

**REQUEST FOR PROPOSALS  
FOR  
THE STATE OF OHIO DEPARTMENT OF TAXATION**

**RFP NUMBER: TAX21IT01  
DATE ISSUED: November 30, 2020**

The Ohio Department of Taxation (ODT) is requesting proposals for:

**Tax Discovery Data Warehouse Replacement**

**Inquiry Period Begins: November 30, 2020  
Inquiry Period Ends: December 10, 2020 at 8:00 am (Columbus, OH local time)  
Proposals Due: January 4, 2021**

**Submit Proposals via email to:**

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**And**

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**THE STATE OF OHIO DEPARTMENT OF TAXATION**  
**Tax Discovery Data Warehouse Replacement RFP**  
**TAX21IT01**

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## SECTION I - REQUESTED SERVICES OVERVIEW

### 1.1 Purpose:

The Ohio Department of Taxation (ODT) is soliciting competitive sealed proposals for a **Tax Discovery Data Warehouse Replacement** (the “Project”), to be completed by fall 2021.

### 1.2 Background:

The Ohio Department of Taxation (ODT) administers individual and business taxes for the State of Ohio. It maintains its principal offices in Columbus, Ohio. Its core functions include: taxpayer registration, returns and remittance processing, taxpayer accounting and billing, non-filer and under-reporter discovery, selection and management of audits, processing assessments, administering taxpayer appeals, revenue accounting, and distribution of tax proceeds to local governments within the State. ODT is not responsible for collection enforcement activities on taxes due, as this is legally the responsibility of the State Attorney General’s Office. Major taxes/funds administered by ODT include but are not limited to:

- Commercial Activity Tax (CAT)
- Corporation Franchise Tax
- Employer Withholding Tax (including School District Withholding Tax)
- Individual Income Tax – (including School District Income Tax) (PIT)
- Pass-Through Entity Tax (PTE)
- Sales and Use Tax (SUT)
- Liquor and Excise Taxes

Currently, ODT performs most of its audit, Tax Discovery and Fraud analysis using Teradata’s integrated Data Warehousing solution. Based on the warehouse data, analysts identify leads formulated on over 60 different criteria in ten major taxes. The data warehouse information is available to permitted users throughout ODT and contains mostly information developed from external sources such as federal and state agencies and summary information of the tax operational data that is both received and generated internally by the Department. All data is extracted, transformed, and loaded (ETL) utilizing Teradata’s Tools and Utilities (TTU) and IBM’s SPSS. Excel reports of the warehouse data are provided through IBM Cognos V11 Analytics. Additional analytics and modelling are performed in SPSS and SAS. This system will be referred to as ODT’s Compliance Data Warehouse (CDW) throughout the RFP.

The CDW is critical to the Department’s audit selection and processing. The system is credited with recovering the following amounts in State revenue:

- Total since inception: \$189,996,951.00
- Calendar year 2019: \$77,240,244.00
- 2020 (01/01 to 04/30): \$21,866,799.00

The current Teradata System is the basis for critical business applications:

- Two audit lead scoring applications, Audit Leads Management System (ALMS) and Teradata Tax Compliance System (TTCS) that utilize business rules and IBM’s SPSS analytics tool to identify non-filers and under reporters. Taxes include individual, PTE, CAT, Sales and EWH
- 96 Cognos Reports – allowing the business users to research trends and cross check given data to IRS and previous tax years. Over 1,000 reports are executed each day with 225 active users.
- The T610 billing program – a program that identifies tax revenue collection opportunities. The program’s casual sales recovered \$1 million last calendar year by using shared data from other agencies.

- Ohio Tax Investigative System dashboard – OTIS – tracks Personal Income Tax fraud trends and patterns, quickly identifying new threats.
- Direct access using SAS – SAS and Teradata provided timely analytics to the Tax Analyst group.
- Data analytics and modeling vital areas including Personal Income Fraud, Liquor, Sales, BMV and CAT.

### 1.3 Project Objectives:

To replace the CDW with an all-inclusive solution built on a scalable foundation that can utilize modern hardware and software. Options include completely replacing existing technology or updating and upgrading the current technology to a supported level. It is the intent of ODT to retain the audit application layer with little or no change and for business to carry on operations without impact from the IT infrastructure change. ODT welcomes RPFs utilizing technologies included in but not limited to the current system and built on-premises.

It will be the Contractor’s obligation to ensure that the Project meets these objectives:

- Reduce technical, security and financial risk by implementing modern architecture and an easily adaptable environment. This will allow more uniform IT skill sets to be established to support system maintenance and will allow for cost-effective implementation of changes and new features with less concern about the impact to existing processes, systems, or data, and lower IT infrastructure and training costs.
- Obtain and build a robust high-performance data warehouse that increases compliance revenue and enhances fraud detection.
- Leverage ODT’s current Data Conversion and Migration Services. Ideally, ODT would be presented with a solution that would reuse a large percentage of its Tax Discovery infrastructure without an in-depth redesign effort to exploit the new system’s architecture, including but not limited to the database dimensional model, SPSS analytical models, lead generation applications, Cognos Reports and the supporting ETL infrastructure.
- Interface with other inbound and outbound systems. For example, IRS, other state agencies, and internal ODT systems.
- Safeguard taxpayer information through the application of appropriate security controls, which fosters a high degree of taxpayer confidence that personal and financial information submitted to ODT is protected against unauthorized use, inspection, or disclosure.
- Implement an IT infrastructure that satisfies the IRS requirement to persist FTI data on current hardware and software.
- Reflect the impact of, and respond flexibly to, legislative changes to tax administration and tax processing. Additionally, a new system could potentially support enhanced “what if” analysis of tax policy changes to allow for greater understanding of their implications.

In addition to these high-level goals and other features that may be offered, ODT specifically seeks the following improvements:

- **In Database Analytics** – to improve audit lead scoring and analytics modeling, reducing Tax Agents’ time verifying leads and trends.
- **Positioned for the Cloud** – to have the flexibility to transition seamlessly to the Cloud

## 1.4 Overview of the Project:

The Project's scope of the work and requirements are provided in greater detail within **Supplement 1** to this RFP. If there is any inconsistency between this summary and the Supplement's description of the work, the Supplement will govern.

## **SECTION II - GENERAL INSTRUCTIONS**

### 2.1 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.

ODT will respond to all inquiries within three (3) business days of receipt, excluding weekends and State holidays, but will not respond to any inquiries received after 8:00 a.m. on the inquiry end date. ODT does not consider questions asked during the inquiry period through the inquiry process as exceptions to the terms and conditions of this RFP.

### 2.2 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. Proposals must be submitted in the following manner:

- Proposals must be submitted via e-mail by no later than January 4, 2021 by 2:00 p.m. to [Michael.O'Leary@tax.state.oh.us](mailto:Michael.O'Leary@tax.state.oh.us), [Kerrie.Ryan@tax.state.oh.us](mailto:Kerrie.Ryan@tax.state.oh.us) and [Jarod.Newport@tax.state.oh.us](mailto:Jarod.Newport@tax.state.oh.us).
- Emails will clearly refer to Tax Discovery Data Warehouse Replacement RFP TAX21IT01 in the subject line of the email.
- The Offeror must provide an electronic "searchable" copy of the proposal in Microsoft Office (native format), Microsoft Word (native format), Microsoft Project (native format), Microsoft Excel (native format) and Adobe Acrobat format, as appropriate. Hardcopies will not be accepted.
- Margins must not be less than  $\frac{3}{4}$  of an inch on all sides.
- Font must be 10 point or larger with no more than 6 lines of text per inch.
- All pages must be numbered consecutively using the format "Page [#] of [total number of pages]" (e.g., Page 2 of 20).
- Each Proposal must be organized in both a Microsoft Word document and PDF document, ordered in the same manner as the response items are ordered in the applicable attachments to this RFP.
- ODT requests clear and concise Proposals, but Offerors must answer questions completely and meet all the RFP's requirements.
- Offeror responses to questions throughout this RFP and related Supplements 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.

Proposers are advised there will be no opportunity to correct mistakes or deficiencies in their submitted materials after the Proposal Due Date. Proposals that are incomplete or otherwise missing required information may not be evaluated. It is the Proposer's responsibility to ensure timely submission of a complete Proposal. Late Proposals will not be scored. Proposals that are not submitted in the format requested will not be scored. No supplementary or revised materials will be accepted after the Proposal Due Date unless specifically requested by ODT.

All costs incurred in the preparation of the Proposal shall be borne by the Proposer alone, and ODT shall not contribute, in any way, to the cost of the preparation of the Proposal.

Any and all documents developed by the Proposer during the course of this project will be provided to ODT upon request and will become the property of ODT, and the Proposer shall not assert any claims arising under copyright or otherwise inconsistent with the transfer of ownership of such documents. All information submitted in response to this RFP shall be a public record unless a statutory exception exists that would protect the information from release to the public.

ODT reserves the right to:

- Accept or reject any and all Proposals and/or bids if ODT determines that it is in the best interests of ODT to do so.
- Rebid this RFP, requesting new Proposals from qualified vendors.
- Waive or modify minor irregularities in Proposals received.
- Negotiate with Proposer(s), within the requirements of this RFP, to best serve the interests of ODT.
- Require the submission of modifications or additions to Proposals as a condition of further participation in the selection process.
- Not make an award at the end of the evaluation process; this RFP is not to be interpreted or construed to guarantee that one or more Proposers submitting responses will be awarded contracts.
- Adjust the RFP Calendar of Event dates for whatever reason it deems appropriate.

- Contact Proposer to clarify any portion of the Proposer’s submittal.
- If, during the review process, ODT determines that it is necessary to make further distinctions between certain Proposers, ODT may request certain selected Proposers to make a presentation to staff and reviewers.

In accordance with federal and state statutes and ODT policy, no person shall be excluded from participation or subject to discrimination in the RFP process on the basis of race, color, age, sex, national origin, military status, religion, or disability. Each Proposal must contain the following ***tabbed sections in the response***:

### **Technical Proposal Requirements**

- Cover Letter
- Subcontractor Letters
- Offeror Certification Form
- Supplier Registration
- MBE Certification(s)
- Offeror Profile
- Staffing Plan
- Supplement Responses
  - Supplement 1 - Requirements and Project Delivery
  - Supplement 2 – Legacy Technical Environment (***No Response Required***)
  - Supplement 3 - State Information Security and Privacy Requirements, State Data Handling Requirements
- Proof of Insurance
- W-9 Form
- Independent Contractor Acknowledgement
- Affirmation and Disclosure Form
- Acceptance of General Terms and Conditions
- Assumptions
- Support Requirements
- Value-Added Services (if applicable)
- Data Conversion Plan
- **Cost Proposal** - Microsoft Excel Workbook

### **2.3 Calendar of Events:**

The schedule for the RFP process and the Project is given on page one. ODT may change this schedule at any time. If ODT 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. 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.

### **2.4 Disclosure of Proposal Contents:**

ODT will seek to open the Proposals in a manner that avoids disclosing their contents. Additionally, ODT will seek to keep the contents of all Proposals confidential until the Contract is awarded.

### **2.5 Rejection of Proposals:**

ODT may reject any Proposal that proposes to do any work or make any State data available outside the United States or for which the Offeror 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. Additionally, ODT may reject any Proposal that is not in the required format, does not address all the requirements of this RFP, objects to the terms or conditions of this RFP, or that ODT determines is excessive in price or otherwise not in ODT's interest to accept. In addition, ODT may cancel this RFP, reject all the Proposals, and seek to do the Work through a new RFP or other means. Each Proposal must include a response to every request for information in this RFP and all related Supplements (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.

## **2.6 Technical Evaluation:**

ODT will evaluate each Proposal that it has determined is timely, complete, and properly formatted. ODT 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, ODT 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. ODT may adopt or reject any recommendations it receives from such reviews and evaluations or give them such weight as ODT believes is appropriate. ODT will document all major decisions and make these a part of the Contract file, along with the evaluation results for each Proposal considered.

## **2.7 Requirements:**

Supplement One provides requirements ODT 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 Supplement One and the table in Section IV, below.

## **2.8 Minority Business Enterprise (MBE):**

ODT is committed to improving the number of minority-owned enterprises that do business with the State of Ohio. 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 Web site at: <http://das.ohio.gov/Divisions/EqualOpportunity/MBEEDGECertification.aspx>

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

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

## **2.9 Cost Evaluation:**

Once the technical merits of the Proposals are considered, ODT may consider the costs of one or more of the highest-ranking Proposals. It is within ODT's discretion to wait until after any interviews, presentations, and

demonstrations to evaluate costs. Before evaluating the technical merits of the Proposals, ODT may do an initial review of costs to determine if any Proposals should be rejected because of excessive cost. ODT may reconsider the excessiveness of any Proposal's cost at any time in the evaluation process.

#### **2.10 Reference Checks:**

As part of ODT's evaluation process, ODT 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, ODT may reject an Offeror's Proposal as non-responsive if the Offeror fails to provide requested reference contact information.

#### **2.11 Contract Negotiations:**

It is within ODT's discretion 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 ODT negotiating with the Offeror may be rejected. ODT is free to limit negotiations to particular aspects of any Proposal or the RFP, to limit the Offerors with whom ODT negotiates, and to dispense with negotiations entirely. If negotiations are held, they will be scheduled at the convenience of ODT, and the selected Offeror or Offerors must negotiate in good faith.

From the opening of the Proposals to the award of the Contract, everyone evaluating Proposals on behalf of ODT will seek to limit access to information contained in the Proposals solely to those people with a need to know the information. ODT also will seek to keep this information away from other Offerors, and ODT 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.

### **SECTION III - AWARD OF THE CONTRACT**

#### **3.1 Contract:**

If this RFP results in a Contract award, the Contract will consist of this RFP, including all attachments, Supplements One, Two and Three, written amendments to this RFP, the Contractor's Proposal, and written, authorized amendments to the Contractor's Proposal. It also will include any materials incorporated by reference in the above documents and any purchase orders and change orders issued under the Contract. The general terms and conditions for the Contract are contained in Section VI 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. The attached, amended and clarified version of Contractor's Response. Contractor's Response includes General Terms and Conditions, and all other Attachments, Supplements and materials included in Contractor's Response as accepted by the State;
2. The attached Cost Proposal Workbook;
3. The applicable Purchase Order.

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

### 3.2 Term and Renewal:

The term of the Contract will be from the award date until the Work is completed to the satisfaction of the State and the Contractor is paid or June 30, 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.

## **SECTION IV - EVALUATION CRITERIA**

### 4.1 Mandatory Requirement:

The first table lists this RFP's mandatory requirement. If the Offeror's Proposal meets the mandatory requirement, the Offeror's Proposal may be included in the next part of the evaluation phase.

<b>Mandatory Requirement</b>	<b>Reject</b>	<b>Accept</b>
The proposed data warehouse hardware, environment software and database solution has been successfully implemented as part of the compliance data warehouse solution for at least one state or federal tax and revenue agency and is still actively used as of this RFP. See Attachment Two.		

### 4.2 Technical Evaluation Criteria

<b>Services Provider Requirements</b>	<b>Weight</b>	<b>Does Not Meet</b>	<b>Partially Meets</b>	<b>Meets</b>	<b>Exceeds</b>
Provide proof their solution has passed an IRS audit, at more than one site, within the past two years.	15	0	2	5	7
The Offeror or proposed subcontractors have successfully integrated a similar solution in at least 3 tax or non-tax sites. Provide the last 3 reference sites from within the past 36 months – Attachment Two	10	0	2	5	7
The offeror must provide evidence that they have been in business for at least five years – Attachment Two	2	0	2	5	7
Solution must be recognized by Gartner's Magic Quadrant for Data Warehouse and Analytics – Attachment Two	20	0	2	5	7
The offeror must have implemented similar architecture and hardware solution on at least two similar sites – Attachment Two	10	0	2	5	7
<b>Project Manager Requirements</b>	<b>Weight</b>	<b>Does Not Meet</b>	<b>Partially Meets</b>	<b>Meets</b>	<b>Exceeds</b>

Experience as the Project Manager on a minimum of two successful system implementation projects of similar size and scope.	5	0	2	5	7
Experience as the Project Manager on a minimum of one implementation with the proposed Data Warehouse software.	10	0	2	5	7
<b>Team Strength</b>	<b>Weight</b>	<b>Does Not Meet</b>	<b>Partially Meets</b>	<b>Meets</b>	<b>Exceeds</b>
Staffing Plan – From Attachment 4 - focus on strength of team (skill level) and consistency of staff throughout implementation	20	0	2	5	7

<b>Proposed System Solution</b>					
<b>Functional Elements from Supplement 1</b>					
	<b>Weight</b>	<b>Does Not Meet</b>	<b>Partially Meets</b>	<b>Meets</b>	<b>Exceeds</b>
2.1.1 RDBMS	20	0	2	5	9
2.1.2 Backup and Recovery	20	0	2	5	7
2.1.3 Database Monitoring and Alerts	10	0	2	5	7
2.1.4 Workload Manager	10	0	2	5	7
2.1.5 BI and Statistical Analysis	10	0	2	5	7
2.1.6 Extract, Translate and Load (ETL)	20	0	2	5	9
2.2 Services	10	0	2	5	7
2.2.1 Data Conversion and Migration Services	20	0	2	5	7
2.2.2 Documentation & Knowledge transfer	20	0	2	5	7
2.2.3 Ongoing support agreement	10	0	2	5	7
2.3 Specific Features	10	0	2	5	7
<b>Technical Elements from Supplement 1</b>					
	<b>Weight</b>	<b>Does Not Meet</b>	<b>Partially Meets</b>	<b>Meets</b>	<b>Exceeds</b>
3.1 General	3	0	2	5	7
3.2 Hardware	10	0	2	5	7
3.3 Software	10	0	2	5	7

3.4 Development	5	0	2	5	7
3.5 Production Support	5	0	2	5	7
3.6 Security	20	0	2	5	9
3.7 Performance	25	0	2	5	7
3.8 Scalability	10	0	2	5	7
Maintainability, Operations, Upgrades and Support	20	0	2	5	7
Track Record	5	0	2	5	7
SDLC Overview					
	Weight	Does Not Meet	Partially Meets	Meets	Exceeds
Project Plan	3	0	2	5	7
Technical Environment Design	8	0	2	5	7
Technical Environment Setup and Maintenance	8	0	2	5	7
Performance Testing and System Tuning	8	0	2	5	7
Hardware, Software, System Development, Customization, and Implementation	8	0	2	5	7
Data Conversion, migration, ETL	15	0	2	5	7
Documentation	3	0	2	5	7
Training and Knowledge Transfer	20	0	2	5	7
System Implementation and Post- Deployment Support	7	0	2	5	7

### 4.3 Evaluation Scoring Formula:

The evaluation team will rate the Proposals that meet the Mandatory Requirements based on the following criteria and respective weights. ODT is committed to making more State contracts, services, benefits and opportunities available to minority business enterprises (MBE). To foster this commitment, ODT included an MBE Set-aside component in the Evaluation Scoring Formula (shown below).

<i>Criteria</i>	<i>Percentage</i>
Technical Proposal	80%
Cost Proposal	15%
MBE Set-aside	5%

To ensure the scoring ratio is maintained, ODT will use the following formulas to adjust each Offeror's points.

The Offeror with the highest point total for the Technical Proposal will receive 850 points. The remaining Offerors will receive a percentage of the maximum points available based upon the following formula:

**Technical Proposal Points** = (Offeror's Technical Proposal Points/Highest Offeror's Technical Proposal Points) x 850

The Offeror with the lowest proposed Cost will receive 150 points. The remaining Offerors will receive a percentage of the maximum cost points available based upon the following formula:

**Cost Proposal Points** = (Lowest Offeror's Total Cost / Offeror's Total Cost) x 150

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

**Total Points** = Technical Proposal Points + Cost Proposal Points

## **SECTION V - SPECIAL PROVISIONS**

### **5.1 Submittal of Deliverables.**

Should ODT 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. The Contractor must provide the Deliverables no later than the due dates the Contract requires. 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 ODT Project Representative, who will review (or delegate review of) the materials or documents within a reasonable time after receipt, as specified in ODT approved, base-lined Project Plan.

ODT's form authorizing payment and the payment itself do not indicate that ODT has accepted the Deliverables associated with the payment. ODT'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).

### **5.2 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 ODT.

### **5.3 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 will prevail.

#### 5.4 The Contractor's Fee Structure:

The Contract award will be for a Not-to-Exceed Fixed cost as agreed to in the Offerors Cost Summary. The Contractor may invoice ODT for each Task as defined in Supplement 1 after ODT has accepted all Deliverables for that Task. The Contractor may invoice ODT for the on-going software licensing, maintenance and support costs annually in advance.

#### 5.5 Reimbursable Expenses:

None.

#### 5.6 Location of Data:

The Contractor must perform all work on the Project and keep all State data within the United States, and ODT may reject any Proposal that proposes to do any work or make State data available outside the United States. ODT 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. Additionally, the Contractor must provide written notification for approval if at any time the location of work or data changes.

## **SECTION VI - GENERAL TERMS AND CONDITIONS**

### **PART ONE: PERFORMANCE AND PAYMENT**

#### 6.1 Statement of Work:

The selected Offeror's Proposal and ODT'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 ODT representatives and others necessary to ensure a thorough understanding of the Project and satisfactory performance. ODT 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.

#### 6.2 Term:

Unless this Contract is terminated or expires without renewal, it will remain in effect until the Project is completed to the satisfaction of ODT, 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. ODT 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 ODT paid for before or after termination or limit ODT's rights in such.

ODT'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, ODT's obligations under this Contract will terminate as of the date that the funding expires without further obligation of ODT.

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 ODT may terminate this Contract under the termination provision contained below.

ODT also may have certain obligations to meet. Those obligations, if any, are also listed in the RFP Documents. If ODT agrees that the Contractor's failure to meet the delivery, milestone, or completion dates in the RFP Documents is due to ODT'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 ODT's failure to perform will be extended by the same amount of time as ODT'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 ODT meaningful written notice of ODT's failure to meet its obligations within five business days of the Contractor's realization that ODT'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 ODT Delay." The notice must identify any delay in detail, as well as the impact the delay has or will have on the Project. Unless ODT 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 ODT's delay. Should ODT 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 ODT's delay.

ODT 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 ODT are included in the Project and the Not-To-Exceed Fixed costs.

### **6.3 Compensation:**

In consideration of the Contractor's promises and satisfactory performance, ODT 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 without the prior written approval of ODT 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 ODT's then current policies regarding invoices and their submission. ODT 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.

ODT will pay the Contractor interest on any late payment, as provided in Section 126.30 of the Ohio Revised Code (the "Revised Code"). If ODT disputes a payment for anything covered by an invoice, within 15 business days after receipt of that invoice, ODT will notify the Contractor, in writing, stating the grounds for the dispute. ODT 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 ODT, ODT 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, ODT’s Project Representative, and ODT Contract Management Administrator. ODT 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 ODT’s satisfaction, ODT will pay the disputed amount within 30 business days after the matter is resolved. ODT 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 ODT 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 ODT for that amount at the end of the 30 calendar days as a nonexclusive remedy for ODT. On written request from the Contractor, ODT will provide reasonable assistance in determining the nature of the problem by giving the Contractor reasonable access to ODT’s facilities and any information ODT has regarding the problem.

Payment of an invoice by ODT will not prejudice ODT’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 ODT not to constitute allowable costs, on the basis of audits conducted in accordance with the terms of this Contract. At ODT’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, ODT will withhold from each invoice paid the percentage specified in the RFP Documents as retainage. ODT will pay the retainage only after ODT has accepted the Project, and then only in accordance with the payment schedule specified in the RFP Documents. ODT will withhold all amounts under this section arising from claims or disputes in addition to any retainage specified in the RFP Documents.

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

#### **6.4 Right of Offset:**

ODT 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 ODT, including any amounts the

Contractor owes to ODT under this or other contracts, against any payments due from ODT to the Contractor under this or any other contracts with ODT.

#### **6.5 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 ODT. 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 ODT 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 ODT 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 ODT, that ODT 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 ODT.

#### **6.6 Sales, Use, Excise, and Property Taxes:**

ODT 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**

#### **6.7 Other Contractors:**

ODT may hold other contracts for additional or related 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 ODT's employees. Additionally, the Contractor must include the obligations of this provision in all its contracts with its subcontractors that work on this project.

#### **6.8 Subcontracting:**

The Contractor may not enter into subcontracts related to the Project after award without written approval from ODT. Nevertheless, the Contractor will not need ODT'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.

#### **6.9 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. At ODT's request, Contractor shall furnish ODT of Ohio with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause.

#### **6.10 Key Employees:**

It is expressly understood that the Contractor's selection is based in part on the credentials of the personnel proposed in the Contractor's proposal. Any substitution for key personnel during the course of the contract will be deemed a material breach unless the substituted employee's credentials are submitted to ODT and approved by ODT prior to substitution. Contractor shall report any significant changes in the organizational structure and staffing to ODT in a timely manner. Contractor shall make no changes in the assigned project management or implementation team without the express written approval of ODT.

#### **6.11 Suspension and Termination:**

ODT 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. ODT also may terminate this Contract if the Contractor violates any law or regulation in doing the Project, or if it appears to ODT that the Contractor's performance is substantially endangered through no fault of ODT. In any such case, the termination will be for cause, and ODT'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, ODT will have the right to terminate this Contract immediately on notice to the Contractor. ODT 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 ODT has notified the Contractor in writing of the Contractor's failure to meet any of its obligations three times. After the third notice, ODT 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.

ODT 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.

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 ODT. 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 ODT at the time of termination. The Contractor also must deliver all the completed and

partially completed Deliverables to ODT with its report. However, if ODT determines that delivery in that manner would not be in its interest, then ODT will designate a suitable alternative form of delivery, which the Contractor must honor.

If ODT terminates this Contract for cause, ODT will be entitled to cover for the Work by using another Contractor on such commercially reasonable terms as ODT and the covering contractor may agree. The Contractor will be liable to ODT 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 ODT 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, ODT 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 ODT, the Contractor will be entitled to the Contract price as prorated by ODT Contract price for deliverables, products or services accepted by ODT 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, ODT 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.

ODT will have the option of suspending this Contract in full or in part rather than terminating the Project, if ODT believes that doing so would better serve its interests. In the event of a suspension for the convenience of ODT, 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 ODT 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 ODT 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 ODT from the default or other event giving rise to the suspension.

In the case of a suspension for ODT's convenience, ODT 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 ODT's convenience. The Contractor will not be entitled to compensation for any other costs associated with a suspension for ODT's convenience, and ODT will make no payment under this provision to the Contractor until the Contractor submits a proper invoice. If ODT decides to allow the work to continue rather than terminating this Contract after the suspension, ODT 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 ODT and may resume work only on written notice from ODT to do so. In any case of suspension, ODT retains its right to terminate this Contract rather than to continue the suspension or resume the Project.

ODT may not suspend the Project for its convenience more than twice during the term of this Contract, and any suspension for ODT'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 ODT'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 ODT for any liability to them. Notwithstanding the foregoing, each subcontractor must hold ODT 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.

#### **6.12 Project Responsibilities:**

ODT will be responsible for providing only those things, if any, expressly identified in the RFP Documents. If ODT 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 ODT's property, ODT 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.

#### **6.13 Changes:**

ODT may make reasonable changes within the general scope of the Project. ODT will do so by issuing a written order under this Contract describing the nature of the change ("Change Order"), including any change in cost of the project. Additionally, if ODT 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 ODT. **ODT will not pay any additional costs or fees arising from directions or requests outside the specifications for the Project that are not included in an executed Change Order.**

#### **6.14 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.

#### **6.15 Tax Compliance:**

Contractor agrees that it is compliant with, and will continue to be compliant with the filing and paying of all of its Ohio taxes, including its income tax and school district employer withholding tax responsibilities. Contractor authorizes ODT to perform an inquiry regarding current tax status and ODT may communicate any issues to Contractor.

Contractor further agrees that it will notify each person supplied under this contract, that as a condition of their engagement:

- They need to be current with, and continue to be current with, all of their Ohio tax filing and payment responsibilities, including but not limited to, their Ohio income tax and school district income tax responsibilities, subject to ODT confirmation;
- They will agree to and adhere to the various ODT policies posted on its website for the protection of taxpayer data and ODT equipment, as well as personal safety and security; and
- If required to complete disclosure training in order to access sensitive or confidential ODT information, Contractor and any personnel supplied under this RFP will complete the required disclosure training at no additional cost to ODT and prior to commencing work on this project.

Contractor agrees that failure to comply with these requirements will constitute a breach of this contract.

#### **6.16 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, ODT 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.

#### **6.17 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.

#### **6.18 Publicity and Branding:**

The Contractor shall not do the following without prior, written consent from ODT:

- Advertise or publicize that the Contractor is doing business with ODT;
- Use this Contract as a marketing or sales tool; or

- 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**

#### **6.19 Confidentiality:**

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

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

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

The Contractor's obligation to maintain the confidentiality of the Confidential Information will not apply where such: (1) was already in the Contractor's possession before disclosure by ODT, and such was received by the Contractor without obligation of confidence; (2) is independently developed by the Contractor; (3) except as provided in the next paragraph, is or becomes publicly available without breach of this Contract; (4) is rightfully received by the Contractor from a third party without an obligation of confidence; (5) is disclosed by the Contractor with the written consent of ODT; or (6) is released in accordance with a valid order of a court or governmental agency, provided that the Contractor (a) notifies ODT of such order immediately upon receipt of the order and (b) makes a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production. The Contractor must return all originals of any Confidential Information and destroy any copies it has made on termination or expiration of this Contract.

Information that may be available publicly through other sources about people that is personal in nature, such as medical records, addresses, phone numbers, social security numbers, and similar things are nevertheless sensitive in nature and may not be disclosed or used in any manner except as expressly

authorized in this Contract. Therefore, item (3) in the preceding paragraph does not apply, and the Contractor must treat such information as Confidential Information whether it is available elsewhere or not.

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

#### **6.20 Confidentiality Agreements:**

When the Contractor performs services under this RFP that require the Contractor's and its subcontractors' personnel to access facilities, data, or systems that ODT in its sole discretion deems sensitive, ODT may require the Contractor's and its subcontractors' personnel with such access to sign an individual confidentiality agreement and policy acknowledgements, and have a background check performed before accessing those facilities, data, or systems. 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.

#### **6.21 Ownership of Deliverables:**

ODT 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 ODT. Additionally, the Contractor waives any author rights and similar retained interests in custom-developed material. The Contractor must provide ODT with all assistance reasonably needed to vest such rights of ownership in ODT. 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 ODT 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 ODT ownership of the Pre-existing Materials. ODT 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 ODT in writing and seek ODT's approval for doing so in advance. ODT 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, ODT 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 ODT with respect to Pre-existing Materials, ODT 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 ODT, ODT is entitled to the source material. Scripts and similar functionality may not be locked or otherwise protected from access by ODT, unless ODT has any passwords or other tools necessary to access the material. Source material must include annotations or comments according to industry standards. Further, ODT is entitled to any working papers the Contractor has developed during the performance of the Project that would reasonably assist ODT in using the Deliverables that include source materials or that would



help ODT 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.

## **6.22 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 ODT 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 ODT 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 ODT will treat the material as confidential. In this regard, ODT will assume all obligations with respect to the Commercial Material that the Contractor assumes under the Confidentiality section of this Contract with respect to ODT's Confidential Information. Otherwise, ODT 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 ODT.

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

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

5. Disclosed to and reproduced for use on behalf of ODT by support service contractors or their subcontractors, subject to the same restrictions set forth in this Contract; and
6. Used or copied for use in or transferred to a replacement computer.

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

### **6.23 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 ODT regarding conduct on any premises under ODT's control and security for ODT'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 ODT; (5) the Contractor has the right and ability to grant the license granted in any Deliverable in which title does not pass to ODT; 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 ODT for any direct damages and claims by third parties based on a breach of these warranties. This obligation of indemnification will not apply where ODT has modified or misused the Deliverable and the claim is based on the modification or misuse. ODT 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 ODT to use the infringing Deliverable as it was intended for ODT to use under this Contract; or (4) remove the Deliverable and refund the amount ODT 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 ODT.

### **6.24 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 ODT 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 ODT; 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 ODT 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.

#### **6.25 Indemnity for Property Damage, Bodily Injury, and Data Breach:**

The Contractor must indemnify ODT 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 ODT, its employees, other contractors, or agents.

#### **6.26 Limitation of Liability:**

Neither party will be liable for any indirect, incidental, or consequential loss or damage of the other party, including but not limited to lost profits, even if the parties have been advised, knew, or should have known of the possibility of such damages. Additionally, neither party will be liable to the other for direct or other damages in excess of two times the **Not-To-Exceed Fixed Price** of this Contract. The limitations in this paragraph do not apply to: (i) any obligation of the Contractor to indemnify ODT against claims made against

it; (ii) disclosure/breach of State Data including personally identifiable information or State sensitive information, or for (iii) damages to ODT caused by the Contractor's negligence or other tortious conduct.

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

### **6.27 Standards of Performance and Acceptance:**

There will be a period for performance testing of the completed Project. During the performance period, ODT, 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, ODT 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 ODT 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 ODT may have under this Contract, ODT 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 ODT the right to reject the entire Project. Alternatively, if ODT determines that it is in ODT's interest to reject only the part of the Project that was independently and unsuccessfully tested, it may do so. If ODT chooses this option, ODT 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, ODT 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 ODT 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, ODT 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.

#### **6.28 Passage of Title:**

Title to any Deliverable will pass to ODT 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 ODT.

#### **6.29 Software Maintenance:**

If this Contract involves software as a Deliverable, then, during the warranty period, as well as any optional maintenance periods that ODT exercises, the Contractor must correct any material programming errors that are attributable to the Contractor within a reasonable period of time. However, ODT 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 ODT has not signed a separate license agreement, the Contractor must acquire for ODT 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 ODT 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 ODT for use by ODT solely for the purpose of maintaining the copy(ies) of the software for which ODT has a proper license. For purposes of receiving the source code, ODT 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 ODT gets under this section, ODT will do all the things that the Confidentiality section requires the Contractor to do in handling ODT's Confidential Information.

### **6.30 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.

### **6.31 Maintenance Access (General):**

This section applies if software or Equipment will be a Deliverable under this Contract.

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

### **6.32 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 ODT with a means of identifying these people, furnish ODT with their credentials, and notify ODT at least 30 calendar days in advance of any reductions in staffing levels of key people at the office serving ODT.

## **PART FIVE: CONSTRUCTION**

### **6.33 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.

### **6.34 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.

### **6.35 Amendments – Waiver:**

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

### **6.36 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.

### **6.37 Construction:**

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

### **6.38 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.

### **6.39 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.

### **6.40 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 SIX: LAW AND COURTS**

### **6.41 Compliance with Law:**

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

### **6.42 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.

### **6.43 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 ODT 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 ODT 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.

### **6.44 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.

### **6.45 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.

#### **6.46 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/>

#### **6.47 Security & Safety Rules:**

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

#### **6.48 Injunctive Relief:**

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

#### **6.49 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. ODT is not obligated to provide its consent to any proposed assignment.

#### **6.50 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.

#### **6.51 Registration with the Secretary of State:**

By providing a Charter Number and signature within the Certification Offer Letter, the Contractor attests that the Contractor is:

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

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



by O.R.C. § 1703.01-1703.31 to procure and maintain a license, but has not done so. Whoever violates this is guilty of a misdemeanor of the fourth degree. Questions regarding registration should be directed to (614) 466-3910, or visit <http://www.sos.state.oh.us>.

**ATTACHMENT ONE**

**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 it will not and will not allow others to perform work for the State of Ohio outside the geographic limitations contained in Attachment Two or take data that belongs to the State of Ohio outside the geographic limitations contained in Attachment Two without express written authorization from the State.
3. The Offeror certifies that its responses to the following statements are true and accurate. The Offeror’s answers apply to the last seven years. Please indicate yes or no in each column.

Yes/No	Description
	The Offeror has had a contract terminated for default or cause.
	The Offeror has been assessed any penalties in excess of \$10,000.00, including liquidated damages, under any of its existing or past contracts with any organization (including any governmental entity).
	The Offeror was the subject of any governmental action limiting the right of the Offeror to do business with that entity or any other governmental entity.
	Trading in the stock of the company has ever been suspended with the date(s) and explanation(s).
	The Offeror, any officer of the Offeror, or any owner of a 20% interest or greater in the Offeror has filed for bankruptcy, reorganization, a debt arrangement, moratorium, or any proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding.
	The Offeror, any officer of the Offeror, or any owner with a 20% interest or greater in the Offeror has been convicted of a felony or is currently under indictment on any felony charge.

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

seriousness of the matter, the matter’s possible impact on the Offeror’s performance under the Contract, and the best interest of the State.

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

Potential Conflicts (by person or entity affected)

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

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

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

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

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

- 8. The Offeror certifies that that any MBE program participants will provide necessary data to ensure program reporting and compliance.
- 9. 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 TWO  
OFFEROR PROFILE**

**OFFEROR MANDATORY REQUIREMENT**

**MANDATORY REQUIREMENT:**

[Mandatory Requirement #1]

This form may be copied for multiple instances.

<b>Company Name:</b>	<b>Contact Name:</b> (Indicate Primary or Alternate)  <b>Contact Title:</b>
<b>Company Address:</b>	<b>Contact Phone Number:</b>  <b>Contact Email Address:</b>
<b>Project Name:</b>	<b>Beginning Date of Expr: / Ending Date of Expr:</b> Month/Year                      Month/Year
<b>Describe Related Service Provided:</b>	

**ATTACHMENT TWO  
OFFEROR PROFILE**

**OFFEROR SCORED REQUIREMENT**

**SCORED REQUIREMENT 1:**

[Scored Requirement #1]

This form may be copied for multiple instances.

<b>Company Name:</b>	<b>Contact Name:</b> (Indicate Primary or Alternate)  <b>Contact Title:</b>
<b>Company Address:</b>	<b>Contact Phone Number:</b>  <b>Contact Email Address:</b>
<b>Project Name:</b>	<b>Beginning Date of Expr: / Ending Date of Expr:</b> Month/Year                      Month/Year
<b>Describe Related Service Provided:</b>	

### ATTACHMENT THREE: AFFIRMATION AND DISCLOSURE FORM

#### AFFIRMATION AND DISCLOSURE FORM

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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.

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 FOUR STAFFING PLAN

The Offeror's proposal must identify all Key Project Personnel who will provide services as part of the resulting Contract. ODT expects that the proposed named Key Project Personnel will be available as proposed to work on the Project. Resumes for the proposed candidates must be provided for all Key Project Personnel. Representative resumes are **not** acceptable. The resumes will be used to supplement the descriptive narrative provided by the Offeror regarding their proposed project team. **References for key personnel, with contact information, must also be provided. References may be contacted by ODT during the evaluation phase of this RFP.**

The resume (3-page limit per resume) 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
- Professional Licenses/Certifications/Memberships
- Employment History
- References, including contact information

The template on the following pages may also be used in lieu of a resume.



**PERSONNEL PROFILE SUMMARY**  
**CANDIDATE REFERENCES CONTINUED**

**Client Reference #2:**

<b>Client Company:</b>	<b>Client Contact Name:</b>	<b>Client Contact Title:</b>	
<b>Client Address:</b>		<b>Client</b>	<b>Contact</b>
		<b>Phone Number:</b>	
<b>Project Name:</b>		Beginning Date of Employment: Month/Year	Ending Date of Employment: Month/Year
<b>Description of services provided that are in line with those to be provided as part of this Project:</b>			
<b>Description of how client project size and complexity are similar to this project:</b>			

**Client Reference #3:**

<b>Client Company:</b>	<b>Client Contact Name:</b>	<b>Client Contact Title:</b>	
<b>Client Address:</b>		<b>Client</b>	<b>Contact</b>
		<b>Phone Number:</b>	
<b>Project Name:</b>		Beginning Date of Employment: Month/Year	Ending Date of Employment: Month/Year
<b>Description of services provided that are in line with those to be provided as part of this Project:</b>			
<b>Description of how client project size and complexity are similar to this project:</b>			

**PERSONNEL PROFILE SUMMARY**  
**CANDIDATE EDUCATION AND TRAINING**

<b>Candidate's Name:</b>
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**Education and Training.** This section must be completed to list the education and training of each proposed candidate and must demonstrate in detail the proposed candidate's ability to properly execute the Contract based on the relevance of the education and training to the requirements of the RFP.

EDUCATION AND TRAINING	MONTHS/ YEARS	WHERE OBTAINED	DEGREE/MAJOR YEAR EARNED
<b>College</b>			
<b>Technical School</b>			
<b>Other Training</b>			