that fully meet the Contract requirements. The Contractor must complete its work in steps that will result in Deliverables associated with those steps, and the Contractor must provide the required Deliverables no later than the due date identified in the Contractor's Project Plan as approved by the State. At the time of delivery of a written Deliverable, the Contractor must submit an original and one 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 ODM, who will review the materials or documents within a 10-day period after receipt, as specified in the Project Plan.

If the State determines that a Deliverable is not in compliance, ODM will document, in writing, the reason for non-compliance. At no expense to the State, the Contractor then must bring the Deliverable into conformance and re-submit it to ODM within business days. The State's 10-day review cycle will re-start upon re-submission of the deliverable.

If the State agrees the Deliverable is compliant, ODM will indicate in writing its acceptance of the deliverable at such time the Contractor may invoice the State for the deliverable.

Status reports are not subject to a review and approval process.

## The Contractor's Fee Structure

The Contract award will be for a not to exceed fixed price for the Project Management, Phases 1 and 2. The Scope of Work and Contractor's Fee Structure for Phase 1 and 2 are based on the completion and acceptance of defined 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.

Payment Milestone / deliverable	Deliverable Item/Milestone	Payment (percentage of not to exceed fixed price for Phases 1 and 2)
<b>Project Management</b>		
Monthly Project Management Responsibilities		Monthly per the Cost Summary
<b>Phase 1</b>		
Vendor Demonstrations	Vendor Day events occur	11%
Alignment Report	Report	10%
Industry Trends Report	Report	9%
Organizational Impact Report	Report	13%
MMIS Task Report	Report	13%
Evaluation Report	Report	15%
<b>Phase 2</b>		
MMIS Requirements	Requirement Document(s)	20%
Procurement Project Plan	Project Plan	9%
<b>Phase 3</b>		
Time and Materials Contractor may invoice for actual hours worked in the previous month based on approved timesheets.		

# **Supplement 2: ODM-MMIS Procurement Support RFP**

**State Security and Privacy Requirements**

**State IT Computing Policy Requirements**

**State Data Handling Requirements**

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## 1. Overview and Scope

This Supplement shall apply to any and all Work, Services, Locations and Computing Elements that the Contractor will perform, provide, occupy or utilize in conjunction with the delivery of work to the State and any access of State resources in conjunction with delivery of work.

This scope shall specifically apply to:

- Major and Minor Projects, Upgrades, Updates, Fixes, Patches and other Software and Systems inclusive of all State elements or elements under the Contractor's responsibility utilized by the State;
- Any systems development, integration, operations and maintenance activities performed by the Contractor;
- Any authorized Change Orders, Change Requests, Statements of Work, extensions or Amendments to this agreement;
- Contractor locations, equipment and personnel that access State systems, networks or data directly or indirectly; and
- Any Contractor personnel, or sub-Contracted personnel that have access to State confidential, personal, financial, infrastructure details or sensitive data.

The terms in this Supplement are additive to the Standard State Terms and Conditions contained elsewhere in this agreement. In the event of a conflict for whatever reason, the highest standard contained in this agreement shall prevail.

## 2. General State Security and Information Privacy Standards and Requirements

The Contractor will be responsible for maintaining information security in environments under the Contractor's management and in accordance with State IT Security Policies. The Contractor will implement an information security policy and security capability as set forth in this agreement.

The Contractor's responsibilities with respect to Security Services will include the following:

- Provide vulnerability management Services for the Contractor's internal secure network connection, including supporting remediation for identified vulnerabilities as agreed.
- Support the implementation and compliance monitoring for State IT Security Policies.
- Develop, maintain, update, and implement security procedures, with State review and approval, including physical access strategies and standards, ID approval procedures and a breach of security action plan.
- Manage and administer access to the systems, networks, System software, systems files and State data, excluding end-users.
- Provide support in implementation of programs to educate State and Contractor end-users and staff on security policies and compliance.
- Install and update Systems software security, assign and reset passwords per established procedures, provide the State access to create User ID's, suspend and delete inactive logon IDs, research system security problems, maintain network access authority, assist in processing State security requests, perform security reviews to confirm that adequate security procedures are in place on an ongoing basis, and provide incident investigation support (jointly with the State ), and provide environment and server security support and technical advice.
- Develop, implement, and maintain a set of automated and manual processes to ensure that data access rules are not compromised.
- Perform physical security functions (e.g., identification badge controls, alarm responses) at the facilities under the Contractor's control.
- Prepare an Information Security Controls Document. This document is the security document that is used to capture the security policies and technical controls that the Contractor will implement, as requested by the State, on Contractor managed systems, supported servers and the LAN within the scope of this agreement. The Contractor will submit a draft document for State review and approval during the transition period.

The State will:

- Develop, maintain and update the State IT Security Policies, including applicable State information risk policies, standards and procedures.
- Provide a State Single Point of Contact with responsibility for account security audits;
- Support intrusion detection and prevention and vulnerability scanning pursuant to State IT Security Policies;
- Provide the State security audit findings material for the Services based upon the security policies, standards and practices in effect as of the Effective Date and any subsequent updates.
- Assist the Contractor in performing a baseline inventory of access IDs for the systems for which the Contractor has security responsibility;
- Authorize User IDs and passwords for the State personnel for the Systems software, software tools and network infrastructure systems and devices under Contractor management;
- Approve non-expiring passwords and policy exception requests, as appropriate.

## 2.1. State Provided Elements: Contractor Responsibility Considerations

The State is responsible for Network Layer (meaning the internet Protocol suite and the open systems interconnection model of computer networking protocols and methods to process communications across the IP network) system services and functions that build upon State infrastructure environment elements, the Contractor shall not be responsible for the implementation of Security Services of these systems as these shall be retained by the State.

To the extent that Contractor's access or utilize State provided networks, the Contractor is responsible for adhering to State policies and use procedures and do so in a manner as to not diminish established State capabilities and standards.

The Contractor will be responsible for maintaining the security of information in environment elements that it accesses, utilizes, develops or manages in accordance with the State Security Policy. The Contractor will implement information security policies and capabilities, upon review and agreement by the State, based on the Contractor's standard service center security processes that satisfy the State's requirements contained herein.

The Contractor's responsibilities with respect to security services must also include the following:

- Support intrusion detection & prevention including prompt agency notification of such events, reporting, monitoring and assessing security events.
- Provide vulnerability management services including supporting remediation for identified vulnerabilities as agreed.
- Support the State IT Security Policy which includes the development, maintenance, updates, and implementation of security procedures with the agency's review and approval, including physical access strategies and standards, ID approval procedures and a breach of security action plan.
- Support OIT in the implementation, maintenance and updating of statewide data security policies, including the State information risk policies, standards and procedures.
- Managing and administering access to the systems, networks, Operating Software or System Software, (including programs, device drivers, microcode and related code supporting documentation and media that: 1) perform tasks basic to the functioning of data processing and network connectivity; and 2) are required to operate Applications Software), systems files and the State Data.
- Supporting the State in implementation of programs to raise the awareness of End Users and staff personnel as to the existence and importance of security policy compliance.
- Installing and updating State provided or approved system security Software, assigning and resetting passwords per established procedures, providing the agency access to create user ID's, suspend and delete inactive logon IDs, research system security problems, maintain network access authority, assisting in processing the agency requested security requests, performing security audits to confirm that adequate security procedures are in place on an ongoing basis, with the agency's assistance providing incident investigation support, and providing environment and server security support and technical advice.

- Developing, implementing, and maintaining a set of automated and manual processes so that the State data access rules, as they are made known by the State, are not compromised.
- Performing physical security functions (e.g., identification badge controls, alarm responses) at the facilities under Contractor control.

## 2.2. Periodic Security and Privacy Audits

The State shall be responsible for conducting periodic security and privacy audits and generally utilizes members of the OIT Chief Information Security Officer and Privacy teams, the OBM Office of Internal Audit and the Auditor of State, depending on the focus area of an audit. Should an audit issue or finding be discovered the following resolution path shall apply:

- If a security or privacy issue is determined to be pre-existing to this agreement, the State will have responsibility to address or resolve the issue. Dependent on the nature of the issue the State may elect to contract with the Contractor under mutually agreeable terms for those specific resolution services at that time or elect to address the issue independent of the Contractor.
- For in-scope environments and services, all new systems implemented or deployed by the Contractor shall comply with State security and privacy policies.

## 2.3. Annual Security Plan: State and Contractor Obligations

The Contractor will develop, implement and thereafter maintain annually a Security Plan for review, comment and approval by the State Information Security and Privacy Officer, that a minimum must include and implement processes for the following items related to the system and services:

- Security policies
- Logical security controls (privacy, user access and authentication, user permissions, etc.)
- Technical security controls and security architecture (communications, hardware, data, physical access, software, operating system, encryption, etc.)
- Security processes (security assessments, risk assessments, incident response, etc.)
- Detail the technical specifics to satisfy the following:
  - Network segmentation
  - Perimeter security
  - Application security and data sensitivity classification
  - PHI and PII data elements
  - Intrusion management
  - Monitoring and reporting
  - Host hardening
  - Remote access
  - Encryption
  - State-wide active directory services for authentication
  - Interface security
  - Security test procedures
  - Managing network security devices
  - Security patch management
- Detailed diagrams depicting all security-related devices and subsystems and their relationships with other systems for which they provide controls
- Secure communications over the Internet

The Security Plan must detail how security will be controlled during the implementation of the System and Services and contain the following:

- High-level description of the program and projects
- Security risks and concerns
- Security roles and responsibilities
- Program and project security policies and guidelines
- Security-specific project deliverables and processes
- Security team review and approval process
- Security-Identity management and Access Control for Contractor and State joiners, movers, and leavers
- Data Protection Plan for personal/sensitive data within the projects
- Business continuity and disaster recovery plan for the projects
- Infrastructure architecture and security processes
- Application security and industry best practices for the projects
- Vulnerability and threat management plan (cyber security)

## **2.4. State Network Access (VPN)**

Any remote access to State systems and networks, Contractor or otherwise, must employ secure data transmission protocols, including the secure sockets layer (SSL) protocol and public key authentication, signing and encryption. In addition, any remote access solution must use Secure Multipurpose Internet Mail Extensions (S/MIME) to provide encryption and non-repudiation services through digital certificates and the provided PKI. Multi-factor authentication is to be employed for users with privileged network access by leveraging the State of Ohio RSA solution.

## **2.5. Security and Data Protection.**

All Services must also operate at the [moderate level baseline] as defined in the National Institute of Standards and Technology ("NIST") 800-53 Rev. 3 [moderate baseline requirements], be consistent with Federal Information Security Management Act ("FISMA") requirements, and offer a customizable and extendable capability based on open-standards APIs that enable integration with third party applications. Additionally, they must provide the State's systems administrators with 24x7 visibility into the services through a real-time, web-based "dashboard" capability that enables them to monitor, in real or near real time, the Services' performance against the established SLAs and promised operational parameters.

## **2.6. State Information Technology Policies**

The Contractor is responsible for maintaining the security of information in environment elements under direct management and in accordance with State Security policies and standards. The Contractor will implement information security policies and capabilities as set forth in Statements of Work and, upon review and agreement by the State, based on the offeror's standard service center security processes that satisfy the State's requirements contained herein. The offeror's responsibilities with respect to security services include the following:

- Support intrusion detection & prevention including prompt agency notification of such events, reporting, monitoring and assessing security events.
- Support the State IT Security Policy which includes the development, maintenance, updates, and implementation of security procedures with the agency's review and approval, including physical access strategies and standards, ID approval procedures and a breach of security action plan.
- Managing and administering access to the Operating Software, systems files and the State Data.
- Installing and updating State provided or approved system security Software, assigning and resetting administrative passwords per established procedures, providing the agency access to create administrative user ID's, suspending and deleting inactive logon IDs, researching system security problems, maintaining

network access authority, assist processing of the agency requested security requests, performing security audits to confirm that adequate security procedures are in place on an ongoing basis, with the agency's assistance providing incident investigation support, and providing environment and server security support and technical advice.

- Developing, implementing, and maintaining a set of automated and manual processes so that the State data access rules are not compromised.
- Where the Contractor identifies a potential issue in maintaining an “as provided” State infrastructure element with the more stringent requirement of an agency security policy (which may be federally mandated or otherwise required by law), identifying to agencies the nature of the issue, and if possible, potential remedies for consideration by the State agency.
- The State shall be responsible for conducting periodic security and privacy audits and generally utilizes members of the OIT Chief Information Security Officer and Privacy teams, the OBM Office of Internal Audit and the Auditor of State, depending on the focus area of an audit. Should an audit issue be discovered the following resolution path shall apply:
  - If a security or privacy issue is determined to be pre-existing to this agreement, the State will have responsibility to address or resolve the issue. Dependent on the nature of the issue the State may elect to contract with the Contractor under mutually agreeable terms for those specific resolution services at that time or elect to address the issue independent of the Contractor.
  - If over the course of delivering services to the State under this Statement of Work for in-scope environments the Contractor becomes aware of an issue, or a potential issue that was not detected by security and privacy teams the Contractor is to notify the State within two (2) hours. This notification shall not minimize the more stringent Service Level Agreements pertaining to security scans and breaches contained herein, which due to the nature of an active breach shall take precedence over this notification. Dependent on the nature of the issue the State may elect to contract with the Contractor under mutually agreeable terms for those specific resolution services at that time or elect to address the issue independent of the Contractor.
- For in-scope environments and services, all new systems implemented or deployed by the Contractor shall comply with State security and privacy policies.

The Contractor will comply with State Security and Privacy policies and standards. For purposes of convenience, a compendium of links to this information is provided in the Table below.

**State of Ohio Security and Privacy Policies**

Item	Link
Statewide IT Standards	<a href="http://das.ohio.gov/Divisions/InformationTechnology/StateofOhioITStandards.aspx">http://das.ohio.gov/Divisions/InformationTechnology/StateofOhioITStandards.aspx</a>
Statewide IT Bulletins	<a href="http://das.ohio.gov/Divisions/InformationTechnology/StateofOhioITBulletins.aspx">http://das.ohio.gov/Divisions/InformationTechnology/StateofOhioITBulletins.aspx</a>
IT Policies and Standards	<a href="http://das.ohio.gov/Divisions/InformationTechnology/StateofOhioITPolicies/tabid/107/Default.aspx">http://das.ohio.gov/Divisions/InformationTechnology/StateofOhioITPolicies/tabid/107/Default.aspx</a>
DAS Standards (Computing and??)	100-11 Protecting Privacy), (700 Series – Computing) and (2000 Series – IT Operations and Management) <a href="http://das.ohio.gov/Divisions/DirectorsOffice/EmployeeServices/DASpolicies/tabid/463/Default.aspx">http://das.ohio.gov/Divisions/DirectorsOffice/EmployeeServices/DASpolicies/tabid/463/Default.aspx</a>

### 3. State and Federal Data Privacy Requirements

Because the privacy of individuals' personally identifiable information (PII) and State Sensitive Information, generally information that is not subject to disclosures under Ohio Public Records law, (SSI) is a key element to maintaining the public's trust in working with the State, all systems and services shall be designed and shall function according to the following fair information practices principles. To the extent that personally identifiable information in the system is “protected health information” under the HIPAA Privacy Rule, these principles shall be implemented in alignment with the HIPAA Privacy Rule. To the extent that there is PII in the system that is not “protected health information” under HIPAA, these principles shall still be implemented and, when applicable, aligned to other law or regulation.

All parties to this agreement specifically agree to comply with state and federal confidentiality and information disclosure laws, rules and regulations applicable to work associated with this RFP including but not limited to:

- United States Code 42 USC 1320d through 1320d-8 (HIPAA);

- Code of Federal Regulations, 42 CFR 431.300, 431.302, 431.305, 431.306, 435.945,45 CFR164.502 (e) and 164.504 (e);
- Ohio Revised Code, ORC 173.20, 173.22, 1347.01 through 1347.99, 2305.24, 2305.251, 3701.243, 3701.028, 4123.27, 5101.26, 5101.27, 5101.572, 5112.21, and 5111.61; and
- Corresponding Ohio Administrative Code Rules and Updates.
- Systems and Services must support and comply with the State’s security operational support model which is aligned to NIST 800-53 Revision 3.

### 3.1. Protection of State Data

**Protection of State Data.** To protect State Data as described in this agreement, in addition to its other duties regarding State Data, Contractor will:

- Maintain in confidence any personally identifiable information (“PI”) and State Sensitive Information (“SSI”) it may obtain, maintain, process, or otherwise receive from or through the State in the course of the Agreement;
- Use and permit its employees, officers, agents, and independent contractors to use any PI/SSI received from the State solely for those purposes expressly contemplated by the Agreement;
- Not sell, rent, lease or disclose, or permit its employees, officers, agents, and independent contractors to sell, rent, lease, or disclose, any such PI/SSI to any third party, except as permitted under this Agreement or required by applicable law, regulation, or court order;
- Take all commercially reasonable steps to (a) protect the confidentiality of PI/SSI received from the State and (b) establish and maintain physical, technical and administrative safeguards to prevent unauthorized access by third parties to PI/SSI received by Contractor from the State;
- Give access to PI/SSI of the State only to those individual employees, officers, agents, and independent contractors who reasonably require access to such information in connection with the performance of Contractor’s obligations under this Agreement;
- Upon request by the State, promptly destroy or return to the State in a format designated by the State all PI/SSI received from the State;
- Cooperate with any attempt by the State to monitor Contractor’s compliance with the foregoing obligations as reasonably requested by the State from time to time. The State shall be responsible for all costs incurred by Contractor for compliance with this provision of this subsection;
- Establish and maintain data security policies and procedures designed to ensure the following:
  - a) Security and confidentiality of PI/SSI;
  - b) Protection against anticipated threats or hazards to the security or integrity of PI/SSI; and
  - c) Protection against the unauthorized access or use of PI/SSI.

#### 3.1.1. Disclosure

**Disclosure to Third Parties.** This Agreement shall not be deemed to prohibit disclosures in the following cases:

- Required by applicable law, regulation, court order or subpoena; provided that, if the Contractor or any of its representatives are ordered or requested to disclose any information provided by the State, whether PI/SSI or otherwise, pursuant to court or administrative order, subpoena, summons, or other legal process, Contractor will promptly notify the State (unless prohibited from doing so by law, rule, regulation or court order) in order that the State may have the opportunity to seek a protective order or take other appropriate action. Contractor will also cooperate in the State’s efforts to obtain a protective order or other reasonable assurance that confidential treatment will be accorded the information provided by the State. If, in the absence of a protective order, Contractor is compelled as a matter of law to disclose the information provided by the State, Contractor may disclose to the party compelling disclosure only the part of such information as is required by law to be disclosed (in which case, prior to such disclosure, Contractor will advise and consult with the State and its counsel as to such disclosure and the nature of wording of such

disclosure) and Contractor will use commercially reasonable efforts to obtain confidential treatment therefore;

- To State auditors or regulators;
- To service providers and agents of either party as permitted by law, provided that such service providers and agents are subject to binding confidentiality obligations; or
- To the professional advisors of either party, provided that such advisors are obligated to maintain the confidentiality of the information they receive.

### **3.2. Handling the State's Data**

The Contractor must use due diligence to ensure computer and telecommunications systems and services involved in storing, using, or transmitting State Data are secure and to protect that data from unauthorized disclosure, modification, or destruction. "State Data" includes all data and information created by, created for, or related to the activities of the State and any information from, to, or related to all persons that conduct business or personal activities with the State. To accomplish this, the Contractor must adhere to the following principles:

- Apply appropriate risk management techniques to balance the need for security measures against the sensitivity of the State Data.
- Ensure that its internal security policies, plans, and procedures address the basic security elements of confidentiality, integrity, and availability.
- Maintain plans and policies that include methods to protect against security and integrity threats and vulnerabilities, as well as detect and respond to those threats and vulnerabilities.
- Maintain appropriate identification and authentication processes for information systems and services associated with State Data.
- Maintain appropriate access control and authorization policies, plans, and procedures to protect system assets and other information resources associated with State Data.
- Implement and manage security audit logging on information systems, including computers and network devices.

### **3.3. Contractor Access to State Networks Systems and Data**

The Contractor must maintain a robust boundary security capacity that incorporates generally recognized system hardening techniques. This includes determining which ports and services are required to support access to systems that hold State Data, limiting access to only these points, and disable all others.

To do this, the Contractor must:

- Use assets and techniques such as properly configured firewalls, a demilitarized zone for handling public traffic, host-to-host management, Internet protocol specification for source and destination, strong authentication, encryption, packet filtering, activity logging, and implementation of system security fixes and patches as they become available.
- Use two-factor authentication to limit access to systems that contain particularly sensitive State Data, such as personally identifiable data.
- Assume all State Data and information is both confidential and critical for State operations, and the Contractor's security policies, plans, and procedure for the handling, storage, backup, access, and, if appropriate, destruction of that data must be commensurate to this level of sensitivity unless the State instructs the Contractor otherwise in writing.
- Employ appropriate intrusion and attack prevention and detection capabilities. Those capabilities must track unauthorized access and attempts to access the State's Data, as well as attacks on the Contractor's infrastructure associated with the State's data. Further, the Contractor must monitor and appropriately address information from its system tools used to prevent and detect unauthorized access to and attacks on the infrastructure associated with the State's Data.

- Use appropriate measures to ensure that State Data is secure before transferring control of any systems or media on which State Data is stored. The method of securing the State Data must be appropriate to the situation and may include erasure, destruction, or encryption of the State Data before transfer of control. The transfer of any such system or media must be reasonably necessary for the performance of the Contractor's obligations under this Contract.
- Have a business continuity plan in place that the Contractor tests and updates at least annually. The plan must address procedures for response to emergencies and other business interruptions. Part of the plan must address backing up and storing data at a location sufficiently remote from the facilities at which the Contractor maintains the State's Data in case of loss of that data at the primary site. The plan also must address the rapid restoration, relocation, or replacement of resources associated with the State's Data in the case of a disaster or other business interruption. The Contractor's business continuity plan must address short- and long-term restoration, relocation, or replacement of resources that will ensure the smooth continuation of operations related to the State's Data. Such resources may include, among others, communications, supplies, transportation, space, power and environmental controls, documentation, people, data, software, and hardware. The Contractor also must provide for reviewing, testing, and adjusting the plan on an annual basis.
- Not allow the State's Data to be loaded onto portable computing devices or portable storage components or media unless necessary to perform its obligations under this Contract properly. Even then, the Contractor may permit such only if adequate security measures are in place to ensure the integrity and security of the State Data. Those measures must include a policy on physical security for such devices to minimize the risks of theft and unauthorized access that includes a prohibition against viewing sensitive or confidential data in public or common areas.
- Ensure that portable computing devices must have anti-virus software, personal firewalls, and system password protection. In addition, the State's Data must be encrypted when stored on any portable computing or storage device or media or when transmitted from them across any data network.
- Maintain an accurate inventory of all such devices and the individuals to whom they are assigned.

### **3.4. Portable Devices, Data Transfer and Media**

Any encryption requirement identified in this Supplement means encryption that complies with National Institute of Standards Federal Information Processing Standard 140-2 as demonstrated by a valid FIPS certificate number. Any sensitive State Data transmitted over a network, or taken off site via removable media must be encrypted pursuant to the State's Data encryption standard ITS-SEC-01 Data Encryption and Cryptography.

The Contractor must have reporting requirements for lost or stolen portable computing devices authorized for use with State Data and must report any loss or theft of such to the State in writing as quickly as reasonably possible. The Contractor also must maintain an incident response capability for all security breaches involving State Data whether involving mobile devices or media or not. The Contractor must detail this capability in a written policy that defines procedures for how the Contractor will detect, evaluate, and respond to adverse events that may indicate a breach or attempt to attack or access State Data or the infrastructure associated with State Data.

To the extent the State requires the Contractor to adhere to specific processes or procedures in addition to those set forth above in order for the Contractor to comply with the managed services principles enumerated herein, those processes or procedures are set forth in this agreement.

### **3.5. Limited Use; Survival of Obligations.**

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

### **3.6. Disposal of PI/SSI.**

Upon expiration of Contractor's limited right to use PI/SSI, Contractor must return all physical embodiments to the State or, with the State's permission; Contractor may destroy PI/SSI. Upon the State's request, Contractor shall provide written certification to the State that Contractor has returned, or destroyed, all such PI/SSI in Contractor's possession.

### 3.7. Remedies

If Contractor or any of its representatives or agents breaches the covenants set forth in these provisions, irreparable injury may result to the State or third parties entrusting PI/SSI to the State. Therefore, the State's remedies at law may be inadequate and the State shall be entitled to seek an injunction to restrain any continuing breach. Notwithstanding any limitation on Contractor's liability, the State shall further be entitled to any other rights or remedies that it may have in law or in equity.

### 3.8. Prohibition on Off-Shore and Unapproved Access

The Contractor shall comply in all respects with U.S. statutes, regulations, and administrative requirements regarding its relationships with non-U.S. governmental and quasi-governmental entities including, but not limited to the export control regulations of the International Traffic in Arms Regulations ("ITAR") and the Export Administration Act ("EAA"); the anti-boycott and embargo regulations and guidelines issued under the EAA, and the regulations of the U.S. Department of the Treasury, Office of Foreign Assets Control, HIPPA Privacy Rules and other conventions as described and required in this Supplement.

The Contractor will provide resources for the work described herein with natural persons who are lawful permanent residents as defined in 8 U.S.C. 1101 (a)(20) or who are protected individuals as defined by 8 U.S.C. 1324b(a)(3). It also means any corporation, business association, partnership, society, trust, or any other entity, organization or group that is incorporated to do business in the U.S. It also includes any governmental (federal, state, local), entity.

**The State specifically excludes sending, taking or making available remotely (directly or indirectly), any State information including data, software, code, intellectual property, designs and specifications, system logs, system data, personal or identifying information and related materials out of the United States in any manner,** except by mere travel outside of the U.S. by a person whose personal knowledge includes technical data; or transferring registration, control, or ownership to a foreign person, whether in the U.S. or abroad, or disclosing (including oral or visual disclosure) or transferring in the United States any State article to an embassy, any agency or subdivision of a foreign government (e.g., diplomatic missions); or disclosing (including oral or visual disclosure) or transferring data to a foreign person, whether in the U.S. or abroad.

It is the responsibility of all individuals working at the State to understand and comply with the policy set forth in this document as it pertains to end-use export controls regarding State restricted information.

Where the Contractor is handling confidential employee or citizen data associated with Human Resources data, the Contractor will comply with data handling privacy requirements associated with HIPAA and as further defined by The United States Department of Health and Human Services Privacy Requirements and outlined in <http://www.hhs.gov/ocr/privacysummary.pdf>

It is the responsibility of all Contractor individuals working at the State to understand and comply with the policy set forth in this document as it pertains to end-use export controls regarding State restricted information.

Where the Contractor is handling confidential or sensitive State, employee, citizen or Ohio Business data associated with State data, the Contractor will comply with data handling privacy requirements associated with the data HIPAA and as further defined by The United States Department of Health and Human Services Privacy Requirements and outlined in <http://www.hhs.gov/ocr/privacysummary.pdf>.

### 3.9. Background Check of Contractor Personnel

Contractor agrees that (1) it will conduct 3<sup>rd</sup> party criminal background checks on Contractor personnel who will perform Sensitive Services (as defined below), and (2) no Ineligible Personnel will perform Sensitive Services under this Agreement. "Ineligible Personnel" means any person who (a) has been convicted at any time of any criminal offense involving dishonesty, a breach of trust, or money laundering, or who has entered into a pre-trial diversion or similar program in connection with a prosecution for such offense, (b) is named by the Office of Foreign Asset Control (OFAC) as a Specially Designated National, or (b) has been convicted of a felony.

"Sensitive Services" means those services that (i) require access to Customer/Consumer Information, (ii) relate to the State's computer networks, information systems, databases or secure facilities under circumstances that would permit modifications to such systems, or (iii) involve unsupervised access to secure facilities ("Sensitive Services").

Upon request, Contractor will provide written evidence that all of Contractor's personnel providing Sensitive Services have undergone a criminal background check and are eligible to provide Sensitive Services. In the event that Contractor does not comply with the terms of this section, the State may, in its sole and absolute discretion, terminate this Contract immediately without further liability.

### **3.10. Federal Tax Information**

Contract Language for General Services

#### **3.10.1. Performance**

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

1. All work will be done under the supervision of the Contractor or the Contractor's employees.
2. Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the Contractor will be prohibited.
3. All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
4. The Contractor certifies that the data processed during the performance of this Contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
5. Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
6. All computer systems receiving, processing, storing, or transmitting Federal Tax Information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operations, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal Tax Information.
7. No work involving Federal Tax Information furnished under this Contract will be subcontracted without prior written approval of the IRS.
8. The Contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.

9. The agency will have the right to void the Contract if the Contractor fails to provide the safeguards described above.

### **3.10.2. Criminal/Civil Sanctions**

1. Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
2. Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of the officer or employee (United States for Federal employees) in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC 7213A and 7431.
3. Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

### **3.10.3. Criminal/Civil Sanctions**

The IRS and the Agency shall have the right to send its officers and employees into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work under this Contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with Contract safeguards

## **4. Contractor Responsibilities Related to Reporting of Concerns, Issues and Security/Privacy Issues**

### **4.1. General**

If over the course of the agreement a security or privacy issue arises, whether detected by the State, a State auditor or the Contractor, that was not existing within an in-scope environment or service prior to the commencement of any Contracted service associated with this agreement, the Contractor must:

- notify the State of the issue or acknowledge receipt of the issue within two (2) hours;

- within forty-eight (48) hours from the initial detection or communication of the issue from the State, present an potential exposure or issue assessment document to the State Account Representative and the State Chief Information Security Officer with a high level assessment as to resolution actions and a plan;
- within four (4) calendar days, and upon direction from the State, implement to the extent commercially reasonable measures to minimize the State's exposure to security or privacy until such time as the issue is resolved; and
- upon approval from the State implement a permanent repair to the identified issue at the Contractor's cost; and

## 4.2. Actual or Attempted Access or Disclosure

If the Contractor determines that there is any actual, attempted or suspected theft of, accidental disclosure of, loss of, or inability to account for any PI/SSI by Contractor or any of its subcontractors (collectively "Disclosure") and/or any unauthorized intrusions into Contractor's or any of its subcontractor's facilities or secure systems (collectively "Intrusion"), Contractor must immediately:

- Notify the State within two (2) hours of the Contractor becoming aware of the unauthorized Disclosure or Intrusion;
- Investigate and determine if an Intrusion and/or Disclosure has occurred;
- Fully cooperate with the State in estimating the effect of the Disclosure or Intrusion's effect on the State and fully cooperate to mitigate the consequences of the Disclosure or Intrusion;
- Specify corrective action to be taken; and
- Take corrective action to prevent further Disclosure and/or Intrusion.

## 4.3. Unapproved Disclosures and Intrusions: Contractor Responsibilities

Contractor must, as soon as is reasonably practicable, make a report to the State including details of the Disclosure and/or Intrusion and the corrective action Contractor has taken to prevent further Disclosure and/or Intrusion. Contractor must, in the case of a Disclosure cooperate fully with the State to notify the effected persons as to the fact of and the circumstances of the Disclosure of the PI/SSI. Additionally, Contractor must cooperate fully with all government regulatory agencies and/or law enforcement agencies having jurisdiction to investigate a Disclosure and/or any known or suspected criminal activity.

- Where the Contractor identifies a potential issue in maintaining an "as provided" State infrastructure element with the more stringent of an Agency level security policy (which may be Federally mandated or otherwise required by law), identifying to Agencies the nature of the issue, and if possible, potential remedies for consideration by the State agency.
- If over the course of delivering services to the State under this Statement of Work for in-scope environments the Contractor becomes aware of an issue, or a potential issue that was not detected by security and privacy teams the Contractor is to notify the State within two (2) hour. This notification shall not minimize the more stringent Service Level Agreements pertaining to security scans and breaches contained herein, which due to the nature of an active breach shall take precedence over this notification. Dependent on the nature of the issue the State may elect to contract with the Contractor under mutually agreeable terms for those specific resolution services at that time or elect to address the issue independent of the Contractor.

## 4.4. Security Breach Reporting and Indemnification Requirements

- In case of an actual security breach that may have compromised State Data, the Contractor must notify the State in writing of the breach within two (2) hours of the Contractor becoming aware of the breach and fully cooperate with the State to mitigate the consequences of such a breach. This includes any use or disclosure of the State data that is inconsistent with the terms of this Contract and of which the Contractor becomes aware, including but not limited to, any discovery of a use or disclosure that is not consistent with this Contract by an employee, agent, or subcontractor of the Contractor.

- The Contractor must give the State full access to the details of the breach and assist the State in making any notifications to potentially affected people and organizations that the State deems are necessary or appropriate. The Contractor must document all such incidents, including its response to them, and make that documentation available to the State on request.
- In addition to any other liability under this Contract related to the Contractor's improper disclosure of State data, and regardless of any limitation on liability of any kind in this Contract, the Contractor will be responsible for acquiring one year's identity theft protection service on behalf of any individual or entity whose personally identifiable information is compromised while it is in the Contractor's possession. Such identity theft protection must provide coverage from all three major credit reporting agencies and provide immediate notice through phone or email of attempts to access the individuals' credit history through those services.

## 5. Security Review Services

As part of a regular Security Review process, the Contractor will include the following reporting and services to the State:

### 5.1. Hardware and Software Assets

The Contractor will support the State in defining and producing specific reports for both hardware and software assets. At a minimum this should include:

- Deviations to hardware baseline
- Inventory of information types by hardware device
- Software inventory against licenses (State purchased)
- Software versions and then scans of versions against patches distributed and applied

### 5.2. Security Standards by Device and Access Type

The Contractor will:

- Document security standards by device type and execute regular scans against these standards to produce exception reports
- Document and implement a process for deviation from State standards

### 5.3. Boundary Defenses

The Contractor will:

- Work with the State to support the denial of communications to/from known malicious IP addresses\*
- Ensure that the OAKS network architecture separates internal systems from DMZ and extranet systems
- Require remote login access to use two-factor authentication
- Support the State's monitoring and management of devices remotely logging into internal network
- Support the State in the configuration firewall session tracking mechanisms for addresses that access OAKS

### 5.4. Audit Log Reviews

The Contractor will:

- Work with the State to review and validate audit log settings for hardware and software
- Ensure that all OAKS systems and environments have adequate space to store logs

- Work with the State to devise and implement profiles of common events from given systems to both reduce false positives and rapidly identify active access
- Provide requirements to the State to configure operating systems to log access control events
- Design and execute bi-weekly reports to identify anomalies in system logs
- Ensure logs are written to write-only devices for all servers or a dedicated server managed by another group.

## 5.5. Application Software Security

The Contractor will:

- Perform configuration review of operating system, application and database settings
- Ensure software development personnel receive training in writing secure code

## 5.6. System Administrator Access

The Contractor will

- Inventory all administrative passwords (application, database and operating system level)
- Implement policies to change default passwords in accordance with State policies, particular following any transfer or termination of personnel (State, existing MSV or Contractor)
- Configure administrative accounts to require regular password changes
- Ensure service level accounts have cryptographically strong passwords
- Store passwords in a hashed or encrypted format
- Ensure administrative accounts are used only for administrative activities
- Implement focused auditing of administrative privileged functions
- Configure systems to log entry and alert when administrative accounts are modified
- Segregate administrator accounts based on defined roles

## 5.7. Account Access Privileges

The Contractor will:

- Review and disable accounts not associated with a business process
- Create daily report that includes locked out accounts, disabled accounts, etc.
- Implement process for revoking system access
- Automatically log off users after a standard period of inactivity
- Monitor account usage to determine dormant accounts
- Monitor access attempts to deactivated accounts through audit logging
- Profile typical account usage and implement or maintain profiles to ensure that Security profiles are implemented correctly and consistently

## 5.8. Additional Controls and Responsibilities

The Contractor will meet with the State no less frequently than annually to:

- Review, Update and Conduct Security training for personnel, based on roles
- Review the adequacy of physical and environmental controls
- Verify the encryption of sensitive data in transit
- Review access control to information based on established roles and access profiles

- Update and review system administration documentation
- Update and review system maintenance policies
- Update and Review system and integrity policies
- Revised and Implement updates to the OAKS security program plan
- Update and Implement Risk Assessment Policies and procedures
- Update and implement incident response procedures

## SUPPLEMENT 3 - ODM and OHT Guiding Principles

### The ODM Guiding Principles:

- For our Market:
  - Value – Promote a system which is dedicated to quality over volume by linking payment to health outcomes
  - Innovation – Foster approaches that continue to improve the health and economic vitality of Ohioans
  - Transparency – Provide clear, straight-forward information concerning the cost and quality of Ohio's Medicaid program to providers, individuals, and stakeholders
- For Ohio Individuals
  - Responsiveness – Promote a health care maker that offers high quality services in a culturally competent manner in an individual's setting of choice
  - Coordination – Foster person-centered care coordination across a full continuum of benefits and services
  - Access – Create new avenues of accessible care for people across the state
  - Decision-Making – Empower individuals with the tools and information that assist them in making responsible decisions about their care, and promote independence
- For our Partners and Providers
  - Shared Outcomes – Promote a standard of collaboration among stakeholders in order to achieve desired outcomes
  - Accountability – Create an environment that promotes accountability for outcomes
  - Integrity – Foster an environment forged on accountability by curbing instances of fraud, waste, and abuse and terminating our relationship with those who take advantage of Ohio taxpayers
- For our Organization and Staff
  - Mission Focus – Focus on what we do best and leverage the expertise of our business partners and providers in serving the residents of Ohio
  - Information-Driven – Provide accurate and timely information to support evidence-based decision making and to derive program performance
  - Team-Based – Maintain ODM as a collaborative partnership with Sister State Agencies built on staff expertise and service
  - Adaptable – Promote a culture of change, creativity, and continuous learning that challenges the status quo

### OHT Guiding Principles:

- Market-based: Reset the basic rules of health care competition so the incentive is to keep people as healthy as possible.
- Personal responsibility: Reward Ohioans who take responsibility to stay healthy – and expect people who make unhealthy choices to be responsible for the cost of their decisions.
- Evidence based: Rely on evidence and data to complement a lifetime of experience, so doctors can deliver the best quality care at the lowest possible cost.
- Transparent: Make information about price and quality transparent, and get the right information to the right place at the right time to improve care and cut costs.
- Value: Pay only for what works to improve and maintain health – and stop paying for what doesn't work, including medical errors.
- Primary care: Transform primary care from a system that reacts after someone gets sick to a system that keeps people as healthy as possible.
- Chronic disease: Prevent chronic disease whenever possible and, when it occurs, coordinate care to improve quality of life and help reduce chronic care costs.
- Long-term care: Enable seniors and people with disabilities to live with dignity in the setting they prefer, especially their own home, instead of a higher-cost setting like a nursing home.
- Innovation: Innovate constantly to improve health and economic vitality – and demonstrate to the nation why Ohio is a great place to live and work.

## SUPPLEMENT 4

### OHIO DEPARTMENT OF MEDICAID DATA SHARING AND CONFIDENTIALITY AGREEMENT

**D-1617-00-0000**

*This Data Sharing and Confidentiality Agreement (Agreement) is entered into by and between the Ohio Department of Medicaid (ODM) and **Awarded Vendor** in furtherance of the Contract entitled \_\_\_\_\_ between the Ohio Department of Administrative Services and \_\_\_\_\_ (the DAS Contract).*

#### ARTICLE I - PURPOSE AND LEGAL AUTHORITY

- A. This Agreement is entered into by ODM and **Awarded Vendor**, in accordance with the terms and conditions of the DAS Contract that require the use or disclosure of protected health information.
- B. The authority to release this data is found in Title 42 of the Code of Federal Regulations (CFR), specifically 42 CFR 431.300, 431.302, 431.304, 431.305 431.306, 435.945; Privacy regulations 45 CFR 164.502(e); 164.504(e) and security regulations 45 CFR 164.308, 164.314 issued pursuant to the Health Insurance Portability and Accountability Act [42 USC 1320d - 1320d-8]; relevant amendments effected by the American Recovery and Reinvestment Act of 2009 [Pub. L. 111-5, §§ 13400, *et seq.*] and the terms of this Agreement, or more stringent provisions of the law, rules, or regulations of the State of Ohio.
- C. The parties agree that any data or records provided under this Agreement may only be used or disclosed in accordance with Medicaid regulations.

#### ARTICLE II – DESCRIPTION OF RECORDS TO BE PROVIDED TO OR ACCESSED BY **AWARDED VENDOR**

The **Awarded Vendor** shall have the minimal amount of access necessary to protected health information records to perform the work required under the DAS Contract.

#### ARTICLE III - CONFIDENTIALITY OF INFORMATION

- A. **Awarded Vendor** agrees that it shall not use any information, systems, or records made available to it for any purpose other than to fulfill the obligations specified herein. **Awarded Vendor** specifically agrees to comply with state and federal confidentiality and information disclosure laws, rules, and regulations applicable to programs under which this Agreement exists, including, but not limited to:
  - 1. United States Code, 42 USC 1320d through 1320d-8 (HIPAA);
  - 2. Code of Federal Regulations, 42 CFR 431.300, 431.302, 431.305, 431.306, 435.945, 45 CFR 164.502(e), 164.504(e), and 162.100;
  - 3. Ohio Revised Code, ORC 173.20, 173.22, 2305.24, 2305.251, 3701.243, 3701.028, 4123.27, 5101.26, 5101.27, 5160.39, 5168.13, and 5165.88; and
  - 4. Corresponding Ohio Administrative Code rules.
- B. **Awarded Vendor** agrees that any data created, received, maintained or transmitted on behalf of ODM by **Awarded Vendor** shall be returned to ODM not later than 90 calendar days following termination of this Agreement and shall certify that no copies of source data were retained by **Awarded Vendor**, unless as may be otherwise provided for in this Agreement or by law.

- C. **Awarded Vendor** shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the paper and/or electronic protected personal data and health information that it creates, receives, maintains, or transmits on behalf of ODM against use or disclosure not provided for by this Agreement.
- D. **Awarded Vendor** agrees that access to the records and data provided by ODM and described in ARTICLE II will be restricted to only those authorized employees, officials, subcontractors, and other persons who need it to perform duties related to this Agreement. **Awarded Vendor** agrees to provide the ODM Agreement Manager with a complete listing of any and all such persons who shall have access to the above referenced records and/or data.
- E. **Awarded Vendor** agrees that the above records and/or data and any records, reports, databases, and/or other derivative documents created from the information provided under this Agreement shall be stored in an area that is physically safe from access from unauthorized persons during duty and non-duty hours. Information provided under this Agreement shall be protected electronically to prevent unauthorized access by computer, remote access, or any other means. **Awarded Vendor** expressly agrees that no records will be accessed, tested, maintained, backed up or stored outside of the United States.
- F. **Awarded Vendor** shall assure that all persons who have access to the above referenced information shall be fully apprised as to the confidential nature of the information, the safeguards required to protect the information, and the applicable civil and criminal sanctions and penalties associated with any intentional or non-intentional disclosure. No subcontractor shall receive any information without a written agreement with **Awarded Vendor** incorporating these assurances.
- G. **Awarded Vendor** shall not disclose any of the above referenced information to any third party without the specific written authorization of the Director of ODM.
- H. **Awarded Vendor** shall permit onsite inspection by the State of Ohio (including but not limited to ODM, the Auditor of the State of Ohio, the Inspector General of Ohio, the Ohio Attorney General or any duly authorized law enforcement officials) and by agencies of the United States government.
- I. ODM will prepare data pursuant to the security and encryption standards found in Ohio IT Standard ITS-SEC-01, Data Encryption and Cryptography; and NIST Special Publication 800-53. **Awarded Vendor** shall retain this encryption while the data is in transit or at rest.
- J. The express terms and conditions of this Article shall be included in all subcontracts executed by **Awarded Vendor** for any and all work under this Agreement.

#### **ARTICLE IV - TIME OF PERFORMANCE**

- A. This Agreement shall be in effect upon execution by the Director of ODM, until the DAS Contract is terminated, unless this Agreement is suspended or terminated pursuant to ARTICLE VI prior to the termination date.
- B. The Confidentiality and Business Associate provisions of this Agreement shall survive the termination of this Agreement.

#### **ARTICLE V - COST OF DATA PREPARATION**

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

#### **ARTICLE VI - SUSPENSION AND TERMINATION**

- A. Upon 30 calendar days written notice to the other party, either party may terminate this Agreement.

- B. Notwithstanding Section A of this Article, ODM may suspend or terminate this Agreement immediately upon delivery of written notice to **Awarded Vendor**, if ODM discovers any illegal conduct on the part of **Awarded Vendor** or if there is any breach of the confidentiality provisions of ARTICLE III or ARTICLE XI herein.
- C. Notice of termination or suspension under either Section A or B of this Article must be sent to: the ODM Chief Legal Counsel, 50 West Town Street, 4th Floor, Columbus, Ohio 43215; and to **Awarded Vendor's** representative at the address appearing on the signature page of this Agreement.

#### **ARTICLE VII - BREACH OR DEFAULT**

- A. Upon breach or default of any of the provisions, obligations or duties embodied in this Agreement, ODM may exercise any administrative, contractual, equitable or legal remedies available, without limitation. The waiver of any occurrence of breach or default is not a waiver of subsequent occurrences, and ODM retains the right to exercise all remedies hereinabove mentioned.
- B. If either of the parties fails to perform an obligation or obligations under this Agreement and thereafter such failure(s) is (are) waived by the other party, such waiver shall be limited to the particular failure(s) so waived and shall not be deemed to waive other failure(s) hereunder. Waiver by ODM shall not be effective unless it is in writing signed by the ODM Director.

#### **ARTICLE VIII - AMENDMENTS**

This Agreement may be modified or amended provided that any such modification or amendment is in writing and is signed by the Director of ODM and **Awarded Vendor**. It is agreed, however, that any amendments to laws, rules, or regulations cited herein will result in the correlative modification of this Agreement, without the necessity for executing a written amendment.

#### **ARTICLE IX - INDEPENDENT CONTRACTOR**

**Awarded Vendor** agrees that no agency, employment, joint venture, or partnership has been or will be created between the parties hereto pursuant to the terms and conditions of this Agreement. **Awarded Vendor** also agrees that, as an independent contractor, it assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums which may accrue as a result of compensation received for services or deliverables rendered hereunder. **Awarded Vendor** agrees that it is an independent contractor for all purposes including, but not limited to, the application of the Fair Labor Standards Act, the Social Security Act, the Federal Unemployment Tax Act, the Federal Insurance Contribution Act, provisions of the Internal Revenue Code, Ohio Tax law, Workers Compensation law, and Unemployment Insurance law. **Awarded Vendor** certifies that all approvals, licenses, or other qualifications necessary to conduct business in Ohio have been obtained and are operative. If at any time during the contractual period **Awarded Vendor** becomes disqualified from conducting business in Ohio, for whatever reason, **Awarded Vendor** must immediately notify ODM of the disqualification and will immediately cease performance of its obligations hereunder.

#### **ARTICLE X - LIMITATION OF LIABILITY**

To the extent allowable by law, **Awarded Vendor** agrees to defend, indemnify and hold ODM, its officials, employees and agents harmless from and against any and all liability, loss and expense (including reasonable attorneys' fees) or claims for personal injury, property damage, patent and copyright infringement, or for any liability or claims under ARTICLE XI, Business Associate Requirements Under HIPAA, below, and/or any other type of claim that arises from the performance under this Agreement. **Awarded Vendor's** sole and exclusive remedy for any ODM failure to perform under this Agreement will be an action in the Ohio Court of Claims pursuant to ORC Chapter 2743 that will be subject to the limitations set forth in this Article. In no event will ODM be liable for any indirect or consequential damages, including loss of profits, even if ODM knew or should have known of the possibility of such damages. To the extent that ODM is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin

County, Ohio. Subject to ORC 109.02, **Awarded Vendor** agrees to defend ODM against any such claims or legal actions if called upon by ODM to do so.

## ARTICLE XI - BUSINESS ASSOCIATE REQUIREMENTS UNDER HIPAA

- A. The definitions contained in this Section are derived from federal law. Should there be any conflict between the meanings assigned in this Agreement and the meanings defined in applicable federal law (even in the event of future amendments to law that create such conflict), the definitions found in federal law will prevail.
1. **General Definitions.** The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information and Use.
  2. **Specific Definitions.**
    - a. HIPAA means the Health Insurance Portability and Accountability Act of 1996, the American Recovery and Reinvestment Act of 2009 (ARRA) and any other applicable federal statute or regulation.
    - b. HIPAA Rules shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
    - c. Covered Entity means a health plan, a health care clearinghouse, or health care provider under 45 CFR 160.103.
    - d. Business Associate means a person or entity that, on behalf of the Covered Entity, maintains, performs, or assists in the performance of a function or activity that involves the use or disclosure of "Protected Health Information" under 45 CFR 160.103.
    - e. Protected Health Information (PHI) means individually identifiable information including but not limited to the past, present or future physical or mental health or condition of an individual, provision of health care to an individual, or the past, present or future payment for health care provided to an individual, as more fully defined under 45 CFR 164.501 and any amendments thereto, received or sent on behalf of the Department.
- B. **Awarded Vendor** acknowledges that ODM is a Covered Entity under HIPAA. **Awarded Vendor** further acknowledges that it is a Business Associate of ODM, and, in carrying out the work described in this Agreement, agrees to comply with all of the following provisions:
1. **Permitted Uses and Disclosures.** **Awarded Vendor** will not use or disclose PHI except as provided in this Agreement or as otherwise required under HIPAA regulations or other applicable law.
  2. **Safeguards.** **Awarded Vendor** will implement sufficient safeguards, and comply with Subpart C of 45 CFR Part 164 pertaining to electronic PHI to prevent the use or disclosure of PHI other than as provided for under this Agreement. Safeguards will be implemented for all paper and electronic PHI created, received, maintained, or transmitted on behalf of ODM.
  3. **Reporting of Disclosures.** **Awarded Vendor** agrees to promptly report to ODM any inappropriate use or disclosure of PHI that is not in accordance with this Agreement or applicable law, including breaches of unsecured protected health information as required at 45 CFR 164.410 and any security incident the **Awarded Vendor** has knowledge of or reasonably should have knowledge of under the circumstances.

4. **Mitigation Procedures.** **Awarded Vendor** agrees to coordinate with ODM to determine specific actions that will be required of the Business Associates for mitigation, to the extent practical, of the breach. These actions will include notification to the appropriate individuals, entities, or other authorities. Notification or communication to any media outlet must be approved, in writing, by ODM prior to any such communication being released. **Awarded Vendor** will report all of its mitigation activity to ODM and shall preserve all relevant records and evidence.
5. **Incidental Costs.** **Awarded Vendor** shall bear the sole expense of all costs to mitigate any harmful effect, of any breaches or security incidents of which **Awarded Vendor** has knowledge which are directly caused by the use or disclosure of protected health information by **Awarded Vendor** in violation of the terms of this Agreement. These costs will include, but are not limited to, the cost of investigation, remediation and assistance to the affected individuals, entities or other authorities.
6. **Agents and Subcontractors.** **Awarded Vendor**, in compliance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2) as applicable, will ensure that all its agents and subcontractors that create, receive, maintain, or transmit PHI from or on behalf of **Awarded Vendor** and/or ODM agree to have, in a written agreement, the same restrictions, conditions, and requirements that apply to **Awarded Vendor** with respect to the use or disclosure of PHI.
7. **Accessibility of Information.** **Awarded Vendor** will make available to ODM such information as ODM may require to fulfill its obligations to provide access to, provide a copy of any information or documents with respect to PHI pursuant to HIPAA and regulations promulgated by the United States Department of Health and Human Services, including, but not limited to, 45 CFR 164.524 and 164.528 and any amendments thereto.
8. **Amendment of Information.** **Awarded Vendor** shall make any amendment(s) to PHI as directed by, or agreed to, by ODM pursuant to 45 CFR 164.526, or take other steps as necessary to satisfy ODM's obligations under 45 CFR 164.526. In the event that **Awarded Vendor** receives a request for amendment directly from the individual, agent, or subcontractor **Awarded Vendor** will notify ODM prior to making any such amendment(s). **Awarded Vendor's** authority to amend information is explicitly limited to information created by **Awarded Vendor**.
9. **Accounting for Disclosure.** **Awarded Vendor** shall maintain and make available to ODM or individuals requesting the information as appropriate, records of all disclosures of PHI in a Designated Record Set as necessary to satisfy ODM's obligations under 45 CFR 164.528. For every disclosure the record will include, at a minimum, the name of the individual who is the subject of the disclosure, the date of the disclosure, reason for the disclosure if any, and the name and address of the recipient to which the protected health information was disclosed.
10. **Obligations of ODM.** When **Awarded Vendor** is to carry out an obligation of ODM under Subpart E of 45 CFR 164, **Awarded Vendor** agrees to comply with all applicable requirements of Subpart E that would apply to ODM in the performance of such obligation.
11. **Access to Books and Records.** **Awarded Vendor** shall make available to ODM and to the Secretary of the U.S. Department of Health and Human Services any and all internal practices, documentation, books, and records related to the use and disclosure of PHI received from ODM, or created or received on behalf of ODM. Such access is for the purposes of determining compliance with the HIPAA Rules.
12. **Material Breach.** In the event of material breach of **Awarded Vendor's** obligations under this Article, ODM may immediately terminate this Agreement as set forth in ARTICLE VI, Section B. Termination of this Agreement will not affect any provision of this Agreement, which, by its wording or its nature, is intended to remain effective and to continue to operate after termination.
13. **Return or Destruction of Information.** Upon termination of this Agreement and at the request of ODM, **Awarded Vendor** will return to ODM or destroy all PHI in **Awarded Vendor's** possession

stemming from this Agreement as soon as possible but no later than 90 days, and will not keep copies of the PHI except as may be requested by ODM or required by law, or as otherwise allowed for under this Agreement. If **Awarded Vendor**, its agent(s), or subcontractor(s) destroy any PHI, then **Awarded Vendor** will provide to ODM documentation evidencing such destruction. Any PHI retained by **Awarded Vendor** will continue to be extended the same protections set forth in this Section, HIPAA regulations and this Agreement for as long as it is maintained.

14. **Survival.** These provisions shall survive the termination of this Agreement.

#### **ARTICLE XII – COUNTERPART**

This Agreement may be executed in one, or more than one counterpart, and each executed counterpart shall be considered an original, provided that such counterpart is delivered to the other party by facsimile, mail courier or electronic mail, all of which together shall constitute one and the same agreement.

#### **ARTICLE XIII - CONSTRUCTION**

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

*SIGNATURE PAGE FOLLOWS*

**OHIO DEPARTMENT OF MEDICAID  
DATA SHARING AND CONFIDENTIALITY AGREEMENT  
Signature Page**

**D-1617-00-0000**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the signature of the Director of the Ohio Department of Medicaid.

**Awarded Vendor**

\_\_\_\_\_  
Authorized Signature (Blue Ink Please)

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
**Address**

\_\_\_\_\_  
**City, State, Zip**