

REQUEST FOR PROPOSALS

RFP NUMBER: 0A1295
DATE ISSUED: August 17, 2020

The State of Ohio (State), through the Department of Administrative Services (DAS), for the Office of Information Technology (OIT) is requesting proposals for:

Enterprise Warehouse Management System

INQUIRY PERIOD BEGINS: August 17, 2020
INQUIRY PERIOD ENDS: September 8, 2020
at 8:00 am (Columbus, OH local time)
OPENING DATE: September 14, 2020
OPENING TIME: 1:00 pm (Columbus, Ohio local time)
OPENING LOCATION: Department of Administrative Services
Bid Desk
4200 Surface Road
Columbus, Ohio 43228-1313

PRE-PROPOSAL CONFERENCE DATE: August 26, 2020
at 1:00 pm (Columbus, Ohio local time)

This RFP consists of five (5) parts and ten (10) attachments totaling 109 consecutively numbered pages. Supplements are also attached to this RFP with a beginning header page. Please verify that you have a complete copy.

PART ONE: EXECUTIVE SUMMARY

Purpose. This is a Request for Competitive Sealed Proposals (“RFP”) under Sections 125.071 and 125.18 of the Ohio Revised Code (the “Revised Code”) and Section 123:5-1-8 of the Ohio Administrative Code (the “Administrative Code”). The Ohio Department of Administrative Services (“DAS”), Office of Information Technology (“OIT”) is soliciting competitive sealed proposals (“Proposals”) for an Enterprise Warehouse Management System (the “Project”), and this RFP is the result of that request.

The purpose of this RFP is to award a Contract after evaluating offerors that have an established Software as a Service (SaaS) solution for warehouse management. Once the Contract is awarded, a State agency maintaining a warehouse would be able to utilize the Enterprise Warehouse Management System. The requirements in Supplement 1 are a combination of requirements from several of the State-maintained warehouse operations and therefore, does not reflect the requirements of a single warehouse. If an agency requests its warehouse be included in the Contractor’s SaaS solution, this would be done as an Interval Deliverable Agreement (IDA) with an agency specific Statement of Work (SOW) under this Contract.

Background. The current extenuating circumstances created by the COVID-19 pandemic have drastically increased the demand on the State of Ohio (“State”) warehousing capacity. Rapid and effective management of products within the State warehouses is urgently needed to keep up with the unprecedented demand presented to the State agencies to manage requesting, receiving, storing, and shipping of much needed medical material and related supplies to the fight against coronavirus and to assist in any other future response efforts. As such, a comprehensive and industry-proven warehouse management solution is needed to assist the State with the significantly increased demand on warehouse capacity.

The Ohio Department of Administrative Services (DAS) is committed to providing quality centralized services, specialized support and innovative solutions to State agencies, boards and commissions as well as local governments, State universities and cooperative purchasing members. DAS has more than 40 program areas serving Ohio government customers, who in turn directly serve the interests of Ohio citizens. DAS helps procure goods and services, deliver information technology and intrastate mail, recruit and train personnel, promote equal access to the State workforce, lease and manage office space, process payroll, and print publications and perform a variety of other services. To provide these services, DAS is organized into the divisions of Equal Opportunity, General Services, and Human Resources as well as the Office of Collective Bargaining and Office of Information Technology. This RFP seeks to establish an Enterprise Warehouse Management System managed by DAS.

RFP Process. If a suitable offeror solution is made in response to this RFP, the State, through the Department of Administrative Services (DAS), may enter into a contract (the “Contract”) to have the selected Offeror (the “Contractor”) perform all or part of the Project.

This RFP provides details on what is required to submit a Proposal for the Project, how the State will evaluate the Proposals, and what will be required of each Contractor in performing the Project.

This RFP also gives the estimated dates for the various events in the submission process, selection process, and performance of the Project. 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 Project is completed to the satisfaction of the State and the Contractor is paid or June 30, 2021, whichever is sooner. The State may renew this Contract for up to four (4) additional two (2) year term(s), subject to and contingent on the discretionary decision of the Ohio General Assembly to appropriate funds for this Contract in each new biennium for a maximum contract term expiring June 30, 2029. 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.

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

Minority Business Enterprise (MBE). The State is committed to improving the number of minority-owned enterprises that do business with the State of Ohio. A "minority-owned enterprise" is an individual, partnership, corporation or joint venture of any kind that is owned and controlled by U. S. Citizens and residents of Ohio, who

are and have held themselves out as members of the following socially and economically disadvantaged groups: Blacks, American Indians, Hispanics and Asians.

The offeror is encouraged to seek out and set aside work for Ohio certified minority business enterprises (MBEs). The MBE must be certified by the Ohio Department of Administrative Services pursuant to ORC 123.151. For more information regarding MBE and MBE certification requirements please refer to the DAS Equal Opportunity Division Website at: <http://das.ohio.gov/Divisions/EqualOpportunity/MBEEDGECertification.aspx>

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

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

Requirements for Embedded Solicitation

In seeking solicitations from Ohio certified MBE subcontractors, the Offeror must:

- Utilize a competitive process to which only Ohio certified MBEs may respond;
- Have established criteria by which prospective Ohio MBEs will be evaluated including business ability and specific experience related to the Work requirements; and
- Offeror must maintain its proposed percentage with certified MBEs throughout the term of the Contract resulting from this solicitation throughout the term of the Contract, including any renewals.

Offeror’s Proposal must include the Ohio certified MBE Utilization Plan (Plan). The Plan must (a) state the specific percentage of the cost of the Work that it will set aside for Ohio certified MBE subcontractors only; (b) attest that a competitive process used for the selection of Ohio certified MBE subcontractors to which only Ohio certified MBEs responded; and (c) identify proposed portions of the Work to be performed by Ohio certified MBE subcontractors.

Reporting

After award of the RFP, the Contractor must submit a quarterly report to the Agency’s designee documenting the work performed by and payments made to the MBE subcontractor. The reports must be filed at a time and in a form prescribed by the Agency’s designee. Upon request the State may require documentation of the Ohio certified MBE subcontractors’ activities. Compliance with Offeror proposed cost set-aside percentage is a term of this contract and failure to attain the proposed percentage by the expiration of the contract may result in the Offeror being found in breach of contract.

Scope of Work. An overview of the Project scope of work is provided below. The Project’s scope of the work and requirements are provided in greater detail within Supplement 1 to this RFP.

The State, via more than 120 agencies, boards and commissions (agencies) has a variety of requirements that need to be fulfilled by an enterprise warehouse management solution that are specific to the business needs of the State and aligned with the missions of each agency, board and commission. The State of Ohio, needs to identify, select and implement an extensible platform that is suited to the requirements of the enterprise. The State seeks to identify a solution via this Request for Proposal (RFP) to:

- Address the State’s warehouse management needs and requirements contained in this RFP; and
- Serve as a basis for ongoing standardization for future warehouse management system needs;
- Provide an extensible enterprise Software-as-a-Service (SaaS) platform.

Calendar of Events. The schedule for the RFP process and the Project is given below. The State may change this schedule at any time. If the State changes the schedule before the Proposal due date, it will do so through an announcement on the State Procurement Website’s question and answer area for this RFP. The Website

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

Dates:

Firm Dates

RFP Issued:	August 17, 2020
Inquiry Period Begins:	August 17, 2020
Pre-Proposal Conference Date	August 26, 2020 at 1:00 PM (Columbus, Ohio local time)
Inquiry Period Ends:	September 8, 2020 at 8:00 AM (Columbus, Ohio local time)
Proposal Due Date:	September 14, 2020 at 1:00 PM (Columbus, Ohio local time)

Estimated Dates

Award Date:	October 2020
Work Begins:	November 2020

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 ten (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:

- Attachment One Evaluation Criteria
- Attachment Two Special Provisions, Interval Deliverable Agreement, Service Level Agreements
- Attachment Three Requirements for Proposals
- Attachment Four General Terms and Conditions
- Attachment Five Sample Contract
- Attachment Six Offeror Certification Form
- Attachment Seven Offeror Profile Summary
- Attachment Eight Data Location Form
- Attachment Nine Cost Proposal
- Attachment Ten Master Cloud Services Agreement

Supplements:

- Supplement 1 Enterprise Warehouse Management System Scope and Requirements
- Supplement A State IT Policy Standard and Service Requirements (version 5.0, dated 10/31/2017)
- Supplement S State Security Privacy and Data Handling Requirements (version 1.0, dated 10/1/2019)

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:

Dennis Kapenga, IT Acquisition Analyst
dennis.kapenga@das.ohio.gov
Department of Administrative Services
General Services Division
Office of Procurement Services
Enterprise IT Contracting
4200 Surface Road
Columbus, Ohio 43228

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

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

- Access the State's Procurement Website at <http://procure.ohio.gov/>
- From the Quick Links menu on the right, select "**Bid Opportunities Search**";
- In the "**Document/Bid Number**" field, enter the RFP number found on the first page of this RFP (the RFP number begins with zero followed by the letter "A");
- Select "**Request for Proposal**" from the Opportunity Type dropdown;
- Click the "**Search**" button;
- On the Procurement Opportunity Search Results page, click on the hyperlinked **Document/Bid Number**;
- On the Procurement Opportunity Details page, click the "**Submit Inquiry**" button;
- On the document inquiry page, complete the required "**Personal Information**" section by providing:
 - First and last name of prospective offeror's representative who is responsible for the inquiry,
 - Representative's business phone number,
 - Company Name,
 - 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
- Enter the Confirmation Number at the bottom of the page
- 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 "Bid Opportunities Search" 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 (3) business days of receipt, excluding weekends and State holidays. But the State will not respond to any inquiries received after 8:00 a.m. on the inquiry end date.

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

Pre-Proposal Conference. The State will hold a Pre-Proposal Conference on August 26, 2020 at 1:00 pm Columbus, Ohio local time. The purpose of this conference is to discuss the RFP and the Project with prospective offerors and to allow them to ask questions arising from their initial review of this RFP.

The conference will be held as a Microsoft Teams meeting with the following contact information:

[Join Microsoft Teams Meeting](#)

[+1 614-721-2972](tel:+16147212972) United States, Columbus (Toll)

Conference ID: 627 966 855#

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

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

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

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

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

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

Proposal Submittal. Each offeror must submit a technical section and a cost section as part of its total Proposal before the opening time on the Proposal due date. The offeror must submit the technical section as a separate package from the cost section of its Proposal, and each section must be submitted in its own separate, opaque package. The package with the technical section of the Proposal must be sealed and contain one (1) originally signed technical section and ten (10) additional copies of the technical section, and the package with the cost section also must be sealed and contain three (3) complete copies of the cost section of the Proposal.

The offeror must mark the outside of each package with either:

“**RFP #0A1295 Enterprise Warehouse Management System – Technical Proposal**” or
“**RFP #0A1295 Enterprise Warehouse Management System – Cost Proposal,**” as appropriate.

Included in each sealed package, the offeror also must provide an electronic “searchable” copy of everything contained within the package on a flash drive (portable storage device) in Microsoft Office (native format), Microsoft Word (native format), Microsoft Project (native format), Microsoft Excel (native format) and Adobe Acrobat format,

as appropriate. If there is a discrepancy between the hard copy and the electronic copy of the Proposal, the hard copy will control, and the State will base its evaluation of the offeror's Proposal on the hard copy.

Proposals are due no later than 1:00 p.m. on the Proposal due date. Proposals submitted by email, fax, or other electronic means are not acceptable, and the State may reject them. Offerors must submit their Proposals to:

Department of Administrative Services
Attn: Dennis Kapenga c/o Bid Desk RFP 0A1295
4200 Surface Road
Columbus, Ohio 43228

Bid Desk Main Phone Number: 614-466-5090

The State may reject any Proposals or unsolicited modifications it receives after the deadline. An offeror that mails its Proposal must allow for adequate mailing time to ensure its timely receipt. Offerors also must allow for potential delays due to increased security. The Bid Desk accepts packages between the hours of 7:30 A.M. to 5:00 P.M. Monday through Friday, excluding State Holidays. No deliveries will be accepted before or after these hours without prior arrangements. Offerors must allow sufficient time since the State may reject late Proposals regardless of the cause for the delay.

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

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

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

If an offeror includes in its proposal information it considers confidential, proprietary, or trade secret exempt from disclosure in a public records request, it must submit a redacted version of any document containing such information, as further described in this paragraph. Offerors must only redact (black out) the specific language that is exempt from disclosure pursuant to the Ohio Public Records Act. Redaction of sections in their entirety simply because they may contain some confidential information is not acceptable. Redaction of the cost proposal in its entirety is also not acceptable. In addition to the redacted document(s), offerors must submit a list of each redaction with a detailed legal explanation for each redaction to demonstrate that the redacted information is protected under the Ohio Public Records Act. A blanket statement that all redactions are exempt from disclosure pursuant to the Ohio Public Records Act and/or the Uniform Trade Secrets Act is not a sufficient explanation. The redacted version(s) must be submitted as an electronic copy in a searchable PDF format. The redacted version(s) and accompanying explanation, as submitted, will be available for inspection and released in response to public records requests.

If redacted version(s) with the accompanying explanation are not submitted, or if an improperly redacted version or insufficient explanation is submitted, the original submission of the proposal may be provided in response to public records requests. By not submitting a redacted version with accompanying explanation, an offeror consents to the release of the original submission in response to a public records request.

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. 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 (3) years. After the three-year retention period, the State may return, destroy, or otherwise dispose of the Proposals and any copies of them.

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

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

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

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

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

PART FOUR: EVALUATION OF PROPOSALS

Disclosure of Proposal Contents. The State will seek to open the Proposals in a manner that avoids disclosing their contents. Additionally, the State will seek to keep the contents of all Proposals confidential until the Contract is awarded. But the State will prepare a registry of Proposals that contains the name of each offeror. The public may inspect that registry after the State opens the Proposals.

Rejection of Proposals. The State may reject any Proposal that proposes to do any work or make any 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 representing that it will ensure that all work on the Project will be done within the United States and that all State data will remain in the United States.

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. Presentations and Demonstrations and
6. Contract Negotiations.

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

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

Corrections and clarifications must be completed off State premises.

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

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

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

During the technical evaluation, the State will calculate a point total for each Proposal that it evaluates. At the sole discretion of the State, it may reject any Proposal receiving a significant number of zeros for sections in the technical portions of the evaluation. The State may select those offerors submitting the highest rated Proposals for the next

phase. The number of Proposals that advance to the next phase will be within the State's discretion, but regardless of the number of Proposals selected, they always will be the highest rated Proposals from this phase.

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

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

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

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

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

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

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

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

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

The State may select one or more of the Proposals for further consideration in the next phase of the evaluation process based on the price performance formula contained in Attachment One. The Proposal(s) selected for consideration in the next phase always will be the highest-ranking Proposal(s) based on this analysis. That is, the State may not move a lower-ranking Proposal to the next phase unless all Proposals that rank above it also are moved to the next phase, excluding any Proposals that the State disqualifies because of excessive cost or other irregularities.

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

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

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

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

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

Presentations and Demonstrations. The state may request the offeror to perform Presentations and/or Demonstrations involving its proposed solution. The state will coordinate the time and location and provide a framework for any requested presentations and/or demonstrations.

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.

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 (5) 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 (2) originals of the Contract to the Contractor proposed for award. The offeror must sign and return the two (2) 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 start 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. If this RFP results in a Contract award, the Contract will consist of this RFP including all Exhibits, written Amendments to this RFP, the Contractor's accepted Proposal and accepted, written authorized amendments and clarifications to the Contractor's Proposal. It will also include any materials incorporated by reference in the above documents and any Amendments issued under the Contract. The Terms and Conditions for the Contract are contained in Attachments Two and Four of this RFP. If there are conflicting provisions between the documents that make up the Contract, the order of precedence for the documents is as follows:

1. This one-page Contract Signature Page in its final form;
2. The Offeror's proposal, as negotiated, clarified, and accepted by the State; and
3. This RFP, as amended.

Notwithstanding the order listed above, 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 this RFP’s mandatory requirements. If the offeror’s Proposal meets the mandatory requirement (as described in Attachment Seven – Mandatory Requirements), the offeror’s Proposal may be included in the next part of the technical evaluation phase.

Mandatory Requirements	Reject	Accept
1. The offeror must have completed at least one (1) implementation of the proposed Enterprise Warehouse Management System, and which is currently in production at a National Distributor or Federal / State / Local government client, within the last thirty-six (36) months. (Mandatory Requirement #1 form from Attachment Seven)		
2. The offeror must demonstrate that the proposed Enterprise Warehouse Management System will support the pharma track operation and trace system using a National Distributor or Federal, State or Local government client implemented within the last thirty-six (36) months. (Mandatory Requirement #2 form from Attachment Seven)		
3. The offeror must demonstrate that the proposed Enterprise Warehouse Management System is Drug Supply Chain Security Act (DSCSA) compliant. (Mandatory Requirement #3 form from Attachment Seven)		
4. The offeror must demonstrate that the proposed Enterprise Warehouse Management System will support National Drug Code (NDC) Management. (Mandatory Requirement #4 form from Attachment Seven)		

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 Requirements	Weight	Does Not Meet	Partially Meets	Meets	Exceeds
Offeror Requirements					
1. The offeror must have completed at least one (1) implementation of the proposed Enterprise Warehouse Management System, and which is currently in production at a National Distributor or Federal / State / Local government client, within the last thirty-six (36) months. (Mandatory Requirement #1 form from Attachment Seven)	25			5	7
2. The offeror must demonstrate that the proposed Enterprise Warehouse Management System will support the pharma track operation and trace system using a National Distributor or Federal, State or Local government client implemented within the last thirty-six (36) months. (Mandatory Requirement #2 form from Attachment Seven)	25			5	7

Scored Requirements	Weight	Does Not Meet	Partially Meets	Meets	Exceeds
Offeror Profile (tab 6 of Proposal)	25	0	2	5	7
Personnel Profile Summary: Key members (tab 10 of Proposal)	25	0	2	5	7
Technical Proposal					
Requirement Category (see Supplement 1, Section 2.1.4)					
Regulatory Requirements	48	0	2	5	7
Security Requirements	50	0	2	5	7
User Management Requirements	43	0	2	5	7
User Interface Requirements	53	0	2	5	7
General Requirements	60	0	2	5	7
Technical Requirements	53	0	2	5	7
Order Requirements	54	0	2	5	7
Inbound Requirements	98	0	2	5	7
Inventory Requirements	117	0	2	5	7
Outbound Requirements	103	0	2	5	7
System Requirements	67	0	2	5	7
Integration Requirements	68	0	2	5	7
Reporting Requirements	118	0	2	5	7

Scored Requirements	Weight	Does Not Meet	Partially Meets	Meets	Exceeds
Financial Requirements	68	0	2	5	7
Use Case Response (Supplement 1, Section 3.2)					
Offeror's Use Case Response (tab 9 of Proposal)	100	0	2	5	7

Price / Performance Formula. The evaluation team will rate the Proposals that meet the Mandatory Requirements based on the following criteria and respective weights.

Criteria	Percentage
Technical Proposal	80%
Cost Proposal	20%
TOTAL:	100%

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 800 points. The remaining offerors will receive a percentage of the maximum points available based upon the following formula:

$$\text{Technical Proposal Points} = \frac{\text{Offeror's Technical Proposal Points}}{\text{Highest Offeror's Technical Proposal Points}} \times 800$$

The offeror with the lowest proposed Cost Proposal Price will receive 200 points. The remaining offerors will receive a percentage of the maximum cost points available based upon the following formula:

$$\text{Cost Proposal Points} = \frac{\text{Lowest Offeror's Total Cost}}{\text{Offeror's Total Cost}} \times 200$$

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

$$\text{Total Points Score} = \text{Technical Proposal Points} + \text{Cost Proposal Points}$$

Veteran's Enterprise Preference. The State will apply the Veterans Friendly Business Enterprise preference as required by ORC 9.318 and OAC 123:5-1-16.

Attachment Two: Special Provisions

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

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

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

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

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

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

General Systems Implementation Standards. The Contractor has and will continue to use its best efforts through quality assurance procedures to ensure there are no viruses or malware or undocumented features in its infrastructure and services and that they do not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent any use of or access to them by the State.

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

The Contractor's Fee Structure. The offeror's costs for a Statement of Work (SOW) under this Contract will be a Not-To-Exceed Fixed Cost calculated using the amounts for hardware, services and support as agreed to in the offeror's Cost Proposal.

The Contractor may invoice the State for each Deliverable as defined in a SOW after the State has accepted that Deliverable. The Contractor may invoice the State for the on-going software licensing, maintenance and support costs annually in advance. IDA costs will be determined by using the Contractor's Rate Card as agreed to in the offeror's Cost Proposal with pricing not to exceed the rates on the Contractor's Rate Card provided in Attachment Nine – Cost Proposal.

Hardware and Related Components. Only hardware and related components listed in the Cost Proposal may be invoiced under this Contract.

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.

Additional Work. Implementation of agencies within the selected Enterprise Warehouse Management System (e.g., future phases) will be defined after the initial Contract award using the Interval Deliverable Agreement (“IDA”) model documented in this RFP (see below).

Interval Deliverable Agreement (“IDA”). The State may use the Interval Deliverable Agreement (IDA) model for future work (e.g. implementation of additional environmental programs) or other work identified during the life of the Contract that cannot be defined to the appropriate level of detail during the RFP process. The Contractor must work with designated State staff to develop the deliverables and identify all work for each IDA. Deliverables or sub-deliverables will be defined prior to the start of each designated interval, and monitored throughout the designated interval and the life of the Contract. The IDAs will be identified and agreed to at least 30 days in advance of the beginning of the interval. For each IDA, the State and the Contractor will agree, in writing, to specific deliverables, work assignments, sub-deliverables, services to be provided using time and materials, the length of the interval, due dates, and Contractor staffing requirements based on positions and not-to-exceed hourly rates quoted on the Rate Card on the Cost Proposal. The IDA is not effective until the State and Contractor have signed the agreement and a purchase order is issued to the Contractor. The agreed-upon IDA will be incorporated into the Contract.

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

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

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

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

If the Work fails to meet the standard of performance and exit criteria during the performance period, the Contractor will be in default and will not have a cure period. In addition to all other remedies the State may have under this Contract, the State will have the right to request correction or replacement of the relevant portion of the IDA.

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

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

- The designated interval length for each IDA.
- Goals and Objectives for the interval.
- Deliverables to be completed or partially completed during the interval. This will include, but not be limited to:
 - Deliverable Name;
 - Description of Deliverable including tasks or milestones to be completed;

- Detailed acceptance criteria and standards of performance;
- State dependencies identified by the Contractor for successful completion of the Deliverable;
- Deliverable Due Date;
- Risks associated with delays and incomplete Deliverables; and
- Not-To-Exceed Fixed pricing for each Deliverable based on staffing requirements (services to be performed, identification of Contractor staff resource by name and position, number of hours allocated to the task for each assigned position, individual hourly rate for each Contractor resource assigned to a task, etc.).

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

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

In addition, the following information may also be required:

- Staffing Issues
- Required work related travel and training.

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

Service Level Agreements (“SLA”).

This Contract includes SLAs that will be used to monitor and manage the Contractor's performance of services. The minimum SLAs are listed below followed by Project Implementation Service Level Agreements and Service Level Objectives, but the Contractor may supplement them with additional SLAs that are generally applicable to its other customers, so long as those additional SLAs cover parameters not addressed in the below SLAs or are more stringent than those listed below. Modifications to the SLAs provided below may only be made by the written agreement of the State and the Contractor, except with respect to SLAs the Contractor offers generally to other customers that are more stringent or in addition to those below. If there is a conflict between the SLAs contained in Attachment Two and the terms in Attachment Four, the provisions of Attachment Two control.

Subscribers. A “Subscriber” means State entities such as agencies, boards, and commissions (sometimes referred to as “State Entities”) that may execute a Statement of Work under the Contract for the warehouse management services in this RFP. It also includes other entities of the State, such as the legislative and judicial branches of State government and the independent offices of elected State officials.

Service. A “Service” means a cloud based Software as a Service (SaaS) offering made available to Subscribers under this Contract.

Availability. “Availability” or “Available” means the Subscriber's users are able to access a Service and use all material features and functions of the Service effectively and efficiently and the Service meets all the SLAs contained in this RFP. “Unavailable” or “Unavailability” means the Subscriber's users are unable to access the Service or use all the Service's features and functions effectively and efficiently or they do not otherwise meet all SLAs in this RFP, subject to the following:

A Service may be inaccessible to the State's users during scheduled downtime. Scheduled downtime will occur for less than one hour between 10:00 p.m. and 6:00 a.m. Eastern Time and on Saturdays, but not more than once monthly. The Contractor may change the scheduled downtime to other non-business hours upon reasonable notice to the affected Subscribers. Scheduled downtime will not be considered times when the Service is Unavailable.

In addition to scheduled downtime, the following will not be considered times when a Service is Unavailable:

- (i) Outages resulting from a Subscriber's equipment or its Internet service provider;
- (ii) A Subscriber's negligence or breach of its material obligations under this Contract; and
- (iii) Excusable Delays, as provided for and handled in accordance with the Contract.

SLA Credits.

The "Target Availability Level" is the Service's availability level that the Contractor plans to meet or exceed during each calendar month. The "Service Availability Level" is the number of hours during a particular period that the Service was Available to the Subscriber, excluding scheduled downtime permitted above, divided by the total number of hours during such period. The Target Availability Level is provided in the next section.

The Contractor must actively monitor and report to the State and each Subscriber any and all Unavailability of the Service monthly, along with reasonable details regarding such Unavailability. The Contractor also must provide each Subscriber that uses the Service a credit within 30 days of any calendar month in which the Service Availability Level is below the Target Availability Level, calculated as set forth herein.

The applicable credit will be calculated as follows: If the Contractor fails to meet the Target Availability Level by up to four hours, each affected Subscriber will be entitled to the equivalent of one day's fee for the Service. That is, if the fee is an annual fee, the credit would be 1/365th of that annual fee, or if it is a monthly fee, the Subscriber would be entitled to 1/30th of its monthly fee as a credit. Further, the credit will double if the Target Availability Level is missed by more than four but less than eight hours for any calendar month. And if the failure to meet the Target Availability Level is greater than eight hours, the Subscriber will be entitled to the entire fee applicable to that month.

Any such credits must be paid to the Subscriber within 30 days after the month in which the Contractor fails to meet the Target Availability Level.

If the Contractor fails to meet the Target Availability Level for three consecutive calendar months, any affected Subscriber may terminate any or all Orders for that Service for cause.

Specific SLAs.

The Target Availability Level is 99.9% in any calendar month. For a Service to be considered Available, the following parameters also must be met:

Project Implementation Service Level Agreements and Service Level Objectives.

This section sets forth the performance specifications for the Service Level Agreements (SLA) and Service Level Objectives (SLO) to be established between the Contractor and the State. These are applicable to any work associated with the development, configuration, extension or implementation of any software (asset or cloud-based) associated with this Project.

The following sections contain tables and descriptions that provide the State framework, requirements relating to service level commitments, and the implications of meeting versus failing to meet those requirements and objectives, as applicable. This section defines the State's detailed performance, management, and reporting requirements for Project implementation, as well as all subsequent Project-related services and phases that are contracted under Statements of Work between the State and the Contractor.

The mechanism set out herein will be implemented to manage the Contractor's performance against each Service Level, in order to monitor overall performance.

The Contractor is required to comply with the following performance management and reporting mechanisms for all services within scope and shall provide these reports to the State on a frequency no less than monthly.

Service Level Specific Performance.

Service Level Specific Performance means agreed upon Service Levels measuring the performance of specific services. Most individual Service Levels are linked to financial credits which would be due to the State (“Performance Credits”) to incent Contractor performance.

Each Service Level (SL) will be measured using a “Green-Yellow-Red” traffic light mechanism (the “Individual SL GYR State”), with “Green” representing the highest level of performance and “Red” representing the lowest level of performance. A Performance Credit will be due to the State in the event of an individual Service Level Agreement (SLA) GYR State falling in a “Yellow “or “Red” state. The amount of the Performance Credit for each SLA will be based on the Individual SLA GYR State. Contractors should note, the amount of the Performance Credits will, in certain cases, increase when they are triggered for consecutive months. No Performance Credit will be due to the State for the Contractor’s failure to meet a Service Level Objective (SLO).

Provided below is a table summarizing monthly Performance Credits for each SLA. The “Red” and “Yellow” rows display Performance Credit formulas. The first month’s formula is a percentage of Monthly Project Charges (MPC).

Consecutive (SLA Performance Credits)												
Individual SL GYR State	1st Month	2nd Month	3rd Month	4th Month	5th Month	6th Month	7th Month	8th Month	9th Month	10th Month	11th Month	12th Month
Red	A = 1.71% of MPC	A + 50% of A	A + 100% of A	A + 150% of A	A + 200% of A	A + 250% of A	A + 300% of A	A + 350% of A	A + 400% of A	A + 450% of A	A + 500% of A	A + 550% of A
Yellow	B = 0.855% of MPC	B + 50% of B	B + 100% of B	B + 150% of B	B + 200% of B	B + 250% of B	B + 300% of B	B + 350% of B	B + 400% of B	B + 450% of B	B + 500% of B	B + 550% of B
Green	None	None	None	None	None	None	None	None	None	None	None	None

The Contractor agrees that in each month of the Contract, a maximum of 12% of the Monthly Project Charges (MPC) associated with the Project implementation is at risk (this will be referred to throughout this section as the “At Risk Amount”). MPCs are the charges for the deliverables accepted during a given month. The MPC for the Project implementation will be at risk for failure to meet the Service Levels set forth in the Contract. The Contractor will not be required to owe Performance Credits for multiple SLA failures caused by the same event. If multiple SLAs are triggered from one event, only the SLA with the highest Performance Credit available to the State will apply.

On a quarterly basis (every 3 months), there will be a “true-up” at which time the total amount of the Performance Credits will be calculated (the “Net Amount”), and this Net Amount will be subtracted from any fees the State owes to the Contractor. In the event of consecutive months of failure to meet the same SLA, the Contractor will be required to credit the State an increased Performance Credit per the table above.

The Contractor will not be liable for any failed Service Level caused by circumstances beyond its control which could not be avoided or mitigated through the exercise of prudence and ordinary care, provided that the Contractor promptly notified the State in writing and resumes its performance of the services in accordance with the SLAs as soon as possible.

SLA Performance Credit Example: If an Individual SL GYR State is Yellow in the first month, Red in the second month and back to Yellow in the third month for a SLA, then the Performance Credit due to the State will be the sum of Yellow Month 1 (B), Red Month 2 (A + 50% of A), and Yellow Month 3 (B + 100% of B).

This would be provided that (1) the total Performance Credit does not exceed 12% of the MPC (At Risk Amount); and, (2) no single Service Level Credit exceeds 20% of the total At Risk Amount. The total of any weighting factors may not exceed 100% of the total At-Risk Amount. The Performance Credits available to the State constitute the

monetary remedy to resolving issues related to Contractor's service level performance failures. SLA and SLO tracking will commence at project initiation for any Statement of Work under this Contract.

Overall Contractor Performance.

Overall Contractor Performance means an overall performance score of the Contractor across all Service Levels. The overall performance score will be linked to governance and escalation processes if necessary to initiate corrective actions and remedial processes.

In addition to the SLA Performance Credits, on a monthly basis, an overall SL score (this will be referred to throughout this section as the "Overall SL Score") will be determined, by assigning points to each SL based on its Individual SL GYR State. The table below describes the methodology for calculating an Overall SL Score.

Individual SLAs and SLOs GYR State	Performance Points
Green	0
Yellow	1
Red	4

The Overall SL Score is calculated by multiplying the number of SLAs and SLOs in each GYR State by the Performance Points above.

Overall SL Score Example: If all SLAs and SLOs are Green (0 Points) except for two SLAs in a Red GYR State, the Overall SL Score would be 8 (2 Red SLAs X 4 Performance Points).

If the Overall SL Score exceeds the threshold of fifteen (15), mandatory executive escalation procedures will be initiated to restore acceptable Service Levels.

If a successful resolution is not reached, then the State may terminate the Contract for cause if:

- The overall SL score reaches the threshold of fifteen (15) for three (3) consecutive months with at least 50% of the Service Levels in a Red state; and the Contractor fails to remedy the affected Service Levels within sixty (60) calendar days of receipt of the State's written notice of intent to terminate; OR
- The threshold of 75% of service levels are in a Red state for six (6) consecutive months.

SLA Performance Credits associated with Overall Contractor Performance will not constitute the State's exclusive remedy to resolving issues related to the Contractor's performance. The State retains the right to terminate for Overall Contract Performance under the terms of the Contract.

Monthly Service Level Report.

On a monthly basis, the Contractor will provide a report (the "Monthly Service Level Report") to the State which includes the following information: (1) the Contractor's quantitative performance for each Service Level; (2) each Individual SL GYR State and the Overall SL Score; (3) the amount of any monthly SLA Performance Credit for each Service Level (4) the year-to-date total SLA Performance Credit balance for each Service Level and total Service Levels; (5) a "Root-Cause Analysis" and Path to Green action plan with respect to any Service Levels where the Individual SL GYR State was not "Green" during the reporting month; and (6) trend or statistical analysis with respect to each Service Level as requested by the State. The Monthly Service Level Report will be due no later than the tenth (10th) accounting day of the following month.

Failure to report any SL performance in a given month or any Root-Cause Analysis and Path to Green for a non-Green SL (for reasons within the Contractor's control) will result in the State considering the SL performance for that month as being in a Red State.

Service Level Commitments.

The Contractor will meet the Service Level Commitment for each Service Level set forth in the tables and descriptions below.

Service Level	State Requirements		
	SLA or SLO	Required*	
		Response	Resolution
Defect Resolution – Priority 1 Items	SLA	Every 4 hours until resolution	<= 24 hours
Defect Resolution – Priority 2 Items	SLA	Every 8 hours until resolution	<=72 hours
Defect Resolution – Priority 3 Items	SLO	Every 24 hours until resolution	<= 7 calendar days
Testing Performance	SLA	See section below	-
Blocking Issues Identification and Removal	SLA	Every 2 hours until resolution or agreeable workaround is implemented	<=10%
Code Coverage – Automated Test Beds	SLO	See section below	-
Project Performance	SLA	See section below	-
Agile Performance	SLA	See section below	-
Issue Reporting	SLO	See section below	-
Deliverable Acceptance	SLO	See section below	-
Project Delivery – Build and Testing Activities	SLO	See section below	-

* The performance metrics summarized in this table are further described in the sections below. In the event of a conflict between this table and the detailed sections below, the detailed sections govern. In the event a metric is included in this table but not in the detailed sections below, it is recognized and agreed that such metric is a target only, and failure to meet such metric does not constitute a breach under the contract.

Defect Resolution – Priority 1 Items (SLA).

Specification: Defect Resolution – Average Time to Repair/Resolve Priority 1 Items

Definition: A “Priority 1 Defect Service Request” is an incident where the State’s use of a solution service element has stopped or is so severely impacted that the State personnel cannot reasonably continue to work.

Average Time to Repair Priority 1 Items is to be calculated by determining the average resolution time (stated in hours and minutes) of all Priority 1 Defect Service Requests for in-scope deliverables in the Contract month. “Time to Repair” is measured from the time a Defect Service Request is received in the defect tracking system to the point in time when the Defect Service Request is resolved or a workaround is in place and the Contractor submits the repair to the State for confirmation of resolution.

This Service Level will commence upon Contractor presentation of a deliverable (generally code-based) to the State for conducting System Integration Testing (SIT) and will prevail through User Acceptance Testing (UAT) until the conclusion of the 180 day period described in Supplement 1 of this RFP.

Formula: Average Time to Repair Priority 1 Items =
$$\frac{\text{Total Time to Repair all Priority 1 Defect Service Requests}}{\text{Total \# of Priority 1 Defect Service Requests}}$$

Measurement Period: 1 Month

Data Source: Monthly Service Level Report

Frequency of Collection: Per Service Request

Service Level Measures

Individual SL GYR State	Defect Resolution – Average Time to Repair Priority 1 Items (Non-Production Environments)	Defect Resolution – Average Time to Repair Priority 1 Items (Production Critical Environments)
Green	<=24 hours	<= 8 hours
Yellow	>24 hours and <= 48 hours	> 8 hours and <= 12 hours
Red	> 48 hours	> 12 hours

Defect Resolution – Priority 2 Items (SLA).

Specification: Defect Resolution – Average Time to Repair/Resolve Priority 2 Items

Definition: A “Priority 2 Defect Service Request” is an incident where a software or processing error results in partial or intermittent system outage or unavailability, delay of processing business cycle data that creates a processing backlog, or when system performance and availability levels are not adhering to the performance levels set forth in the contract, which are generally accepted and customary industry standard for similar functions and capabilities. A temporary workaround is identified but due to processing, hardware, labor or other considerations, is deemed unreasonable by the State or may be a recurring issue with or indeterminate cause.

Average Time to Repair Priority 2 Items is to be calculated by determining the average resolution time (stated in hours and minutes) of all Priority 2 Defect Service Requests for in-scope deliverables in the Contract month. “Time to Repair” is measured from the time a Defect Service Request is received in the defect tracking system to the point in time when the Defect Service Request is resolved or a workaround is in place and the Contractor submits the repair to the State for confirmation of resolution.

This Service Level will commence upon Contractor presentation of a deliverable (generally code-based) to the State for conducting System Integration Testing (SIT) and will prevail through User Acceptance Testing (UAT) until the conclusion of the 180 day period described in Supplement 1 of this RFP.

Formula: Average Time to Repair Priority 2 Items =
$$\frac{\text{Total Time to Repair all Priority 2 Defect Service Requests}}{\text{Total \# of Priority 2 Defect Service Requests}}$$

Measurement Period: 1 Month

Data Source: Monthly Service Level Report

Frequency of Collection: Per Service Request

Service Level Measures

Individual SL GYR State	Defect Resolution – Average Time to Repair Priority 2 Items (Non-Production Environments)	Defect Resolution – Average Time to Repair Priority 1 Items (Production Critical Environments)
Green	<= 72 hours	<= 16 hours
Yellow	> 72 hours and <= 90 hours	> 16 hours and <= 24 hours
Red	> 90 hours	> 24 hours

Defect Resolution – Priority 3 Items (SLO).

Specification: Defect Resolution – Average Time to Repair/Resolve Priority 3 Items

Definition: A “Priority 3 Defect Service Request” is an incident where a software or processing error results in partial or intermittent system outage or unavailability, delay of processing business cycle data that creates a processing backlog, or when system performance and availability levels are not adhering to the performance levels set forth in the contract, which are generally accepted and customary industry standard for similar functions and capabilities. This may include errors or omissions in the software, related software elements, operational processes or software integration suite for which a workaround has been identified and implemented, having been provided by the Contractor and approved by the State with acceptable processing, hardware, labor or other considerations, and may be a recurring issue with identified or indeterminate cause. All items not otherwise classified as a Priority 1 or Priority 2 Defect Service Request will be considered a Priority 3 Defect Service Request.

Average Time to Repair Priority 3 Items is to be calculated by determining the average resolution time (stated in hours and minutes) of all Priority 3 Defect Service Requests for in-scope deliverables in the Contract month. “Time to Repair” is measured from the time a Defect Service Request is received in the defect tracking system to the point in time when the Defect Service Request is resolved or a workaround is in place and the Contractor submits the repair to the State for confirmation of resolution.

This Service Level will commence upon Contractor presentation of a deliverable (generally code-based) to the State for conducting System Integration Testing (SIT) and will prevail through User Acceptance Testing (UAT) until the conclusion the 180 day period described in Supplement 1 of this RFP.

Formula:

$$\text{Average Time to Repair Priority 3 Items} = \frac{\text{Total Time to Repair all Priority 3 Defect Service Requests}}{\text{Total \# of Priority 3 Defect Service Requests}}$$

Measurement Period: 1 Month

Data Source: Monthly Service Level Report

Frequency of Collection: Per Service Request

Service Level Measures

Individual SL GYR State	Defect Resolution – Average Time to Repair Priority 3 Items (Non-Production Environments)	Defect Resolution – Average Time to Repair Priority 1 Items (Production Critical Environments)
Green	<= 7 business days	<= 5 business days
Yellow	> 7 business days and <= 10 business days	> 5 business days and <= 7 business days
Red	> 10 business days	> 7 business days

Testing Performance (SLA).

Specification: System Test Execution Exit Quality Rate

Definition: “System Test Execution Exit Quality Rate” is the inventory of all test cases performed in conjunction with Contractor system integration testing, or testing otherwise preceding the State’s User Acceptance Testing (UAT) efforts, presentation of the resultant test performance including identified errors or issues, and pre UAT testing results to the State.

System Test Execution Exit Quality Rate is calculated using the results of Contractor generated and executed test cases which include functionality, performance, integration, interfaces, operational suitability and other test coverage items comprising a thorough Contractor executed system integration testing effort.

This Service Level will commence upon Contractor presentation of a deliverable (generally code-based) to the State for conducting System Integration Testing (SIT) and be in effect during the overall testing effort including Contractor effort, joint effort or support of State testing activities as agreed upon for initial testing elements, regression/fix elements, performance and integration testing prior to production use.

The target Service Level for this SLA is >= 90% and will be validated during an initial measurement time period of 35% of the complete SIT phase or be a mutually agreed upon time period by the Contractor and State. Following this initial measurement period, and for all releases, updates, enhancements or patches as a result of any production or commercial use, the target Service Level will be >= 95%.

Formula

$$\text{Test Execution Quality Rate} = \frac{\text{Total \# of Test Scripts Passed in System Testing Results}}{\text{Total \# of Test Scripts Executed in System Testing Results}} \times 100$$

Measurement Period: Initial time period is 35% of complete SIT phase

Data Source: Monthly Service Level Report

Frequency of Collection: At conclusion of System Integration Testing

Service Level Measures

Individual SL GYR State	Testing Performance (Initial Period)	Testing Performance (Remaining Period)
Green	>= 90%	>= 95%
Yellow	>= 85%, < 90%	>= 90%, < 95%
Red	< 85%	< 90%

Blocking Issues Identification and Removal (SLA).

Specification: Testing of Blocking Issues – Identification and Removal Rate

Definition: A “Blocking Issue” is an item that is non-compliant, or otherwise fails to meet the overall quality standard for a release in an approved statement of work between the Contractor and the State, that without remediation causes testing or production efforts to be halted for the overall work product contracted by the State.

If a Blocking Issue is identified, and results in no more testing able to be completed prior to resolution of the Blocking Issue, the Contractor will remedy the issue or deliver suitable working and commercially viable alternatives to the State as to resume testing activities and meet the business requirement as requested by the State.

Testing environments are to be functional and available to the State to conduct SIT and UAT activities, configured with all required base configuration and test data, application code and other elements as required to support the overall State testing effort. In the event that the testing environment is not functional or available, this will be considered a Blocking Issue.

Percentage of time lost to Blocking Issues is to be calculated by determining the total test time lost to Blocking Issues (stated in hours and minutes).

This Service Level will commence upon Contractor presentation of a deliverable (generally code-based) to the State for conducting System Integration Testing (SIT) and will prevail until the conclusion of User Acceptance Testing (UAT).

The target Service Level for this SLA is <= 10% and will be validated during an initial measurement time period of 35% of the complete SIT phase or be a mutually agreed upon time period by the Contractor and State. Following this initial measurement period, and for all releases, updates, enhancements or patches as a result of any production or commercial use, the target Service Level will be <= 5%.

Formula:

$$\% \text{ of Time Lost to Blocking Issues} = \frac{\text{Total Test Time Lost to all Blocking Issues (Hours and Minutes)}}{\text{Total Scheduled Test Time (Hours and Minutes)}} \times 100$$

Measurement Period: Initial time period is 35% of complete SIT phase

Data Source: Monthly Service Level Report

Frequency of Collection: Per Issue

Service Level Measures

Individual SL GYR State	Blocking Issues Identification and Removal (Initial Period)	Blocking Issues Identification and Removal (Remaining Period)
Green	<= 10%	<= 5%
Yellow	>10%, <= 15%	> 5%, <= 10%
Red	< 15%	< 10%

Code Coverage – Automated Test Beds (SLO).

Specification: % Automated Code Coverage – Regression, Release and Performance Testing

Definition: Percentage of code that is covered using automated testing tools for performance, functionality or scenario testing pertaining to (re)testing items or releases that had been previously tested under prior releases or performance testing of the system.

The Contractor is to provide best practices in conjunction with the overall testing effort. To facilitate rapid and quality testing, with a high degree of code coverage, the Contractor will employ automated testing tools and techniques where possible to test core scenarios, scenario variations, regression testing and performance testing. During the discovery and design phases, the Contractor and the State will mutually identify all requirements that lend themselves to automated testing and Contractor will ensure that such automated testing methods, scripts and tools are developed and utilized in light of these mutually agreed requirements.

This Service Level will commence upon Contractor presentation of a deliverable (generally code-based) to the State for conducting System Integration Testing (SIT) and be in effect during the overall testing effort including Contractor effort, joint effort or support of State testing activities as agreed upon for initial testing elements, regression/fix elements, performance and integration testing prior to production use.

Formula:

$$\begin{matrix} \text{\% of Code} \\ \text{Covered by} \\ \text{Automated Tools} \end{matrix} = \frac{\begin{matrix} \text{Number of Test Cases covered by Automated Testing} \\ \text{Tool within a Testing Period + Total Number of} \\ \text{Performance Test Cases covered by Automated} \\ \text{Performance Test Tool} \end{matrix}}{\begin{matrix} \text{Number of Total Test Cases within a Testing Period +} \\ \text{Total Number of Performance Test Cases within a} \\ \text{Testing Period} \end{matrix}} \times 100$$

Measurement Period: Weekly, During Testing

Data Source: Weekly Testing Report

Frequency of Collection: Mutually Agreed Testing Periods

Service Level Measures

Individual SL GYR State	Code Coverage – Automated Test Beds
Green	>75%
Yellow	>50%, <= 75%
Red	<= 50%

Project Performance (SLA).

Specification: % Project Date Compliance

Definition: Percentage of compliance for committed and accepted Project dates as per the Project Plan.

The Contractor is to produce an overall Project Plan which includes milestones, activities, and deliverables at the commencement of the Project. Due to the overlapping nature of phases, tasks and activities, a measurement period of 1 calendar month will be established. Contractor will count all milestones, activities and deliverables to be completed during that measurement period and the corresponding committed delivery dates. Any date variations (positive or negative) will be recorded upon the State’s acceptance of the deliverable and used in the calculation of this SL.

This SL will commence upon Project initiation and will prevail until Project completion.

Formula:

$$\text{\% Project Date Compliance} = \frac{\text{Total Number of Deliverables, Milestones, Activities, and Signoffs (owned by Contractor) met within the measurement month}}{\text{Total Number of Deliverables, Milestones, Activities, and Signoffs (owned by Contractor) planned to be met within the measurement month}} \times 100$$

Measurement Period: 1 Month

Data Source: Project Plan

Frequency of Collection: Monthly

Service Level Measures

Individual SL GYR State	Project Performance
Green	> 90%
Yellow	>85%, <=90%
Red	<= 85%

Issue Reporting (SLO).

Specification: % Compliance Issue Reporting

Definition: The reporting of any issues impacting the Project to the State for prompt resolution. The Contractor is to promptly report all issues to the leadership and sponsorship personnel within the State upon detection of an issue that will impact Project delivery, Project quality, or overall effectiveness of the Project in its intended production operation mode.

Percentage of issue reporting compliance is to be calculated by determining the number of project issues identified during the reporting period and the number of project issues not reported in the status reports for that period. This includes all unreported issues that arise or are discovered subsequent to reporting dates.

Whenever possible, the Contractor must include recommendations for workarounds, remedial actions, impact assessment and potential mitigation strategies the State may employ.

This SL will commence upon Project initiation and will prevail until Project completion.

Formula:

$$\begin{matrix} \% \\ \text{Reporting} \\ \text{Compliance} \end{matrix} = \frac{\begin{matrix} \text{Issue} \\ \# \text{ Project Issues Identified during reporting period} \\ - \\ \text{(minus) } \# \text{ Project Issues not reported during reporting} \\ \text{period} \end{matrix}}{\begin{matrix} \# \text{ Project Issues Identified during reporting period} \end{matrix}} \times 100$$

Measurement Period: 1 Month

Data Source: Issues Status Report

Frequency of Collection: Weekly

Service Level Measures

Individual SL GYR State	Issue Reporting
Green	>90%
Yellow	>85%, <=90%
Red	<= 85%

Deliverable Acceptance (SLO).

Specification: % Deliverable Acceptance

Definition: The State’s ability to accept Contractor deliverables based on submitted quality and compliance with defined standards and content.

The Contractor must provide deliverables to the State which comply with agreed levels of completeness, content quality, content topic coverage and otherwise achieve the agreed purpose of the deliverable between the State and the Contractor. For the avoidance of doubt, the deliverables contained in the RFP, as they pertain to general project delivery concepts associated with structured software development, represents the minimum set of expected deliverables.

Not including the State review and approval cycles, this SL will commence upon the final submission of a deliverable for acceptance to the State, include any work/re-work to the final deliverable as a result of State questions or required clarifications/amplifications, and conclude upon approval of the required amendments. Due to the iterative nature of the approval process, this Service Level should be presented in the months of planned approval dates for each deliverable and not the planned submission dates.

This SL will commence upon Project initiation and will prevail until Project completion.

Formula:

$$\% \text{ Deliverable Acceptance} = \frac{\# \text{ Final Deliverables Accepted During Period}}{\# \text{ Final Deliverables Submitted During Period}} \times 100$$

Measurement Period: 1 Month

Data Source: Project Plan

Frequency of Collection: Per Deliverable on Planned Approval Date

Service Level Measures

Individual SL GYR State	Deliverable Acceptance
Green	>85%
Yellow	>80%, <=85%
Red	<= 80%

Project Delivery – Build and Testing Activities (SLO).

Specification: % build and testing activities

Definition: The Contractor will perform and prioritize deliverable creation efforts in keeping with the overall Project Plan and focus on completion associated with the successful delivery of a working Project delivered with quality to a production environment.

Prior to the start of the build and test phases, the Contractor and the State will forecast a planned number of overall work units including build and unit test documents, features, test script development, and test script execution in the Project Plan. Each team lead will track the actual number of approved work units and report progress during status meetings with Project leadership.

This SL will commence at the beginning of the build phase and will prevail through testing completion.

Formula:

$$\% \text{ Build and Testing Activities} = \frac{\text{Actual Number of Work Units Submitted in a Month}}{\text{Planned Number of Work Units Submitted in a Month}} \times 100$$

Measurement Period: 1 Month

Data Source: Project Plan

Frequency of Collection: Monthly

Service Level Measures

Individual SL GYR State	Project Delivery - Build and Testing Activities
Green	>75%
Yellow	>70%, <=75%
Red	<= 70%

Attachment Three: Requirements for Proposals

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

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

Response Specifics. Offeror responses should use a consistent contrasting color (**blue** is suggested to contrast with the black text of this RFP 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 (**font size 10**) throughout the Offeror's response and readily distinguishable from the baseline RFP. Alterations to the State provided baseline RFP language is strictly prohibited. The State will electronically compare Offeror responses to the baseline RFP and deviations or alterations to the State's RFP requirements may result in a rejection of the Offeror's Proposal.

To ensure that each Proposal addresses the required sections of the RFP Offerors must address each RFP requirement by section and sub-section heading and provide the Offeror's proposed service or response to the requirement by section and subsection using the provided Microsoft Word version of this RFP.

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

Illustrative Example: Customers Served in the Widget Space:

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

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

Each Proposal must include a response to every request for information in this attachment and in Supplements 1 and 2 (per the response options), 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.

State evaluators read every RFP from front-to-back inclusive of all Attachments, Supplements, Forms and other elements. Offerors are advised to limit offeror marketing statements and positioning to the area(s) of the RFP applicable to those statement(s) and not include duplicative or otherwise repetitive statements throughout its response.

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

Technical Proposal

1. Cover Letter
2. Subcontractor Letters
3. Offeror Certification Form
4. Supplier Registration
5. MBE Certification(s)
6. Offeror Profile
7. Offeror Profile Summary Forms (Mandatory and Scored Requirements) – Attachment Seven
8. Proposed Solution – Supplement 1 Response
9. Use Case Response – Supplement 1 Section 3
10. Personnel Profile Summary
11. Supplement A Response – State IT Policy Standard and Service Requirements
12. Supplement S Response – State Security Privacy and Data Handling Requirements
13. Proof of Insurance
14. Payment Address
15. Legal Notice Address
16. W-9 Form
17. Independent Contractor Acknowledgement
18. Affirmation and Disclosure Form
19. Acceptance of Attachment Two: Special Provisions
20. Acceptance of Attachment Four: General Terms and Conditions
21. Assumptions
22. Support Requirements
23. Value-Added Services
24. Master Cloud Services Agreement

Cost Proposal

Cost Proposal Workbook – Attachment Nine (in native Excel format – not PDF) and the Offeror Pricing and Licensing Structure must be in a separately sealed package.

1. **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;
 3. The complete contact information for a person to answer questions related to the Proposal; and
 4. A statement certifying the Contractor is a business entity and will not submit the Independent Contractor/Worker Acknowledgement to the ordering agency.
2. **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.
3. **Offeror Certifications.** The offeror must complete Attachment Six, Offeror Certification Form.

4. **Supplier Registration.** The State of Ohio has changed the way suppliers register to do business with the State of Ohio. To provide suppliers with an enhanced registration experience, a new Website dedicated to new and existing suppliers is now available. To register to do business in Ohio and to access supplier forms, [click here http://www.supplier.obm.ohio.gov/](http://www.supplier.obm.ohio.gov/). Offerors must provide evidence that they are registered with the Ohio Shared Services to do business in the State of Ohio.
5. **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.
6. **Offeror Profile.** Each Response must include a description of the offeror capability, capacity, and experience in support of the requirements. The description should include the date the offeror was established, its leadership, number of employees, number of employees the offeror will engage in tasks directly related to the Project, and any other background information or relevant experience that will help the State gauge the ability of the offeror to fulfill the obligations of the Contract.
7. **Offeror Profile Summary Form(s).** The offeror must use the Offeror Profile Summary Form(s) (Attachment Seven) and fill them out completely to provide the required information. All offerors must demonstrate experience to meet each of the applicable mandatory requirement(s) evaluation criteria by including the offeror mandatory requirement form provided in this RFP. Each offeror must meet the applicable mandatory requirement(s) in the RFP. If an offeror does not meet the applicable mandatory requirement(s), the State may reject the offeror's Proposal as non-responsive.

The offeror must also use the Offeror Profile Summary Form(s) (Attachment Seven) and fill them out completely to provide the required information to demonstrate experience to meet each of the first two scored requirement(s) evaluation criteria by including the offeror scored requirement form provided in this RFP. These forms may be duplicated to provide multiple experiences.

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

Experience and Qualifications.

The offeror must complete this section to demonstrate that it has the experience needed to meet the RFP's requirements. For each reference, the offeror must provide the following information:

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

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

8. Proposed Solution – All Supplements are 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, Excel and Project based documents that comprise the requirements of a Supplement, inclusive of their response.

Supplement 1 Response. Supplement 1- Enterprise Warehouse Management System Scope and 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 Project. 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.

9. Use Case Response. Offerors are requested to provide a high-level design and approach for addressing the Warehouse Management Use Case using their solution. This should include a project plan, system design approach, data/system migration approach, implementation/testing/deployment approach, operations optimization based on product functionality, and operational support. See Supplement 1, Section 3 for details.

10. Personnel Profile Summary. Offeror’s proposal must include a profile for each “key member” of the proposed work team. The offeror must propose a Project team that collectively meets all the requirements in this RFP and has the education, technical skills and experience to implement the Enterprise Warehouse Management System. At a minimum, the offeror’s Proposal must include the following key members: Project Manager, Lead Business Analyst, Solution Architect and Lead IT Developer.

The offeror must demonstrate that all candidates proposed meet the requirements by submitting the following information in the Personnel Profile Summary. The state expects that the proposed named key project personnel will be available, as proposed, to work on the Project. Personnel Profile Summary (4-page limit per each member) of the proposed key project personnel must include:

- Proposed candidate’s name
- Proposed role on this project
- 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.
- Education and Training
- Professional licenses/certifications/memberships
- Employment history
- Description of the Related Service Provided. The offeror must elaborate the technical experience being described, including the capacity in which the candidate gained the experience and the role of the candidate in the project as it relates to this Project. It is the Offeror’s responsibility to customize the description to clearly substantiate the candidate’s qualification.

11. Supplement A Response– State IT Policy, Standard and Service Requirements

Offerors must include a fully completed copy of Supplement A in this section of their proposal. Offerors must follow the completion instructions contained in the supplement when preparing their response. When responding, offerors should note the redaction process described in the RFP section entitled "Proposal Submittal." This section is located within the General Instructions (Part 3) of the RFP.

12. Supplement S Response– State Information Security and Privacy Requirements, State Data Handling Requirements

Offerors must include a fully completed copy of Supplement S in this section of their proposal. Offerors must follow the completion instructions contained in the supplement when preparing their response. When responding, offerors should note the redaction process described in the RFP section entitled "Proposal Submittal." This section is located within the General Instructions (Part 3) of the RFP.

13. 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.

14. Payment Address. The offeror must give the address to which the State should send payments.

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

16. 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>

17. 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>

18. Affirmation and Disclosure Form. The offeror must complete and sign the Affirmation and Disclosure Form (Attachment Eight) as part of its Proposal.

19. Acceptance of Attachment Two – Special Provisions. Offerors must include the entire content of Attachment Two as a single section in their proposal. The Offerors must include a statement at the beginning of the section indicating that the offeror has read, understands and agrees to the Special Provisions contained in Attachment Two.

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

21. 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 should 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 should not include assumptions elsewhere in their response.

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

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

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

23. Value-Added Services. The offeror must describe in detail any Value-Added Services included in their Proposal above the minimum requirements.

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

Cost Proposal (must be a separately sealed package). This RFP includes a Cost Proposal Workbook in Microsoft Excel® format. Offerors may not reformat the State's Cost Proposal Workbook. Each offeror must complete the Cost Proposal Workbook in the exact format provided. The State may reject any Proposal with a reformatted Cost Proposal Workbook or that is not separately sealed. (See: Part Three: General Instructions, Proposal Submittal.)

- The Cost Proposal Workbook must not include exceptions, additional terms and conditions, or assumptions.
- The offeror's costs for Statements of Work (SOW) under this Contract will be a Not-To-Exceed Fixed Cost calculated using the amounts for hardware, services and support as agreed to in the offeror's Cost Proposal.
- **Offeror Pricing and Licensing Structure.** The offeror must provide its complete licensing structure (price tiers, annual/monthly subscriptions, maintenance and support, any initial setup costs etc.) in the Cost Proposal. These costs must be not-to-exceed fixed costs for the life of the Contract and included in the Cost Proposal.

ATTACHMENT FOUR: GENERAL TERMS AND CONDITIONS

PART ONE: PERFORMANCE AND PAYMENT

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

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

Term. Unless this Contract is terminated or expires without renewal, it will remain in effect until the Project is completed to the satisfaction of the State, including all optional renewal periods for maintenance or continuing commitments, and the Contractor is paid. However, the current General Assembly cannot commit a future General Assembly to an expenditure. Therefore, this Contract will automatically expire at the end of each biennium, the first of which is June 30, 2021. The State may renew this Contract in the next biennium by issuing written notice to the Contractor of the decision to do so. This expiration and renewal procedure also will apply to the end of any subsequent biennium during which the Project continues, including any optional renewal periods. Termination or expiration of this Contract will not limit the Contractor's continuing obligations with respect to Deliverables that the State paid for before or after termination or limit the State's rights in such.

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

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

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

The State seeks a complete project, and the Contractor must provide any incidental items omitted in the RFP Documents as part of the Contractor's Not-To-Exceed Fixed costs. The Contractor also must fully identify, describe, and document all systems that are delivered as a part of the Project. Unless expressly excluded elsewhere in the RFP, all hardware, software, supplies, and other required components (such as documentation, conversion,

training, and maintenance) necessary for the Project to be complete and useful to the State are included in the Project and the Not-To-Exceed Fixed costs.

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" amounts in the RFP Documents or in the Statements of Work under this Contract without the prior written approval of the State and, when required, the Ohio Controlling Board and any other source of funding. The Contractor's right to the Fee is contingent on the complete and satisfactory performance of the Project or, in the case of milestone payments or periodic payments of an hourly, daily, weekly, monthly, or annual rate, all relevant parts of the Project tied to the applicable milestone or period. Payment of the Fee also is contingent on the Contractor delivering a proper invoice and any other documents the RFP Documents require. An invoice must comply with the State's then current policies regarding invoices and their submission. The State will notify the Contractor in writing within 15 business days after it receives a defective invoice of any defect and provide the information necessary to correct the defect.

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

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

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

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

If the RFP Documents provide for any retainage, the State will withhold from each invoice paid the percentage specified in the RFP Documents as retainage. The State will pay the retainage only after the State has accepted the Project, and then only in accordance with the payment schedule specified in the RFP Documents. The State will withhold all amounts under this section arising from claims or disputes in addition to any retainage specified in the RFP Documents.

The State may pay any part of the Not-To-Exceed Fixed Transaction, Installation and Maintenance costs identified in the RFP documents or Statements of Work as being for a license in Commercial Material from a third party in accordance with the applicable license agreement, if the license agreement addresses payment. For all Key Commercial Software with a license agreement, payment of any license or support fees will be governed exclusively by that license agreement.

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

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

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

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

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

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

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

PART TWO: WORK AND CONTRACT ADMINISTRATION

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

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

Further, the Contractor must fully cooperate with any IV&V contractor assigned to this Project. Such cooperation includes expeditiously providing the IV&V contractor with full and complete access to all project work product, records, materials, personnel, meetings, and correspondence as the IV&V contractor may request. If the State assigns an IV&V contractor to the Project, the State will obligate the IV&V contractor to a confidentiality provision similar to the Confidentiality Section contained in this Contract. Additionally, the Contractor must include the obligations of this provision in all its contracts with its subcontractors that work on this project.

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

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

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

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

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

Audits. During the term of this Contract and for three years after the payment of the Contractor's Fee, on reasonable notice, and during customary business hours, the State may audit the Contractor's records and other materials that relate to the Project. This audit right also applies to the State's duly authorized representatives and any person or organization providing financial support for the Project. State audit rights will apply to those Contractor materials that are required to verify the accuracy of a Contractor invoice to the State inclusive of: Contractor personnel timesheets; Contractor purchased or provided equipment for benefit of the State that will remain in the State's possession; State deliverable acceptance documentation; any required State written approvals as required herein; final Work products and deliverables; any partial or incomplete Work products or deliverables that should the Contractor submit for partial compensation from the State as a result of termination of this contract.

Right to Terminate as a Result of Audit Findings. In the event the State determines that the results of any examination of the Contractor is unsatisfactory per the requirements of the Contract and not remedied within a 30 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.

Insurance. Contractor shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services hereunder by the Contractor, its agents, representatives, or employees. Contractor shall procure and maintain, for the duration of the contract, insurance for claims arising out of their services and including, but not limited to loss, damage, theft or other misuse of data, infringement of intellectual property, invasion of privacy and breach of data.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): written on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be outside the policy limit.
2. Automobile Liability: covering Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with a limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation insurance as required by the State of Ohio, or the state in which the work will be performed, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease. If Contractor is a sole proprietor, partnership or has no statutory requirement for workers' compensation, Contractor must provide a letter stating that it is exempt and agreeing to hold Entity harmless from loss or liability for such.
4. Technology Professional Liability (Errors and Omissions) Insurance appropriate to the Contractor's profession, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall cover all applicable Contractor personnel or subcontractors who perform professional services related to this agreement.
5. Cyber liability (first and third party) with limits not less than \$5,000,000 per claim, \$10,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The coverage shall provide for breach response costs as well as regulatory fines and penalties and credit monitoring expenses with limits sufficient to respond to these obligations.

The Insurance obligations under this agreement shall be the minimum Insurance coverage requirements and/or limits shown in this agreement. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the State of Ohio. No representation is made that the minimum Insurance requirements of this agreement are sufficient to cover the obligations of the Contractor under this agreement.

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured Status**

Except for Workers' Compensation and Professional Liability insurance, the State of Ohio, its officers, officials and employees are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. Coverage can be provided in the form of an endorsement to the Contractor's insurance.

2. **Primary Coverage**

For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance. Any insurance or self-insurance maintained by the State of Ohio, its officers, officials and employees shall be excess of the Contractor's insurance and shall not contribute with it.

3. Umbrella or Excess Insurance Policies

Umbrella or excess commercial liability policies may be used in combination with primary policies to satisfy the limit requirements above. Such Umbrella or excess commercial liability policies shall apply without any gaps in the limits of coverage and be at least as broad as and follow the form of the underlying primary coverage required above.

4. Notice of Cancellation

Contractor shall provide State of Ohio with 30 days written notice of cancellation or material change to any insurance policy required above, except for non-payment cancellation. Material change shall be defined as any change to the insurance limits, terms or conditions that would limit or alter the State's available recovery under any of the policies required above. A lapse in any required insurance coverage during this Agreement shall be a breach of this Agreement.

5. Waiver of Subrogation

Contractor hereby grants to State of Ohio a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State of Ohio by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the State of Ohio has received a waiver of subrogation endorsement from the insurer.

6. Deductibles and Self-Insured Retentions

Deductibles and self-insured retentions must be declared to and approved by the State. The State may require the Contractor to provide proof of ability to pay losses and related investigations, claims administration and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the deductible or self-insured retention may be satisfied by either the named insured or the State.

7. Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

- a. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
- c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work. The Discovery Period must be active during the Extended Reporting Period.

Verification of Coverage

Contractor shall furnish the State of Ohio with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the State of Ohio before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The State of Ohio reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that State of Ohio is an additional insured on insurance required from subcontractors.

Special Risks or Circumstances

State of Ohio reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Replacement Personnel. The Contract contains the names of specific people who will work on the Work, and the quality and professional credentials of those people were material factors in the State's decision to enter into this Contract. Therefore, the Contractor will use all commercially reasonable efforts to ensure the continued availability of those people. Also, the Contractor will 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 Contract from the Work if doing so is necessary for legal or disciplinary reasons, in the case of the person's resignation, the ceasing of his or her employment with the Contractor, or in the case of a leave of absence due to medical or personal extenuating circumstances. When the unavailability of a listed person becomes known to the Contractor. The Contractor must give the State immediate written notice of the unavailability or removal of the person.

The Contractor must have candidates with equal or better qualifications available to replace any person listed by name in the Contract. The Contractor will submit two (2) resumes of candidates to replace each person removed or who otherwise becomes unavailable, along with such other information as the State may reasonably request, within five (5) business days after the notice.

The State will select one of the two proposed replacements or will reject both of them within ten (10) business days after the Contractor has submitted the proposed replacements to the State. The State may reject the proposed replacements for any reason(s).

In addition, should the Contractor do any of the following, it will be in default:

- Fail to provide candidates with equal or better qualifications;
- Fail to provide the notice required under this Section; or
- Fail to provide two (2) qualified replacement candidates for each removed or unavailable person.

The State has an interest in ensuring, and right to ensure, that its operations are carried out in an efficient, professional, legal, and secure manner. The State, therefore, will have the right to require the Contractor to remove any individual on 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 will follow the procedures identified above for replacing unavailable people. This provision applies to people engaged by the Contractor's subcontractors.

If the Contractor removes a person listed in the Proposal from the Work for any reason other than those specified above, the State may assess damages in the amount of \$1,800.00 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. 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.

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

On written notice, the Contractor will have 30 calendar days to cure any breach of its obligations under this Contract, provided the breach is curable. If the Contractor fails to cure the breach within 30 calendar days after written notice, or if the breach is not one that is curable, the State will have the right to terminate this Contract immediately on notice to the Contractor. The State also may terminate this Contract in the case of breaches that are cured within 30 calendar days but are persistent. "Persistent" in this context means that the State has notified the Contractor in writing of the Contractor's failure to meet any of its obligations three times. After the third notice, the State may

terminate this Contract on written notice to the Contractor without a cure period if the Contractor again fails to meet any obligation. The three notices do not have to relate to the same obligation or type of failure. Some provisions of this Contract may provide for a shorter cure period than 30 calendar days or for no cure period at all, and those provisions will prevail over this one. If a particular section does not state what the cure period will be, this provision will govern.

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

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

If the State terminates this Contract for cause, the State will be entitled to cover for the Work by using another Contractor on such commercially reasonable terms as the State and the covering contractor may agree. The Contractor will be liable to the State for all costs related to covering for the Work to the extent that such costs, when combined with payments already made to the Contractor for the Work before termination, exceed the costs that the State would have incurred under this Contract. The Contractor also will be liable for any other direct damages resulting from its breach of this Contract or other action leading to termination for cause. If the Contractor fails to deliver Deliverables or provide satisfactory services, the State has the right to withhold any and all payments due to the Contractor without penalty or work stoppage by the Contractor until such failure to perform is cured.

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

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

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

Any notice of suspension, whether with or without cause, will be effective immediately on the Contractor's receipt of the notice. The Contractor will prepare a report concerning the Project just as is required by this Section in the

case of termination. After suspension of the Project, the Contractor may not perform any work without the consent of the State and may resume work only on written notice from the State to do so. In any case of suspension, the State retains its right to terminate this Contract rather than to continue the suspension or resume the Project.

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

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

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

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

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

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

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

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

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

Changes. The State may make reasonable changes within the general scope of the Project. The State will do so by issuing a written order under this Contract describing the nature of the change ("Change Order"). Additionally, if the State provides directions or makes requests of the Contractor without a change order, and the Contractor reasonably believes the directions or requests are outside the specifications for the Project, the Contractor may request a Change Order from the State. The parties will handle such changes as follows: The Contractor will provide pricing to the State. The State will execute a Change Order once it and the Contractor have agreed on the

description of and specifications for the change, as well as any equitable adjustments that need to be made in the Contractor's Fee or the performance schedule for the work. Then within five business days after receiving the Change Order, the Contractor must sign it to signify agreement with it.

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

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

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

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

Change Orders must be added to the Contract through a Contract Amendment as described in the Standard Terms and Conditions, Contract Amendments/Waiver section.

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

Independent Contractor Acknowledgement. It is fully understood and agreed that Contractor is an independent contractor and is not an agent, servant, or employee of the State of Ohio or the Ohio Department of Administrative

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

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

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

Background Checks. All Contractor and subcontractor personnel, including any Replacement Personnel, assigned to this project who have access to sensitive or confidential information or to sensitive State systems must have a current fingerprint search and background check performed by the Federal Bureau of Investigation or other Federal investigative authority. The fingerprint search and background checks must be completed before any such Contractor or subcontractor personnel gain access to State facilities, sensitive and/or confidential information or systems. All costs associated with this will be at the Contractor's expense. At its discretion, the State may reject any Contractor or subcontractor personnel based on the information provided in the completed background check.

The contractor must confirm in their proposal that all contractor and subcontractor personnel assigned to the project will have background checks completed before project start or before reporting to state designated project facilities.

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.

OhioBuys. This contract will become part of an eProcurement System which will provide electronic contract and catalog hosting and management services. Ordering Agencies will access a web-based site to place orders for the procurement of goods and services using State of Ohio contracts. The Contractor agrees to establish, maintain and support an online contract and catalog.

Publicity and Branding. The Contractor shall not do the following without prior, written consent from the State:

1. Advertise or publicize that the Contractor is doing business with the State;
2. Use this Contract as a marketing or sales tool; or
3. Affix any advertisement or endorsement, including any logo, graphic, text, sound, video, and company name, to any State-owned property, application, or website, including any website hosted by Contractor or a third party.

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

Confidentiality. The parties may disclose or learn of information, documents, data, records, or other material that the disclosing party considers confidential ("Confidential Information") in the performance of this Contract. The receiving party must treat the Confidential Information as such if it is so marked, otherwise defined as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of either party, the public, other contractors or potential contractors with the State, or individuals or organizations about whom the State keeps information. Title to the Confidential Information and all related materials and documentation remains with the disclosing party. The receiving party may only use the Confidential Information solely to perform its obligations under this Contract, and may not use or disclose any Confidential Information received as a result of

this Contract without the written permission of the disclosing party. The Contractor must assume that all State information, documents, data, source codes, software, models, know-how, trade secrets, or other material 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 is confidential. In addition, the receiving party may not use or disclose any documents or records excluded by Ohio law from public records disclosure requirements.

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

1. Was already in the receiving party's possession without the obligation of confidence;
2. Is independently developed by the receiving party with documentary evidence to support the independent development;
3. Is or becomes publicly available without breach of this Contract, except as provided in the next full paragraph;
4. Is rightfully received by the receiving party from a third party without an obligation of confidence;
5. Is disclosed by the receiving party with the written consent of the disclosing party; or
6. Is released in accordance with a valid order of a court or governmental agency, provided that the receiving party:
 - a. Notifies the disclosing party 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 serviced by the original order of production.

Although some sensitive personal information, such as medical records, addresses, telephone numbers, and social security numbers may be publicly available through other sources, the receiving party shall not disclose or use such information in any manner except as expressly authorized in this Contract. Therefore, item 3 above does not apply, and the receiving party must treat such sensitive personal information as Confidential Information whether it is available elsewhere or not. The receiving party must restrict circulation of Confidential Information within its organization and then only to people in the receiving party's organization that have a need to know the Confidential Information to perform under this Contract.

The receiving party must return all originals of any Confidential Information provided by the disclosing party and destroy any copies the receiving party has made upon termination or expiration of this Contract.

The receiving party 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 receiving party may be required to have all of its personnel and subcontractors who have access to any Confidential Information to execute a confidentiality agreement incorporating the obligations in this section.

The receiving party will be liable for the disclosure of any Confidential Information not specifically authorized by this Contract. The parties agree that the disclosure of Confidential Information may cause the disclosing party irreparable damage for which remedies other than injunctive relief may be inadequate, and the receiving party agrees that in the event of a breach of the receiving party's obligations hereunder, the disclosing party shall be entitled to temporary and permanent injunctive relief to enforce this Contract without the necessity of proving actual damages. This provision shall not, however, diminish or alter any right to claim and recover damages.

This Agreement is not Confidential Information. All its terms and conditions, including pricing and any attachments, represent public information.

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.

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

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

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

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

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

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

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.

Software Licenses. All hardware and Commercial Software and associated warranties or maintenance must be purchased in the State's name. The offeror must provide to the State all documentation related to hardware/software purchases including, but not limited to invoices, packing slips, license agreements, and other identifying details that may be required for inventory, audit and accounting.

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

For Commercial Software, the State will have the rights in items (1) through (8) of this section with respect to the software. The State will not use any Commercial Software except as provided in items (1) through (8) of this section or as expressly stated otherwise in this Contract. The Commercial Software may be:

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

However:

7. If the Commercial Software delivered under this Contract is published and copyrighted, it is licensed to the State without disclosure prohibitions.
8. If any Commercial Software is delivered under this Contract with the copyright notice in 17 U.S.C. 401, it will be presumed to be published, copyrighted, and licensed to the State without disclosure restrictions, unless a statement substantially as follows accompanies such copyright notice: "Unpublished -- rights reserved under the copyright laws of the United States." The State will treat such Commercial Software as Confidential Information to the extent that such is actually the case.

Cloud Software services will be covered by a separate Master Cloud Services Agreement and Service Attachment for Software Licensing, in the form of Attachment Ten. When such a Master Cloud Service Agreement and Service Attachment are executed, it will be a separate agreement and not part of this Contract, though the Contractor remains responsible for ensuring that the completed Work, including any Cloud Software, meets the requirements of this Contract and performs according to the Contract's requirements.

NOTE: The State will own all software licenses/systems procured through this RFP.

PART FOUR: REPRESENTATIONS, WARRANTIES, AND LIABILITIES

General Warranties. The Contractor warrants that the recommendations, guidance, and performance of the Contractor under this Contract will: (1) be in accordance with sound professional standards and the requirements

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

Additionally, with respect to the Contractor's activities under this Contract, the Contractor warrants that: (1) the Contractor has the right to enter into this Contract; (2) the Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform the contemplated services; (3) the Contractor will observe and abide by all applicable laws and regulations, including those of the State regarding conduct on any premises under the State's control and security for the State's data, systems, and networks; (4) the Contractor has good and marketable title to any goods delivered under this Contract and in which title passes to the State; (5) the Contractor has the right and ability to grant the license granted in any Deliverable in which title does not pass to the State; and (6) the Contractor is not subject to any unresolved findings of the Auditor of State under Revised Code Section 9.24 and will not become subject to an unresolved finding that prevents the extension or renewal of this Contract.

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

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

For Commercial Software licensed from a third party that is incorporated into a Deliverable, and for which the State has not approved a separate license agreement governing that Commercial Software's warranties as part of the RFP process, the Contractor represents and warrants that it has done one of the following things: (a) obtained the right from the third-party licensor to commit to the warranties and maintenance obligations in this Section; (b) obtained a binding commitment from the licensor to make those warranties and maintenance obligations directly to the State; or (c) fully disclosed in the RFP Documents any discrepancies between the requirements of this section and the commitment the third-party licensor has made.

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

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

Indemnity for Property Damage, Bodily Injury, and Data Breach. The Contractor must indemnify the State for all liability and expense resulting from bodily injury to any person (including injury resulting in death), damage to tangible or real property, or disclosure/breach of State Data including personally identifiable information and State sensitive information arising out of the performance of this Contract, provided that such bodily injury, property damage, or disclosure/breach 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 will not exceed two times the amount of compensation payable to Contractor for the previous 12 months of Service or \$4,000,000.00, whichever is greater. The limitations in this paragraph do not apply to: (i) any obligation of the Contractor to indemnify the State against claims made against it; (ii) disclosure/breach of State Data including personally identifiable information or State sensitive information, or for (iii) damages to the State caused by the Contractor's negligence or other tortious conduct.

PART FIVE: ACCEPTANCE AND MAINTENANCE

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

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

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

The Project may have components that can be tested for acceptance individually. If that is so, there may be acceptance criteria listed on the RFP Documents for each part of the Project that will be independently tested and accepted. However, unless the RFP Documents expressly provide otherwise, the failure of any independently tested component to meet its acceptance criteria will give the State the right to reject the entire Project. Alternatively,

if the State determines that it is in the State's interest to reject only the part of the Project that was independently and unsuccessfully tested, it may do so. If the State chooses this option, the State will be entitled to a refund or credit toward the Contractor's Fee equal to the cost of acquiring a replacement for the rejected component.

The acceptable level of performance for the Project will be 99.5%, unless otherwise specified in the RFP Documents. The performance level for the Project is computed by dividing the sum of the uptime by the number of working hours during the test time. "Uptime" means the total hours, rounded to the nearest quarter hour, during which all components of the Project are operational and all functions of the Project are available to its users. The number of "working hours" means the total number of working hours for the period during which the Project was scheduled to be available to its users. Uptime and downtime will be measured in hours and quarter hours.

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

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

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

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

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

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

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

to the source code that the State gets under this section, the State will do all the things that the Confidentiality section requires the Contractor to do in handling the State's Confidential Information.

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

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

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

The Contractor must keep the Project in good operating condition during the warranty period and any annual maintenance period during which the State contracts for continued maintenance. The State will provide the Contractor with reasonable access to the Project to perform maintenance. All maintenance that requires the Project to be inoperable must be performed outside the State's customary working hours, except when the Project is already inoperable. Preventive or scheduled maintenance will be performed at mutually agreeable times, within the parameters of the manufacturer's published schedule.

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

The Contractor must identify all key people responsible for providing maintenance on the Project, furnish the State with a means of identifying these people, furnish the State with their credentials, and notify the State at least 30 calendar days in advance of any reductions in staffing levels of key people at the office serving the State.

PART SIX: CONSTRUCTION

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

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

Amendments – Waiver.

- 1. AMENDMENTS.** No change to any provision of this Contract will be effective unless it is in writing and signed by parties to the Contract. However, the State may document non-material changes in writing and provide notice to the Contractor. No “click-through,” “shrink-wrap,” “browse-wrap,” or other terms that have not been specifically negotiated by the Contractor and the State, whether before, on, or after the date of this Contract, will be effective to add or modify the terms of this Contract, regardless of any party's “acceptance” of those terms by electronic means. No State employee has the authority to modify, amend, or supplement this Contract through electronic means.
- 2. WAIVER.** The failure of either party at any time to demand strict performance by the other party of any of the terms of this Contract will not be a waiver of those terms or to any other terms of this Contract. Waivers must be in writing to be effective, and either party may at any later time demand strict performance.

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

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

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

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

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

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

Time is of the Essence. Contractor hereby acknowledges that time is of the essence for performance of 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 and Ethics Compliance Certification. None of the Contractor's Personnel may voluntarily acquire any personal interest that conflicts with their responsibilities under this Contract. Additionally, the Contractor may not knowingly permit any public official or public employee who has any responsibilities related to this Contract or the Project to acquire an interest in anything or any entity under the Contractor's control, if such an interest would conflict with that official's or employee's duties. The Contractor must disclose to the State knowledge of any such person who acquires an incompatible or conflicting personal interest related to this Contract. The Contractor also must take steps to ensure that such a person does not participate in any action affecting the work under this Contract. However, this will not apply when the State has determined, in light of the personal interest disclosed, that person's participation in any such action would not be contrary to the public interest.

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

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

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

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

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

Security and Safety Rules. When using or possessing State data or accessing State networks and systems, the Contractor, its employees, subcontractors and agents must comply with all applicable State rules, policies, and regulations regarding State-provided IT resources, data security and integrity. 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.

The State may require the Contractor, its employees, subcontractors and agents to sign a confidentiality agreement and policy acknowledgements and have a background check performed before accessing facilities, data, or systems. Each Ordering Agency may require a different confidentiality agreement or acknowledgement, and the Contractor, its employees, subcontractors and agents may be required to sign a different confidentiality agreement or acknowledgement for each Ordering Agency. The Contractor must immediately replace anyone who refuses to sign a required confidentiality agreement or acknowledgment or have a background check performed.

Prohibition of the Expenditure of Public Funds for Offshore Services. No State Cabinet, Agency, Board or Commission will enter into any contract to purchase services provided outside the United States or that allows State data to be sent, taken, accessed, tested, maintained, backed-up, stored, or made available remotely outside (located) of the United States, unless a duly signed waiver from the State has been attained. 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 the Contract.

The Contractor must complete the Contractor/Subcontractor Affirmation and Disclosure Form affirming the Contractor understands and will meet the requirements of the above prohibition. During the performance of this Contract, if the Contractor changes the location(s) disclosed on the Affirmation and Disclosure Form, Contractor must complete and submit a revised Affirmation and Disclosure Form reflecting such changes.

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

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

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

Registration with the Secretary of State. Contractor certifies that it is one of the following:

1. A company that is properly registered with the Ohio Secretary of State; or
2. A foreign corporation, not incorporated under the laws of the State of Ohio, but is registered with the Ohio Secretary of State pursuant to Sections 1703.01 to 1703.31 of the Ohio Revised Code, as applicable; or
3. Exempt from registration requirements of the Ohio Secretary of State.

Boycotting. Pursuant to Ohio Revised Code 9.76 (B) Contractor warrants that Contractor is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the contract period.

**ATTACHMENT FIVE
SAMPLE CONTRACT**

**A CONTRACT BETWEEN
THE DEPARTMENT OF ADMINISTRATIVE SERVICES
ON BEHALF OF THE OFFICE OF INFORMATION TECHNOLOGY
AND**

(CONTRACTOR)

THIS CONTRACT, which results from RFP 0A1295, entitled Enterprise Warehouse Management System, is between the State of Ohio, through the Department of Administrative Services, on behalf of the Office of Information Technology and _____(the "Contractor").

The Contract is the result of agreed upon changes to the RFP including all Exhibits and written Amendments to this RFP, the Contractor's accepted Proposal and accepted, written authorized amendments and clarifications to the Contractor's Proposal. It will also include any materials incorporated by reference in the above documents and any Amendments issued under the Contract. The Terms and Conditions for the Contract are contained in Attachments Two and Four of this RFP. If there are conflicting provisions between the documents that make up the Contract, the order of precedence for the documents is as follows:

This Contract consists of the following in this order of precedence:

1. This one-page Contract Signature Page in its final form;
2. The Offeror's proposal, as negotiated, clarified, and accepted by the State and dated ____; and
3. This RFP, as amended.

The Contract also includes Amendments issued after the Contract is executed that 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.

Once awarded, the term of the Contract will be from the award date through June 30, 2021. The State may renew this Contract for up to four (4) additional two-year term(s). 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 of Ohio.

This Contract has an effective date of the later of _____, 2020, or the occurrence of all conditions precedent specified in the Terms and Conditions, Attachments Two and Four.

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

CONTRACTOR

STATE OF OHIO
OFFICE OF INFORMATION TECHNOLOGY

SAMPLE – DO NOT FILL OUT

By: _____

By: Matthew M. Damschroder

Title: _____

Title: DAS Director

Date: _____

Date: _____

**ATTACHMENT SIX
OFFEROR CERTIFICATION FORM**

Note: Offeror must provide a response to each of the numbered items in the 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 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.

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

Potential Conflicts (by person or entity affected)

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

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

- 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.
- The offeror certifies that it's regular, fulltime employees will perform at least 30% of the Work.
- 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.

- The offeror certifies that that any MBE program participants will provide necessary data to ensure program reporting and compliance.
- If the offeror qualifies as a Veterans Friendly Business Enterprise as defined by ORC 9.318 and OAC 123:5-1-01 (KK), the offeror certifies that it is a Veterans Friendly Business Enterprise.

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 EIGHT: AFFIRMATION AND DISCLOSURE FORM

By the signature affixed hereto, the Contractor affirms and understands that if awarded a contract, both the Contractor and any of its subcontractors shall perform no services requested under this Contract outside of the United States, nor allow State data to be sent, taken, accessed, tested, maintained, backed-up, stored or made available remotely (located) outside of the United States unless a duly signed waiver from the State has been attained.

The Contractor shall provide all the name(s) and location(s) where services under this Contract will be performed and where data is located in the spaces provided below or by attachment. Failure to provide this information may result in no award. If the Contractor will not be using subcontractors, indicate "Not Applicable" in the appropriate spaces.

1. Principal location of business of Contractor:

(Address) (City, State, Zip)

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

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

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

2. Location where services will be performed by Contractor:

(Address) (City, State, Zip)

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

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

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

3. Location where state data will be located, by Contractor:

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

Name/Location(s) where state data will be located by subcontractor(s):

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

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

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

Contractor also affirms, understands and agrees that Contractor and its subcontractors are under a duty to disclose to the State any change or shift in location of services performed by Contractor or its subcontractors before, during and after execution of any contract with the State. Contractor agrees it shall so notify the State immediately of any such change or shift in location of its services. The State has the right to immediately terminate the contract, unless a duly signed waiver from the State has been attained by the Contractor to perform the services outside the United States.

On behalf of the Contractor, I acknowledge that I am duly authorized to execute this Affirmation and Disclosure Form and have read and understand that this form is a part of any Contract that Contractor may enter into with the State and is incorporated therein.

By: _____
Contractor

Print Name: _____

Title: _____

Date: _____

ATTACHMENT NINE
Enterprise Warehouse Management System RFP
COST PROPOSAL

The Cost Proposal Workbook is included in electronic form on the Opportunity Details Page on the State Procurement Website for this RFP. The Cost Proposal Workbook is to be submitted along with the Offeror Pricing and Licensing Structure, in a separately sealed package from the Technical Proposal.

The Cost Proposal Workbook is to be submitted as a Microsoft Excel workbook in native Excel format – not PDF.

Offeror Pricing and Licensing Structure. The offeror must provide its complete licensing structure (price tiers, annual/monthly subscriptions, maintenance and support, any initial setup costs etc.) in its Cost Proposal. These costs must be not-to-exceed fixed costs for the life of the Contract and included in the Cost Proposal.

See the Cost Proposal Workbook for additional instructions.

ATTACHMENT TEN
Master Cloud Services Agreement

<Contractor>
Master Cloud Services Agreement <Number>

THIS MASTER CLOUD SERVICES AGREEMENT (“Agreement”) is by and between _____ (“Contractor”), having an office at _____, and the State of Ohio (“State”), through its Department of Administrative Services (“DAS”), having its principal place of business at 30 East Broad Street, 40th Floor, Columbus, OH 43215. The State and the Contractor also are sometimes referred to jointly as the “Parties” or individually as a “Party”. The effective date of this Agreement is the date it is signed on behalf of the State (“Effective Date”).

1. General Information

1.1. Organization

This Agreement covers subscriptions to cloud services through one or more attachments (“Service Attachments”) that describe the cloud offerings (“Services”) that the Contractor makes available to its customers by subscription and that it is authorized to sell to the State. The Service Attachments describe the Services the Contractor offers under this Agreement, along with any special terms or conditions applicable only to those Services, descriptions of those Services, features, and all fees associated with such Services, as well as any other provisions to which the Parties have agreed with respect to those Services. Such Service Attachments, when executed by the Parties, are incorporated into this Agreement and become a part hereof.

1.2. Subscribers

A “Subscriber” means State entities such as agencies, boards, and commissions (sometimes referred to as “State Entities”) that place requests (“Orders”) through the State’s Ordering System described in another section under this Agreement for any of the Services identified by one or more Service Attachments incorporated into this Agreement. And it includes other entities of the State, such as the legislative and judicial branches of State government and the independent offices of elected State officials that place Orders under this Agreement. It also means the Cooperative Purchasing Members, defined in the next section, that place Orders under this Agreement.

1.3. Cooperative Purchasing Members

“Cooperative Purchasing Members” or “Co-op Members” are entities that qualify for participation in the State’s cooperative purchasing program under Section 125.04 of the Ohio Revised Code (“ORC”) and that have completed the steps necessary to participate in that program. They may include Ohio political subdivisions, such as counties, townships, municipal corporations, school districts, conservancy districts, township park districts, park districts created under Chapter 1545 of the ORC, regional transit authorities, regional airport authorities, regional water and sewer districts, and port authorities. They also may include any Ohio county board of elections, state institutions of higher education, private fire companies, private, nonprofit emergency medical service organizations, and chartered nonpublic schools.

1.4. Term

The current General Assembly cannot commit a future General Assembly to any expenditure. Therefore, this Agreement along with all Service Attachments will automatically expire at the end of the State's current biennium, which is June 30, «YEAR».

1.5. Agreement – Renewal

The State may renew this Agreement in the next biennium by issuing written notice to the Contractor of the decision to do so. Renewals will be initiated by the State in writing at least 30 days before the expiration of the then current term. This expiration and renewal procedure will also apply to the end of any subsequent biennium.

1.6. Service Attachment(s) – Renewal

As part of the renewal of this Agreement, the State may renew any or all Service Attachments for the next biennium by issuing written notice to the Contractor of the decision to do so. Renewals will be initiated by the State at least 30 days before the expiration of the then current term. This expiration and renewal procedure will also apply to any subsequent biennium. Individual Orders under a Service Attachment may be renewed as long as the applicable Service Attachment remains in effect. Any such renewal is effective only on issuance of a purchase order from the Subscriber for the applicable Service.

After the first renewal, the Parties agree that pricing of Services under any Service Attachment may be renegotiated to reflect more favorable rates to the State. Upon termination of this Agreement, all rights of the Subscribers to order new Services cease and the Contractor may not fulfill any new Orders for any Subscriber under this Agreement. Further, all existing Service Attachments and all existing Orders under those Service Attachments also will terminate, except to the extent that the Contractor has any prepaid Services to perform.

The Subscribers have the option anytime during the Agreement's term to upgrade to a new technology or Service offering with the Contractor without incurring any charges for terminating the existing technology or Service offering before the agreed upon term of the Subscriber's Order ("Early Termination Charge"), if any such charge is provided for in the applicable Service Attachment.

1.7. Relationship of the Parties and Subscribers

The Contractor is an independent contractor and is not an agent, servant, or employee of the State. The Contractor 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, as an independent contractor, The Contractor is not a public employee and is not entitled to contributions from the State to any public employee retirement system or any other benefit of public employment.

Further, any individual providing personal Services under this Agreement is not a public employee for purposes of Chapter 145 of the Ohio Revised Code. And unless the 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") the Contractor must have any individual

performing work under this Agreement complete and submit to the ordering agency the Independent Contractor/Worker Acknowledgement form found at the following link:

<https://www.opers.org/forms-archive/PEDACKN.pdf#zoom=80>

The Contractor's failure to complete and submit the Independent/Worker Acknowledgement form before providing any Service or otherwise doing any work hereunder will serve as the Contractor's certification that the Contractor is a "Business entity" as the term is defined in ORC Section 145.037.

1.8. Dealers and Distributors

The State authorizes the Contractor to name one or more dealers to work with the State on behalf of the Contractor. But if the Contractor decides to use any dealers, the Contractor must submit the name, principal business address, addresses for Orders and for payments, telephone number, and its federal tax identification number. The Contractor also must submit a completed W9 form for each dealer it wishes to name under this section. The Contractor's submission must be on its official letterhead, signed by an authorized representative, and sent to the address listed in The Notices section of this Agreement.

In doing the above, the Contractor warrants that:

- i. The Contractor has provided the dealer with a copy of this Agreement, and a duly authorized representative of the dealer has agreed, in writing, to be bound by the terms and conditions in this Agreement.
- ii. Such agreement specifically provides that it is for the benefit of the State as well as the Contractor.
- iii. The Contractor will remain liable under this Agreement for the Services of its dealers and will remedy any breach of any of its dealers under this Agreement.
- iv. Payments under this Agreement for the Services of any dealer may be made directly to that dealer, and the Contractor will look solely to the dealer for any payments due to the Contractor once the State has paid the dealer.
- v. To the extent that there is any liability to the State arising from doing business with a dealer that has not signed the Agreement required under this section with the Contractor, the Contractor will indemnify the State for such liability.

If the Contractor wants to designate a dealer that will not receive payments (a "distributor"), the Contractor may do so by identifying the person or organization as a distributor in the authorizing letter. In such cases, information regarding taxpayer identification and payment addressing may be omitted, as may the distributor's W9 form. All other requirements and obligations for designating a dealer apply to designating a distributor.

Section 125.081 of the Ohio Revised Code requires the State to set-aside purchases for MBE and Executive Order 2008-13S encourages use of EDGE businesses. Therefore, the State encourages the Contractor to purchase goods and services from Ohio certified Minority Business Enterprises (MBE) and Encouraging Diversity, Growth and Equity (EDGE) vendors and to use such for its dealers and distributors under this Agreement.

1.9. Audits and Reports

During the term of this Agreement and for three years after its termination, on reasonable notice and during customary business hours, the State may audit the Contractor's records and other materials that relate to the Services performed under this Agreement, to any billing or invoices under the Agreement, or to pricing representations that the Contractor made to acquire this Agreement. This audit right also will apply to the State's duly authorized representatives and any organization providing funding for any Order hereunder.

The Contractor must make such records and materials available to the State within 15 days after receiving the State's written notice of its intent to audit the Contractor's records and must notify the State as soon as the records are ready for audit.

If any audit reveals any material misrepresentation, overcharge to the State, or violation of the terms of this Agreement, the State will be entitled to recover its damages, including the cost of the audit.

The State also may require various reports from the Contractor related to the Services. Such reports include those identified in the Cost Recovery section of this Agreement and those identified in any Service Attachment. Further, the State will be entitled to any other reports that the Contractor makes generally available to its other customers without additional charge. The State's rights under this section will apply to all Services provided to all Subscribers under this Agreement, but a Subscriber's rights to reports will apply solely to Services it orders or receives under this Agreement.

1.10. Subscribers' Reliance on Agreement

Subscribers may rely on this Agreement. But whenever a Subscriber is a Cooperative Purchasing Member and relies on this Agreement to issue an Order, the Subscriber will step into the shoes of the State under this Agreement for purposes of its Order, and, as to the Subscriber's Order, this Agreement will be between the Contractor and that Subscriber. The Contractor must look exclusively to that Subscriber for performance, including but not limited to payment, and must hold the State harmless regarding such Orders and the Subscriber's performance. But the State, through DAS, will have the right to terminate this Agreement and seek such remedies on termination as this Agreement provides should the Contractor fail to honor its obligations under an Order from any Subscriber, whether a Cooperative Purchasing Member or not.

1.11. Third-Party Suppliers

The Contractor must incorporate the costs of any third-party supplies and services in the Contractor's fees identified on the applicable Service Attachment under this Agreement.

The Contractor's use of other suppliers does not mean that the State will pay for them. The Contractor will be solely responsible for payment of its suppliers and any claims of those suppliers for any failure of the Contractor to meet its obligations under this Agreement in the required manner. The Contractor will hold the State harmless and indemnify the State against any such claims.

The Contractor assumes responsibility for all Services provided under this Agreement whether it or one of its suppliers provides them in whole or in part. Further, the Contractor will be the sole point of contact for all contractual matters, including payment of all charges resulting from the Agreement and all Service requests.

1.12. Non-Exclusivity

This Agreement is non-exclusive and is not a requirements contract. Nothing herein prevents either Party from entering into similar agreements with other entities.

1.13. Competitive Pricing and Services

For the purposes of maintaining pricing and Service competitiveness through the term of the Agreement, the Contractor agrees to an annual joint review of its pricing and Service offerings. The annual review will include, but need not be limited to, a like-customer review wherein the Contractor must provide an analysis that includes both retail and wholesale prices of the similar services it provides to other customers similar to the State to ensure the State and the Subscribers are receiving cost-competitive and technologically competitive Services. Written amendments to the Service Attachments to reduce fees and introduce technological Service improvements may be submitted throughout the term of the Agreement.

1.14. Conflict Resolution

If one Party believes the other Party has violated or is not complying with the terms of this Agreement or if any other dispute arises under this Agreement, the Party raising the matter may provide to the other Party written notice referencing this section and specifying the nature of the dispute (the "Dispute Notification"). The Parties then will seek to resolve the dispute in accordance with the procedures in this Section.

All disputes will be submitted first to the authorized State Representative (or designee) and the Contractor's Account Manager (or equivalent) for resolution. For 15 days from receipt of the Dispute Notification ("Dispute Date"), the authorized State Representative and Contractor's Account Manager will meet in person or by telephone as often as is reasonably necessary to discuss and attempt to resolve the dispute in good faith.

If after the 15 days identified above, the authorized State Representative and the Contractor's Account Manager are unable to resolve the dispute, the Parties will then submit the dispute to the State's IT Contract Manager (or designee) and to the Contractor's Sales Director (or equivalent) for resolution. For the next 15 days, the State's IT Contract Manager and Contractor's Sales Director will meet in person or by telephone as often as is reasonably necessary to discuss and attempt to resolve the dispute in good faith.

If following the 15 days in the previous section, the State's IT Contract Manager and the Contractor's Sales Director are unable to resolve the dispute, the Parties will then submit the dispute to the State's Chief Information Officer ("CIO") or a designee and to the Contractor's Vice President of Sales (or equivalent executive) for resolution. For the next 15 days, the State's CIO and Contractor's Vice President will meet in person or by telephone as often as is reasonably necessary to discuss and attempt to resolve the dispute in good faith. If the State's CIO and Contractor's Vice President are unable to resolve the dispute within that time, the Parties will nevertheless continue to retain their rights to initiate formal proceedings hereunder.

The specific format for such discussions will be left to the discretion of the representatives of the State and Contractor responsible for attempting to resolve the dispute, but each Party will involve the business, technical, and legal resources reasonably necessary to attempt in good faith to resolve the dispute at the earliest possible time and without undue delay.

If the Parties are unable to resolve the dispute and the dispute involves a claim that the Contractor is noncompliant with its obligations hereunder or has overcharged for a Service, the State or affected Subscribers may withhold payment for any Services that are the subject of the dispute until the Contractor cures the noncompliance, the Parties arrive at an agreement to resolve the dispute, or a Party obtains a resolution in a court of competent jurisdiction.

Nothing in this section is intended to limit the rights provided under termination section of this Agreement or be a prerequisite to exercising those rights.

Once the dispute has been resolved, any payments withheld will be handled in the following manner:

If the resolution was in favor of the State or one or more Subscribers, the Contractor will issue a credit on the next invoice for the affected Subscribers. If the credit exceeds the Service charges on the next invoice or an invoice will not be issued within 60 days of the resolution, the Contractor will issue payment in the form of a check in the amount exceeding the Service charges or for the full amount if an invoice will not be issued within 60 days. Any such checks must be issued within that 60-day period.

If in favor of the Contractor, the affected Subscribers will submit appropriate payment within 30 days of receiving notification of the resolution at the office designated to receive the invoice.

In either of the above cases, the amount or amounts withheld by the State or Subscriber(s) will be taken into account in calculating any amount(s) due.

2. General Requirements for Cloud Services

2.1. Standards

All Service subscriptions must provide a Service that maintains a redundant infrastructure that will ensure access for all the State's enrolled users in case of a failure at any one of the Contractor locations, with effective contingency planning (including back-up and disaster recovery capabilities) and 24x7 trouble shooting service for inquiries, outages, issue resolutions, etc. All such Services must be dependable and provide response rates that are as good as or better than industry standards. They also must meet the Service Level Agreements ("SLAs") provided in the applicable Service Attachment and be supported with sufficient connectivity and computing resources to handle reasonably anticipated peak demand, and the Contractor must ensure that sufficient bandwidth and computing resources are dedicated to the Services to meet peak demand times without material degradation in performance.

All Services must operate at the **moderate level baseline** as defined in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-53, "Security and Privacy Controls for Federal Information Systems and Organizations"(current, published version), 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. Services 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 service level agreements and promised operational parameters.

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

User access to the Services must be capable of being integrated with a Subscriber's Active Directory or other Lightweight Directory Access Protocol (LDAP) service to support single sign-on capability for users and to ensure that every user is tied to an Active Directory or other LDAP account and to prevent user access when a user is disabled or deleted in the applicable Subscriber's Active Directory or other LDAP service.

If the Service is cloud based, the Contractor must obtain an annual audit that meets the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Attestation Engagements ("SSAE") No. 18, Service Organization Control 1 Type 2 and Service Organization Control 2 Type 2. The audit must cover all operations pertaining to the Services covered by this Agreement. The audit will be at the sole expense of the Contractor and the results must be provided to the State within 30 days of its completion each year.

At no cost to the State, the Contractor must immediately remedy any issues, material weaknesses, or other items identified in each audit as they pertain to the Services.

Supplement S, the State's Security, Privacy, and Data Handling Policy, as modified by the Contractor's responses therein, is attached to this Contract and made a part hereof. It provides for additional security, privacy, and data handling requirements to those in this and other sections of this Contract.

2.2. Object Reassignment

Any Service subscriptions that are provided by the number of items that may be used by or in conjunction with it, such as nodes, users, or connections ("Objects"), may be reassigned to other, similar Objects within the Subscriber's organization at any time and without any additional fee or charge. For example, a named user subscription may be assigned to another user. But any such reassignment must be in conjunction with termination of use by or with the previous Object, if such termination is required to keep the total number of licensed Objects within the scope of the applicable subscription. Should a Subscriber require a special code, a unique key, or similar item to reassign the subscription as contemplated by this section, the Contractor will provide such a code, key, or similar item to the Subscriber at any time and without a fee or charge. A later section in this Agreement governs assignment of a Subscriber's subscription to any Service to a successor in interest.

2.3. Generated Files

"Generated Files" are files storing information, instructions, or data that a Subscriber creates or modifies using the Contractor's Services and in which the data or other information was provided or created by a Subscriber. Such Generated Files are also included in the definition of "Subscriber's Data" in a later section of this Agreement. Examples of such files could include, among others, text files generated with a word processor, data tables created with a database engine, and image files created with a graphics application. Applications consisting of instruction sets created with a programming language that the Contractor provided to a Subscriber also would be considered Generated Files. As between the Subscriber and the Contractor, the Subscriber will own all Generated Files that the Subscriber prepares by using the Services, excluding such portions of the Generated Files that consist of embedded portions

of the Software. The Contractor or its licensors will retain ownership of any portions of the Software embedded into Generated Files. But the Contractor grants to the Subscriber a nonexclusive, royalty-free right to reproduce and distribute to third parties any portions of the intellectual property embedded in any Generated Files that the Subscriber creates while using the Services in the way the Services are designed to be used. In the Subscriber's distribution of the Generated Files, the Subscriber may not use the Contractor's name, logo, or trademarks, except to the extent that such are incorporated in such Generated Files by the design of a Service when used as intended.

2.4. Contractor Warranties

The Contractor warrants the following:

- i. It has validly entered into this Agreement and has the legal power to do so.
- ii. The Services will perform materially in accordance with the applicable user guide and the requirements of this Agreement.
- iii. Subject to any limitations specified in the applicable Service Attachment, the functionality of the Services will not be materially decreased during a subscription term.
- iv. It will not transmit viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs ("Malicious Code") to a Subscriber.

For any breach of a warranty above, the State's and individual Subscribers' remedies will be as provided in the section of this Agreement dealing with termination.

Failure of the Contractor to meet any SLAs in an applicable Service Attachment will not be considered a breach of this warranty section unless the State reasonably determines that the failure is persistent or extended in duration.

2.5. State and Subscribers Responsibilities

The State and each Subscriber will be responsible for their respective compliance with this Agreement. Additionally, each Subscriber will:

- i. Be responsible for the accuracy, quality, and legality of its data and of the means by which the data was acquired.
- ii. Use commercially reasonable efforts to prevent unauthorized access to or use of the Services to which it subscribes and notify the Contractor promptly of any unauthorized access or use of which it becomes aware.
- iii. Use the Services only in accordance with the applicable user guide, to the extent it is not inconsistent with this Agreement, applicable laws, or government regulations.

A Subscriber may not:

- i. Intentionally make the Services available to anyone other than its employees and contractors acting on its behalf.
- ii. Sell, resell, rent or lease the Services,
- iii. Use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights.
- iv. Intentionally use the Services to store or transmit Malicious Code,
- v. Intentionally interfere with or disrupt the integrity or performance of the Services or third-party data contained therein.
- vi. Attempt to gain unauthorized access to the Services or their related systems or networks.

3. Insurance, Indemnification, Limitation of Liability

3.1. Insurance

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees. Contractor shall procure and maintain for the duration of the contract insurance for claims arising out of their services and including, but not limited to loss, damage, theft or other misuse of data, infringement of intellectual property, invasion of privacy and breach of data.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): written on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be outside the policy limit.
2. Automobile Liability: covering Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with a limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation insurance as required by the State of Ohio, or the state in which the work will be performed, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease. If Contractor is a sole proprietor, partnership or has no statutory requirement for workers' compensation, Contractor must provide a letter stating that it is exempt and agreeing to hold Entity harmless from loss or liability for such.
4. Technology Professional Liability (Errors and Omissions) Insurance appropriate to the Contractor's profession, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall cover all applicable Contractor personnel or subcontractors who perform professional services related to this agreement.
5. Cyber liability (first and third party) with limits not less than \$5,000,000 per claim, \$10,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Pre-Qualified Contractor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The coverage shall provide for breach response costs as well as regulatory fines and penalties and credit monitoring expenses with limits sufficient to respond to these obligations.

The Insurance obligations under this Agreement shall be the minimum Insurance coverage requirements and/or limits shown in this agreement. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the State of Ohio. No representation is made

that the minimum Insurance requirements of this agreement are sufficient to cover the obligations of the Contractor under this agreement.

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

Except for Workers' Compensation and Professional Liability insurance, the State of Ohio, its officers, officials and employees are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. Coverage can be provided in the form of an endorsement to the Contractor's insurance.

Primary Coverage

For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance. Any insurance or self-insurance maintained by the State of Ohio, its officers, officials and employees shall be excess of the Contractor's insurance and shall not contribute with it.

Umbrella or Excess Insurance Policies

Umbrella or excess commercial liability policies may be used in combination with primary policies to satisfy the limit requirements above. Such Umbrella or excess commercial liability policies shall apply without any gaps in the limits of coverage and be at least as broad as and follow the form of the underlying primary coverage required above.

Notice of Cancellation

Contractor shall provide State of Ohio with 30 days written notice of cancellation or material change to any insurance policy required above, except for non-payment cancellation. Material change shall be defined as any change to the insurance limits, terms or conditions that would limit or alter the State's available recovery under any of the policies required above. A lapse in any required insurance coverage during this Agreement shall be a breach of this Agreement.

Waiver of Subrogation

Contractor hereby grants to State of Ohio a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State of Ohio by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the State of Ohio has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Deductibles and self-insured retentions must be declared to and approved by the State. The State may require the Contractor to provide proof of ability to pay losses and related investigations, claims administration and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the deductible or self-insured retention may be satisfied by either the named insured or the State.

Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

- a. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
- c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work. The Discovery Period must be active during the Extended Reporting Period.

Verification of Coverage

Contractor shall furnish the State of Ohio with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the State of Ohio before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The State of Ohio reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that State of Ohio is an additional insured on insurance required from subcontractors.

Special Risks or Circumstances

State of Ohio reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

3.2. Indemnification for Infringement

The Contractor will release, protect, indemnify, defend, and hold the State and the Subscribers harmless from and against any claims of infringement by any third parties based on any Service provided under this Agreement. Any defense of the State or a State Subscriber requires and is subject to the approval and consent of the Ohio Attorney General. Any such defense will be at the Contractor's sole cost and expense. Further, the Contractor will indemnify the State and Subscribers for any liability resulting from any such claims, demands, or suits, as well as hold the State and the Subscribers harmless for the Contractor's liability, losses, and damages resulting from such. This obligation of defense and indemnification will not apply where the State or a Subscriber has modified or misused the Service and the claim or the suit is based on the modification or misuse. The State or affected Subscribers will give the Contractor notice of any such claim as soon as reasonably practicable and allow the Contractor to control the defense of any such claim, upon consultation with and the approval of the Office of the State's Attorney General.

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

- i. Modify the offending Service so that it is no longer infringing but provides substantially the same functionality as before the modification.
- ii. Replace the offending Service with an equivalent or better, non-infringing offering.
- iii. Acquire the right for the Subscribers to use the infringing Service as it was intended to be used under this Agreement.
- iv. Terminate the infringing Service and refund the amount the Subscribers paid for the Service and the amount of any other Service that requires the availability of the infringing Service for it to be useful to the Subscribers.

3.3. Limitation of Liability - State

The State's and Subscribers' combined total liability for damages, whether in contract, law, or equity, will not exceed two times the amount of compensation payable to Contractor for the previous 12 months of Service related to the Service Attachment under which the damages occurred or the amount of direct damages incurred by the Contractor, whichever is less.

3.4. Limitation of Liability - Contractor

The Contractor will be responsible for any liability, claims, losses and damages arising out of the performance of this Agreement provided such liability, claim, loss or damage is due to the fault or negligence of the Contractor, its employees, agent, subcontractors or affiliates. Contractor's liability to the State for direct or other damages will not exceed two times the amount of compensation payable to Contractor for the previous 12 months of service or \$4,000,000.00, whichever is greater.

EXCEPT FOR A DATA BREACH OR AS EXPRESSLY PROVIDED IN THIS CONTRACT, NEITHER PARTY, ITS AFFILIATES OR CONTRACTORS WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

4. Confidentiality and Handling of Data

4.1. Confidentiality

The State may disclose to the Contractor written material or oral or other information that the State treats as confidential ("Confidential Information"). Title to the Confidential Information and all related materials and documentation the State delivers to the Contractor will remain with the State. The Contractor must treat such Confidential Information as secret if it is so marked, otherwise identified as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of the public, other contractors or potential contractors with the State, or individuals or organizations about whom the State keeps information. The Contractor may not disclose any Confidential Information to third parties and must use it solely to perform under this Agreement.

If any Service delivered under this Agreement contains data, documentation, or other written information that is confidential in nature and properly labeled as such, then it also will be

Confidential Information for purposes of this section. The State will keep all such Confidential Information in confidence and will not use it other than as authorized under this Agreement. Nor will the State disclose any such Confidential Information to any third party without first obligating the third party to maintain the secrecy of the Confidential Information.

If one Party discloses Confidential Information (“Disclosing Party”) to the other Party to this Agreement (“Receiving Party”), the Receiving Party’s obligation to maintain the confidentiality of the Confidential Information will not apply where such:

- i. was already in the possession of the Receiving Party without an obligation of confidence;
- ii. is independently developed by the Receiving Party, provided documentary evidence exists to support the independent development;
- iii. except as provided in the next paragraph, is or becomes publicly available without a breach of this Agreement;
- iv. is rightfully received by the Receiving Party from a third party without an obligation of confidence;
- v. is disclosed by the Receiving Party with the written consent of the Disclosing Party; or
- vi. is released under a valid order of a court or governmental agency, provided that the Receiving Party:
 - a. Notifies the Disclosing Party of the order immediately upon receipt of it, unless it is legally prohibited from doing so; and
 - b. Makes a reasonable effort to obtain a protective order from the issuing court or agency limiting the disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production.

Information that may be available publicly through other sources about people that is personal in nature, such as medical records, addresses, phone numbers, social security numbers, and similar things, is nevertheless sensitive in nature and may not be disclosed or used in any manner except as expressly authorized in this Agreement. Therefore, item (iii) 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 Receiving Party must return all originals of any Confidential Information and destroy any copies it has made on termination or expiration of this Agreement.

The disclosure of the Confidential Information of the Disclosing Party in a manner inconsistent with the terms of this provision may cause the Disclosing Party irreparable damage for which remedies other than injunctive relief may be inadequate, and each Receiving Party agrees that in the event of a breach of the Receiving Party’s obligations hereunder, the Disclosing Party will be entitled to seek temporary and permanent injunctive relief to enforce the provisions of this Agreement without the necessity of proving actual damages. However, this provision does not diminish or alter any right to claim and recover damages.

This Agreement is not Confidential Information. All its terms and conditions, including pricing and any attachments, represent public information.

4.2. Public Records Requests.

Should the Contractor receive any public records request with respect to any Subscriber's Data, the Contractor will immediately notify any affected Subscriber and fully cooperate with the affected the Subscriber directs.

4.3. Handling of Subscriber's Data

"Subscriber's Data" is any information, data, files, or software that a Subscriber uses or stores on or in conjunction with the Services, including but not limited to Generated Files. The Contractor must use due diligence to ensure computer and telecommunications systems and Services involved in storing, using, or transmitting Subscriber's Data are secure and to protect that data from unauthorized disclosure, modification, or destruction. To accomplish this, the Contractor must comply with all applicable National Institute of Standards and Technology ("NIST") standards for Moderate Impact systems and:

- i. Apply appropriate risk management techniques to ensure security for all sensitive data, including but not limited to any data identified as Confidential Information elsewhere in this Agreement.
- ii. Ensure that its internal security policies, plans, and procedures address the basic security elements of confidentiality, integrity, and availability.
- iii. 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.
- iv. Maintain appropriate identification and authentication processes for information systems and services associated with Subscriber's Data.
- v. Maintain appropriate access control and authorization policies, plans, and procedures to protect system assets and other information resources associated with Subscriber's Data.
- vi. Implement and manage security audit logging on information systems, including computers and network devices.

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 Subscriber's Data, limiting access to only these points and disabling 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. And the Contractor must use two-factor authentication to limit access to systems that contain Subscriber's Data.

Unless a Subscriber instructs the Contractor otherwise in writing, the Contractor must assume all Subscriber's Data is both confidential and critical for Subscriber 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. As part of the Contractor's protection and control of access to and use of data, the Contractor must employ appropriate intrusion and attack prevention and detection capabilities. Those capabilities must track unauthorized access and attempts to access Subscriber's Data, as well as attacks on the Contractor's infrastructure associated with Subscriber'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 Subscriber's Data.

The Contractor must use appropriate measures to secure a Subscriber's Data before transferring control of any systems or media containing that Subscriber's Data. The method of securing the data must be appropriate to the situation and may include erasure, destruction, or encryption of the 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 Agreement.

The Contractor must have a business continuity plan in place. The Contractor must test and update the IT disaster recovery portion of its business continuity plan 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 Subscriber'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 Subscriber'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 Subscriber'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.

The Contractor may not allow Subscriber's Data to be loaded onto portable computing devices or portable storage components or media unless necessary to perform its obligations under this Agreement properly. Even then, the Contractor may permit such only if adequate security measures are in place to ensure the integrity and security of the 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. At a minimum, portable computing devices must have anti-virus software, personal firewalls, and system password protection. In addition, Subscriber'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. The Contractor also must maintain an accurate inventory of all such devices and the individuals to whom they are assigned.

Any encryption requirement identified in this provision must meet the NIST standards identified above.

The Contractor must have reporting requirements for lost or stolen portable computing devices authorized for use with Subscriber's 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 Subscriber's 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 Subscriber's Data or the infrastructure associated with Subscriber's Data.

In case of an actual security breach that may have compromised Subscriber's Data, including but not limited to loss or theft of devices or media, the Contractor must notify the Subscriber in writing of the breach within 24 hours of the Contractor becoming aware of the breach, and fully cooperate with the Subscriber to mitigate the consequences of such a breach. This includes any use or disclosure of the Subscriber's Data that is inconsistent with the terms of this Agreement 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 Agreement by an employee, agent, or subcontractor of the Contractor.

The Contractor must give affected Subscribers full access to the details of the breach and assist each Subscriber in making any notifications to potentially affected people and organizations that the affected Subscribers deem are necessary or appropriate. The Contractor must document all such incidents, including its response to them, and make that documentation available to the affected Subscribers on request. In addition to any other liability under this Agreement related to the Contractor's improper disclosure of Subscriber's Data, and regardless of any limitation on liability of any kind in this Agreement, 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 be reasonably acceptable to the State.

All Subscriber Data will remain the property of the Subscriber. The Contractor must ensure that the Subscriber retains access and download capability for purposes of retrieving its data for research, investigation, transfer, or migration to other systems.

All Subscriber Data at rest in systems supporting the Contractor's Services must reside within the contiguous United States with a minimum of two data center facilities at two different and distant geographic locations and be handled in accordance with the requirements of this section at all Contractor locations.

When the Contractor performs any Services under this Agreement 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 or whose results from such background check are unacceptable to the applicable Subscriber.

4.4. Subscriber Responsibilities

Each Subscriber will be responsible for its compliance with this Agreement, be responsible for the accuracy, quality, and legality of its Subscriber's Data and for the means by which it acquired that Subscriber's Data, use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify the Contractor promptly of any unauthorized access or use of which it becomes aware. Further, the Subscriber will use the Services only in accordance with the applicable user guide(s), to the extent not inconsistent with the Subscriber's rights under this Agreement, applicable laws, and government regulations.

Further, a Subscriber may not intentionally make the Services available to anyone other than its employees and its contract personnel, unless the applicable Service or Services are designed to be publicly facing or intended for interaction with clients of the Subscriber (e.g., hosted web sites), sell, resell, rent, or lease the Services, use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights. The Subscribers also may not intentionally use the Services to store or transmit malicious code, intentionally interfere with or disrupt the integrity or performance of the Services or third-party data contained therein or attempt to gain unauthorized access to the Services or their related systems or networks.

5. Orders, Requesting Service, Delivery, Acceptance, Termination, and Modification

5.1. Acceptance

The acceptance procedure for setup or installation of a Service will be a review by the Subscriber acquiring the Service to ensure that it meets the performance standards and other requirements in the applicable Service Attachment and that the setup or installation has been done in a professional manner and that the Service itself meets all requirements. For Services not requiring setup or installation, the acceptance procedure will be a review by the Subscriber to ensure the Service complies with the performance requirements in the applicable Service Attachment.

In addition to the requirements of the applicable Service Attachment, if ordering documents such as a statement of work are authorized in that Service Attachment, the review will include any additional requirements in the applicable Order form. The Subscriber will have up to 15 days after the setup, installation, or establishment of the Service to do this. The Subscriber will not issue a formal letter of acceptance, unless otherwise specified in the applicable Service Attachment, and passage of 15 days will imply acceptance, though the Subscriber will issue written notice of noncompliance if setup, installation, or the Service does not meet the requirements in this Agreement.

If the Subscriber issues a noncompliance letter, the Contractor will have 30 days to correct the problems listed in the letter. If the Subscriber has issued a noncompliance letter, the Service, installation, or set up will not be accepted until that Subscriber 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 Subscriber will issue the acceptance letter within 15 days after all defects have been fixed. If the Contractor fails to correct the defect(s), the applicable Order(s) will terminate without cost or obligation to the Subscriber, and the Subscriber will be entitled to a full refund of any payments made for the Service, setup, and installation.

The applicable Service Attachment may provide additional or alternative acceptance procedures, but no Order may change the acceptance process.

5.2. Service, Termination, or Modification

All Orders for Service, as well as any modification to an Order, must be made through the State's Ordering System, except for Orders involving only Cooperative Purchasing Members.

Cooperative Purchasing Members do not use the State's Ordering System and will submit their Orders directly to the Contractor.

The Contractor must act as the sole point of contact for all Services under this Agreement and any related Service Attachments for all Subscribers. The Contractor may not require a Subscriber to contact any of the Contractor's third-party suppliers or otherwise transact business directly with such suppliers for any Services ordered under this Agreement, and in all respects, the Contractor must maintain a seamless, single-point-of-contact business relationship with each Subscriber for the Services ordered under this Agreement.

6. Termination – Agreement, Service Attachments, Orders

6.1. Termination by the State

The Contractor must comply with all terms and conditions of this Agreement. If the Contractor fails to perform any one of its obligations under this Agreement, it will be in default, and the State may proceed in any or all the following ways:

- I. The State may terminate this Agreement, the applicable Service Attachment(s), or the affected Order(s) under this Agreement.
- II. The State may withhold payment for any affected Service until the Contractor cures the noncompliance or the Parties agree on the corrective action the Contractor must take to cure the noncompliance.
- III. The State may file a complaint for damages with a court of competent jurisdiction in Ohio.

1.

The State also may terminate this Agreement or any Service Attachments for its convenience with 30 days written notice to the Contractor. In any such event, each Subscriber must pay for all accrued and unpaid charges for Services and any fee specified in the affected Service Attachment(s) for early termination ("Early Termination Charge"), if applicable.

If the termination of the Agreement or any Service Attachment(s) is for cause, then neither the State nor any Subscribers will be liable for any Early Termination Charge outlined in any affected Service Attachments. And the Contractor will fully cooperate in any disentanglement efforts any affected Subscribers reasonably request at no cost to the requesting Subscribers, even if disentanglement is a separately priced Service in the applicable Service Attachment(s).

The State's funds are contingent upon the availability of lawful appropriations by the Ohio General Assembly. If the General Assembly fails at any time to continue funding for the payments and other obligations due as part of this Agreement, the State's obligations under this Agreement will terminate as of the date the funding expires without further obligation of the State, including but not limited to any Early Termination Charge outlined in any affected Service Attachment(s).

6.2. Termination of Orders by Subscriber or Contractor

Under this Agreement, specific Orders also may be terminated by either a Subscriber or the Contractor, as follows:

6.2.1. By a Subscriber

A Subscriber may terminate Service under any Order it has placed, and it may do so at any time for any or no reason. The Subscriber will be liable for Services delivered but unpaid as of the termination date, as well as any Early Termination Charge outlined in the appropriate Service Attachments.

If the Subscriber's funds are contingent upon the availability of lawful appropriations by the Ohio General Assembly or other governmental body, and the General Assembly or other governmental body fails at any time to continue funding for the payments and other obligations due under an Order, the Subscriber's obligations with respect to that Order will terminate as of the date the funding expires, and the Subscriber will have no further obligation with respect to such Order, including but not limited to any Early Termination Charge outlined in any affected Service Attachments.

If a termination of any Service under one or more Orders is for cause or non-appropriation of funds, as described in this Section 6, the Subscriber will not be liable for any Early Termination Charge, if such are otherwise applicable to the Service or Services so terminated. If the termination is for cause, the Contractor will fully cooperate in any disentanglement efforts the Subscriber reasonably requests at no cost to the Subscriber.

6.2.2. By the Contractor

If a Subscriber materially defaults in the performance of any of its duties or obligations under this Agreement, the Contractor, by giving at least 30 days prior written notice, may cancel any affected Services provided to that Subscriber under this Agreement.

If the Subscriber cures the default before the cancellation of Service date, the Order will remain in full force and effect.

If the Subscriber fails to cure, then the Subscriber will remain liable for charges accrued but unpaid as of the cancellation date and any Early Termination Charge as outlined in the appropriate Service Attachment(s), if applicable.

7. Financial – Fees, Claims and Disputes, Billing, and Payment

7.1. Fees

All applicable charges are fully documented in the appropriate Service Attachment(s). The Subscriber will not be responsible for any charges not documented in the applicable Service Attachment(s) or be responsible for any charges waived by the Contractor in this Agreement or the applicable Service Attachment(s).

Subscribers are not subject to increases in fees during the term of this Agreement. No increase in any Service charge for any renewal terms may exceed ____% above the charge for the same Service in the previous term for that Service. For any Order with a term (“Order Term”) that extends beyond the then-current term of this Agreement, that Order’s applicable fees may not increase until that Order is renewed.

Subscribers are not responsible for any charges from the Contractor’s third-party suppliers for any Services ordered under this Agreement, unless an applicable Service Attachment expressly provides otherwise. In this regard, the Contractor is the seller or reseller of all Services covered by this Agreement, and any payments due to the Contractor’s third-party suppliers for Services under this Agreement are included in the Contractor’s fees specified in the applicable Service Attachment, unless that Service Attachment expressly provides otherwise.

7.2. Billing

Invoices will be issued at the Order level, but the Subscriber may require a recap at the agency, division, or district level based on the organizational structure of the Subscriber.

Invoices must be submitted to the office designated in the State’s Ordering System as the “bill to address”. The invoice must be submitted within 60 days of the Service. If the Subscriber does not receive the invoice within the 60 days of the date of Service, the Subscriber will be entitled to deny payment of the invoice.

A proper invoice must include the following information:

- i. Name and address of the Contractor as designated in this Agreement.
- ii. Federal Tax Identification Number of the Contractor as designated in this Agreement.
- iii. Invoice remittance address as designated in the Agreement.
- iv. A sufficient description of the Services to allow the Subscriber to identify the Services and perform an audit of the Services.

7.3. Payment

Payments for Services under this Agreement will be due on the 30th calendar day after the actual receipt of a proper invoice in the office designated to receive the invoice.

The Contractor agrees to receive payment from approved vouchers by electronic fund transfer ("EFT") for Subscribers that rely on them to make payment. The Contractor will cooperate with Subscribers in providing the necessary information to implement EFT. The date the EFT is issued in payment will be considered the date payment is made, or if a Subscriber does not use an EFT process, the date its check or warrant is issued in payment will be considered the date payment is made.

7.4. State Reporting Requirements

The Contractor must provide the State with a recap of all Services provided to the Subscribers on a monthly basis. Additional, specific reporting data requirements may be outlined in the Service Attachment(s).

7.5. Service Level Guarantee and Credits

The Contractor will issue a credit allowance to any Subscriber affected by a Service outage, as defined in the Service Level Agreement contained in the applicable Service Attachment. The credit will appear on the affected Subscriber's next invoice, or if the Subscriber so requests, the Contractor will issue a check to the Subscriber as payment within 30 days of the request.

7.6. Cost Recovery

2. The Contractor must pay a fee to the State to cover the estimated costs the State will incur administering this Agreement and the Services offered under it ("Cost Recovery Fee").
- 3.
4. The Cost Recovery Fee will be 2% of the total dollar amount of Services the Contractor invoices under this Agreement to all Subscribers, including all State-level entities and all Cooperative Purchasing Members. The Cost Recovery Fee is included in the prices reflected on the Service Attachment and the Contractor may not add a surcharge to Orders under this contract to cover the amount of the Cost Recovery Fee. The State will generate notification to the Contractor via email on the last day of the calendar quarter advising the Contractor to complete a revenue reporting form provided by the State within 30 days after the close of the quarter. The State may compare the form provided by the Contractor to information in the State's accounting system, the State's Ordering System, and other records for purposes of verifying the accuracy of the form. The State will generate an invoice to the Contractor for the quarterly Cost Recovery Fee based on reported revenue from the Contractor or the State's records, whichever is greater.

5.

Examples of the calculation of a Cost Recovery Fee:

1. An example of a contractor with sales only to State Entities and thus no revenue from Co-op Members:

FY15				
Quarter	Revenue from State Entities	Revenue from Co-op Members	Revenue Share Due	Reported by
Q1	\$ 79,193	\$ 0	\$ 1,584	Name of Contact
Q2	\$ 10,392	\$ 0	\$ 208	Name of Contact
Q3	\$ 209,105	\$ 0	\$ 4,182	Name of Contact
Q4	\$ 74,970	\$ 0	\$ 1,499	Name of Contact

2. An example of a contractor with sales to both State Entities and Co-op Members and thus revenue from both:

FY15				
Quarter	Revenue from State Entities	Revenue from Co-op Members	Revenue Share Due	Reported by
Q1	\$ 79,193	\$ 20,963	\$ 2,003	Name of Contact
Q2	\$ 10,392	\$ 4,197	\$ 292	Name of Contact
Q3	\$ 209,105	\$ 63,210	\$ 5,446	Name of Contact
Q4	\$ 74,970	\$ 1,471	\$ 1,529	Name of Contact

3. An example of a contractor with sales to neither State Entities nor Co-op Members and thus no revenue to report:

FY15				
Quarter	Revenue from State Entities	Revenue from Co-op Members	Revenue Share Due	Reported by
Q1	\$0	\$0	\$0	Name of Contact
Q2	\$0	\$0	\$0	Name of Contact
Q3	\$0	\$0	\$0	Name of Contact
Q4	\$0	\$0	\$0	Name of Contact

The Contractor must use the State's Web-based system for reporting revenue generated under this Agreement.

The Contractor must remit the 2% Cost Recovery Fee to the State quarterly by check to the State of Ohio, Department of Administrative Services. The check must be made payable to the Treasurer, State of Ohio, and must be sent to the State at the following address:

Department of Administrative Services
L-3686
Columbus, OH 43260-3686

To ensure that the payment is credited properly, the Contractor must identify the payment as a State of Ohio Cost Recovery Fee and reference this Agreement

The first payment will be calculated against all Services rendered to the existing Subscribers transferred to the Agreement in the month of effective date. Subsequent payments will be calculated against all Subscribers as stated above.

The Contractor's contact person for Cost Recovery Section will be:

Name:

Address:

Phone:

Email:

8. Support and Order Adjustments

8.1. Service Support Generally

During the term of any Order, the Contractor will provide the Subscriber with telephonic assistance and advice for using all Services covered by the Order. The Contractor also will provide troubleshooting and problem resolution by developing and providing fixes or patches for errors in any software it provides and contract with any third party providing software that supports the Services for the same. As part of the support the Contractor provides in exchange for the applicable fee, the Contractor also will keep all software current by installing all relevant service packs and patches as well as all updates and new releases and versions of the software as soon as reasonably possible. The Contractor also will keep its own software offering compatible with any updated third-party software that is part of the Services or supports the Services. The way the Contractor provides support will be governed by the Contractor's policies and programs described in the applicable documentation or other materials that the Contractor uses to notify its customers generally of such policies. But regardless of the Contractor's policies and programs, unless otherwise agreed in the applicable Service Attachment, in all cases such support must comply with the requirements of this Agreement and the applicable Service Attachment(s). And the Contractor must provide the support in a competent, professional, and timely manner.

8.2. Equipment Support Generally

For any equipment used to provide the Services, remedial equipment maintenance by the Contractor will be completed within eight business hours after notification by the Subscriber that maintenance is required. In the case of preventative maintenance, the Contractor will perform such in accordance with the manufacturer's published schedule and specifications. If maintenance is not completed within eight hours after notification by the Subscriber, the Contractor will be in default. Failure of the Contractor to meet or maintain these requirements will provide the Subscriber with the same rights and remedies as specified elsewhere in this Agreement for default, except that the Contractor will only have eight hours to remedy a default. Nothing contained herein will limit the application of any credits for failure to meet any service level agreements in the applicable Service Attachment. The Contractor will provide adequate staff to provide the maintenance required by this Agreement.

8.3. Adjustments

A Subscriber may acquire subscriptions that are based on the number of users, nodes, computers, processors, or other counts of items covered by an Order ("Objects"). In any such cases, the Subscriber may request the fees for a subscription renewal be calculated based on fewer Objects than included in the previous Order, with an appropriate adjustment in the applicable fee(s). Despite the reduction, fees for the remaining Objects may not be increased over the applicable fees from the previous Order.

During an Order Term, a Subscriber may increase the volume of its Order (e.g., add additional users) without increasing the Order Term. The cost of any addition Objects or similar increase in usage must be prorated to reflect the time remaining in the Order Term rather than be based on the full Order Term.

8.4. Support Parameters

A Subscriber may initiate support requests for problems it encounters with the Software by telephone, email, Internet, or fax, and the Contractor must maintain lines of communication that support all four forms of communication. The Contractor must make support available 24 hours a day, seven days per week (the "Support Window"), and it must do so by staffing its support function with an adequate number of qualified personnel to handle its traditional volume of calls. Further, the Contractor must maintain at least one support center in North America with

adequate English-speaking support personnel. The applicable Service Attachment(s) may provide for different support periods. A Subscriber's technical staff may contact any support center that the Contractor maintains, and they may choose to do so based on convenience, proximity, service hours, languages spoken, or otherwise.

8.5. Incident Classification

The Contractor must classify and respond to support calls by the underlying problem's effect on a Subscriber. In this regard, the Contractor may classify the underlying problem as critical, urgent, or routine. The guidelines for determining the severity of a problem and the appropriate classification of and response to it are described below.

The Contractor must designate a problem as "critical" if the Service is functionally inoperable, the problem prevents the Service or a major component or function from being used in production mode or there is significant potential for data integrity problems. This classification assumes there is no existing patch for the problem. The Contractor must classify a problem as "urgent" if the underlying problem significantly degrades the performance of the Service or a major function or component of it or materially restricts a Subscriber's use of the Service in a production mode. A problem also will be considered urgent if a commonly used feature often generates application errors, causes the Service to freeze, locks up the computer on which the Service is running, or otherwise routinely does not work as intended. Classification of a problem as urgent rather than critical assumes that an affected Subscriber still can conduct business with the Service and response times are consistent with the needs of the Subscriber for that type of Service. As with the critical classification, the urgent classification assumes there is no existing patch or acceptable workaround procedure for the problem. Finally, the Contractor may classify a support call as "routine" if the underlying problem is a question on end use or configuration of the Service. It also may be classified as routine when the problem does not materially restrict a Subscriber's use of the Service in its production environment, such as when a feature or combination of features generates minor or rare errors. Also, if any problem that otherwise should be classified as critical or urgent can be solved either by a known workaround or an existing patch that does not materially interfere with a Subscriber's use of the Service, the problem may be treated as routine.

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

8.6. Incident Response

The Contractor must respond to critical problems by ensuring that appropriate managerial personnel are made aware of the problem and that they actively track and expedite a resolution. The Contractor must assign support or development personnel at the appropriate level to the problem, and those personnel must prepare a work plan for the problem's expeditious resolution. The work plan must assume that the Contractor's appropriate staff will work without material interruption until the problem is resolved properly. At the request of an affected Subscriber, the Contractor's personnel must maintain daily contact with the Subscriber's technical staff to keep the Subscriber abreast of efforts being made to solve the problem. The Contractor also must provide the Subscriber's technical staff with direct access to the Contractor's support personnel and product development personnel, if appropriate, who are assigned to the problem.

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

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

8.7. Response Times

The maximum time that the Contractor takes to respond initially to a support request may vary based upon the classification of the request. During the Support Window, the Contractor's response time for a critical support request will be less than one hour. The Contractor's response time for an urgent request must be less than two hours during the Support Window. And the Contractor's response time for a routine support request must be less than four hours during the Support Window. The applicable Service Attachment may provide for shorter response times, and nothing contained herein will limit the application of any credits for failure to meet any service level agreements in the applicable Service Attachment.

8.8. Escalation Process

Any support call that is not resolved must be escalated to the Contractor's management under the following parameters. Unresolved problems that are classified as critical must be escalated to the Contractor's support manager within one hour and to the director level after four hours. If a critical problem is not resolved within one day, it must escalate to the CEO level after two days. The Contractor's support staff will escalate unresolved urgent problems to its support manager within three hours, to the director level after one day, and to the CEO level after two days.

8.9. Subscriber Obligations

To facilitate the Contractor meeting its support obligations, Subscribers must provide the Contractor with the information reasonably necessary to determine the proper classification of the underlying problem. They also must assist the Contractor as reasonably necessary for the Contractor's support personnel to isolate and diagnose the source of the problem. Additionally, to assist the Contractor's tracking of support calls and the resolution of support issues, Subscribers must make a reasonable effort to use any ticket or incident number that the Contractor assigns to a particular incident in each communication with the Contractor.

8.10. Relationship to Support Level Agreements ("SLA")

The Contractor's support obligations are in addition to the SLAs in the Service Attachment(s). Furthermore, the SLAs may provide for credits to the Subscribers even though the Contractor is meeting its support obligations hereunder.

9. Standard Provisions

9.1. Certification of Funds

None of the rights, duties, or obligations in this Agreement will be binding on the State or a Subscriber, and the Contractor will not begin its performance under any Order, until all the following conditions occur for that Order:

- i. All statutory provisions under the ORC, including Section 126.07, have been met.
- ii. All necessary funds are made available by the appropriate State agencies.
- iii. If required, approval of this Agreement or the applicable Order is given by the Controlling Board of Ohio.
- iv. If the Subscriber is relying on federal or third-party funds for its Order, the Subscriber gives the Contractor written notice that such funds have been made available.

Additional or alternate legal requirements may apply to a political subdivision that is a Subscriber for an Order to be binding on it.

9.2. Excusable Delay

Neither Party will be liable for any delay in its performance arising from causes beyond its control and without its negligence or fault. The delayed Party will notify the other promptly of any material delay in performance and will specify in writing the proposed revised performance date or dates as soon as practicable after notice of delay. The proposed date or dates must be reasonable and cannot exceed the actual delay caused by the events beyond the control of the Party. In the case of such an excusable delay, the dates of performance or delivery affected by the delay will be extended for a period equal to the time lost by reason of the excusable delay. The delayed Party must also describe the cause of the delay and what steps it is taking 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 suppliers will be considered controllable by the Contractor.

In the case of subscriptions to Services for a term that an excusable delay interrupts, the term of that subscription will be extended at no additional cost to affected Subscribers by the same amount of time as the excusable delay.

9.3. Employment Taxes

Each Party will be solely responsible for reporting, withholding, and paying all employment related taxes, contributions, and withholdings for its own personnel, including, but not limited to, federal, state, and local income taxes, and social security, unemployment and disability deductions, withholdings, and contributions, together with any interest and penalties.

9.4. Sales, Use, Excise, and Property Taxes

The State and most Subscribers are 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 any Service, 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.

9.5. Equal Employment Opportunity

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

Before this Agreement 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 to the Ohio Business Gateway at:

<http://business.ohio.gov/efiling/>

The State encourages the Contractor to purchase goods and services from Minority Business Enterprises (“MBEs”) and Encouraging Diversity, Growth and Equity (“EDGE”) contractors.

9.6. 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 its employees, while working on State property or the property of any Subscriber, will not have or be under the influence of illegal drugs or alcohol or abuse prescription drugs in any way.

9.7. Conflicts of Interest

No Contractor personnel may voluntarily acquire any personal interest that conflicts with the Contractor’s responsibilities under this Agreement. Additionally, the Contractor will not knowingly permit any public official or public employee who has any responsibilities related to this Agreement 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 will disclose to the State knowledge of any such person who acquires an incompatible or conflicting personal interest related to this Agreement. The Contractor will take all legal steps to ensure that such a person does not participate in any action affecting the work under this Agreement, unless the State has determined that, in the light of the personal interest disclosed, that person’s participation in any such action would not be contrary to the public interest.

9.8. Assignment

The Contractor may not assign this Agreement or any of its rights or obligations under this Agreement without the prior, written consent of the State.

9.9. Governing Law

This Agreement will be governed by the laws of Ohio, and venue for any disputes will lie with the appropriate court in Ohio.

9.10. Finding for Recovery

The Contractor warrants that the Contractor is not subject to an unresolved finding for recovery under ORC §9.24. If the warranty is false on the date the Parties signed this Agreement, the Agreement is void *ab initio*.

9.11. Anti-trust

The Parties recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by the State and the Subscribers. The Contractor therefore assigns to the State all state and federal antitrust claims and causes of action that the Contractor now has or may acquire relating to the Services that are covered by this Agreement.

9.12. Use of Name

Neither Party will use the other Party's name in any marketing material, advertisement, or press release without the other Party's written consent. Further, neither Party may use any contact information collected from the other in the performance of this Agreement for general marketing or sales purposes, such as using email addresses to send mass marketing material, and must use such information solely for purposes of administering this Agreement.

9.13. Prohibition of the Expenditure of Public Funds for Offshore Services

No State Cabinet, Agency, Board or Commission will enter into any contract to purchase services provided outside the United States or that allows State data to be sent, taken, accessed, tested, maintained, backed-up, stored, or made available remotely outside (located) of the United States, unless a duly signed waiver from the State has been attained. Notwithstanding any other terms of this Agreement, 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 the Agreement.

The Contractor must complete the Contractor/Subcontractor Affirmation and Disclosure Form attached to this Addendum as Exhibit I affirming the Contractor understands and will meet the requirements of the above prohibition. During the performance of this Agreement, if the Contractor changes the location(s) disclosed on the Affirmation and Disclosure Form, Contractor must complete and submit a revised Affirmation and Disclosure Form reflecting such changes.

9.14. Campaign Contributions

By signing this document, the Contractor certifies that all applicable parties listed in ORC Section 3517.13 are in full compliance with ORC Section 3517.13.

9.15. Export Compliance

The Services and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Both the Contractor and the State represent that it is not named on any U.S. government denied-party list. Neither Party will permit others to access or use the Services in a US-embargoed country or in violation of any U.S. export law or regulation.

9.16. Safety and Security Rules

When accessing State networks and systems, the Contractor must comply with all applicable State 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 applicable to people on those premises. Subscribers may have policies and regulations that are specific to them and with which the Contractor must also comply.

9.17. HIPAA Compliance

When the Contractor is handling Subscriber Data that includes health or medical data, the Contractor must comply with data handling and privacy requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and its associated regulations.

9.18. Order of Precedence

If a conflict between the terms and conditions of this Master Services Agreement and those in a Service Attachment arises, this Master Services Agreement will prevail, unless the Service Attachment specifically provides otherwise. If a user guide or other documentation is incorporated into the Agreement by reference, this Agreement, including any applicable Service Attachment(s), will prevail over any conflicting terms or conditions in any such incorporated documentation.

9.19. Federal Tax Information

When the Contractor is handling Subscriber Data that includes Federal Tax Information, the Contractor must comply with the safeguards contained in the IRS Publication 1075 Attachment hereto.

9.20. Entire Agreement

This Agreement, together with any Service Attachments and all additional documents expressly incorporated herein, sets forth the entire agreement of the Parties with respect to the subject matter hereof and supersedes any prior agreements, promises, representations, understandings, and negotiations between the Parties with respect to the subject matter hereof.

Only an executable Order attached to a Service Attachment as an exhibit and identified as such in the applicable Service Attachment may be executed by a Subscriber to evidence a transaction under this Agreement. Further, neither the Subscriber nor the Contractor may add or require additional terms as part of any authorized Order. Documents attached to a Service Attachment as exhibits to be executed by a Subscriber typically identify authorized Service options the Subscriber has selected, provide information about a Subscriber, identify installation or configuration requirements or similar statements of work to be done by the Contractor, set schedules for performance, and similar matters.

9.21. Severability

If any provision hereunder is held invalid, illegal, or unenforceable by a court of competent jurisdiction, this Agreement will be revised only to the extent necessary to make that provision legal and enforceable or, if that is not possible, the unaffected portions of this Agreement will remain in full force and effect so long as the Agreement remains consistent with the Parties' original intent.

9.22. Survival

Any terms or conditions contained in this Agreement that must survive termination or expiration of this Agreement to be fully effective will survive the termination or expiration of the Agreement, unless expressly provided otherwise in this Agreement. Additionally, no termination or expiration of the Agreement will affect the State's right to receive Services for which the State has paid before expiration or termination, but no subscription to a Service will continue beyond the period paid for before termination or expiration of the Agreement.

If any Service Attachment should expire or be terminated, the remaining portions of this Agreement will survive.

9.23. No Waiver

The failure of a Party to demand strict performance of any terms or conditions of this Agreement may not be construed as a waiver of those terms or conditions, and that Party may later demand strict and complete performance by the other Party.

9.24. Headings

The headings herein are for convenience only and are not intended to have any substantive significance in interpreting this Agreement.

9.25. Governmental Authorization, Regulatory Changes

This Agreement is subject to all applicable federal, state, and local laws, rules, orders, and regulations, and each Party must comply with such in performing its obligations hereunder. To the extent any provision of this Agreement conflicts with any such law, rule, order, or regulation, that law, rule, order, or regulation will supersede the conflicting provision of this Agreement.

The Contractor may discontinue, limit, or impose additional requirements to the provision of Service, upon no less than 30 days written notice, if required to meet federal, state or local laws, rules, orders, or regulations. But if any such action materially affects any Subscriber's use of a Service, the Subscriber may on written notice to the Contractor terminate its use of the Service without an Early Termination Charge and receive a pro rata refund of any amounts paid in advance for the Service.

9.26. Notices

Except as otherwise provided in this Agreement, all notices hereunder must be in writing and may only be sent by registered or certified mail, postage prepaid; facsimile transmission, overnight courier, or email, upon confirmation of receipt.

Alternatively, such notices may be hand delivered if confirmation of receipt is attained at delivery.

The State's address for notification is:

Department of Administrative Services
Enterprise IT Contracting
4200 Surface Road
Columbus, Ohio 43228
Attention: Contract Category Manager

Email: das.statepurchasing@das.ohio.gov

Additionally, all notice of any information security or privacy incidents must be immediately reported to the State's Customer Service Center via phone at 614.644.6860 and email at csc@ohio.gov.

The Contractor's address for notification is:

<Contractor Address>

With a copy to:

<Contractor Address>

9.27. Travel Expenses

Any travel that the Contractor requires to perform its obligations under this Agreement will be at the Contractor's expense. The State will pay for any additional travel that it requests only with prior written approval. The State will pay for all additional travel expenses that it requests in accordance with the State's travel policy in Rule126-1-02 of the Ohio Administrative Code.

9.28. Ohio Ethics Law

The Contractor certifies that it is currently in compliance with 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 that section.

9.29. Amendments

No amendment or modification of this Agreement will be effective unless it is in writing and signed by both Parties.

9.30. Boycotting

Pursuant to Ohio Revised Code 9.76 (B) Contractor warrants that Contractor is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the contract period.

9.31. Registration with the Secretary of State.

Contractor certifies that it is one of the following:

1. A company that is properly registered with the Ohio Secretary of State; or
2. A foreign corporation, not incorporated under the laws of the State of Ohio, but is registered with the Ohio Secretary of State pursuant to Sections 1703.01 to 1703.31 of the Ohio Revised Code, as applicable; or
3. Exempt from registration requirements of the Ohio Secretary of State.

TO SHOW THEIR AGREEMENT, the Parties have executed this Agreement on the date(s) identified below.'

<Contractor>

**STATE OF OHIO,
DEPARTMENT OF
ADMINISTRATIVE SERVICES**

_____ Signature	_____ Signature
_____ Printed Name	_____ Robert Blair Printed Name DAS Director
_____ Title	_____ Title
_____ Date	_____ Effective Date

AFFIRMATION AND DISCLOSURE FORM

By the signature affixed hereto, the Contractor affirms and understands that if awarded a contract, both the Contractor and any of its subcontractors shall perform no services requested under this Contract outside of the United States, nor allow State data to be sent, taken, accessed, tested, maintained, backed-up, stored or made available remotely (located) outside of the United States unless a duly signed waiver from the State has been attained.

The Contractor shall provide all the name(s) and location(s) where services under this Contract will be performed and where data is located in the spaces provided below or by attachment. Failure to provide this information may result in no award. If the Contractor will not be using subcontractors, indicate "Not Applicable" in the appropriate spaces.

4. Principal location of business of Contractor:

(Address)	(City, State, Zip)
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Name/Principal location of business of subcontractor(s):

(Name)	(Address, City, State, Zip)
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(Name)	(Address, City, State, Zip)
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5. Location where services will be performed by Contractor:

(Address)	(City, State, Zip)
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Name/Location where services will be performed by subcontractor(s):

(Name)	(Address, City, State, Zip)
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(Name)	(Address, City, State, Zip)
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6. Location where state data will be located, by Contractor:

(Address)

(Address, City, State, Zip)

Name/Location(s) where state data will be located by subcontractor(s):

(Name)

(Address, City, State, Zip)

Contractor also affirms, understands and agrees that Contractor and its subcontractors are under a duty to disclose to the State any change or shift in location of services performed by Contractor or its subcontractors before, during and after execution of any contract with the State. Contractor agrees it shall so notify the State immediately of any such change or shift in location of its services. The State has the right to immediately terminate the contract, unless a duly signed waiver from the State has been attained by the Contractor to perform the services outside the United States.

On behalf of the Contractor, I acknowledge that I am duly authorized to execute this Affirmation and Disclosure Form and have read and understand that this form is a part of any Contract that Contractor may enter into with the State and is incorporated therein.

By: _____
Contractor

Print Name: _____

Title: _____

Date: _____

IRS Publication 1075 Attachment

To protect risk of loss, breach, or misuse of Federal Tax Information ("FTI") held by government agencies, the Internal Revenue Service issued Publication 1075 which includes specific language to

include in any State contract in which FTI may be disclosed. If FTI is involved, then the IRS Publication 1075 language below applies.

I Performance

In performance of this Agreement, 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 Agreement. 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 Agreement. 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 Agreement 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 FTI 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 Agreement 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 Agreement if the Contractor fails to provide the safeguards described above.

II Criminal 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 Agreement. 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 Agreement. 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.
- (4) Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (See Exhibit 4, *Sanctions for Unauthorized Disclosure*, and Exhibit 5, *Civil Damages for Unauthorized Disclosure*). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

III Inspection

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 Agreement. On the basis of such inspection, specific measures may be required in cases where the Contractor is found to be noncompliant with contract safeguards.