

State of Ohio
 Department of Natural Resources
 2045 Morse Rd.
 Columbus, OH 43229

INVITATION TO BID For GEOLOGICAL SUBSURFACE MAPPING SOFTWARE



A signed Bid must be submitted to receive consideration for award of contract.		BIDDER NAME	
BID NUMBER DNROBF008	OPENING DATE/TIME (06/29/2020 4:00 pm) DATE: 06/29/2020	STREET ADDRESS <input type="checkbox"/> Check if remit address is different and list on separate sheet CITY STATE ZIP	
Ohio Department of Natural Resources Attn: Division of Geological Survey-James Stucker 2045 Morse Road Columbus Ohio 43229-6693		COUNTY	MBE/EDGE CERTIFICATE NUMBER
REQ./INDEX NO.		NOTICE DATE 06/09/2020	TELEPHONE NO.
CONTACT PERSON		TOLL FREE NO.	1 - FAX NO.
BIDDER'S E-MAIL ADDRESS			

The original signed Bid must be received by ODNR on or before 4:00 p.m. EST on the above stated Opening Date to receive consideration for award. All attachments included in the Bid MUST be submitted with Bid. Bids received after the Opening Date and time will not be considered for award.

Submit Bids via e-mail only to: Agency Procurement Officer Ohio Department of Natural Resources Office of Budget and Finance
DNROBFBIDS@dnr.state.oh.us

The contract will be awarded to the Bidder with the lowest responsive and responsible Bid. The winning Bidder must demonstrate responsiveness by affirming the ability of its goods to meet the specifications (the "Specifications") set forth herein. The winning Bidder shall, within fourteen (14) days of the announcement of the winning Bid, enter into a contract with the Ohio Department of Natural Resources ("ODNR" or the "State") in substantially the same form as the Agreement attached hereto as Exhibit A (the "Agreement"). The Specifications and Bidder's Bid shall be exhibits to the Agreement.

Ohio Revised Code (ORC) Section 9.24, prohibits ODNR from awarding a contract to any Bidder(s) against whom the Auditor of State has issued a finding for recovery if the finding for recovery is unresolved at the time of award. By submitting a Bid, Bidder warrants that it is not now, and will not become subject to an unresolved finding for recovery under ORC 9.24, prior to the award of any agreement arising out of this Invitation for Bid ("RFP") without notifying ODNR of such finding.

By submission of this Bid, the Bidder is affirming that it is capable of providing the manpower and competency required to meet the requirements of the Specifications and Agreement (Exhibit A).

ODNR reserves the right to reject any and all responses to the Invitation in whole or in part, cancel, and/or reissue the Invitation when:

- (1) The products, supplies or services are not in compliance with the requirements, specifications, and terms and conditions set forth in the Invitation; or
- (2) Pricing offered is determined to be excessive in comparison with existing market conditions, or exceeds the available funds of the procuring entity; or
- (3) It is determined that awarding of any or all items will not be in the best interest of the state.

BID CERTIFICATION STATEMENTS

- I. Bidders claiming preference for Domestic Source End Products, the Ohio preference, and/or the Veteran Friendly Business Enterprise (VBE) must complete the following information. **Any Bidder who intentionally submits false or misleading information in an attempt to receive a Bid preference will be immediately disqualified and may be subject to legal action, including debarment.** ODNR reserves the right to clarify any information during the evaluation process.

*****BIDDERS MUST COMPLETE THE APPROPRIATE CERTIFICATION BELOW TO RECEIVE THE PREFERENCE.*****

A. DOMESTIC PREFERENCE (BUY AMERICAN): Revised Code 125.11 and Administrative Code 123:5-1-06
[Not applicable to "[Excepted Products](#)"]

1. Where is each product/services being offered mined, raised, grown, produced or manufactured?
 United States: _____(State) Canada Mexico (Go to B-1)
 Other: (Specify Country)_____ (Go to A-2)
2. End product is manufactured outside the United States and at least 50% of the cost of its components are produced, mined, raised, grown or manufactured within the United States. The cost of components may include transportation costs to the place of manufacture and, in the case of components of foreign origin, duty whether or not a duty free entry certificate is issued. Yes (Go to Section B-1) No (Go to Section A-3)
3. The Bidder hereby certifies that each end product, except the products listed below, is a domestic source end product as defined in the Buy American Act and that components of unknown origin have been considered to have been mined, produced, grown or manufactured outside the United States.

_____ (Item) _____ (Country of Origin)
 _____ (Item) _____ (Country of Origin)

B. OHIO PREFERENCE (BUY OHIO): Revised Code 125.09 and Administrative Code 123:5-1-06

1. The products/services being offered are raised, grown, produced, mined or manufactured in Ohio.
 Yes No ([Go to B-2](#))
2. Bidder has significant economic presence within the State of Ohio. Yes ([Answer a, b, c, d below](#)) No ([Go to B-3](#))
 - a) Bidder has paid the required taxes due the state of Ohio Yes No
 - b) Bidder is registered with the Ohio Secretary of State
 Yes (Charter/Registration No.: _____) No
 Questions regarding registration should be directed to (614) 466-3910 or visit their web site at:
<http://sos.state.oh.us/>
 - c) Bidder has ten or more employees based in Ohio or border state. Yes No ([Go to B-2d](#))
 - d) Bidder has seventy-five percent or more employees based in Ohio or border state. Yes No ([Go to B-3](#))
3. Border state Bidder:
 Yes (Specify which state then go to B-2c): KY MI NY PA IN No ([Go to B-4](#))
4. Border state Bidder: mined products mined in respective border state Yes No Not Applicable

C. VETERANS PREFERENCE (BUY VETERAN): Revised Code 9.318 and Administrative Code 123:5-1-16

Is the Bidder a certified Veteran Friendly Business Enterprise as defined in Administrative Code 123:5-1-01(OO)
 Yes No

INQUIRIES: All inquiries should be submitted a minimum of five (5) working days prior to the opening date through the procurement website, www.procure.ohio.gov. Locate the "Quick Links" menu on the right, select "Bid Opportunities Search"; Step 1, enter the "Bid Number; Step 2, click "Search"; Step 3, click the "Document/Bid Number." The "Submit Inquiry" button is at the bottom right of the Opportunity Detail page. Bidders will not receive a personalized e-mail response to their question, nor will they receive notification when the question is answered. Responses may be viewed by clicking the "View Q & A" button located beneath the "Submit Inquiry" button.

SUBCONTRACTOR DISCLOSURE CERTIFICATION

Disclosure of Subcontractors / Joint Ventures

List names of subcontractors who will be performing work under the Agreement.

_____	_____
_____	_____
_____	_____

The Bidder agrees that no changes will be made to this list of subcontractors without prior written approval of ODNR. Any attempt by the Bidder to change or otherwise alter subcontractors without prior written approval of ODNR, will be deemed a default. If a default should occur, ODNR will seek all legal remedies as set forth in the Agreement which may include immediate cancellation of the Agreement.

SPECIFICATIONS

The goods for which the Bidder shall submit a Bid is Geological Subsurface Mapping Software. Bidder's Bid must specifically affirm the ability of its goods to meet the following Specifications:

1. Multiuser Environment

- a. Support at least five (5) concurrent users
- b. Support multiple users working simultaneously on the same project
- c. Must be a commercial-off-the-shelf (COTS) - please do not submit bids for custom software

2. Cross sections

- a. Functionality to create cross sections using geophysical logs
 - i. Able to scan geophysical logs in TIF format
 - ii. Functionality to scan geophysical logs in LAS format
- b. Functionality to incorporate both raster and digital logs on the same cross section line
- c. The following drawing options:
 - i. Functionality to accommodate filled formations
 - ii. Functionality to accommodate optional line style symbology
- d. Must contain the following functionality:
 - i. Functionality to change from structure to stratigraphic drawing
 - ii. Functionality to change stratigraphic datums for stratigraphic drawing
 - iii. Functionality to incorporate computed grids of formation tops in the cross section
 - iv. Functionality to pick geologic formation tops and automatically populate the information back into the database (FM Tops DB)
 - v. Functionality to create unassigned/generic correlations
 - vi. Functionality to perform pay interval picking and calculations
 - vii. Functionality to reference logs (aka Slip Logs)

3. Mapping

- a. Functionality to perform the following basemaps functionality:
 - i. Functionality to import and export ESRI Shapefiles and/or ESRI File Geodatabases
 - ii. Optional – Functionality to consume GIS REST services for basemaps
- b. Functionality for contouring/gridding of geological surfaces and thicknesses
 - i. Functionality to provide the following Gridding Algorithms:
 1. Functionality to perform Kriging – both universal and ordinary kriging
 2. Functionality to perform Minimum Curvature
 3. Functionality to perform Inverse Distance Weighting (IDW)
 4. Functionality to perform other types of splines
 - ii. Functionality for contours to be editable
 - iii. Functionality for contours and grids should be easily exported in standard GIS formats
- c. Functionality to symbolize wells on the map based on database attributes
- d. Functionality to bubble map production
- e. Functionality to create scaled cross sections on the fly from the geological surfaces
- f. Functionality to map deviated/horizontal wells (Total Vertical Depth [TVD])

4. Analysis

- a. Functionality to plot oil and gas production
- b. Functionality to create decline curves of oil and gas production
- c. Functionality to perform the following geophysical log cross plots—logs and zone items:
 - i. Functionality to perform Pickett cross plots
 - ii. Functionality to perform Hingle cross plots
 - iii. Functionality to perform neutron-density cross plots
 - iv. Functionality to perform neutron-sonic cross plots
 - v. Functionality to perform density-sonic lithology cross plots
 - vi. Functionality to perform matrix identification plot (Rho_{maa} vs. Δt_{maa})
 - vii. Functionality to perform matrix identification plot (Rho_{maa} vs. U_{maa})
 - viii. Functionality to perform alpha mapping from the SP log
 - ix. Functionality to perform clean sand or carbonate from the GR log
 - x. Functionality to perform rock typing and facies mapping
 - xi. Functionality to perform create facies logs from cross plots
- d. Functionality to perform Log calculations—both standard defined equations, such as Archie equation and the Vshale equation, along with user defined equations

5. Database

- a. Can be a proprietary database, but optionally have a SQL-based that can connect directly to a MS-SQL Server database
- b. Functionality to store information in a database (non-exclusive examples of data stored in the database):

- i. ustwell header data
 - 1. location, name, unique well identifiers, comments, etc.
 - ii. geologic formation tops
 - iii. girection drilled survey information
 - iv. core and sample information
 - v. pPerforations
 - vi. produced oil, gas, and water volumes
 - vii. injected wastewater volumes
 - viii. zone Items
 - ix. LAS logs
 - x. TIF logs
- c. Functionality that has the ability to be searchable and selectable

6. Data Import/Export

- a. Functionality to import/export attribute data in a tabular format, such as CSV, Excel, MS-Access tables
- b. Functionality to Import/Export map data in GIS formats, such as ESRI shape files and ESRI File geodatabases
- c. Functionality to Import/export projects and data in industry standard formats. Industry standard formats are critically needed so as to exchange data with our other research partners, who use either LMKR/Geographix or IHS Petra
 - i. LMKR/Geographix GEX Wellbase
 - ii. IHS Petra Project File
 - iii. LIC—Petra Log Image Calibration file
 - iv. DRA—Geographix Raster calibration file
 - v. Other industry standard formats for archiving project data and for data exchange with research partners and the public.

7. Optional – Functionality to perform seismic Interpretation

- a. Functionality to perform import stacked SEG-Y data
- b. Functionality to perform incorporate seismic line with mapped well locations—possibly change projection.
- c. Functionality to perform create or incorporate synthetic seismograms
- d. Functionality to perform time/depth conversions
- e. Functionality to perform Export CDP (x,y,z) values as text

8. Transition – The transition to the new software must completed no later than December 1, 2020.

PRICE SCHEDULE

The Bid shall express the price term for the Bid as an annual charge, per user.	\$
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**STATE OF OHIO
INSTRUCTIONS, TERMS AND
CONDITIONS FOR INVITATION FOR BID**

I-1. Bids are Public Records. Once Bids have been opened they may be considered public record as defined in Ohio Revised Code ("O.R.C.") Section 149.43 and are subject to inspection and copying after ODNR announces the award of the contract.. Bidder may request that certain information, such as trade secrets or proprietary data, be designated as confidential and not considered as public records. Such requests must be accompanied by the statutory exemption from Ohio's Public Records Act, Chapter 149 of the O.R.C. Any confidential material shall accompany the Bid in a sealed container marked "confidential", and shall be readily separable from the Bid in order to facilitate public inspection of non-confidential portion. Prices, makes, models, catalog numbers of items offered, deliveries and terms of payment shall not be considered as confidential. The decision as to whether or not such trade secrets or proprietary data shall be disclosed at the Bid opening rests solely with ODNR.

I-2. Bids are Firm for 90 Days. Unless stated otherwise, once opened, all Bids are irrevocable for ninety (90) days. Beyond ninety (90) days, Bidder will have the option to honor their Bid or make a written request to withdraw their Bid from consideration.

I-3. Bid Preparation. ODNR assumes no responsibility for costs incurred by the Bidder prior to the award of any contract resulting from this Bid. Total liability of ODNR is limited to the terms and conditions of a resulting contract.

I-4. Suspension and Debarments. ODNR will not award a contract for supplies or services, funded in whole or in part with federal funds, to a person who has been suspended or debarred from doing business with the State of Ohio or who appears on the federal List of Excluded Parties Listing System <https://www.sam.gov/portal/public/SAM/>

I-5. Registration with the Secretary of State. The Bidder represents and warrants that the Bidder meets all applicable requirements for registration under O.R. C. Chapters 1701, 1703 or 1705.

Any foreign corporation required to be licensed under O.R.C. Sections 1703.01 to 1703.31, which transacts business in the State of Ohio, without being so licensed, or when its license has expired or been canceled, shall forfeit not less than \$250 nor more than ten thousand dollars. No officer of a foreign corporation shall transact business in ODNR, if such corporation is required by O.R.C. Sections 1703.01 to 1703.31 to procure and maintain a license, but has not done so. Whoever violates this is guilty of a misdemeanor of the fourth degree.

I-6. Certification Regarding Contract Eligibility With Other Governmental Entities. The Bidder certifies that Bidder has not, within the last seven (7) years been the subject of any government action to limit the Bidder's right to do business with the State of Ohio. If the Bidder cannot so certify, the Bidder must provide a written explanation with the Bid response.

I-7. Non-Collusion Certification. The Bidder certifies that he/she is (sole owner, partner, president, secretary, etc.) of the party making the forgoing Bid; that such Bid is genuine and not collusive or sham; that Bidder has not colluded, conspired or agreed, directly or indirectly, with any Bidder or person, to put in a sham Bid; or colluded or conspired to have another not Bid and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person to fix the Bid price of its Bid or any other Bidder, or to fix any overhead, profit or cost element of the Bid price, or of that of any other Bidder, or to secure any advantage against any Bidder or any person or persons interested in the proposed contract and that all statements contained in the Bid are true; and further, that the Bidder has not, directly or indirectly, submitted this Bid, or the contents thereof, or divulged any related information or data to any association or to any member or agent of any association.

I-8. Electronic Commerce Program. The State of Ohio is an active participant in E-Commerce to include Electronic Data Interchange (EDI). This program will benefit both the State of Ohio and the Contractor by reducing time delays in receiving invoices and making payments that are associated with the existing manual processes. The Contractor is encouraged to move toward compliance with electronic commerce technologies, as this will be the preferred method of doing business with ODNR. Information regarding E-Commerce is available on the Office of Budget and Management's website at <http://obm.ohio.gov/StateAccounting/edi/default.aspx>

I-9. Use of Social Security Numbers as Federal Tax Identification Numbers. ODNR requires vendors and contractors wishing to do business with ODNR to provide their Federal Taxpayer Identification Number to ODNR. ODNR does this so that it can perform statutorily required "responsibility" analyses on those vendors and contractors doing business with ODNR and, under limited circumstances, for tax reporting purposes. If you are a vendor or contractor using your Social Security Number as your Federal Taxpayer Identification Number, please be aware that the information you submit is a public record, and ODNR may be compelled by Ohio law to release Federal Taxpayer Identification Numbers as a public record. If you do not want to have your Social Security Number potentially disclosed as a Federal Taxpayer Identification Number, the Department encourages you to use a separate Employer Identification Number (EIN) obtained from the United States Internal Revenue Service's to serve as your Federal Taxpayer Identification Number.

I-10. Expenditure of Public Funds on Offshore Services. Bidder affirms to have read and understands Executive Order 2019-12D and hereby certifies that its Bid shall comply with the requirements of that Executive Order. ODNR reserves the right to recover any funds paid for services Bidder performs outside of the United States for which it did not receive a waiver.

**STATE OF OHIO
DEPARTMENT OF NATURAL RESOURCES**

**STANDARD AFFIRMATION AND DISCLOSURE FORM
EXECUTIVE ORDER 2019-12D
Banning the Expenditure of Public Funds on Offshore Services**

CONTRACTOR/SUBCONTRACTOR AFFIRMATION AND DISCLOSURE:

By the signature affixed to this response, the CONTRACTOR/SUBCONTRACTOR affirms, understands, and will abide by the requirements of Executive Order 2019-12D. If awarded a contract, the CONTRACTOR/SUBCONTRACTOR becomes the Contractor and affirms that both the Contractor and any of its subcontractors shall perform no services requested under this Agreement outside of the United States.

The CONTRACTOR/SUBCONTRACTOR shall provide all the name(s) and location(s) where services under this Contract will be performed in the spaces provided below or by attachment. Failure to provide this information as part of the response will deem the CONTRACTOR/SUBCONTRACTOR not responsive and the Agreement will not be executed. If the CONTRACTOR/SUBCONTRACTOR will not be using subcontractors, indicate "Not Applicable" in the appropriate spaces. Attach a supplemental sheet, if necessary.

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)

(Address, City, State, Zip)

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

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

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

(Address)

(Address, City, State, Zip)

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

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

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

(Address)

(Address, City, State, Zip)

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

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

ATTACHMENT ONE

Attachment one is an example of a DNR contract. The Ohio Department of Natural Resources reserves the right to change the contract Terms and Conditions, prior to a contract award.

Apparent awardee will be required to sign a contract with the Ohio Department of Natural Resources.

AGREEMENT

This Agreement is entered into by and between the **STATE OF OHIO, DEPARTMENT OF NATURAL RESOURCES**, a department of the State of Ohio, with offices located at 2045 Morse Road, Columbus, Ohio 43229-6693 ("ODNR") and _____ ("Contractor"), with offices at _____.

The parties agree as follows:

I. NATURE OF AGREEMENT.

- A. Contractor shall be employed as an independent contractor, to fulfill the terms of this Agreement and to act as a contractor to ODNR.
- B. ODNR enters into this Agreement in reliance upon Contractor's representations that it has the necessary expertise and experience to perform its obligations hereunder, and Contractor warrants that it does possess the necessary expertise and experience.
- C. Contractor shall perform the services to be rendered under this Agreement and the ODNR shall not hire, supervise, or pay any subcontractors or assistants to Contractor in the performance of services under this Agreement. ODNR shall not be required to provide any training to Contractor to enable it to perform services required hereunder.

II. SCOPE OF WORK; RESPONSIBILITIES OF PARTIES.

- A. Contractor shall perform the services (Work) set forth and described in the Scope of Work attached hereto, ODNR's Invitation to Bid for Geological Subsurface Mapping Software, and Contractor's Bid (the "Contract Documents"), each made a part hereof. In the event there is a conflict between the Invitation to Bid for Geological Subsurface Mapping Software, Contractor's Bid and this Agreement, including the Scope of Work, this Agreement is controlling.
- C. Contractor shall perform the Work with the degree of professional skill, quality, and care ordinarily exercised by members of the same profession currently practicing in the same location under comparable circumstances and as expeditiously as is consistent with professional skill and the orderly progress of the Work.
- D. ODNR shall furnish to Contractor all information and technical data in ODNR's possession or control reasonably required for the proper performance of the Work. Contractor shall be entitled to reasonably rely, without independent verification, upon the information and data provided by ODNR or obtained from generally accepted sources within the industry, except to the extent such verification by Contractor is required as a defined part of the Work.
- E. ODNR shall arrange for access and make all provisions necessary for Contractor to enter upon public and/or private property as required for Contractor to properly perform the Work.

ODNR shall disclose to Contractor any known or suspected hazards at any site of the Work, which may pose a threat to human health, property or the environment.

- F. If any document or inquiry requires ODNR to approve, comment, or to provide any decision or direction with regard to the Work, such approval, comment, decision or direction shall be provided within a reasonable time within a reasonable time to facilitate the timely performance of the Work.

III. TIME OF PERFORMANCE.

- A. The Work shall be commenced on or after the date of an approved purchase order (the "Purchase Order").
- B. The Work shall be concluded on the earlier to occur of: (i) the date on which the Work is completed to the satisfaction of the ODNR or (ii) the date on which this Agreement is terminated as provided in Article XI, Termination of Contractor's Services.
- C. Notwithstanding the foregoing, this Agreement shall expire no later than June 30, 2021. ODNR, in the exercise of its sole discretion, may renew this Agreement for an additional one-year term on the same terms and conditions by giving written notice prior to expiration.
- D. It is expressly agreed by the parties that none of the rights, duties, and obligations herein shall be binding on either party if award of this Agreement would be contrary to the terms of Ohio Revised Code ("R.C.") 3517.13 (I), 127.16 or Chapter 102.

IV. COMPENSATION.

- A. The ODNR shall pay Contractor no more than \$_____ for the Work.
- B. Contractor shall not be reimbursed for travel, lodging or any other expenses incurred in the performance of the Work.
- C. Contractor must receive the Purchase Order from the ODNR prior to performing any of the Work.
- D. After Contractor commences the Work, Contractor shall submit an invoice for the Work performed upon the completion of each phase of the Work, but not less than once every 30 days. Each invoice shall contain an itemization of the Work performed, including dates the Work was performed and total hours worked, and the sum due at that time pursuant to this Agreement. All invoices shall contain Contractor's name and address and shall reference the ODNR and list the billing address as 2045 Morse Road, Building C, Columbus, Ohio 43229-6693, Attn: Division of Geological Survey. After receipt and approval by the ODNR of a proper invoice, as defined by Ohio Adm. Code 126-3-01(A)(5), payment will be made pursuant to Ohio Adm. Code 126-3-01.

V. CERTIFICATION OF FUNDS.

It is expressly understood and agreed by the parties that none of the rights, duties, and obligations described in this Agreement shall be binding on either party until all relevant statutory provisions of the R.C., including, but not limited to, R.C. § 126.07, have been met, and until such time as all necessary funds are available or encumbered and, when required, such expenditure of funds is approved by the Controlling Board of the State of Ohio, or in the event that grant funds are used, until such time that ODNR gives Contractor

written notice that such funds have been made available to ODNR by the ODNR's funding source.

VI. RELATIONSHIP OF PARTIES.

- A. Contractor shall be responsible for all of its own business expenses, including, but not limited to, computers, email and internet access, software, phone service and office space. Contractor will also be responsible for all licenses, permits, employees' wages and salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage, if any.
- B. While Contractor shall be required to render services described hereunder for ODNR during the term of this Agreement, nothing herein shall be construed to imply, by reason of Contractor's engagement hereunder as an independent contractor, that ODNR shall have or may exercise any right of control over Contractor with regard to the manner or method of Contractor's performance of services hereunder.
- C. Except as expressly provided herein, neither party shall have the right to bind or obligate the other party in any manner without the other party's prior written consent.
- D. It is fully understood and agreed that Contractor is an independent contractor and neither Contractor nor its personnel shall at any time, or for any purpose, be considered as agents, servants, or employees of ODNR or the state of Ohio.
- E. For any employees or subcontractors working onsite at any ODNR location, Contractor understands that these employees or subcontractors are subject to a background check conducted by ODNR. Such a background check may include criminal records, tax records, driving records, verification of academic credentials or degrees. ODNR may also conduct drug testing, field investigation, and polygraph examinations of certain employees of the Contractor or its subcontractors, if ODNR believes such action is necessary. ODNR reserves the right to refuse access to the job site at any time if ODNR determines in its discretion that Contractor's employee or subcontractor presents a potential security threat or if there is a change in the results of the background check at any time during the completion of the Work.
- F. Each party will be solely responsible for reporting, withholding, and paying all employment related taxes, payments, and withholdings for its own personnel, including, but not limited to, federal, state and local income taxes, social security, unemployment or disability deductions, withholdings, and payments (together with any interest and penalties not disputed with the appropriate taxing authority). All personnel the Contractor provides to ODNR under this Contract will be deemed employees of the Contractor for purposes of withholdings, taxes, and other deductions or contributions required under the law. Contractor certifies that if it is an employer with five (5) or more employees as defined at R.C. § 145.037 (A), no individuals employed by Contractor, who provide personal services to ODNR, are public employees for the purposes of R.C. Chapter 145. ODNR will not make contributions to the public employees' retirement system on behalf of any of the individuals employed by Contractor, or its subcontractors or other agents.

VII. SUBCONTRACTORS.

- A. All Work is to be performed by Contractor, who may subcontract without ODNR's approval for the purchase of articles, supplies, components, or special mechanical services that do not involve the type of work or services described in the Scope of Work, but which are required for satisfactory completion of the Work.

- B. Contractor shall not enter into subcontracts related to the Work without prior written approval by the ODNR. All work subcontracted shall be at Contractor's expense.
- C. The Contractor will be solely responsible for payment of its subcontractors and any claims of subcontractors for any failure of the Contractor or any of its other subcontractors to meet the requirements of the Quotation or this Agreement in a timely and professional manner. The Contractor will hold ODNR harmless for and will indemnify ODNR against any such claims.
- D. Contractor shall furnish to ODNR a list of all subcontractors, their addresses, tax identification numbers, and the dollar amount of each subcontract.
- E. Contractor shall bind its subcontractors to the terms of this Agreement, so far as applicable to the work of the subcontractor, and shall not agree to any provision which seeks to bind ODNR to terms inconsistent with, or at variance from, this Agreement.
- F. Contractor warrants that it has not entered into, nor shall it enter into, other agreements, without prior written approval of ODNR, to perform substantially identical work for the State of Ohio such that the Work duplicates the work called for by the other agreements.

VIII. GENERAL WARRANTIES.

- A. The Contractor warrants that the recommendations, guidance, and performance of the Contractor under this Agreement will: (1) be in accordance with sound professional standards and the requirements of this Agreement and without any material defects; (2) unless otherwise disclosed by Contractor, be the work solely of the Contractor; and (3) no Deliverable will infringe on the intellectual property rights of any third-party.
- B. The warranty regarding material defects is a one (1) year warranty. All other warranties will be continuing warranties. If any portion of the Work or Deliverables fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor will correct such failure with all due speed or will refund the amount of the compensation paid for such portion of the Work. The Contractor will also indemnify ODNR for any direct damages and claims by third-parties based on a breach of these warranties. This obligation of indemnification will not apply where ODNR has modified or misused the Deliverable and the claim is based on the modification or misuse. ODNR agrees to 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 will do one of the following four 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 ODNR to use the infringing Deliverable as it was intended for ODNR to use under this Agreement; or (4) remove the Deliverable and refund the amount ODNR 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 ODNR.

IX. CONFIDENTIALITY.

- A. ODNR may disclose to the Contractor written material or oral or other information that ODNR treats as confidential ("Confidential Information"). Title to the Confidential Information and all related materials and documentation ODNR delivers to the Contractor will remain with ODNR. 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 ODNR, or individuals or organizations about whom ODNR keeps information. By way of example, information should be treated as confidential if it includes any proprietary documentation, materials, flow charts, codes, software, computer instructions, techniques, models, information, diagrams, know-how, trade secrets, data, business records, or marketing information. By way of further example, the Contractor also must treat as confidential materials such as police and investigative records, files containing personal information about individuals or employees of the state of Ohio, such as personnel records, tax records, and so on, court and administrative records related to pending actions, any material to which an attorney-client, physician-patient, or similar privilege may apply, and any documents or records expressly excluded by Ohio law from public records disclosure requirements.

- B. The Contractor agrees not to disclose any Confidential Information to third- parties and to use it solely to do the Work. The Contractor will restrict circulation of Confidential Information within its organization and then only to people in the Contractor's organization that have a need to know the Confidential Information to do the Work. The Contractor will be liable for the disclosure of such information whether the disclosure is intentional, negligent, or accidental, unless otherwise provided below.
- C. The Contractor will not be liable for any unintentional disclosure of Confidential Information that results despite the Contractor's exercise of at least the same degree of care as it normally takes to safeguard its own secrets, except when the Contractor's procedures are not reasonable given the nature of the Confidential Information or when the disclosure nevertheless results in liability to ODNR.
- D. The Contractor will not incorporate any portion of any Confidential Information into any work or product, other than a Deliverable, and will have no proprietary interest in any of the Confidential Information. Furthermore, the Contractor will cause all of its employees who have access to any Confidential Information to execute a confidentiality agreement incorporating the obligations in this section.
- E. The Contractor may disclose Confidential Information to its subcontractors on a need-to-know basis, but they will be obligated to meet the requirements of this section.
- F. The Contractor agrees not to use advertising, news releases, sales promotions, or other publicity matters relating to any product or service furnished by the Contractor wherein the ODNR's name is mentioned, or language used from which a connection with ODNR may be reasonably inferred, without the prior, written consent of ODNR.
- G. Contractor shall protect the confidentiality of federal tax return information ("FTI") in accordance with Appendix I, attached hereto.

X. HANDLING OF ODNR'S DATA.

- A. The Contractor must use due diligence to ensure computer and telecommunications systems and services involved in storing, using, or transmitting ODNR's data are secure and to protect that data from unauthorized disclosure, modification, or destruction. To accomplish this, the Contractor must:
 1. 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 Contract.

2. Ensure that its internal security policies, plans, and procedures address the basic security elements of confidentiality, integrity, and availability.
 3. Maintain plans and policies that include methods to protect against security and integrity threats and vulnerabilities, as well as and detect and respond to those threats and vulnerabilities.
 4. Maintain appropriate identification and authentication process for information systems and services associated with ODNR data.
 5. Maintain appropriate access control and authorization policies, plans, and procedures to protect system assets and other information resources associated with ODNR data.
 6. Implement and manage security audit logging on information systems, including computers and network devices.
- B. The Contractor must use appropriate measures to ensure that ODNR's data is secure before transferring control of any systems or media on which ODNR's data is stored. 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.
- C. 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 ODNR'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 ODNR'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 ODNR'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.
- D. The Contractor may not allow ODNR'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, ODNR'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.
- E. Any encryption requirement identified in this provision must meet the Ohio standard as defined in Ohio IT standard ITS- SEC-01, "Data Encryption and **Cryptography**."

- F. In case of an actual security breach that may have compromised ODNR's data, including but not loss or theft of devices or media, the Contractor must notify ODNR in writing of the breach within 24 hours of the Contractor becoming aware of the breach, and fully cooperate with ODNR to mitigate the consequences of such a breach. This includes any use or disclosure of ODNR 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.
- G. The Contractor must give ODNR full access to the details of the breach and assist ODNR in making any notifications to potentially affected people and organizations that ODNR deems are necessary or appropriate. The Contractor must document all such incidents, including its response to them, and make that documentation available to ODNR on request.

XI. RIGHTS IN DATA AND COPYRIGHTS/PUBLIC USE

- A. ODNR shall have unrestricted authority to reproduce, distribute and use (in whole or in part) any reports, data or materials prepared by Contractor pursuant to this Agreement. No such documents or other materials produced (in whole or in part) with funds provided to Contractor by ODNR shall be subject to copyright by Contractor in the United States or any other country. If Contractor has reason to believe that use of a specified item is subject to patent or copyright protection, Contractor shall immediately notify the ODNR.
- B. Contractor agrees that all original works created under this Agreement shall be made freely available to the general public to the extent permitted or required by law until and unless specified otherwise by ODNR. Any requests for distribution received by Contractor shall be promptly referred to ODNR.

XII. TERMINATION OF CONTRACTOR'S SERVICES.

- A. ODNR may, at any time prior to completion of the Work, suspend or terminate this Agreement with or without cause by giving written notice to Contractor.
- B. In the event that the Work includes divisible services, the ODNR may, at any time prior to completion of the Work, by giving written notice to Contractor, suspend or terminate any one or more such phases of the Work.
- C. Contractor, upon receipt of notice of suspension or termination, shall cease work on the suspended or terminated activities under this Agreement, suspend or terminate all subcontracts relating to the suspended or terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and, if requested by the ODNR, furnish a report, as of the date Contractor receives notice of suspension or termination, describing the status of all Work, including, without limitation, results, conclusions resulting there from, and any other matters the ODNR requires.
- D. Contractor shall be paid for services rendered up to the date Contractor received notice of suspension or termination, less any payments previously made, provided Contractor has supported such payments with a proper invoice as described in Article IV. In the event of suspension or termination, any payments made by the ODNR for which Contractor has not rendered services shall be refunded.
- E. In the event this Agreement is terminated prior to completion of the Work, Contractor shall deliver to the ODNR all work products and documents which have been prepared by

Contractor in the course of performing the Work. All such materials shall become, and remain the property of, the ODNR, to be used in such manner and for such purpose as the ODNR may choose.

- F. Contractor agrees to waive any right to, and shall make no claim for, additional compensation against the ODNR by reason of any suspension or termination.
- G. Contractor may terminate this Agreement upon sixty (60) days' prior written notice to the ODNR.

XII. LIABILITY.

- A. Contractor agrees to indemnify and to hold ODNR and the state of Ohio harmless and immune from any and all claims for injury or damages arising from this Agreement which are attributable to Contractor's own actions or omissions or those of its trustees, officers, employees, subcontractors, suppliers, third-party agents or joint venturers while acting under this Agreement. Such claims shall include any claims made under the Fair Labor Standards Act or under any other federal or state law involving wages, overtime or employment matters and any claims involving patents, copyrights and trademarks. It is specifically understood and agreed that ODNR does not indemnify Contractor
- B. Contractor shall bear all costs associated with defending ODNR and state of Ohio against any claims.
- C. In no event shall either party be liable to the other party for indirect, consequential, incidental, special or punitive damages, or lost profits.
- D. In conjunction herewith, Contractor agrees, at its own cost, to procure and continue in force at all times that this Agreement is in effect, in its name, the following insurance coverages:
 1. Workers' Compensation Insurance, as required by Ohio law, and, if some of the Work will be done outside Ohio, the laws of the appropriate state(s) where the Work will be performed. The Contractor shall also maintain employer's liability insurance with at least a \$1,000,000 limit.
 2. Commercial general liability insurance for bodily injury, personal injury, wrongful death and property damage. The defense cost shall be outside of the policy limits. Such policy shall designate the state of Ohio as an additional insured, as its interest may appear. The policy shall also be endorsed to include a blanket waiver of subrogation. At a minimum the limits shall be:
 - \$1,200,000 General Aggregate
 - \$2,000,000 Products/Completed Operations Aggregate
 - \$1,000,000 Per Occurrence Limit
 - \$100,000 Fire Legal Liability
 - \$10,000.00 Medical Payments
 3. Commercial Automobile Liability Insurance with a combined single limit of \$500,000.
 4. Professional Liability Insurance covering all staff with a minimum limit of \$1,000,000 per occurrence and \$3,000,000 aggregate. If the Contractor's policy is written on a "claims made" basis, the Contractor shall provide ODNR with proof of continuous coverage at the time the policy is renewed. If for any reason the

policy expires, or coverage is terminated, the Contractor must purchase and maintain "tail" coverage through the applicable statute of limitations.

Such insurance shall be written by a company or companies with an A.M. Best rating of at least "A" or be otherwise approved in writing by the ODNR. The policy shall be endorsed to provide ODNR with a 30-day prior written notice of cancellation or material change to the policy. It is agreed that the Contractor's Commercial General Liability Policy shall be primary over any other insurance coverage. Certificates for Workers' Compensation and proof of insurance must be provided to ODNR. The certificate(s) must be in a form that is reasonably satisfactory to ODNR as to the contents of the policies and the quality of the insurance carriers.

- E. To the fullest extent permitted by applicable law, Contractor waives all rights against the ODNR and its agents and employees for damages to the extent covered by any insurance, except rights to the proceeds of that insurance.

XIV. RECORD KEEPING.

During performance of this Agreement and for a period of three (3) years after its completion, Contractor shall maintain auditable records of all charges pertaining to this Agreement and shall make such records available to the ODNR as the ODNR may reasonably require.

XV. PROHIBITION AGAINST OFFSHORE SERVICES.

- A. The Contractor affirms to have read and understands Executive Order 2019-12D and shall abide by those requirements in the performance of this Agreement, and shall perform no services required under this Agreement outside of the United States. The Executive Order is available at the following website: <http://www.governor.ohio.gov/ExecutiveOrders.aspx> .
- B. The Contractor also affirms, understands, and agrees to disclose:
 1. The location(s) where all services will be performed by any Contractor or subcontractor.
 2. The location(s) where any state data associated with any of the services they are providing, or seek to provide, will be accessed, tested, maintained, backed-up or stored.
 3. Any shift in the location of any services being provided by the Contractor or any subcontractor.
 4. The principal location of business for the Contractor and all subcontractors who are supplying services to ODNR under the proposed contracts.

XVI. ANTITRUST ASSIGNMENT

Contractor assigns to ODNR all state and federal antitrust claims and causes of action that relate to all goods and services provided for in this Agreement.

XVII. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES.

- A. **COMPLIANCE WITH LAWS.** Contractor, in the execution of its duties and obligations under this Agreement, agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances.

- B. **DRUG FREE WORKPLACE.** Contractor agrees to comply with all applicable federal, state and local laws regarding smoke-free and drug-free work places and shall make a good faith effort to ensure that none of its employees or permitted subcontractors engaged in the Work purchase, transfer, and use or possess illegal drugs or alcohol, or abuse prescription drugs in any way.
- C. **NONDISCRIMINATION IN EMPLOYMENT.** Pursuant to R.C. 125.111 and the ODNR's policy, Contractor agrees that Contractor, any subcontractor, shall not discriminate, by reason of race, color, religion, sex, age, disability, military status as defined in section 4112.01 of the Revised Code, national origin, or ancestry against any citizen of this state in the employment of any person qualified and available to perform the Project. Contractor further agrees that Contractor, any subcontractor, and any person acting on behalf of Contractor or a subcontractor shall not discriminate against, intimidate, or retaliate against, in any manner, any employee hired for the performance of the Project on account of race, color, religion, sex, age, disability, military status as defined in section 4112.01 of the Revised Code, national origin, or ancestry.
- D. **EQUAL EMPLOYMENT OPPORTUNITY.** The Contractor will comply with all state and federal laws regarding equal employment opportunity, including R. C. 125.111 and all related Executive Orders. Before this Agreement can be awarded or renewed, an Affirmative Action Plan must be submitted using the Ohio Business Gateway electronic filing website at: <http://business.ohio.gov/efiling/> . Approved Affirmative Action Plans can be viewed by going to the Equal Opportunity Department's website at:

<http://eodreporting.oit.ohio.gov/searchAffirmativeAction.aspx>
- E. **SAFETY PRECAUTIONS.** Contractor shall take reasonable precautions to ensure the safety of individuals doing the Work. Contractor is responsible for designing and implementing its own safety program, including compliance with Occupational Safety and Health Administration ("OSHA") regulations.
- F. **CONFLICTS OF INTEREST.** No personnel of Contractor may voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge of their duties under this Agreement. Additionally, the Contractor will not knowingly permit any public official or public employee who has any responsibilities related to this Agreement or the Work to acquire an interest in anything or any entity under the Contractor's control if such an interest would conflict with that official's or employees' duties. The Contractor will disclose to ODNR knowledge of any such person who acquires an incompatible or conflicting personal interest related to this Agreement. This will not apply when ODNR has determined, in light of the personal interest disclosed, that the person's participation in any such action would not be contrary to the public interest.
- G. **ETHICS AND ELECTIONS LAW.**
1. **ETHICS LAW.** The Contractor is responsible to review and comply with all relevant provisions of R. C. 102.01 to 102.09. Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of Ohio ethics law.
 2. **POLITICAL CONTRIBUTIONS.** The Contractor affirms that all of its personnel are in compliance with R. C. Chapter 3517 regarding limitations on political contributions and will remain in compliance for the duration of the Agreement and with all applicable provisions that extend beyond the expiration of the Agreement.
- H. **QUALIFICATIONS TO DO BUSINESS.** Contractor affirms that it has all of the approvals, licenses, or other qualifications needed to conduct business in Ohio and that all are current. If at any time during the term of this Agreement Contractor, for any reason,

becomes disqualified from conducting business in the state of Ohio, Contractor will immediately notify the ODNR in writing and will immediately cease performance of the Work.

- I. FINDINGS FOR RECOVERY. Contractor warrants that it is not subject to an “unresolved” finding for recovery under R.C. 9.24.
- J. DEBARMENT. Contractor represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either R.C. 153.02 or R.C. 125.25.
- K. OHIO RETIREMENT SYSTEM. If Contractor is a “PERS retirant,” as defined by R.C. § 145.38, Contractor shall notify ODNR of such status in writing prior to the commencement of Work. Notices pursuant to this Paragraph M shall be sent to ODNR’s Director of Human Resources by mail at 2045 Morse Rd., Building D, Columbus, Ohio 43229, by fax at (614) 265-7051, or by email at hr@dnr.state.oh.us. ODNR shall not be responsible for any changes to Contractor’s retirement benefits that may result from entering into this Agreement. Contractor acknowledges and agrees any individual providing personal services under this Agreement is not a public employee for purposes of R.C. Chapter 145. The Contractor certifies that if it is an employer with five or more employees as defined at R.C. § 145.037 (A), no individuals employed by Contractor, who provide personal services to ODNR, are public employees for the purposes of R.C. Chapter 145. ODNR will not make contributions to the public employees’ retirement system on behalf of any of the individuals employed by the Contractor, or its sub-contractors or other agents.
- L. BOYCOTTING. Pursuant to R.C. § 9.76, Contractor hereby declares that it is not boycotting any jurisdiction with whom the State of Ohio can participate in open trade, including the nation of Israel, and will not do so during the term of this Agreement.
- M. REPAYMENT. If the representations and warranties in Paragraphs I or J of this Article XVI are found to be false, this Agreement is void ab initio and Contractor shall immediately repay to the ODNR any funds paid under this Agreement.

XVII. MISCELLANEOUS

- A. CONTROLLING LAW. This Agreement and the rights of the parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the state of Ohio. Contractor consents to jurisdiction in a court of proper jurisdiction in the state of Ohio.
- B. WAIVER. A waiver by any party of any breach or default by the other party under this Agreement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.
- C. SURVIVAL. The provisions of Articles II, VI, VII, IX, X, XI, XII, XIII, XIV, XVI, XVII and XVIII hereof shall survive the termination or expiration of this Agreement.
- D. SUCCESSORS AND ASSIGNS. Neither this Agreement nor any rights, duties or obligations hereunder may be assigned or transferred in whole or in part by Contractor, without the prior written consent of the ODNR.
- E. NOTICES. Except to the extent expressly provided otherwise herein, all notices, consents and communications required hereunder (each, a “Notice”) shall be in writing and shall be

deemed to have been properly given when: 1) hand delivered with delivery acknowledged in writing; 2) sent by U.S. Certified mail, return receipt requested, postage prepaid; 3) sent by overnight delivery service (Fed Ex, UPS, etc.) with receipt; or 4) sent by fax or email. Notices shall be deemed given upon receipt thereof, and shall be sent to the following addresses:

Ohio Department of Natural Resources
Attn: Division of Geological Survey
2045 Morse Road, Bldg. C-1
Columbus, OH 43229-6692

Notwithstanding the foregoing, notices sent by fax or email shall be effectively given only upon acknowledgement of receipt by the receiving party. Any party may change its address for receipt of Notices upon notice to the other party. If delivery cannot be made at any address designated for Notices, a Notice shall be deemed given on the date on which delivery at such address is attempted.

- F. CONFLICT. In the event of any conflict between the terms and provisions of the body of this Agreement and any exhibit hereto, the terms and provisions of the body of this Agreement shall control.
- G. HEADINGS. The headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.
- H. SEVERABILITY. The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.
- I. ENTIRE AGREEMENT. This Agreement contains the entire agreement between the parties hereto and shall not be modified, amended or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto. This Agreement supersedes any and all previous agreements, whether written or oral, between the parties.
- J. EXECUTION. This Agreement is not binding upon the ODNR unless executed in full, and is effective as of the last date of signature by the ODNR.
- K. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.
- L. FACSIMILE SIGNATURES. Any party hereto may deliver a copy of its counterpart signature page to this Agreement electronically. Each party hereto shall be entitled to rely upon an electronic signature of any other party delivered in such a manner as if such signature were an original.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

CONTRACTOR:

**ODNR:
OHIO DEPARTMENT OF NATURAL
RESOURCES**

By: _____

By: _____

Name: _____

Title: _____

Date: _____

Date: _____

SCOPE OF WORK

I. WORK DESCRIPTION

1. OBJECTIVE AND SCOPE
2. WORK MANAGEMENT
3. DELIVERABLES
4. WORK RISK IDENTIFICATION AND MITIGATION

II. COMPENSATION

1. NOT TO EXCEED
2. PAYMENT SCHEDULE

III. CHANGES TO SCOPE OF WORK

ODNR may order changes in the Work without invalidating the Agreement. A change in the Work shall be governed by a change order in the form of a contract amendment. Contractor shall not proceed with any change in the Work without ODNR's prior written authorization. Upon execution of an amendment, Contractor shall perform all changes in the Work under the applicable provisions of the Agreement and any amendments, and the Contractor shall proceed promptly with the change unless otherwise provided in the amendment. The amendment will govern any changes to the Work, changes to the fees owed to Contractor, and any changes to the time for completion of the project. By signing an amendment, Contractor irrevocably certifies that the elements of the amendment are completely satisfied, and waives all rights, if any, to seek further adjustment of the fees owed or the time for completion of the Work, or both, at a later date with respect to the associated change in the Work including without limitation on account of the "cumulative impact" of the associated change in the Work in combination with one or more other changes in the Work.

APPENDIX I
IRS Publication 1075

I. PERFORMANCE

In performance of this Agreement, Contractor agrees to comply with and assume responsibility for compliance by its employees with the following requirements:

- (1) All Work will be done under the supervision of Contractor's employees.
- (2) Any Federal tax returns or return information (hereafter referred to as "returns" or "return information" or "FTI") 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 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) Contractor certifies that the data processed during the performance of this Agreement will be completely purged from all data storage components of its computer facility, and no output will be retained by Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
 - a. Further, the destruction of all FTI will be in compliance with destruction procedures as defined in IRS Publication 1075. The FTI will be logged through destruction, and these logs will be available to the IRS or ODNR as needed through the retention period as defined in IRS Publication 1075.
- (5) Any spoilage or any intermediate hard copy printout that may result during the processing of ODNR data will be given to ODNR or its designee. When this is not possible, Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide ODNR or its 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, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.
- (7) No Work involving FTI furnished under this Agreement will be subcontracted without prior written approval of the IRS and ODNR.
- (8) Contractor will maintain a list of employees authorized access. Such list will be provided to ODNR and, upon request, to the IRS reviewing office.
- (9) Incident response policies and procedures must be developed, documented, disseminated, and updated as necessary to facilitate the implementation of incident response security controls.

- (10) Audit and accountability policies and procedures must be developed, documented, disseminated, and updated as necessary to facilitate the implementation of audit and accountability security controls.
 - a. To support the audit of activities, Contractor must ensure that audit information is archived for six years.
 - b. The information system must protect audit information and audit tools from unauthorized access, modification, and deletion.
- (11) IRS Publication 1075 compliance is mandatory. The aforementioned compliance items are a small selection of key elements contained within the requirements defined in IRS Publication 1075. ODNR reserves the right to impose additional and more stringent requirements as deemed necessary to protect FTI.

II. CRIMINAL/CIVIL SANCTIONS

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 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 this 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 returns or return information may also result in an award of civil damages against 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 sections 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (3) Additionally, it is incumbent upon 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) Before receiving access to FTI, Contractor must certify that each individual understands ODNR's security policy and procedures for safeguarding IRS information. Contractor must maintain its authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in ODNR's files for review. Contractor is hereby advised of the provisions of IRC sections 7431, 7213, and 7213A. (See Exhibit 5 to the Publication, IRC Sec. 7431 Civil Damages for Unauthorized Inspection or Disclosure of Returns and Return Information; see also Exhibit 4 to the Publication, IRC Sec. 7213 Unauthorized Disclosure of Information). 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 of the Publication). For both the initial certification and the annual certification, Contractor must sign, either with ink or electronic signature, a confidentiality statement certifying its understanding of the security requirements.

III. INSPECTION

Contractor shall comply with the FTI safeguard requirements of IRS Publication 1075, including all requirements that refer or relate to record retention and audits.

The IRS and ODNR shall have the right to send their officers and employees into Contractor's offices, plants, and all other sites operated or controlled by Contractor so that the officers and employees may inspect the facilities and operations utilized for the performance of any Work under this Agreement. This includes alternate worksites where FTI is or has been received, processed, stored, destroyed, or handled by any means. This provision specifically includes private property held by Contractor if it allows its employees to establish an alternate work site within their property.

On the basis of such inspection, specific measures may be required to remedy matters of non-compliance where Contractor is found to be noncompliant with safeguards required by the Agreement, the IRS Office of Safeguards, or ODNR. The Agreement may be terminated subject to the discretion of the IRS and/or ODNR for any reason. In either case, Contractor shall have no recourse and shall not be entitled to any damages as a result of the required remedy or termination of the Agreement.

A background check must be performed, as required by IRS Publication 1075, on each of Contractor's employees or subcontractors that may be exposed to FTI provided by ODNR. Results of the background checks shall be made available to ODNR, the IRS, or their designees upon request.

Contractor must provide staff, logs, records, systems access, and facility access at its own expense to assist during each inspection and audit. Inspections and audits may be performed by ODNR, the IRS, or their designees at any time Contractor is in possession of FTI or during the subsequent years until all FTI has been returned or destroyed, the return or destruction has been reported to ODNR, and the retention periods for these records as defined in IRS Publication 1075 have expired.

APPENDIX II

Agreement for Protection of Confidential Information

[Fill in Contractor information in signature block.]

"Confidential Information" means any and all tangible or intangible information, documents, prototypes, samples, products, services, methodologies, research, technical knowledge, marketing plans, trade

secrets, and proprietary materials disclosed previously or in the future by ODNR to you, either directly or indirectly, in writing, orally or by inspection of tangible objects, including, without limitation, any information: (i) that has been marked as proprietary or confidential; (ii) whose confidential nature has been made known by ODNR; (iii) that due to its character and nature, a reasonable person under like circumstances would treat as confidential. Confidential Information may also include information disclosed to a Contractor by third parties; or (iv) Personal Information, as defined in R.C. § 1347.01(E), in any form which is any information that describes anything about a person, or that indicates actions done by or to a person, or that indicates that a person possesses certain personal characteristics, and that contains, and can be retrieved from a system by, a name, identifying number, symbol, or other identifier assigned to a person. Confidential Information shall not, however, include any information which (i) was publicly known and made generally available in the public domain prior to the time of disclosure by ODNR; (ii) becomes publicly known and made generally available after disclosure by ODNR to you through no action or inaction of you; (iii) is already in your possession at the time of disclosure by ODNR as shown by your files and records immediately prior to the time of disclosure; (iv) is obtained by you from a third party without a breach of such third party's obligations of confidentiality; or (v) is required by law to be disclosed by you, provided that ODNR is given prompt written notice of such requirement prior to such disclosure and assistance in obtaining an order protecting the information from public disclosure, in which case such information shall remain Confidential Information.

NON-USE AND NON-DISCLOSURE. You agree not to use any Confidential Information of ODNR for any purpose except to assist Contractor and its permitted subcontractors or agents in providing services to ODNR. You agree not to disclose any Confidential Information to third parties.

MAINTENANCE OF CONFIDENTIALITY. You agree to take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information.

CONTRACTOR

By: _____

Name: _____

Title: _____

Date: _____