

REQUEST FOR PROPOSALS

RFP NUMBER: 0A1181

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

TrustOhio RFP

DATE ISSUED: July 14, 2016
INQUIRY PERIOD BEGINS: July 14, 2016
INQUIRY PERIOD ENDS: August 12, 2016
OPENING DATE: August 26, 2016
OPENING TIME: 1:00 P.M.
**OPENING LOCATION: Department of Administrative Services
General Services Division
Bid Desk
4200 Surface Road
Columbus, Ohio 43228-1313**

This RFP consists of five parts and ten attachments, totaling 119 consecutively numbered pages. Supplements also are attached to this RFP with a beginning header page and an ending trailer page. Please verify that you have a complete copy.

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



PART ONE: EXECUTIVE SUMMARY

Purpose. This is a Request for Competitive Sealed Proposals (“RFP”) under Sections 125.071 and 125.18 of the Ohio Revised Code (the “Revised Code”) and Section 123:5-1-8 of the Ohio Administrative Code (the “Administrative Code”). The Department of Administrative Services, Office of Information Technology is soliciting competitive sealed proposals (“Proposals”) for the implementation and provision of a set of complimentary Security related Services (the “Work”).

If suitable offers are made in response to this RFP, the State of Ohio (the “State”), through the Office of Information Technology, may enter into one or more contracts (the “Contract” or “Contracts”) that prequalifies one or more selected offerors (the “Contractor” or “Contractors”) to perform the Work specified in this RFP for Supplements Two and Three. Supplement One will be awarded to a single Contractor.

All contracts awarded shall be indefinite quantity contracts with no minimum guarantee of any business. Contractors eligible to perform the Work will respond to future Statement of Work (SOW) Solicitations that will be issued and awarded by the Department of Administrative Services Office of Information Technology (OIT), on behalf of Ohio State Agencies, as described in this RFP. The number of Contractors pre-qualified for each Supplement (Two and Three) has not been determined. The State will use the technical scores to rank Proposals for each Supplement prior to establishing the cut-off point for each Supplement. This RFP provides details on what is required to submit a Proposal for the Work, how the State will evaluate the Proposals, and what will be required of the Contractor in performing the Work.

This RFP also gives the estimated dates for the various events in the submission process and selection process. As a contractual vehicle to prequalify one or more selected offerors, and no minimum guarantee for the Work, this RFP does not provide dates for Performance of the Work. While all dates provided in this RFP are subject to change, prospective offerors must be prepared to meet them as they currently stand.

Once awarded, the term of the Contract will be from the award date until the Work is completed to the satisfaction of the State and the Contractor is paid or June 30, 2017, whichever is sooner. The State may renew this Contract for up to four (4) additional one-year term(s), subject to and contingent on the discretionary decision of the Ohio General Assembly to appropriate funds for this Contract in each new biennium. Any such renewal of all or part of the Contract also is subject to the satisfactory performance of the Contractor and the needs of the Department of Administrative Services.

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

Background. The State, as part of its continual efforts to review, revise and enhance protection of its information technology environment, systems and processes has identified a common need of several large Cabinet State Agencies to better protect State data, systems and networks and better defend against fraudulent, malicious access and attacks originating from sources whether they be approved by the State or Unapproved by the State. The goals of the State via this project and its implementation are to specify, design and implement a core set of capabilities as a Statewide Service to protect State Agencies with extensibility to Federal, K-12 institutions, Higher Education, Municipal/Local County Government and Cooperative Purchasing Partners local governments and cooperative purchasing members. The Statewide service will utilize secure, efficient, easy-to-use, and

interoperable Security solutions to protect State online services and applications in a manner that promotes confidence, privacy, choice, and innovation.

Ohio One Network, OARnet and State Vendor Specific Private Networks

The State's Ohio Academic Research Network (OARnet) is the envy of many Public Sector entities – both State and Federal alike – and due to its ultra-high bandwidth (100 gigabit) and Statewide pervasiveness the State is in a most fortunate position with regard to networking.

Through Ohio One Network, the State is leveraging OARnet and consolidating its networking needs across all of our Agencies, computing concentrations and locations as a centrally administered and managed network that connects more than 100 State Agency, Board and Commission locations: administrative, computing, or otherwise.

Agencies who leverage OARnet at the closest point of presence (PoP) access the State backbone, the State's Private Cloud, Agency systems contained in the SOCC as well as Enterprise Services such as Office365, Document Management, Collaboration tools and the like. Via the Ohio One network, Agencies can now compute, collaborate and better serve our citizens.

In addition, State Higher Education Institutions are leveraging OARnet to migrate their production and disaster recovery functions to the State Data Center (SOCC), realizing IT savings in a similar fashion to what the State is enjoying through consolidation of IT infrastructure and operations.

The State also maintains a variety of private networks between State Computing and Administrative locations and State Vendors and State Cloud Vendors who provide systems and services to the State that (in general) center around delivery of Services to the public and the State. These networks are designed and implemented in accordance with the conventions and standards contained in Supplement Four and may be included in the scope of the work in this Supplement.

Objectives. The primary goals of the required services are as follows:

- Reducing the risk to the State by implementing a holistic service to security including strong governance of a service extensible to all State governmental bodies, agencies and networks.
- Crafting cyber security solutions for Ohio as an enterprise, not as a collection of State Agencies, to support all levels of Ohio government, academia, and as a model to the private sector;
- Centrally collecting enterprise baseline metrics to understand what is normal and what is an anomaly,
- Provide real-time threat detection and situational awareness, and to provide real-time threat defense, and actionable intelligence;
- Improving coordination and communication to all involved parties when a cyber security event is underway and to bring all tools and resources to bear on the event. The State has significant resources available, including the DAS Office of Privacy and Security, the Ohio DHS/Fusion Center, DPS/EMA, DHS/HP, and the National Guard;
- Defining a governance process to ensure this Service and tools are applied and deployed in the most effective, efficient, repeatable and scalable manner;
- An Ohio Government Solution. This protection must occur at every level (Federal, State, County, Local and Municipal), at every school district, and at every business or organization that connects with State government;
- A need for monitoring and tools at every level, as the State's ability to protect is only as good as our weakest link;
- A proactive approach to security. The primary approach to protecting State systems and infrastructure today are reactive, identifying a vulnerability and then closing it;

- An Ohio government approach. The remediation capability must be extensible to every level (State, County and Municipal), at every school district, and at every business or organization that connects with State government;
- Utilize leading edge tools, methods and Contractor teams to conduct remediation activities internal and external to the State, between Agencies, networks and infrastructure segments and domains;
- Establish points of coordination between governments, agencies, education and industry to remediate and mitigate risks and facilitate defenses to attacks;
- Fortify security implementations against exposures with respect to manual methods, inconsistencies, automation and other programmatic approaches to reviewing the State's implementation of security measures to our most important infrastructure elements and locations; and
- Implement a standards based, repeatable and proactive approach to security. The primary approach to protecting our systems and infrastructure today is reactive, remediating vulnerabilities.

To accomplish these objectives, the Contractor, must provide appropriate equipment, tools, methods and personnel to perform the following services as part of the Service. The scope of the Service shall include:

- Penetration/Vulnerability Testing of State Infrastructure and Systems Assets from an "external to the State" frame of reference (i.e. generally those exposed via the internet to the general public);
- Penetration/Vulnerability Testing of State Infrastructure and Systems and State Vendor Systems/Services that are utilized by the State via a State Vendor in accordance with delivery of State business to the "customers of the State" – generally Citizens, Businesses and Employees – and test both the State and the State Vendor from an internal and external to the State perspective;
- Penetration/Vulnerability Testing of State Systems or Infrastructure via or through State networks utilized by Agencies, via OARnet peers or via State Office locations; and
- Penetration/Vulnerability Testing of State Systems or Infrastructure internal to the State, which in general means between Agency, Computing or Infrastructure domains or components or in general "from within the State".

State Goals. The goal for this solution is to position the State of Ohio in the forefront of emerging solutions, resulting in not only reduced risk, but also economic benefit by utilizing the State of Ohio Computing Center (SOCC), and Ohio's Administrative Research Network (OARnet).

The State also has the following goals:

Active Security Threat Response: Reducing the risk to the State by implementing defense mechanisms in light of active attempts or successes to breach State infrastructure and computing assets.

Identified Weakness Remediation: Designed to proactively (in advance of an active issue) remediate deficiencies, inconsistencies or anomalies in State infrastructure and computing assets.

Both of which must be designed and implemented to ensure:

- Rapid deployment of cyber security response capabilities for Ohio as an enterprise, not as a collection of State Agencies, to support all levels of Ohio government, academia, and as a model for the private sector;
- Improve coordination and communication when a cyber security event is underway to all involved parties, and to bring all tools and resources to bear on the event. The State has significant resources available, including DAS Office of Privacy and Security, Ohio DHS/Fusion Center, DPS/EMA, DHS/HP, and the National Guard; and

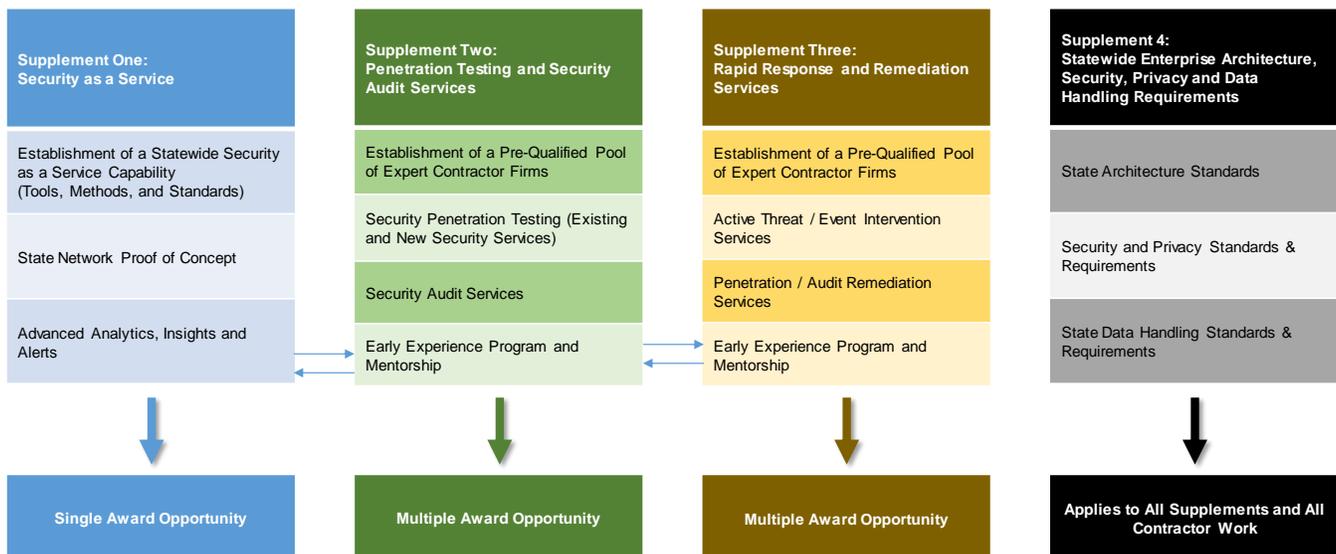
- Support a governance process to ensure these capabilities are deployed and conducted in the most efficient, repeatable and scalable manner.

Early Experience, Internship and Mentoring Programs. The State believes that “hands-on” and “real-world” learning experiences, combined with a structured and differentiated course of study offering will further equip Ohio’s next generation of Security Professionals to perform their roles and jump start their careers and advancement. Contractors will allow participation of State identified personnel (within the Scope of First Ohio) as part of projects as to create observational learning opportunities in support of the program as to:

- Encourage participation or internship opportunities for Ohio students to observe, participate in and perform roles as interns within Trust Ohio;
- Equip these students with skills required to augment the State as skilled interns or potentially co-op students within State, Local/Municipal and Education groups within the State to participate in Security related opportunities whether they be Security testing, remediation or migration to First Ohio offerings once available;
- Coordinate with the State and Institutions of Higher Education through a concerted program to connect interested Security students with participation, internships, co-op or entry into the workforce as the first step in a career progression;
- Refine, extend and evolve existing Cyber Security and Information technology degree and certification programs from technology, tools, techniques and required knowledge, skills, abilities and perspectives as to best position students in Ohio to be relevant in the context of Industry demand and be best positioned for jobs in this career through participation in State projects.

Overview of the Project's Scope of Work.

General Organization and Relationships of Supplements and Requirements in this Procurement



As the requirements of this RFP establish the basis of the overall capability for the State, the majority of the requirements for the overall procurement are contained in greater detail in the RFP’s Supplements, but as there are relationships between the Supplements, brief descriptions of each are provided here for convenience. Each Supplement of this RFP has details specific to the scope of services within each Supplement respectively. Supplement Four contains a variety of Standards and Requirements pertinent to State Architecture, Privacy,

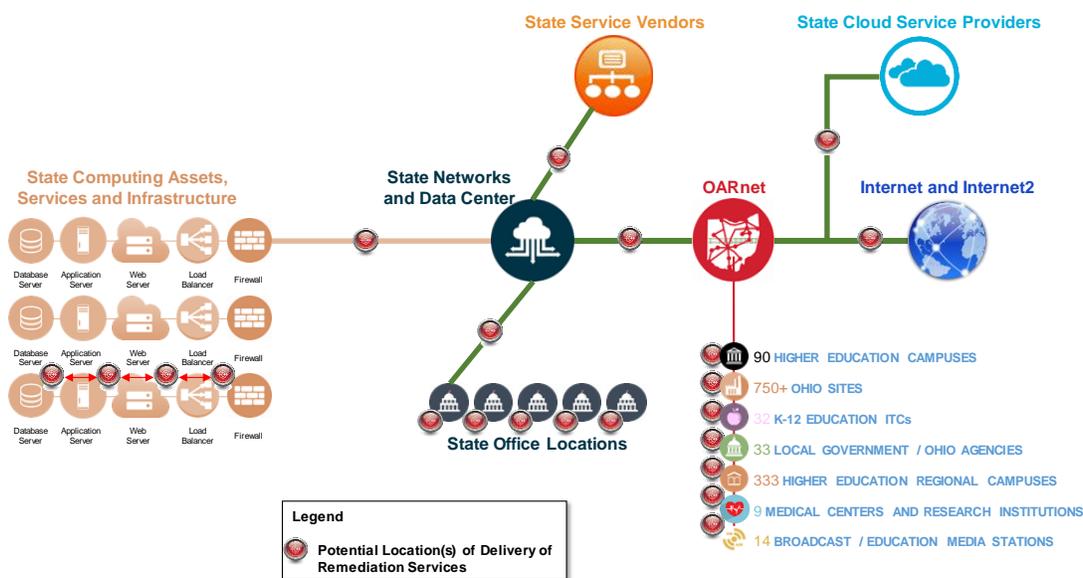
Security and Data handling and shall apply to each of Supplements One, Two and Three regardless of the award structure of this RFP.

The scope of the Work is provided in detail within Supplements One (1), Two (2) and Three (3) to this RFP.

Supplement One contains State requirements for the creation, establishment and operation of a Statewide (State, Federal, K-12 institutions, Higher Education, Municipal/Local County Government and Cooperative Purchasing Partners) Security as a Service inclusive of the Service itself, implementation of a State of Ohio fully production operational Proof of Concept and the implementation of programmatic analytics to identify and significantly reduce the State’s exposure and response times to threats. A **single Contractor** may be awarded this Work, based upon the State’s evaluation of proposals for Supplement 1.

Supplement Two contains scope of work to identify and pre-qualify multiple qualified firms for conducting independent expert level penetration testing and network auditing services on existing networks Statewide, as well as the evolution and enhancements to the State’s capabilities arising as a result of the implementation of the Work in Supplement One. In addition, Supplement Two contains provisions for inclusion of State personnel (e.g., employees, students and academics) in the Work to foster “hands on” training and career development opportunities as well as “real life experience” application of the skills, tools and methods developed within the incubation of leading edge capabilities within Supplement One. Based on the State’s evaluation, **multiple qualified firms may be identified and pre-qualified** to perform this work on an emerging or contracted Statement of Work basis based upon State needs.

Supplement Three contains work requirements pertaining to either or both of: rapid response to active, suspected or recurring attempts at accessing State networks; and remediation of Security deficiencies discovered or identified by the Work contained in Supplements One or Two or via other means as determined by the State in the course of operating and maintaining its networks. In addition, Supplement Three contains provisions for inclusion of State resources (e.g., employees, students and academics) in the Work to foster “hands on” and “real life experience” application of the skills, tools and methods developed within the incubation of leading edge capabilities within Supplement One. Based on the State’s evaluation, **multiple qualified firms may be identified and pre-qualified** to perform this work on a contracted Statement of Work basis based upon State needs.



Creation and Evolution of a Skilled Cyber Security Workforce: The State seeks to work with Battelle, Ohio Universities, community colleges and K-12 to develop curriculums to create a strong pipeline of security professionals to keep up with the growing sophistication of new security threats well into the 21st century. This

initiative must include elements to assist in the development and mentoring of cyber security talent in Ohio with hands on experience as well as attracting the best and brightest professionals to protect Ohio assets.

Supplement Four contains Standards and Requirements applicable to each and all of Supplements One, Two and Three pertaining to State Architecture, Security, Privacy and Data Handling. Firms responding to any of Supplements One, Two or Three will be subject to the requirements contained in Supplement Four.

General Solution Scope and Scope Elements

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

Dates:

Firm Dates

RFP Issued:	July 14, 2016
Inquiry Period Begins:	July 14, 2016
Inquiry Period Ends:	August 12, 2016, at 8:00 a.m.
Proposal Due Date:	August 26, 2016 at 1:00 p.m.

Estimated Dates

Award Date:	October 2016
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Estimated Work Dates

Work Begins:	November 2016
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There are references in this RFP to the Proposal due date. Unless it is clearly provided to the contrary in this RFP, any such reference means the date and time (Columbus, Ohio local time) that the Proposals are due and not just the date.

PART TWO: STRUCTURE OF THIS RFP

Organization. This RFP is organized into five parts and has ten (10) attachments. The parts and attachments are listed below. There also may be one or more supplements to this RFP listed below.

Parts:

Part 1 Executive Summary
Part 2 Structure of this RFP
Part 3 General Instructions
Part 4 Evaluation of Proposals
Part 5 Award of the Contract

Attachments:

Attachment One	Evaluation Criteria
Attachment Two	Work Requirements and Special Provisions
Attachment Three	Requirements for Proposals
Attachment Four	General Terms and Conditions
Attachment Five	Sample Contract
Attachment Six	Offeror Certification Form
Attachment Seven	Offeror Profile Summary
Attachment Eight	Standard Affirmation and Disclosure Form (EO 2011-2012K)
Attachment Nine	Cost Summary Workbook
Attachment Ten	Master Cloud Services Agreement

Supplements:

Supplement 1	TrustOhio: Enterprise Security as a Service, Threat Defense & Monitoring Services
Supplement 2	TrustOhio: Penetration and Vulnerability Testing Services, Security Auditing Services
Supplement 3	TrustOhio: Security Remediation Services
Supplement 4	State Architecture and Computing Standards Requirements, State Security and Privacy Requirements, State IT Computing Policy Requirements, State Data Handling Requirements

PART THREE: GENERAL INSTRUCTIONS

The following sections provide details on how to get more information about this RFP and how to respond to it. All responses must be complete and in the prescribed format.

Contacts. The following person will represent the State during the RFP process, Procurement Representative:

Valerie Piccininni
Acquisition Analyst
Office of Information Technology
Acquisition Management Office
30 East Broad Street, 39th Floor
Columbus, Ohio 43215

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

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

- Access the State's Procurement Website at <http://procure.ohio.gov/>;
- From the 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 Proposals**" from the Opportunity Type dropdown;
- Click the "Search" button;
- On the Opportunity Search Results page, click on the hyperlinked Bid Number;
- On the 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 the prospective offeror's representative (the Offeror Representative) who is responsible for the inquiry,
 - Name of the prospective offeror,
 - The Offeror Representative's business phone number, and
 - The Offeror 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;
- Enter the Confirmation Number at the bottom of the page
- Click the "Submit" button.

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

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

The State usually responds to all inquiries within three business days of receipt, excluding weekends and State holidays. But the State will not respond to any inquiries received after 8:00 a.m. on the inquiry end date.

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

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

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

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

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

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

Proposal Submittal. Each offeror must submit a technical section and a cost section as part of its total Proposal before the opening time on the Proposal due date. The offeror must submit the technical section as a separate package from the cost section of its Proposal, and each section must be submitted in its own separate, opaque package. The package with the technical section of the Proposal must be sealed and contain one originally signed technical section and seven (7) copies of the technical section, and the package with the cost section also must be sealed and contain two complete copies of the cost section of the Proposal. Further, the offeror must mark the outside of each package with either “**TrustOhio RFP 0A1181 – Technical Proposal**” or “**TrustOhio RFP 0A1181 – Cost Summary**,” as appropriate.

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

1. **TrustOhio Supplement 1 Response – Enterprise Security as a Service**
2. **TrustOhio Supplement 2 Response – Security Penetration, Vulnerability and Audit**
3. **TrustOhio Supplement 3 Response – Security remediation Services**
4. Any combination of the aforementioned Supplements as a **TrustOhio Integrated Response** which should be labeled as to include the Supplements that the offeror is responding to.

All offerors are subject to the security, privacy and data handling requirements of Supplement 4, regardless of the offeror’s proposed solution.

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

Proposals are due and must be received by the Department of Administrative Services bid desk no later than 1:00 p.m. Columbus, Ohio local time on the Proposal due date. Proposals submitted by email, fax, or other electronic means are not acceptable, and the State may reject them. Offerors must submit their Proposals to:

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

Bid Desk Main Phone Number: 614-466-5090

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

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

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

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

The State may reject any Proposal if the offeror takes exception to the terms and conditions of this RFP, includes unacceptable assumptions or conditions in its Proposal, fails to comply with the procedure for participating in the RFP process, or fails to meet any requirement of this RFP. In its sole discretion, the State also may reject any Proposal it believes is not in its interest to accept and may decide not to award a contract to any or all of the offerors responding to this RFP.

Offerors may not prepare or modify their Proposals on State premises.

All Proposals and other material offerors submit will become the property of the State and may be returned only at the State's option. Offerors should not include any confidential information in a Proposal or other material submitted as part of the evaluation process. All Proposals will be open to the public after the State has awarded the Contract.

The State will retain all Proposals, or a copy of them, as part of the Contract file for at least three years. After the three-year retention period, the State may return, destroy, or otherwise dispose of the Proposals and any copies of them.

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

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

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

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

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

PART FOUR: EVALUATION OF PROPOSALS

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

Rejection of Proposals. The State may reject any Proposal that is not in the required format, does not address all the requirements of this RFP, objects to the terms or conditions of this RFP, or that the State determines is excessive in price or otherwise not in the State's interest to accept. In addition, the State may cancel this RFP, reject all the Proposals, and/or seek to do the Work through a new RFP or other means.

Evaluation of Proposals Generally. The evaluation process may consist of up to six distinct phases:

1. Initial review;
2. Technical evaluation;
3. Evaluation of costs;
4. Requests for more information
5. Determination of responsibility; and
6. Contract negotiations.

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

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

Corrections and clarifications must be completed off State premises.

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

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

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

recommendations it receives from such reviews and evaluations or give them such weight as the State believes is appropriate.

During the technical evaluation, the State will calculate a point total for each Proposal that it evaluates. At the sole discretion of the State, it may reject any Proposal receiving a significant number of zeros for sections in the technical portions of the evaluation. The State may select those offerors submitting the highest rated Proposals for the next phase. The number of Proposals that advance to the next phase will be within the State's discretion, but regardless of the number of Proposals selected, they always will be the highest rated Proposals from this phase.

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

The State will document the evaluation results for each Proposal considered.

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

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

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

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

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

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

Cost Evaluation. Once the technical merits of the Proposals are considered, the State may consider the costs of

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

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

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

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

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

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

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

Determination of Responsibility. The State may review the background of one or more of the highest-ranking offerors and its or their key team members and subcontractors to ensure their responsibility. For purposes of this RFP, a key team member is a person that an offeror identifies by name in its Proposal as a member of its proposed team. The State will not award the Contract to an offeror that it determines is not responsible or that has proposed candidates or subcontractors to do the Work that are not responsible. The State's determination of an offeror's responsibility may include the following factors: experience of the offeror and its key team members and subcontractors, its and their past conduct on previous contracts, past performance on previous contracts, ability to execute this Contract properly, and management skill. The State may make this determination of responsibility based on the offeror's Proposal, reference evaluations, a review of the offeror's financial ability, and any other information the State requests or determines is relevant.

Some of the factors used in determining an offeror's responsibility, such as reference checks, may also be used in the technical evaluation of Proposals in phase two of the evaluation process. In evaluating those factors in phase two, the weight the State assigns to them, if any, for purposes of the technical evaluation will not preclude the State from rejecting a Proposal based on a determination that an offeror is not responsible. For example, if the offeror's financial ability is adequate, the value, if any, assigned to the offeror's relative financial ability in relation to other offerors in the technical evaluation phase may or may not be significant, depending on the nature of the Work. If the State believes the offeror's financial ability is inadequate, the State may reject the offeror's Proposal despite its other merits.

The State may make a responsibility determination at any time during the evaluation process, but it typically will do so only once it has evaluated the technical merits and costs of the Proposals. The State always will review the responsibility of an offeror selected for an award before making the award, if it has not already done so earlier in the evaluation process. If the State determines that the offeror selected for award is not responsible, the State then may go down the line of remaining offerors, according to rank, and determine responsibility with the next highest-ranking offeror.

Reference Checks. As part of the State's determination of an offeror's responsibility, the State may conduct reference checks to verify and validate the offeror's and its proposed candidates' and subcontractors' past performance. Reference checks that indicate poor or failed performance by the offeror or a proposed candidate or subcontractor may be cause for rejection of the offeror's Proposal. Additionally, the State may reject an offeror's Proposal as non-responsive if the offeror fails to provide requested reference contact information.

The State may consider the quality of an offeror's and its candidates' and subcontractors' references as part of the technical evaluation phase, as well as in the State's determination of the offeror's responsibility. The State also may consider the information it receives from the references in weighing any requirement contained in the technical evaluation phase, if that information is relevant to the requirement. In checking an offeror's or any of its proposed candidates' or subcontractors' references, the State will seek information that relates to the offeror's previous contract performance. This may include performance with other governmental entities, as well as any other information the State deems important for the successful operation and management of the Work and a positive working relationship between the State and the offeror. In doing this, the State may check references other than those provided in the offeror's Proposal. The State also may use information from other sources, such as third-party reporting agencies and independent research.

Financial Ability. Part of the State's determination of an offeror's responsibility may include the offeror's financial ability to perform the Contract. This RFP may expressly require the submission of audited financial statements from all offerors in their Proposals, but if this RFP does not make this an express requirement, the State still may insist that an offeror submit audited financial statements for up to the past three years, if the State is concerned that an offeror may not have the financial ability to carry out the Contract. Also, the State may consider financial information other than the information that this RFP requires as part of the offeror's Proposal, such as credit reports from third-party reporting agencies.

Contract Negotiations. The final phase of the evaluation process may be contract negotiations. It is entirely within the discretion of the State whether to permit negotiations. An offeror must not submit a Proposal assuming that there will be an opportunity to negotiate any aspect of the Proposal, and any Proposal that is contingent on the State negotiating with the offeror may be rejected. The State is free to limit negotiations to particular aspects of any Proposal or the RFP, to limit the offerors with whom the State negotiates, and to dispense with negotiations entirely. If negotiations are held, they will be scheduled at the convenience of the State, and the selected offeror or offerors must negotiate in good faith and without unreasonable delay.

The State may limit negotiations to specific aspects of the RFP or the offeror's Proposal. Should the evaluation result in a top-ranked Proposal, the State may limit negotiations to only that offeror and not hold negotiations with any lower-ranking offeror. If negotiations are unsuccessful with the top-ranked offeror, the State then may go

down the line of remaining offerors, according to rank, and negotiate with the next highest-ranking offeror. Lower ranking offerors do not have a right to participate in negotiations conducted in such a manner.

If the State decides to negotiate simultaneously with more than one offeror, or decides that negotiations with the top-ranked offeror are not satisfactory and therefore negotiates with one or more of the lower-ranking offerors, the State then will determine if an adjustment in the ranking of the offerors with which it held negotiations is appropriate based on the negotiations. The Contract award, if any, then will be based on the final ranking of offerors, as adjusted.

Auction techniques that reveal one offeror's price to another or disclose any other material information derived from competing Proposals are prohibited. Any oral modification of a Proposal will be reduced to writing by the offeror as described below.

Following negotiations, the State may set a date and time for the offeror(s) with which the State conducted negotiations to submit a best and final Proposal. If negotiations were limited and all changes were reduced to signed writings during negotiations, the State need not require a best and final Proposal.

If best and final Proposals are required, they may be submitted only once, unless the State determines that it is in the State's interest to conduct additional negotiations. In such cases, the State may require another submission of best and final Proposals. Otherwise, discussion of or changes in the best and final Proposals will not be allowed. If an offeror does not submit a best and final Proposal, the State will treat that offeror's previous Proposal as its best and final Proposal.

From the opening of the Proposals to the award of the Contract, everyone evaluating Proposals on behalf of the State will seek to limit access to information contained in the Proposals solely to those people with a need to know the information. The State also will seek to keep this information away from other offerors, and the State may not tell one offeror about the contents of another offeror's Proposal in order to gain a negotiating advantage.

Before the award of the Contract or cancellation of the RFP, any offeror that seeks to gain access to the contents of another offeror's Proposal may be disqualified from further consideration.

Negotiated changes will be reduced to writing and become a part of the Contract file, which will be available for public inspection after award of the Contract or cancellation of the RFP, provided the State does not plan to reissue the RFP. If the State plans to reissue the RFP, the Contract file will not be available until the subsequent RFP process is completed. Unless the State agrees otherwise in writing, the offeror must draft and sign the written changes and submit them to the State within five business days. If the State accepts the changes, the State will give the offeror written notice of the State's acceptance, and the negotiated changes to the successful offer will become a part of the Contract.

Failure to Negotiate. If an offeror fails to provide the necessary information for negotiations in a timely manner, or fails to negotiate in good faith, the State may terminate negotiations with that offeror, remove the offeror's Proposal from further consideration, and seek such other remedies as may be available in law or in equity.

PART FIVE: AWARD OF THE CONTRACT

Contract Award. The State plans to award the Contract based on the schedule in the RFP, if the State decides the Work is in its best interest and has not changed the award date.

Included with this RFP, as Attachment Five, is a sample of the Contract for the RFP. The State will issue two originals of the Contract to the Contractor proposed for award. The offeror must sign and return the two originals to the Procurement Representative. The State also may issue two originals of any Master Contract(s) for Master Cloud Services Agreement (Cloud Agreement), if applicable to the Contractor. If the licensor under any such Cloud Agreement is not the offeror, the offeror will be responsible for coordinating execution of the document by the licensor and returning it to the State with the two originally signed copies of the Contract. The Contract and any Cloud Agreement will bind the State only when the State's duly authorized representative signs all copies and returns one signed copy to the Contractor with an award letter, the State issues a purchase order, and all other prerequisites identified in the Contract have occurred.

The Contractor must begin work within 15 business days after the State issues a purchase order, or on a mutually agreed start date, under the Contract. If the State awards a Contract pursuant to this RFP, and the Contractor is unable or unwilling to perform the Work, the State may cancel the Contract, effective immediately on notice to the Contractor. The State then may return to the evaluation process under this RFP and resume the process without giving further consideration to the originally selected Proposal. Additionally, the State may seek such other remedies as may be available to the State in law or in equity for the selected Contractor's failure to perform under the Contract.

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

1. The one page Contract (Attachment Five) in its final form; and
2. The 0A1181 TrustOhio Contract dated _____, 2016 which includes Attachment Four, Attachments, Supplements and the Cost Proposal Workbooks dated _____, 2016.

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

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

Any Cloud will be a separate agreement and not part of the Contract, but the State may require the incorporation of any representations regarding the performance, features, and functions of the Cloud Service made in the RFP.

ATTACHMENT ONE: EVALUATION CRITERIA

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

Mandatory Requirements -TrustOhio (by Supplement)	Reject	Accept
Supplement One: The offeror, as the prime Contractor, must have experience for at least one Cabinet Level Federal or State Agency within the last five years for the successful implement an Agency Wide Threat Identification or Prevention or Detection capability inclusive of a 24x7 operational cyber threat detection and monitoring service.		
Supplement Two: The offeror, as the prime Contractor, must have experience for at least one Cabinet Level Federal or State Agency within the last five years successfully completed the provision, operation and reporting of Penetration/Vulnerability Tests for the Federal or State Agencies infrastructure (e.g., network, network security, firewalls, load balancers, internet access/egress and publicly exposed computing assets).		
Supplement Three: The offeror, as the prime Contractor, must have experience for at least one Cabinet Level Federal or State Agency within the last five years successfully completed the provision, operation and completion of Threat Remediation Services for the Federal or State Agencies infrastructure (e.g., network, network security, firewalls, load balancers, internet access/egress and publicly exposed computing assets).		

Scored Criteria. In the technical evaluation phase, the State will rate the technical merits of the Proposals based on the following requirements and the weight assigned to each requirement:

Mandatory Requirements Scored Criteria (as part of the Evaluation of each Supplement respectively)	Weight	Does Not Meet	Meets	Exceeds
Supplement One: The offeror, as the prime Contractor, must have experience for at least one Cabinet Level Federal or State Agency within the last five years for the successful implement an Agency Wide Threat Identification or Prevention or Detection capability inclusive of a 24x7 operational cyber threat detection and monitoring service.	100	Rejected	5	7
Supplement Two: The offeror, as the prime Contractor, must have experience for at least one Cabinet Level Federal or State Agency within the last five years successfully completed the provision, operation and reporting of Penetration/Vulnerability Tests for the Federal or State Agencies infrastructure (e.g., network, network security, firewalls, load balancers, internet access/egress and publicly exposed computing assets).	100	Rejected	5	7
Supplement Three: The offeror, as the prime Contractor, must have experience for at least one Cabinet Level Federal or State Agency within the last five years successfully completed the provision, operation and completion of Threat Remediation Services for the Federal or State Agencies infrastructure (e.g., network, network security, firewalls, load balancers, internet access/egress and publicly exposed computing assets).	100	Rejected	5	7

Supplement 1 TrustOhio: Enterprise Security as a Service, Threat Defense & Monitoring Services In addition to the Mandatory Requirements Scored Criteria pertaining to Supplement 1					
Scored Criteria	Weight	Does Not Meet	Partially Meets	Meets	Exceeds
Establishment of a Statewide Security as a Service (SaaS) Capability (Supplement 1, Section 2)	100	0	2	5	7
Advanced Security Analytics, Insights and Alerts inclusive of tools, methods, processes and complete implementation of the service and integration with the State's Security Information and Event Manager (SIEM) (Supplement 1, Section 3)	50	0	2	5	7
Implementation and Integration with the State's Enterprise Architecture (Supplement 1, Section 4)	50	0	2	5	7
Implementation of Production Deployment Requirements (Supplement 1, Section 5)	50	0	2	5	7
Project Approach, Delivery and Adherence to State Project Delivery, Management, Methodology and Approach Requirements (Supplement 1, Section 6)	75	0	2	5	7
Project Deliverables and Adherence to State Project Delivery Requirements (Supplement 1, Section 7)	50	0	2	5	7
Project Staffing, Offeror Proposed Key Personnel and Team: (Sections 5 and 6 of Supplement 1) inclusive of the Proposed Project Team, skills and experiences of Key Personnel, Staffing Plan, Inclusion of State personnel in the project and experience / certification levels. (Supplement 1, Section 9)	100	0	2	5	7
Adherence to State Service Level Requirements for Security as a Service (Supplement 1, Section 10)	75	0	2	5	
Adherence to State Service Level Agreements for Project Delivery (Supplement 1, Section 11)	50	0	2	5	

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

Criteria	Percentage
Technical Proposal	70%
Cost Summary	30%

To ensure the scoring ratio is maintained, the State will use the following formulas to adjust the points awarded to each offeror.

The offeror with the highest point total for the Supplement 1 Technical Proposal will receive 700 points. The remaining offerors will receive a percentage of the maximum points available based upon the following formulas:

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

The offeror with the lowest proposed Not-To-Exceed Fixed Price will receive 300 points. The remaining offerors will receive a percentage of the maximum cost points available based upon the following formula:

$$\text{Cost Summary Points} = (\text{Lowest Not-To-Exceed Fixed Price} / \text{Offeror's Not-To-Exceed Fixed Price}) \times 300$$

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

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

Criteria	Weight	Does Not Meet	Partially Meets	Meets
Supplement 2				
Penetration and Vulnerability Testing Services				
Security Auditing Services				
2.1 The offeror must have experience in successfully delivering Vulnerability Testing that was designed to identify, rank, and report vulnerabilities for at least two (2) projects within the last sixty (60) months.	100	0	3	5
2.2 The offeror must have experience in successfully delivering Penetration Testing that was designed to identify ways to exploit vulnerabilities to circumvent or defeat the security features of system or infrastructure components for at least two (2) projects within the last sixty (60) months.	100	0	3	5
2.3 At least one (1) of the Project/Scopes of Work required by 1.1 or 1.2 must have been for a federal, state, or local government jurisdiction or public institution of higher education.	100	0	N/A	5
The offeror must have completed at least two (2) projects within the last thirty-six (36) months that include the following services				
2.4.1 Penetration/Vulnerability Set Up <ul style="list-style-type: none"> Perform, assemble or configure applicable manual method attack(s) and test(s); Perform, assemble or configure applicable automated or script based attack(s) and test(s); Perform, assemble or configure applicable attempts at gaining access via social engineering using a variety of public and/or client provided details to augment manual and/or automated methods. 	50	0	3	5

Criteria	Weight	Does Not Meet	Partially Meets	Meets
2.4.2 Penetration/Vulnerability Testing <ul style="list-style-type: none"> • Perform applicable manual method attack(s) and test(s); • Perform applicable automated or script based attack(s) and test(s); and • Perform applicable attempts at gaining access via social engineering using a variety of public and/or client provided details to augment manual and/or automated methods. 	250	0	3	5
2.4.3 Infrastructure Security Audit Services <ul style="list-style-type: none"> • Review client security positions on a defined set of systems assets, security configuration / implementation details, operational processes and procedures to administer and maintain security elements of client systems and infrastructure; and • Develop assessments as to real or potential vulnerabilities with respect to the implementation of Security within these systems and infrastructure. 	100	0	3	5

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

<i>Criteria</i>	<i>Percentage</i>
Technical Proposal	70%
Cost Summary	30%

To ensure the scoring ratio is maintained, the State will use the following formulas to adjust the points awarded to each offeror.

The offeror with the highest point total for the Supplement 2 Technical Proposal will receive 700 points. The remaining offerors will receive a percentage of the maximum points available based upon the following formulas:

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

The offeror with the lowest proposed Not-To-Exceed Fixed Price will receive 300 points. The remaining offerors will receive a percentage of the maximum cost points available based upon the following formula:

$$\text{Cost Summary Points} = (\text{Lowest Rate Card Evaluation Total} / \text{Offeror's Rate Card Evaluation Total}) \times 300$$

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

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

Criteria	Weight	Does Not Meet	Partially Meets	Meets
Supplement 3				
Security and Remediation Services				
3.1 The offeror must have experience in successfully delivering Security Remediation services on at least three (3) projects within the last sixty (60) months. These projects must have included Active Threat Response, Vulnerability Remediation, and Penetration Remediation.	150	0	3	5
3.2 At least one (1) of the Project/Scopes of Work required by 3.1 must have been for a federal, state, or local government jurisdiction or public institution of higher education.	150	0	N/A	5
The offeror must have completed at least two (2) projects within the last thirty-six (36) months that include the following services				
3.3.1 Remediation Set Up <ul style="list-style-type: none"> • Perform assemble or configure applicable manual method attack(s) and test(s); • Perform assemble or configure applicable automated or script based attack(s) and test(s); and • Perform assemble or configure applicable attempts at gaining access via social engineering using a variety of public and/or State provided details to augment manual and/or automated methods. 	250	0	3	5
3.3.2 Remediation Actions <ul style="list-style-type: none"> • Verify applicable manual method attack(s) 	150	0	3	5

and test(s); <ul style="list-style-type: none"> Remediate all applicable manual, automated or script based attack(s) exploit vectors or methods; and Verify that the methods used to remediate the State infrastructure or systems element are in-fact performing as to defeat the attack, exploit vector or method. 				
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Evaluation Scoring Formula. The evaluation team will rate the Proposals that meet the Mandatory Requirements based on the following criteria and respective weights.

<i>Criteria</i>	<i>Percentage</i>
Technical Proposal	70%
Cost Summary	30%

To ensure the scoring ratio is maintained, the State will use the following formulas to adjust the points awarded to each offeror.

The offeror with the highest point total for the Supplement 3 Technical Proposal will receive 700 points. The remaining offerors will receive a percentage of the maximum points available based upon the following formulas:

$$\text{Technical Proposal Points} = (\text{Offeror's Technical Proposal Points} / \text{Highest Number of Technical Proposal Points Obtained}) \times 700$$

The offeror with the lowest proposed Not-To-Exceed Fixed Price will receive 300 points. The remaining offerors will receive a percentage of the maximum cost points available based upon the following formula:

$$\text{Cost Summary Points} = (\text{Lowest Rate Card Evaluation Total} / \text{Offeror's Rate Card Evaluation Total}) \times 300$$

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

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

ATTACHMENT TWO: SPECIAL PROVISIONS

Submittal of Deliverables. The Contractor must perform the Work 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. At the time of delivery of a written Deliverable, the Contractor must submit an original and one copy of each Deliverable, plus an electronic copy. The Contractor must provide the electronic copy in a file format acceptable to the State.

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

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

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

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

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

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

Inconsistencies between Contract and Deliverables. If any terms and conditions incorporated in a Deliverable or other work product are inconsistent with or conflicts with the Contract, the Contract shall prevail.

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

- **Application (Solution) and Environmental Software.** The State will pay fees related to the Security as a Service "solution" application as it relates to the work in Supplement 1 of this RFP and environmental software and any other Commercial Software that it acquires as part of this Contract only on the State's execution of a schedule or other ordering document, delivery of the software F.O.B. to the Project site, acceptance of the software in accordance with the applicable schedule or other ordering document, and receipt of a proper invoice for the software. Supplements 2 and 3 do not include the provision for software or hardware licenses, which are the responsibility of the Contractor(s) awarded the work for Supplements 2 and 3 respectively and should be included in the quoted rates for Services included in those Supplements.

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

The State will pay ongoing annual maintenance fees for any application and environmental software and any other Commercial Software acquired as part of this Contract only on the State's execution of a

schedule or other ordering document on an annual basis. At the State's request, the first Support Period may be pro-rated so that the Anniversary Date coincides with the end of the State's Fiscal Year.

- **Hardware and Related Components.** The State will pay fees related to the OBG 3.0 "solution" hardware and related components that it acquires as part of this Contract only on the State's execution of an ordering document, delivery of the hardware and related components F.O.B. to the Project site, acceptance of the hardware and related components in accordance with the applicable ordering document, and receipt of a proper invoice for the hardware and related components.

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

The State will pay ongoing annual maintenance and support fees for any hardware and related components acquired as part of this Contract upon receipt of a valid invoice. At the State's request, the first Maintenance and Support Period may be pro-rated so that the Anniversary Date coincides with the end of the State's Fiscal Year.

Reimbursable Expenses. None.

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

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

Location of Services, Data, Results and Contractors Performing the Work. Services are to be performed at a combination of sites which must include the State of Ohio Computer Center and may include other facilities within the United States. All services, work products, deliverables and data must remain within the United States. Offshore access to any element of the Solution, Service, State specific deliverables, work products, technical details, systems, infrastructure or other data is not permissible under any circumstances.

Awarded Contractor personnel candidates must undergo a 10 panel drug screen and complete a thorough background check at the Contractor's expense prior to the award or commencement of any Work. This will include previous work addresses for the last ten (10) years excluding high school.

Prohibition on Damaging State Resources or Infrastructure or Removal of State Data or Information. Under no circumstances will a Contractor design or perform any Work on any element of State infrastructure, whether owned or contracted by the State via a third party, as to render it unusable, impact the availability of the system during published availability hours to the general public or to do permanent damage or harm to the system of infrastructure element.

The Statement of Work Solicitation Process for Supplements Two and Three. Services will be awarded via the Solicitation process. All SOW Solicitations will be issued by the Office of Information Technology. The SOW Solicitation will be released to pre-qualified pools of Contractors from Supplement Two or Supplement Three most closely matching the scope of work. A single pre-qualified Contractor will be selected to perform the work contained in each SOW Solicitation. The selected prequalified Contractor may partner with one or more subcontractors. All subcontractors shall be identified within the pre-qualified Contractor's proposal submitted in

response to the SOW Solicitation. The steps identified below describe the process of a Statement of Work Solicitation.

When determined to be in the best interest of the State, OIT will issue a Statement of Work Solicitation for work specified in this RFP. A Contractor will not be required to respond to every Statement of Work Solicitation issued as a result of this Contract, but they will be expected to respond to a majority of the Statement of Work Solicitations issued for each of the Supplement Two or Supplement Three they are awarded during the course of a fiscal year. Should a Contractor not respond to a majority of the Solicitations issued, it may be removed from the list of pre-qualified Contractors.

The Statement of Work Solicitation Content. Each SOW Solicitation shall contain a Project Statement of Work that will include, but not be limited to, the following components, which will be defined in each SOW Solicitation. The State may revise or refine the SOW Solicitation format and content requirements as needed.

Content. Each Statement of Work Solicitation will contain the sections listed below:

- Background information for the deliverables-based project, including:
 - a. Agency information
 - b. Project name
 - c. Project objective
 - d. Project description
 - e. Project schedule
 - f. Project milestones
 - g. Bill to Address
- Scope of Work
 - a. Description of scope of work (in and out) and project requirements
 - b. Description of constraints, assumptions
 - c. Contractors Work Effort Requirement – The Contractor’s full-time regular employees must perform at least ___% of the effort required to complete the Work. The Contract may use its personnel or subcontractor personnel to meet the remaining ___% of the effort.
 - d. Detailed description of deliverables
 - e. Deliverable acceptance criteria
 - f. Description of roles and responsibilities
 - g. Expected duration
 - h. Restrictions on location of data & work
 - i. Resource Requirement
 - j. Reports
- Deliverables Management
 - a. Submission/format
 - b. Reports and meetings
 - c. Period of performance
 - d. Performance expectations
 - e. Pricing and payment schedule
- State Staffing Plan
- SOW Response Submission Requirements
 - a. Response format, content requirements
 - b. Staffing plan, personnel resumes, time commitment, organizational chart
 - c. Contingency plan, if applicable
 - d. Work plan, project plan
 - e. Fee Structure including estimated work effort for each deliverable
 - f. Cost summary
- Communication Plan
- SOW Evaluation Criteria
- SOW Solicitation Schedule
- Risk management plan (may include issues management)
- Quality management plan

- Project schedule (WBS using MS Project or compatible)
- Limitation of Liability (Identification of Limitation of Liability applicable to the specific SOW Solicitation. Unless otherwise stated in this section of the SOW Solicitation, the Limitation of Liability will be as described in Attachment Four, Part Four of the Contract General Terms and Conditions.

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

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

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

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

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

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

The work may have components that can be tested for acceptance individually. If so, there may be acceptance criteria listed in the IDA for each Deliverable that will be independently tested and accepted. But, unless the IDA expressly provides otherwise, the failure of any independently tested component to meet its acceptance criteria will give the State the right to reject the entire Deliverable. Alternatively, if the State determines that it is in the

State's interest to reject only the part of the Deliverable that was independently and unsuccessfully tested, it may do so. If the State chooses this option, the State will be entitled to a refund or credit toward the Contractor's Fee.

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

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

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

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

In addition, the following information may also be required:

- Staffing Issues
- Required work related travel and training.

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

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

ATTACHMENT THREE: REQUIREMENTS FOR PROPOSALS

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

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

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

Illustrative Example: Customers Served in the Widget Space:

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

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

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

Each Proposal must include a response to every request for information in this attachment and Supplement 1. When a detailed response is required, simply repeating the RFP's requirement and agreeing to comply may be an unacceptable response and may cause the Proposal to be rejected.

Offerors are required to page limit their responses to each Supplement to be no longer than three times the State provided page count in Supplement 1. As offeror responses are to respond in an inline format, and by way of example, if Supplement 1 is approximately 40 pages, the offeror's inline response, inclusive of State requirements shall not exceed 120 pages in total. Offerors should choose a similarly sized typeface (generally 10 point for text and 8 point for tables) as are included in the State's requirements and not utilize smaller than 8 point fonts to work under this page limit restriction.

Offerors are advised to limit offeror marketing statements and positioning to the area(s) of the Proposal applicable to those statement(s) and not include duplicative or otherwise repetitive statements throughout its response. This page limit shall not apply to: State mandatory forms, representations and affirmations, response form(s) and other structured forms required under this RFP.

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

Technical Proposal

1. Cover Letter
2. Supplier Information Form (OBM-5657)
3. Subcontractor Letters
4. Offeror Certification Form
5. Offeror Profile (as it relates to the proposed work)
6. Proposed Solution
 - Supplement 1 Response
 - Supplement 2 Response
 - Supplement 3 Response (Sections 5.0 through 5.3)
 - Supplement 4 Acceptance and Compliance Response (Applies to All Responses)
7. Proof of Insurance
8. Payment Address
9. Legal Notice Address
10. W-9 Form
11. Independent Contractor Acknowledgement
12. Standard Affirmation and Disclosure Form (EO 2011-12K)
13. Attachment 4: General Terms and Conditions Acceptance
14. Attachment 10: Master Cloud Services Agreement (**if applicable**)

Cost Proposal

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

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

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

Supplier Information Form. The offeror must submit a signed and completed Vendor Information Form (OBM5657). The form is available at: <http://ohiosharedservices.ohio.gov/Suppliers.aspx>

Subcontractor Letters. For each proposed subcontractor, the offeror must attach a letter from the subcontractor, signed by someone authorized to legally bind the subcontractor, with the following included in the letter:

1. The subcontractor's legal status, federal tax identification number, D-U-N-S number, and principal place of business address;
2. The name, phone number, fax number, email address, and mailing address of a person who is authorized to legally bind the subcontractor to contractual obligations;
3. A description of the work the subcontractor will do;
4. A commitment to do the work if the offeror is selected; and

5. A statement that the subcontractor has read and understood the RFP and will comply with the requirements of the RFP.

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

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

The offeror must use the Offeror Profile Summary Form(s) (Attachment Seven) and fill it out completely to provide the required information. All offerors must demonstrate experience to meet each of the applicable mandatory requirement(s) evaluation criteria by including the offeror mandatory requirement form provided in this RFP. Each offeror must meet the applicable mandatory requirement(s) in the RFP. If an offeror does not meet the applicable mandatory requirement(s), the State may reject the offeror's Proposal as non-responsive.

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

- a) **Mandatory Experience and Qualifications.** The offeror must complete this section to demonstrate that it has the experience needed to meet the RFP's mandatory requirements. For each reference, the offeror must provide the following information:

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

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

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

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

offeror understands the requirements of this RFP and how the offeror's proposed services meets those requirements.

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

For Supplements Two and Three, offerors must include a statement at the beginning of the section indicating that the offeror has read, understands and agrees to the Requirements, General Scope of Work, Statement of Work Solicitation Process, and Special Provisions contained in each Supplement.

For Supplement Two, Offerors are only required to address Sections 6.0 through 6.3.

For Supplement Three, Offerors are only required to address Sections 5.0 through 5.3

- Supplement 4: Security and Privacy is being provided as a Microsoft Word document through the State's procurement website as a convenience for responding to the RFP. The supplement's content must not be modified. If the content is modified, reformatted or omitted, the offeror's response may be disqualified.

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

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

Proof of Insurance. The offeror must provide the certificate of insurance required by Attachment Four. The policy may be written on an occurrence or claims made basis.

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

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

W-9 Form. The offeror must complete a W-9 form in its entirety. The offeror must submit at least one originally signed W-9. All other copies of a Proposal may contain copies of the W-9. The offeror must indicate on the outside of the binder which Proposal contains the originally signed W-9. A current version of the Internal Revenue's W-9 form is available at <http://www.irs.gov/pub/irs-pdf/fw9.pdf> .

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

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

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

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

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

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

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

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

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

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

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

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

ATTACHMENT FOUR: GENERAL TERMS AND CONDITIONS

PART ONE: PERFORMANCE AND PAYMENT

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

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

Term. Unless this Contract is terminated or expires without renewal, it will remain in effect until the Project is completed to the satisfaction of the State, including all optional renewal periods for maintenance or continuing commitments, and the Contractor is paid. However, the current General Assembly cannot commit a future General Assembly to an expenditure. Therefore, this Contract will automatically expire at the end of each biennium, the first of which is June 30, 2017. The State may renew this Contract in the next biennium by issuing written notice to the Contractor of the decision to do so. This expiration and renewal procedure also will apply to the end of any subsequent biennium during which the Project continues, including any optional renewal periods. Termination or expiration of this Contract will not limit the Contractor's continuing obligations with respect to Deliverables that the State paid for before or after termination or limit the State's rights in such.

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

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

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

The State seeks a complete project, and the Contractor must provide any incidental items omitted in the RFP Documents as part of the Contractor's not-to-exceed fixed price. The Contractor also must fully identify, describe, and document all systems that are delivered as a part of the Project. Unless expressly excluded elsewhere in the RFP, all hardware, software, supplies, and other required components (such as documentation, conversion, training, and maintenance) necessary for the Project to be complete and useful to the State are included in the Project and the not-to-exceed fixed price.

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

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

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

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

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

If the RFP Documents provide for any retainage, the State will withhold from each invoice paid the percentage specified in the RFP Documents as retainage. The State will pay the retainage only after the State has accepted the Project, and then only in accordance with the payment schedule specified in the RFP Documents. The State

will withhold all amounts under this section arising from claims or disputes in addition to any retainage specified in the RFP Documents.

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

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

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

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

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

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

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

Sales, Use, Excise, and Property Taxes. The State is exempt from any sales, use, excise, and property tax. To the extent sales, use, excise, or any similar tax is imposed on the Contractor in connection with the Project, such

will be the sole and exclusive responsibility of the Contractor. Further, the Contractor will pay such taxes, together with any interest and penalties not disputed with the appropriate taxing authority, whether they are imposed at the time the services are rendered or a later time.

PART TWO: WORK AND CONTRACT ADMINISTRATION

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

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

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

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

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

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

Record Keeping. The Contractor must keep all financial records in accordance with generally accepted accounting principles or equivalent consistently applied. The Contractor also must file documentation to support each action under this Contract in a manner allowing the documentation to be readily located. Additionally, the

Contractor must keep all Project-related records and documents at its principal place of business or at its office where the work was performed.

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

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

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

If the Contractor fails to satisfy the requirements of the State with regard to matters not related to items contained in the preceding two (2) paragraphs, the State will provide Contractor with notice and an opportunity to cure the failure within forty-five (45) days. If the failure is not cured by Contractor within such forty-five (45) day period, the State may terminate this Contract without further notice.

Insurance. The Contractor must provide the following insurance coverage at its own expense throughout the term of this Contract:

- (a) Workers' compensation insurance, as required by Ohio law, and, if some of the Project will be done outside Ohio, the laws of the appropriate state(s) where work on the project will be done. The Contractor also must maintain employer's liability insurance with at least a \$1,000,000.00 limit.
- (b) Commercial General Liability insurance coverage for bodily injury, personal injury, wrongful death, and property damage. The defense cost must be outside of the policy limits. Such policy must designate the State of Ohio as an additional insured, as its interest may appear. The policy also must be endorsed to include a waiver of subrogation. At a minimum, the limits of the insurance must be:

- \$ 2,000,000 General Aggregate
- \$ 2,000,000 Products/Completed Operations Aggregate
- \$ 1,000,000 Per Occurrence Limit
- \$ 1,000,000 Personal and Advertising Injury Limit
- \$ 100,000 Fire Legal Liability
- \$ 10,000 Medical Payments

The Contractor shall, for each policy required by this Contract, provide the State with 30-days prior written notice of cancellation, material change, or non-renewal, except a 10-days notice of non-payment of premium. And the Contractor's Commercial General Liability must be primary over any other insurance coverage.

- (c) Commercial Automobile Liability insurance with a combined single limit of \$500,000.

- (d) Professional Liability insurance covering all staff with a minimum limit of \$1,000,000 per incident and \$3,000,000 aggregate. If the Contractor's policy is written on a "claims made" basis, the Contractor must provide the State with proof of continuous coverage at the time the policy is renewed. If for any reason the policy expires, or coverage is terminated, the Contractor must purchase and maintain "tail" coverage through the applicable statute of limitations.

The certificate(s) must be in a form that is reasonably satisfactory to the State as to the contents of the policies and the quality of the insurance carriers. All carriers must have at least an "A-" rating by A.M. Best.

Replacement Personnel. If the RFP Documents contain the names of specific people (e.g., Key Project Personnel) who will work on the Project, then the quality and professional credentials of those people were material factors in the State's decision to enter into this Contract. Therefore, the Contractor must use all commercially reasonable efforts to ensure the continued availability of those people. Also, the Contractor may not remove those people from the Project without the prior written consent of the State, except as provided below.

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

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

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

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

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

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

The State may determine that the proposed replacement candidates meet the minimum qualifications of this Contract and still substantially reduce the value the State perceived it would receive through the effort of the original individual(s) the Contractor proposed and on whose credentials the State decided to enter into this Contract. Therefore, the State will have the right to reject any candidate that the State determines may provide it with diminished value.

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

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

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

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

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

The notice of termination, whether for cause or without cause, will be effective as soon as the Contractor receives it. Upon receipt of the notice of termination, the Contractor must immediately cease all work on the project and

take all steps necessary to minimize any costs the Contractor will incur related to this Contract. The Contractor also must immediately prepare a report and deliver it to the State. The report must be all-inclusive and must detail the work completed at the date of termination, the percentage of the Project's completion, any costs incurred in doing the Project to that date, and any Deliverables completed or partially completed but not delivered to the State at the time of termination. The Contractor also must deliver all the completed and partially completed Deliverables to the State with its report. However, if the State determines that delivery in that manner would not be in its interest, then the State will designate a suitable alternative form of delivery, which the Contractor must honor.

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

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

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

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

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

The State may not suspend the Project for its convenience more than twice during the term of this Contract, and any suspension for the State's convenience may not continue for more than 30 calendar days. If the Contractor

does not receive notice to resume or terminate the Project within the 30-day suspension, then this Contract will terminate automatically for the State's convenience at the end of the 30 calendar day period.

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

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

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

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

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

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

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

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

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

provide pricing to the State. The State will execute a Change Order once it and the Contractor have agreed on the description of and specifications for the change, as well as any equitable adjustments that need to be made in the Contractor's Fee or the performance schedule for the work. Then within five business days after receiving the Change Order, the Contractor must sign it to signify agreement with it.

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

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

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

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

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

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

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

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

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

Publicity. The Contractor may not advertise or publicize that it is doing business with the State or use this Contract or the Contractor's relationship with the State as a marketing or sales tool, unless the State agrees otherwise in writing.

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

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

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

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

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

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

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

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

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

The Contractor may grant the State a worldwide, non-exclusive, royalty-free, perpetual license to use, modify, and distribute all Pre-existing Materials that are incorporated into any custom-developed Deliverable rather than grant the State ownership of the Pre-existing Materials. The State may distribute such Pre-existing materials to third parties only to the extent required by governmental funding mandates. The Contractor may not include in any custom Deliverable any intellectual property unless such has been created under this Contract or qualifies as Preexisting Material. If the Contractor wants to incorporate any Pre-existing Materials into a custom Deliverable,

the Contractor must first disclose that desire to the State in writing and seek the State's approval for doing so in advance. The State will not be obligated to provide that approval, unless the Contractor disclosed its intention to do so in the RFP Documents. On the Contractor's request, the State will incorporate into any copies of a custom Deliverable any proprietary notice that the Contractor included with the original copy, if that notice is reasonably necessary to protect the Contractor's interest in any Pre-existing Materials contained in the custom Deliverable.

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

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

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

License in Commercial Material. As used in this section, "Commercial Material" means anything that the Contractor or a third party has developed at private expense, is commercially available in the marketplace, subject to intellectual property rights, and readily copied through duplication on magnetic media, paper, or other media. Examples include written reports, books, pictures, videos, movies, computer programs, and computer source code and documentation. It does not include Key Commercial Software that will be governed by Attachment Ten, Master Contract, but does include other Commercial Software.

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

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

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

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

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

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

Commercial Software delivered under this Contract is licensed to the State without disclosure restrictions unless it is clearly marked as confidential or secret. The State will treat any Commercial Software that is marked as confidential or secret as Confidential Information to the extent that such is actually the case.

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

PART FOUR: REPRESENTATIONS, WARRANTIES, AND LIABILITIES

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

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

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

item; (3) acquire the right for the State to use the infringing Deliverable as it was intended for the State to use under this Contract; or (4) remove the Deliverable and refund the amount the State paid for the Deliverable and the amount of any other Deliverable or item that requires the availability of the infringing Deliverable for it to be useful to the State.

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

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

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

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

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

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

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

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

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

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

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

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

PART FIVE: ACCEPTANCE AND MAINTENANCE

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

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

If the Project fails to meet the standard of performance after 90 calendar days from the start of the second performance period, the Contractor will be in default and will not have a cure period. In addition to all other

remedies the State may have under this Contract, the State may request a correction or replacement of the relevant portion of the Project.

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

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

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

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

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

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

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

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

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

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

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

The following services are outside the scope of this Contract:

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

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

The Contractor must complete all remedial Equipment maintenance within eight business hours after notification by the State that maintenance is required. In the case of preventative maintenance, the Contractor must perform

such in accordance with the manufacturer's published schedule and specifications. If maintenance is not completed or substitute equipment provided within eight hours after notification by the State, the Contractor will be in default.

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

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

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

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

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

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

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

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

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

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

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

PART SIX: CONSTRUCTION

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

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

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

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

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

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

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

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

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

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

PART SEVEN: LAW AND COURTS

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

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

Conflicts of Interest and Ethics Compliance Certification. None of the Contractor's Personnel may voluntarily acquire any personal interest that conflicts with their responsibilities under this Contract. Additionally, the Contractor may not knowingly permit any public official or public employee who has any responsibilities related to

this Contract or the Project to acquire an interest in anything or any entity under the Contractor's control, if such an interest would conflict with that official's or employee's duties. The Contractor must disclose to the State knowledge of any such person who acquires an incompatible or conflicting personal interest related to this **Contract**. The Contractor also must take steps to ensure that such a person does not participate in any action affecting the work under this Contract. However, this will not apply when the State has determined, in light of the personal interest disclosed, that person's participation in any such action would not be contrary to the public interest.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Any foreign corporation required to be licensed under O.R.C. § 1703.01-1703.31, which transacts business in the state of Ohio, without being so licensed, or when its license has expired or been canceled, shall forfeit not less than \$250.00 nor more than ten thousand dollars. No officer of a foreign corporation (<http://codes.ohio.gov/orc/1703.01>) shall transact business in the state of Ohio, if such corporation is required by O.R.C. § 1703.01-1803.31 to procure and maintain a license, but has not done so. Whoever violates this is guilty of a misdemeanor of the fourth degree. Questions regarding registration should be directed to (614) 4663910, or visit <http://www.sos.state.oh.us>.

ATTACHMENT FIVE SAMPLE CONTRACT

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

(CONTRACTOR)

THIS CONTRACT, which results from RFP 0A1181, entitled TrustOhio , is between the State of Ohio, through the Department of Administrative Services, on behalf of the Ohio Department of <Agency> and _____ (the "Contractor").

This Contract consists of:

1. This one page signature page;
2. The attached amended and clarified version of Contractor's " _____ " dated _____ ("Contractor's Response"). Contractor's Response includes Attachment Four: General Terms and Conditions and all other Attachments, Supplements and materials included in Contractor's Response; and
3. The attached Cost Proposal Workbook dated _____.

Change orders and amendments issued after the Contract is signed may expressly change the provisions of the Contract. If so, the change orders and amendments will apply in accordance with their respective terms.

The term of the Contract will be from the award date until the Work is completed to the satisfaction of the State and the Contractor is paid or June 30, 2017, whichever is sooner. The State may renew this Contract for up to _____ additional ___-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 possible maximum contract term expiring _____. Any such renewal of all or part of the Contract also is subject to the satisfactory performance of the Contractor and the needs of the Department of Administrative Services.

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

CONTRACTOR

STATE OF OHIO
DEPARTMENT OF ADMINISTRATIVE SERVICES

SAMPLE – DO NOT FILL OUT

By:

By: DAS Director

Title: _____

Title: Director

Date: _____

Date: _____

ATTACHMENT SIX

OFFEROR CERTIFICATION FORM

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

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

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

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

Potential Conflicts (by person or entity affected)

--

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

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

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

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

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

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

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

Signature

Name

Title

Company Name

Company D-U-N-S Number

ATTACHMENT EIGHT: STANDARD AFFIRMATION AND DISCLOSURE FORM

EXECUTIVE ORDER 2011-12K

Governing the Expenditure of Public Funds on Offshore Services

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

CONTRACTOR/SUBCONTRACTOR AFFIRMATION AND DISCLOSURE:

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

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

1. Principal location of business of Contractor:

(Address)

(City, State, Zip)

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

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

2. Location where services will be performed by Contractor:

(Address)

(City, State, Zip)

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

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

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

(Address)

(Address, City, State, Zip)

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

(Name)

(Address, City, State, Zip)

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

(Address)

(Address, City, State, Zip)

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

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

ATTACHMENT NINE– TrustOhio

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

ATTACHMENT TEN MASTER CLOUD SERVICES AGREEMENT (MCSA NUMBER [0000000])

<Service Provider>
Master Cloud Services Agreement
MCSA00

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

1. General Information

1.1. Organization

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

1.2. Subscribing Entities

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

1.3. Cooperative Purchasing Members

“Cooperative Purchasing Members” are entities that qualify for participation in the State’s cooperative purchasing program under Section 125.04 of the Ohio Revised Code (“ORC”) and that have completed the steps necessary to participate in that program. They may include Ohio political subdivisions, such as counties, townships, municipal corporations, school districts, conservancy districts, township park districts, park districts created under Chapter 1545 of the ORC, regional transit authorities, regional airport authorities, regional water and

sewer districts, and port authorities. They also may include any Ohio county board of elections, private fire companies, private, nonprofit emergency medical service organizations, and chartered nonpublic schools.

1.4. Term

The current General Assembly cannot commit a future General Assembly to any expenditure. Therefore, this Agreement along with all Service Attachments will automatically expire at the end of the State's current biennium, which is June 30, 2017.

1.5. Agreement – Renewal

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

1.6. Service Attachment(s) – Renewal

Along with renewal of this Agreement, the State may renew any or all Service Attachments for the next biennium by issuing written notice to the Service Provider of the decision to do so. Renewals will be initiated by the State at least 30 days before the expiration of the then current Term. This expiration and renewal procedure will also apply to any subsequent biennium.

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

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

1.7. Relationship of the Parties and Subscribing Entities

The Parties are independent contractors and nothing herein creates or implies an agency relationship, joint venture, or partnership between the Parties. The Service Provider and its officers, employees, contractors, and subcontractors who may attend meetings and work in other situations where their independent contractor status is not obvious to third parties must identify themselves as such to avoid creating an impression that they are State representatives. In addition, neither the Service Provider nor its officers, employees, contractors, or subcontractors may make any representation that they are acting, speaking, representing, or otherwise advocating any position, agreement, service, or otherwise on behalf of the State or any Subscribing Entity.

1.8. Dealers and Distributors

The State authorizes the Service Provider to name one or more dealers to work with the State on behalf of the Service Provider. But if the Service Provider decides to use any dealers, the Service Provider must submit the name, principal business address, addresses for Orders and for payments, telephone number, and its federal tax identification number. The Service Provider also must submit a completed W9 form for each dealer it wishes to name under this section. The Service Provider's submission must be on its official letterhead, signed by an authorized representative, and addressed to the address listed in Section 9.26.

In doing so, the Service Provider warrants that:

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

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

The State strongly encourages the participation of small and disadvantaged businesses in its contracting programs and has created certification programs for Minority Business Enterprises (MBEs) and to Encourage Diversity Growth and Equity (EDGE) in State contracting.

1.9. Audits and Reports

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

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

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

The State also may require various reports from the Service Provider related to the Services. Such reports include those identified in Section 7.6 and those identified in any Service Attachment. Further, the State will be entitled to any other reports that the Service Provider makes generally available to its other customers without additional charge. The State's rights under this section will apply to all Services provided to all Subscribing Entities under this Agreement, but a Subscribing Entity's rights to reports will apply solely to Services it orders or receives under this Agreement.

1.10. Subscribing Entities' Reliance on Agreement

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

1.11. Third-Party Suppliers

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

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

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

1.12. Non-Exclusivity

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

1.13. Competitive Pricing and Services

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

1.14. Conflict Resolution

If a Party is noncompliant with any term or condition of this Agreement or if a dispute arises under this Agreement, the Party raising the dispute may provide to the other Party written notice referencing this section and specifying the nature of the dispute (the "Dispute Notification"). The Parties then will seek to resolve the dispute in accordance with the procedures in this Section.

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

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

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

The specific format for such discussions will be left to the discretion of the representatives of the State and Service Provider responsible for attempting to resolve the dispute, but each Party

will involve the business and legal resources reasonably necessary to attempt in good faith to resolve the dispute at the earliest possible time and without undue delay.

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

Nothing in this Section is intended to limit the rights provided under Section 6 or be a prerequisite to exercising those rights.

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

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

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

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

2. General Requirements for Cloud Services

2.1. Standards

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

The Services must also operate at the moderate level baseline as defined in the National Institute of Standards and Technology (“NIST”) 800-53 Rev. 4 moderate baseline requirements, be consistent with Federal Information Security Management Act (“FISMA”) requirements, and offer a customizable and extendable capability based on open-standards APIs that enable integration with third party applications. Additionally, they must provide the State’s systems administrators with 24x7 visibility into the services through a real-time, web-based “dashboard” capability that enables them to monitor, in real or near real time, the Services’ performance against the established SLAs and promised operational parameters.

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

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

The Service Provider must obtain an annual *Statements on Standards for Attestation Engagements* (“SSAE”) No. 16, Service Organization Control 1 Type 2, audit. The audit must cover all operations pertaining to the Services covered by this Agreement. The audit will be at the sole expense of the Service Provider and a copy of it must be provided to the State within 30 days of its completion each year.

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

2.2. Object Reassignment

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

2.3. Generated Files

“Generated Files” are files storing information, instructions, or data that a Subscribing Entity creates or modifies using the Service Provider’s Services and in which the data or other information was provided or created by a Subscribing Entity. Such Generated Files are also included in the definition of “Subscribing Entity’s Data” in a later section of this Agreement. Examples of such files could include, among others, text files generated with a word processor, data tables created with a database engine, and image files created with a graphics application. Applications consisting of instruction sets created with a programming language that the Service Provider provided to a Subscribing Entity also would be considered Generated Files. As between the Subscribing Entity and the Service Provider, the Subscribing Entity will own all Generated Files that the Subscribing Entity prepares by using the Services, excluding such portions of the Generated Files that consist of embedded portions of the Software. The Service Provider or its licensors will retain ownership of any portions of the Software embedded into Generated Files. But the Service Provider grants to the Subscribing Entity a nonexclusive, royalty-free right to reproduce and distribute to third parties any portions of the intellectual property embedded in any Generated Files that the Subscribing Entity creates while using the Services in the manner in which the Services are designed to be used. In the Subscribing Entity’s distribution of the Generated Files, the Subscribing Entity may not use the Service Provider’s name, logo, or trademarks, except to the extent that such are incorporated in such Generated Files by the design of a Service when used as intended.

2.4. Service Provider Warranties

The Service Provider warrants that:

- i.* it has validly entered into this Agreement and has the legal power to do so,
- ii.* the Services will perform materially in accordance with the applicable user guide and the requirements of this Agreement,
- iii.* subject to any limitations specified in the applicable Service Attachment, the functionality of the Services will not be materially decreased during a subscription Term, and
- iv.* it will not transmit viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs (“Malicious Code”) to a Subscribing Entity, provided it is not a breach of this subpart ,

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

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

Note: Any terms and conditions that may be incorporated in a User Guide that conflicts with the MCSA or SA, the MCSA and SA will prevail.

2.5. State and Subscribing Entities Responsibilities

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

- i. be responsible for the accuracy, quality, and legality of its data and of the means by which the data was acquired,
- ii. use commercially reasonable efforts to prevent unauthorized access to or use of the Services to which it subscribes and notify the Service Provider promptly of any unauthorized access or use of which it becomes aware, and
- iii. use the Services only in accordance with the applicable user guide, to the extent it is not inconsistent with this Agreement, applicable laws, and government regulations.
- iv. because of the sensitive nature of performing security and compliance checks on Assets, The State represents and warrants that The State has full right, power, and authority to consent to have the Service test for vulnerabilities, compliance checking, or, as applicable, malware ("scan") the Assets identified to Service Provider for scanning, whether electronically or by any other means, whether at the time of initial Registration or thereafter, and
- v. The State may access the Service's user interface to reproduce solely for The State's own internal business purposes only such vulnerability, configuration checks and/or malware test results as set forth in the Reports.

A Subscribing Entity may not:

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

3. Insurance, Indemnification, Limitation of Liability

3.1. Insurance

The Service Provider must provide the following insurance coverage at its own expense throughout the Term of this Agreement to the State:

- i. Workers' compensation insurance, as required by Ohio law, and if some work will be done outside Ohio, the laws of the appropriate states where work will be done. The Service Provider also must maintain employer's liability insurance with at least a \$1,000,000.00 limit.

- ii. Commercial General Liability insurance coverage for bodily injury, personal injury, wrongful death, and property damage. The defense cost must be outside of the policy limits. Such policy must designate the State of Ohio as an additional insured, as its interest may appear. The policy also must be endorsed to include a blanket waiver of subrogation. At a minimum, the limits of the insurance must be:

- \$ 2,000,000 General Aggregate
- \$ 2,000,000 Products/Completed Operations Aggregate
- \$ 1,000,000 per Occurrence Limit
- \$ 1,000,000 Personal and Advertising Injury Limit
- \$ 100,000 Fire Legal Liability
- \$ 10,000 Medical Payments

The policy must be endorsed to provide the State with 30-days prior written notice of cancellation or material change to the policy. And the Service Provider's Commercial General Liability must be primary over any other insurance coverage.

- iii. Commercial Automobile Liability insurance with a combined single limit of \$500,000. The policy must be endorsed to include a waiver of subrogation.
- iv. Professional Liability insurance covering all staff with a minimum limit of \$1,000,000 per incident and \$3,000,000 aggregate. If the Service Provider's policy is written on a "claims made" basis, the Service Provider must provide the State with proof of continuous coverage at the time the policy is renewed. If for any reason the policy expires, or coverage is terminated, the Service Provider must purchase and maintain "tail" coverage through the applicable statute of limitations.

All certificates must be in a form that is reasonably satisfactory to the State as to the contents of the policies and the quality of the insurance carriers and must identify this Agreement. All carriers must have at least an "A-" rating by A.M. Best.

Any Subscribing Entity that is a Cooperative Purchasing Member that Orders Services also may require a certificate of insurance from the Subscribing Entity naming it as an additional insured.

Whenever a Subscribing Entity locates its equipment at facilities owned or controlled by the Service Provider or one of its contractors, the Service Provider must maintain:

- i. property insurance insuring the equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement used by the Service Provider for its own property or that in common use in the industry, and any other risks reasonably required and covered by the Service Provider's insurance. The coverage must be in an amount at least equal to the reasonable replacement value of the equipment, and
- ii. workers' compensation coverage as required by the laws of the State in which the equipment is located. The Service Provider must furnish evidence of the coverage throughout each Order's Term.

All such insurance must be with insurers that are authorized to issue such insurance in the state. All such property insurance shall name the applicable Subscribing Entity as the loss payee. All such insurance also must contain a provision to the effect that it cannot be canceled or modified without first giving written notice thereof to the Service Provider and the applicable Subscribing Entities without at least 30 days written notice. Such changes may not become effective without the applicable Subscribing Entities' prior written consent.

3.2. Indemnification for Bodily Injury and Property Damage

The Service Provider must indemnify the State and the Subscribing Entities against all liability or expense resulting from bodily injury to any person (including death) or damage to property arising out of its performance under this Agreement, provided such bodily injury or property damage is due to the negligence or other tortious conduct of the Service Provider, its employees, agents, or subcontractors.

3.3. Indemnification for Infringement

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

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

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

3.4. Limitation of Liability - State

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

3.5. Limitation of Liability - Service Provider

The Service Provider will be responsible for any liability, claims, losses and damages arising out of the performance of this Agreement provided such liability, claim, loss or damage is due to the fault or negligence of the Service Provider, its employees, agent, subcontractors or affiliates.

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

4. Confidentiality and Handling of Data

4.1. Confidentiality

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

If any Service delivered under this Agreement contains data, documentation, or other written information that is confidential in nature and properly labeled as such, then it also will be Confidential Information for purposes of this section. The State will keep all such Confidential Information in confidence and will not use it other than as authorized under this Agreement. Nor will the State disclose any such Confidential Information to any third party without first obligating the third party to maintain the secrecy of the Confidential Information.

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

- i. was already in the possession of the Receiving Party without an obligation of confidence;
- ii. is independently developed by the Receiving Party, provided documentary evidence exists to support the independent development;

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

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

The Receiving Party must return all originals of any Confidential Information and destroy any copies it has made on termination or expiration of this Agreement.

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

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

4.2. Public Records Requests.

Should the Service Provider receive any public records request with respect to any Subscribing Entity's Data, the Service Provider will immediately notify the affected Subscribing Entity or Entities and fully cooperate with the affected Subscribing Entity or Entities as it or they direct.

4.3. Handling of Subscribing Entity's Data

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

- i. apply appropriate risk management techniques to ensure security for all sensitive data, including but not limited to any data identified as Confidential Information elsewhere in this Agreement.
- ii. ensure that its internal security policies, plans, and procedures address the basic security elements of confidentiality, integrity, and availability.
- iii. maintain plans and policies that include methods to protect against security and integrity threats and vulnerabilities, as well as detect and respond to those threats and vulnerabilities.
- iv. maintain appropriate identification and authentication process for information systems and services associated with Subscribing Entity’s Data.
- v. maintain appropriate access control and authorization policies, plans, and procedures to protect system assets and other information resources associated with Subscribing Entity’s Data.
- vi. implement and manage security audit logging on information systems, including computers and network devices.

The Service Provider must maintain a robust boundary security capacity that incorporates generally recognized system hardening techniques. This includes determining which ports and services are required to support access to systems that hold Subscribing Entity’s Data, limiting access to only these points, and disabling all others. To do this, the Service Provider must use assets and techniques such as properly configured firewalls, a demilitarized zone for handling public traffic, host-to-host management, Internet protocol specification for source and destination, strong authentication, encryption, packet filtering, activity logging, and implementation of system security fixes and patches as they become available. The Service Provider must use two-factor authentication to limit access to systems that contain Subscribing Entity’s Data.

Unless a Subscribing Entity instructs the Service Provider otherwise in writing, the Service Provider must assume all Subscribing Entity’s Data is both confidential and critical for Subscribing Entity operations, and the Service Provider’s security policies, plans, and procedure for the handling, storage, backup, access, and, if appropriate, destruction of that data must be commensurate to this level of sensitivity. As part of the Service Provider’s protection and control of access to and use of data, the Service Provider must employ appropriate intrusion and attack prevention and detection capabilities. Those capabilities must track unauthorized access and attempts to access Subscribing Entity’s Data, as well as attacks on the Service Provider’s infrastructure associated with Subscribing Entity’s Data. Further, the Service Provider must monitor and appropriately address information from its system tools used to prevent and detect unauthorized access to and attacks on the infrastructure associated with Subscribing Entity’s Data.

The Service Provider must use appropriate measures to ensure that Subscribing Entity's Data is secure before transferring control of any systems or media on which Subscribing Entity's Data is stored. The method of securing the data must be appropriate to the situation and may include erasure, destruction, or encryption of the data before transfer of control. The transfer of any such system or media must be reasonably necessary for the performance of the Service Provider's obligations under this Agreement.

The Service Provider must have a business continuity plan in place. The Service Provider must test and update the IT disaster recovery portion of its business continuity plan at least annually. The plan must address procedures for response to emergencies and other business interruptions. Part of the plan must address backing up and storing data at a location sufficiently remote from the facilities at which the Service Provider maintains Subscribing Entity's Data in case of loss of that data at the primary site. The plan also must address the rapid restoration, relocation, or replacement of resources associated with Subscribing Entity's Data in the case of a disaster or other business interruption. The Service Provider's business continuity plan must address short- and long-term restoration, relocation, or replacement of resources that will ensure the smooth continuation of operations related to Subscribing Entity's Data. Such resources may include, among others, communications, supplies, transportation, space, power and environmental controls, documentation, people, data, software, and hardware. The Service Provider also must provide for reviewing, testing, and adjusting the plan on an annual basis.

The Service Provider may not allow Subscribing Entity's Data to be loaded onto portable computing devices or portable storage components or media unless necessary to perform its obligations under this Agreement properly. Even then, the Service Provider may permit such only if adequate security measures are in place to ensure the integrity and security of the data. Those measures must include a policy on physical security for such devices to minimize the risks of theft and unauthorized access that includes a prohibition against viewing sensitive or confidential data in public or common areas. At a minimum, portable computing devices must have anti-virus software, personal firewalls, and system password protection. In addition, Subscribing Entity's Data must be encrypted when stored on any portable computing or storage device or media or when transmitted from them across any data network. The Service Provider also must maintain an accurate inventory of all such devices and the individuals to whom they are assigned.

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

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

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

The Service Provider must give affected Subscribing Entities full access to the details of the breach and assist each Subscribing Entity in making any notifications to potentially affected people and organizations that the affected Subscribing Entities deem are necessary or appropriate. The Service Provider must document all such incidents, including its response to them, and make that documentation available to the affected Subscribing Entities on request. In addition to any other liability under this Agreement related to the Service Provider's improper disclosure of Subscribing Entity's Data, and regardless of any limitation on liability of any kind in this Agreement, the Service Provider will be responsible for acquiring one year's identity theft protection service on behalf of any individual or entity whose personally identifiable information is compromised while it is in the Service Provider's possession. Such identity theft protection must be reasonably acceptable to the State.

All Subscribing Entity's Data will remain the property of the Subscribing Entity. The Service Provider must ensure that the Subscribing Entity retains access and download capability for purposes of retrieving its data for research, investigation, transfer, or migration to other systems.

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

4.4. Subscribing Entity Responsibilities

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

Further, a Subscribing Entity may not intentionally make the Services available to anyone other than its employees and its contract personnel, unless the applicable Service or Services are designed to be publically facing or intended for interaction with clients of the Subscribing Entity (e.g., hosted web sites), sell, resell, rent, or lease the Services, use the Services to store or

transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights. The Subscribing Entities also may not intentionally use the Services to store or transmit Malicious Code, intentionally interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or attempt to gain unauthorized access to the Services or their related systems or networks.

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

5.1. Acceptance

The acceptance procedure for setup or installation of the Services will be a review by the Subscribing Entity acquiring the Service to ensure that it meets the performance standards and other requirements in the applicable Service Attachment and that the setup or installation has been done in a professional manner and that the Service itself meets all requirements. For other Services, the acceptance procedure will be a review by the Subscribing Entity to ensure the Service complies with the performance requirements in the applicable Service Attachment. In addition to the requirements of the applicable Service Attachment, if ordering documents such as a Statement of Work (SOW) are authorized in that Service Attachment, the review will include any additional requirements in that Order. The Subscribing Entity will have up to 15 days after the setup, installation, or establishment of the Service to do this. The Subscribing Entity will not issue a formal letter of acceptance, unless otherwise specified in the applicable Service Attachment, and passage of 15 days will imply acceptance, though the Subscribing Entity will issue a notice of noncompliance if set up or installation or other Service does not meet the requirements in this Agreement.

If the Subscribing Entity issues a noncompliance letter, the Service Provider will have 30 days to correct the problems listed in the letter. If the Subscribing Entity has issued a noncompliance letter, the Service, installation, or set up will not be accepted until that Subscribing Entity issues a letter of acceptance indicating that each problem noted in the noncompliance letter has been cured. If the problems have been fixed during the 30-day period, the Subscribing Entity will issue the acceptance letter within 15 days after all defects have been fixed. If the Service Provider fails to correct the defect(s), the applicable Order(s) will terminate without cost or obligation to the Subscribing Entity.

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

5.2. Service, Termination, or Modification

All Orders for Service, as well as any termination of an Order or modification to an Order, including termination, must be made through the State's Ordering System. Therefore, the Service Provider must notify the State when an Order is received that was placed outside the State's Ordering System and the Service Provider will not accept the Order. If a Service Provider accepts an Order outside the State's Ordering System the State or the Subscribing Entity may either withhold payment for the unverified Order or require termination of the Service under the unverified Order without cost or obligation to the State or the Subscribing Entity.

The Service Provider agrees to keep Subscribing Entities' Orders updated and current in the State's Ordering System.

The Service Provider is responsible for processing all Orders, billing, payments, cancellations, changes, and receiving and managing all Service calls in a consolidated manner. In this regard, the Service Provider must act as the sole point of contact for all Services under this Agreement and any related Service Attachments for all Subscribing Entities. The Service Provider may not require a Subscribing Entity to contact any of the Service Provider's third-party suppliers or otherwise transact business directly with such suppliers for any Services ordered under this Agreement, and in all respects, the Service Provider must maintain a seamless, single-point-of-contact business relationship with each Subscribing Entity for the Services ordered under this Agreement.

6. Termination – Agreement, Service Attachments, Orders

[6.1. Termination by the State](#)

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

- I. the State may terminate this Agreement, the applicable Service Attachment(s), or the affected Order(s) under this Agreement;
- II. the State may withhold payment for any affected Service until the Service Provider cures the noncompliance or the Parties arrive at an agreement as to the corrective action for the noncompliance; or
- III. the State may file a complaint for damages with a court of competent jurisdiction in Ohio.

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

If the termination of the Agreement or any Service Attachment(s) is for cause, then neither the State nor any Subscribing Entities will be liable for any Early Termination Charge outlined in any affected Service Attachments. And the Service Provider will fully cooperate in any disentanglement efforts any Subscribing Entity reasonably requests at no cost to the requesting Subscribing Entity or Entities.

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

[6.2. Termination of Orders by Subscribing Entity or Service Provider](#)

Under this Agreement, specific Orders also may be terminated by either a Subscribing Entity or the Service Provider, as follows:

6.2.1. By a Subscribing Entity

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

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

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

6.2.2. By the Service Provider

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

If the Subscribing Entity cures the default to the satisfaction of the Service Provider and before the cancellation of Service date, the Order will remain in full force and effect.

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

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

7.1. Fees

All applicable charges are fully documented in the appropriate Service Attachment(s). The Subscribing Entity will not be responsible for any charges not documented in the applicable Service Attachment(s) nor will the Subscribing Entity be responsible for any charges waived by the Service Provider in this Agreement or the applicable Service Attachment(s).

Subscribing Entities are not subject to increases in fees during the Term of this Agreement.

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

7.2. Billing

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

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

A proper invoice must include the following information and/or attached documentation:

- i. name and address of the Service Provider as designated in this Agreement;
- ii. Federal Tax Identification Number of the Service Provider as designated in this Agreement;
- iii. invoice remittance address as designated in the Agreement; and
- iv. a sufficient description of the Services to allow the Subscribing Entity to identify the Services and perform an audit of the Services.

7.3. Payment

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

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

7.4. State Reporting Requirements

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

7.5. Service Level Guarantee and Credits

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

7.6. Cost Recovery

The Service Provider must pay a Cost Recovery Fee to the State to cover the estimated costs the State will incur administering this Agreement and the Services offered under it.

The Cost Recovery Fee will be 2% of the total quarterly sales reported under this Agreement to all Subscribing Entities, including all State-level entities and all Cooperative Purchasing Members. The Cost Recovery Fee is included in the prices reflected on the Service Attachment and the Service Provider may not add a surcharge to orders under this contract to cover the amount of the Cost Recovery Fee. The State will generate notification to the Service Provider via email on the last day of the calendar quarter advising the Service Provider to complete a revenue reporting form provided by the State within 30 days after the close of the quarter. The State may compare the form provided by the Service Provider to information in the State's accounting system, the State's Ordering System, and other records for purposes of verifying the accuracy of the form.

- Examples of calculation of a Cost Recovery Fee:
(Log-In and Password Established for Cost Recovery Contact to Report Sales)

1) (State Entities Only Example)

FY14				
Quarter	Revenue State Agencies	Revenue Local Governments	Revenue Share Due	Reported by
Q1	\$ 79,193		\$ 0	\$ 1,584 "Name of Contact"
Q2	\$ 10,392		\$ 0	\$ 208 "Name of Contact"
Q3	\$ 209,105		\$ 0	\$ 4,182 "Name of Contact"
Q4	\$ 74,970		\$ 0	\$ 1,499 "Name of Contact"

2) (State Entities and Cooperative Purchasing Member Sales Example)

FY14				
Quarter	Revenue State Agencies	Revenue Local Governments	Revenue Share Due	Reported by
Q1	\$ 79,193	\$ 20,963	\$ 2,003	"Name of Contact"
Q2	\$ 10,392	\$ 4,197	\$ 292	"Name of Contact"
Q3	\$ 209,105	\$ 63,210	\$ 5,446	"Name of Contact"
Q4	\$ 74,970	\$ 1,471	\$ 1,529	"Name of Contact"

3) (Reporting \$0 Sales to both State Entities and Cooperative Purchasing Members)
 Note: Reporting still required although sales reported for quarter - \$0

FY14				
Quarter	Revenue State Agencies	Revenue Local Governments	Revenue Share Due	Reported by
Q1	\$ 0	\$ 0	\$ 0	"Name of Contact"
Q2	\$ 0	\$ 0	\$ 0	"Name of Contact"
Q3	\$ 0	\$ 0	\$ 0	"Name of Contact"
Q4	\$ 0	\$ 0	\$ 0	"Name of Contact"

The Service Provider must remit to the State the 2% Cost Recovery Fee within 30 days of receipt of the notice from the State by check to the State of Ohio, Office of Information Technology. The check must be made payable to the Treasurer, State of Ohio, and must be sent to the State at the following address:

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

The State will direct the Service Provider to the State's in-house reporting system to enter all reporting information to include all State entity sales as well as Cooperating Purchasing sales. To ensure that the payment is credited properly, the Service Provider must identify the check as a State of Ohio Cost Recovery Fee and reference this Master Cloud Service Agreement and the supporting Cost Recovery Report. Credit of the Cost Recovery Fee will begin in the month of execution of this Agreement.

If the full payment of the Cost Recovery fee is not paid within 30 days after the end of the applicable reporting period, the non-payment will constitute a contract debt to the State. The State may offset any unpaid cost recovery from any amount owed to the Contractor under this Contract and employ all other remedies available to it under Ohio law for the non-payment of Cost Recovery. Additionally if the Contractor fails to pay the Cost Recovery in a timely manner, the failure will be considered a breach of this Contract, and the State may terminate this Contract for cause and seek damages to the full extent of applicable Ohio law.

8. Support

8.1. Service Support Generally

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

8.2. Equipment Support Generally

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

8.3. Adjustments

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

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

8.4. Support Parameters

A Subscribing Entity may initiate support requests for problems it encounters with the Software by telephone, email, Internet, or fax, and the Service Provider must maintain lines of communication that support all four forms of communication. The Service Provider must make support available 24 hours a day, seven days per week (the “Support Window”), and it must do so by staffing its support function with an adequate number of qualified personnel to handle its traditional volume of calls. Further, the Service Provider must maintain at least one support center in North America with adequate English-speaking support personnel. The applicable Service Attachment(s) may provide for different support periods. A Subscribing Entity’s technical staff may contact any support center that the Service Provider maintains, and they may choose to do so based on convenience, proximity, service hours, languages spoken, or otherwise.

8.5. Incident Classification

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

The Service Provider must designate a problem as “critical” if the Service is functionally inoperable, the problem prevents the Service or a major component or function of it from being used in production mode or there is significant potential for data integrity problems. This classification assumes there is no existing patch for the problem. The Service Provider must classify a problem as “urgent” if the underlying problem significantly degrades the performance of the Service or a major function or component of it or materially restricts a Subscribing Entity’s use of the Service in a production mode. A problem also will be considered urgent if a commonly used feature often generates application errors, causes the Service to freeze, locks up the computer on which the Service is running, or otherwise routinely does not work as intended. Classification of a problem as urgent rather than critical assumes that an affected Subscribing Entity still can conduct business with the Service and response times are consistent with the needs of the Subscribing Entity for that type of Service. As with the critical classification, the urgent classification assumes there is no existing patch or acceptable workaround procedure for the problem. Finally, the Service Provider may classify a support

call as “routine” if the underlying problem is a question on end use or configuration of the Service. It also may be classified as routine when the problem does not materially restrict a Subscribing Entity’s use of the Service in its production environment, such as when a feature or combination of features generates minor or rare errors. Also, if any problem that otherwise should be classified as critical or urgent can be solved either by a known workaround or an existing patch that does not materially interfere with a Subscribing Entity’s use of the Service, the problem may be treated as routine.

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

8.6. Incident Response

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

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

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

8.7. Response Times

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

8.8. Escalation Process

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

8.9. Subscribing Entity Obligations

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

8.10. Relationship to SLAs

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

9. Standard Provisions

9.1. Certification of Funds

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

- i. all statutory provisions under the ORC, including Section 126.07, have been met;
- ii. all necessary funds are made available by the appropriate State agencies;
- iii. if required, approval of this Agreement or the applicable Order is given by the Controlling Board of Ohio; and

- iv. if the Subscribing Entity is relying on federal or third-party funds for its Order, the Subscribing Entity gives the Service Provider written notice that such funds have been made available.

Additional or alternate legal requirements may apply to political subdivisions that are a Subscribing Entity for an Order to be binding on it.

9.2. 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 will notify the other promptly of any material delay in performance and will specify in writing the proposed revised performance date or dates as soon as practicable after notice of delay. The proposed date or dates must be reasonable and cannot exceed the actual delay caused by the events beyond the control of the Party. In the case of such an excusable delay, the dates of performance or delivery affected by the delay will be extended for a period equal to the time lost by reason of the excusable delay. The delayed Party must also describe the cause of the delay and what steps it is taking to remove the cause.

The delayed Party may not rely on a claim of excusable delay to avoid liability for a delay if the delayed party has not taken commercially reasonable steps to mitigate or avoid the delay. Things that are controllable by the Service Provider's suppliers will be considered controllable by the Service Provider.

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

9.3. Employment Taxes

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

9.4. Sales, Use, Excise, and Property Taxes

The State and most Subscribing Entities are exempt from any sales, use, excise, and property tax. To the extent sales, use, excise, or any similar tax is imposed on the Service Provider in connection with any Service, such will be the sole and exclusive responsibility of the Service Provider, and the Service Provider will pay such taxes (together with any interest and penalties not disputed with the appropriate taxing authority) whether they are imposed at the time the Services are rendered or a later time.

9.5. Equal Employment Opportunity

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

Before this Agreement can be awarded or renewed, an Affirmative Action Program Verification Form must be submitted to the DAS Equal Opportunity Division to comply with the affirmative action requirements. Affirmative Action Verification Forms and approved Affirmative Action Plans can be found by to the Ohio Business Gateway at:

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

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

9.6. Drug-Free Workplace

The Service Provider must comply with all applicable state and federal laws regarding keeping a drug-free workplace. The Service Provider must make a good faith effort to ensure that all its employees, while working on State property or the property of any Subscribing Entity, will not have or be under the influence of illegal drugs or alcohol or abuse prescription drugs in any way.

9.7. Conflicts of Interest

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

9.8. Assignment

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

9.9. Governing Law

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

9.10. Finding for Recovery

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

9.11. Anti-trust

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

9.12. Use of Name

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

9.13. Executive Order 2011-12K Compliance

The Service Provider affirms it has read and understands Executive Order 2011-12K and will abide by those requirements in the performance of this Agreement.

Notwithstanding any other Terms of this Agreement, the State reserves the right to recover any funds paid for Services the Service Provider performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights or remedies provided the State in this Agreement.

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

9.14. Campaign Contributions

The Service Provider, by signature affixed on this document, hereby certifies that all applicable parties listed in ORC Section 3517.13 are in full compliance with ORC Section 3517.13.

9.15. Export Compliance

The Services and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Both the Service Provider and the State represent that it is not named on any U.S. government denied-party list. Neither party will permit others to access or use the Services in a US-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.

9.16. Safety and Security Rules

When accessing State networks and systems, the Service Provider must comply with all applicable State policies and regulations regarding data security and integrity. And when on any property owned or controlled by the State, the Service Provider must comply with all security and safety rules applicable to people on those premises. Subscribing Entities may have policies and regulations that are specific to them that the Service Provider must also comply.

9.17. Ohio Ethics Law

The Service Provider certifies that it is currently in compliance with and will continue to adhere to the requirements of the Ohio ethics laws.

9.18. Entire Agreement

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

Only executable Order attached to a Service Attachment as an exhibit and identified as such in the applicable Service Attachment may be executed by a Subscribing Entity to evidence a transaction under this Agreement. Further, the Subscribing Entity may not add or require additional Terms as part of any authorized Order. Documents attached to a Service Agreement as exhibits to be executed by a Subscribing Entity typically identify authorized Service options the Subscribing Entity has selected, provide information about a Subscribing Entity, identify installation or configuration requirements or similar Statements of Work to be done by the Service Provider, set schedules for performance, and similar matters.

9.19. Severability

If any provision hereunder is declared or held invalid, illegal, or unenforceable by a court of competent jurisdiction, this Agreement will be revised only to the extent necessary to make that provision legal and enforceable or, if impossible, the unaffected portions of this Agreement will remain in full force and effect so long as the Agreement remains consistent with the Parties' original intent.

9.20. Survival

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

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

9.21. No Waiver

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

9.22. Order of Precedence

- A. In event of a conflict related to the general Terms and Conditions between the Agreement and the Service Attachment(s), the Agreement shall prevail.
- B. In the event of a conflict related specifically to the service, between the Agreement and the Service Attachment(s), the Service Attachment(s) shall prevail.

9.23. Headings

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

9.24. Governmental Authorization, Regulatory Changes

This Agreement is subject to all applicable federal, state, and local laws, rules, orders, and regulations, and each Party must comply with all applicable federal, state, and local laws, rules, regulations, and orders in performing its obligations hereunder. To the extent any provision of this Agreement conflicts with any such law, rule, order, or regulation, such law, rule, order, or regulation will supersede the conflicting provision. The Service Provider may discontinue, limit, or impose additional requirements to the provision of Service, upon no less than 30 days written notice, if required to meet federal, state or local laws, rules, or regulations. But if any such action materially affects any Subscribing Entity's use of a Service, the Subscribing Entity may on written notice to the Service Provider terminate its use of the Service without an Early Termination Charge and receive a pro rata refund any amounts paid in advance for the Service.

9.25. Notices

Except as otherwise provided in this Agreement, all notices hereunder must be in writing and sent by:

- i. registered or certified mail, postage prepaid;
- ii. facsimile transmission;
- iii. overnight courier;
- iv. or email, upon confirmation of receipt.

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

The State's address for notification is:

Department of Administrative Services
Office of Information Technology
Enterprise IT Contracting
30 E Broad Street, 39th Floor
Columbus, Ohio 43215
Attention: Contracts Category Manager

The Service Provider's address for notification is:

With a copy to:

9.26 IRS 1075 Technology Services.

In consideration of the mutual promises and obligations contained in the Agreement and this Amendment, the parties agree to add language to the Agreement as follows:

In order to protect risk of loss, breach, or misuse of Federal Tax Information ("FTI") held by government agencies, the Internal Revenue Service issued Publication 1075 which includes specific language to include in any State contract in which FTI may be disclosed. If FTY is involved and the following state entities are also involved, then the IRS Publication 1075 language below applies:

- 1) Department of Administrative Services;
- 2) Department of Job and Family Services;
- 3) Department of Medicaid;
- 4) Department of Taxation;
- 5) Attorney General; or
- 6) Any Cooperative Purchasing Member to which the IRS provided FTI.

I Performance

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

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

II Criminal Sanctions

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a

felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of the officer or employee (United States for Federal employees) in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC 7213A and 7431.
- (3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- (4) Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (See Exhibit 4, *Sanctions for Unauthorized Disclosure*, and Exhibit 5, *Civil Damages for Unauthorized Disclosure*). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

III Inspection

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

9.27 Registration with the Secretary of State.

In consideration of the mutual promises and obligations contained in the Agreement and this Amendment, the parties agree to add language to the Agreement as follows:

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

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

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

WITNESS WHEREOF, the Parties have executed this Agreement which shall be effective on the date signed by the State, 'Effective Date.'

<SERVICE PROVIDER>

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

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

Date

Effective Date

Federal Tax ID



JOHN R. KASICH
GOVERNOR
STATE OF OHIO

Executive Order 2011-12K

Governing the Expenditure
of Public Funds for Offshore Services

WHEREAS, State of Ohio officials and employees must remain passionately focused on initiatives that will create and retain jobs in the United States in general and in Ohio in particular, and must do so especially during Ohio's continuing efforts to recover from the recent recession.

WHEREAS, allowing public funds to pay for services provided offshore has the potential to undermine economic development objectives in Ohio.

WHEREAS, the expenditure of public funds for services provided offshore may deprive Ohioans and other Americans of critical employment opportunities and may also undermine efforts to attract businesses to Ohio and retain them in Ohio, initiatives in which this State has invested heavily.

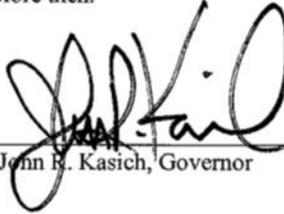
NOW THEREFORE, I, John R. Kasich, Governor of the State of Ohio, by virtue of the authority vested in me by the Constitution and the laws of this State, do hereby order and direct that:

1. No State Cabinet Agency, Board or Commission ("Executive Agency") shall enter into any contract which uses any public funds within its control to purchase services which will be provided outside the United States. This Executive Order applies to all purchases of services made directly by an Executive Agency and services provided by subcontractors of those providing services purchased by an Executive Agency.
2. This Executive Order will be personally provided, by the Director, Chair or other chief executive official of each Executive Agency, to the Chief Procurement Officer or other individual at that entity responsible for contracts for services.
3. The Department of Administrative Services, through Ohio's Chief Procurement Officer, shall have in place, by July 1, 2011, procedures to ensure all of the following:
 - a. All agency procurements officers (APOs), or the person with equivalent duties at each Executive Agency, have standard language in all Executive Agency contracts which:
 - i. Reflect this Order's prohibition on the purchase of offshore services.

- ii. Require service providers or prospective service providers to:
 - 1. Affirm that they understand and will abide by the requirements of this Order.
 - 2. Disclose the location(s) where all services will be performed by any contractor or subcontractor.
 - 3. Disclose the locations(s) where any state data associated with any of the services they are providing, or seek to provide, will be accessed, tested, maintained, backed-up or stored.
 - 4. Disclose any shift in the location of any services being provided by the contractor or any subcontractor.
 - 5. Disclose the principal location of business for the contractor and all subcontractors who are supplying services to the state under the proposed contracts.
 - b. All APOs confirm that all quotations, statements of work, and other such proposals for services affirm this Order's prohibition on the purchase of offshore services and include all of this Order's disclosure requirements.
 - i. Any such proposal for services lacking the affirmation and disclosure requirements of this Order will not be considered.
 - ii. Any such proposal where the performance of services is proposed to be provided at a location outside the United States by the contractor or any subcontractor will not be considered.
 - c. All procurement manuals, directive, policies, and procedures reflect the requirements of this Order.
 - d. All APOs have adequate training which addresses the terms of this Order.
4. Nothing in this Order is intended to contradict any state or federal law. In addition, this Order does not apply to:
- a. Services necessary to support the efforts of the Department of Development to attract jobs and business to the state of Ohio;
 - b. Academic, instructional, educational, research or other services necessary to support the international missions of Ohio's public colleges and universities; or
 - c. Situations in which the Director of the Department of Administrative Services, or the Director's designee, shall determine that it is an emergency or that it is necessary for the State to waive some or all of the requirements of this Order. The Director shall establish standards by which Executive Agencies may request a waiver of some or all of the requirements of this Order and by which such requests will be evaluated and may be granted.
5. Executive Order 2010-09S is hereby rescinded.

I signed this Executive Order on June 21, 2011 in Columbus, Ohio and it will expire on my last day as Governor of Ohio unless rescinded before then.




John R. Kasich, Governor

ATTEST:

Jon Husted, Secretary of State

Master Cloud Service Attachment

This Service Attachment (the "Service Attachment"), is between _____ ("Service Provider") having an office at _____, and the State of Ohio, through the Department of Administrative Services, Office of Information Technology ("the State"), having its principal place of business at 1320 Arthur E. Adams Drive, 3rd Floor, Columbus, OH 43221 (jointly referred hereto as the "Parties"), and it is effective as of the date signed by the State. It amends that certain Master Cloud Services Agreement ("MCSA") between the Parties dated _____.

1. Definitions. [None.]

The defined terms in the Master Cloud Services Agreement will have the same meanings in this Service Attachment as they do in the MCSA. There may be additional definitions contained herein.

2. Services.

Overview. [Provide a list of all Services available under this Service Attachment and a description of each. A separate Services Attachment should be used for each major Service of the Service Provider.]

Standard Service Features. [List and provide a description of all Service features that are included as part of the standard cost.]

Optional Service Features. [List and provide a description of all optional Service features that are not included as part of the standard cost, such as costs associated with bandwidth, page views, storage, organizations ("Orgs"), domains, sandboxes, full sandboxes, and such. Otherwise it will be agreed and stated that all such items are free of charge and will be provided in unlimited quantities.]

Provision of Services. The Service Provider will make the Services available to the Subscribing Entities pursuant to the Agreement, this Service Attachment, and the applicable Order Forms during each Order Term. The State agrees that purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by the Service Provider regarding future functionality or features.

The Service Provider Responsibilities. The Service Provider must: (i) provide the Service Provider's basic support for the Services to the Subscribing Entities at no additional charge, and/or upgraded support if available and if purchased, (ii) use commercially reasonable efforts to make the Services [available 24 hours a day, 7 days a week], except for: (a) planned downtime (of which the Service Provider must give at least 8 hours notice via the Services and which the Service Provider must schedule [10 p.m. and 6 a.m. Eastern Time and on Saturdays], or (b) any unavailability covered by the Agreement's Excusable Delay clause or by the Service Level section later herein, and (iii) provide the Services in full accordance with applicable laws and government regulations.

3. Fees and Payment

Fee Structure. [Provide pricing information for all Services and all optional features. Include all parameters, such as length of subscription, volume discounts, discount from list price, and payment intervals and due dates. Include a professional services rate card or a blended rate, if applicable, for such things as training, consulting, etc.]

Fees. The Subscribing Entities will pay all fees specified in all Order Forms hereunder, subject to the terms of the Agreement. Except as otherwise specified herein or in an Order Form, fees are based on Services purchased and not actual usage, and the number of Object subscriptions (e.g., the number of users) purchased cannot be decreased during the relevant Order Term, except as provided in the Agreement. They may, however, be increased during an Order Term. Object subscription fees are based on [monthly] periods that begin on the subscription start date and each [monthly] anniversary thereof; therefore, fees for Object subscriptions added in the middle of a [monthly] period will be charged for that full [monthly] period and the [monthly] periods remaining in the subscription term. Additions of Object subscriptions during a term does not extend that term. No Order Form may specify a subscription term not identified and priced in this Attachment. Nor may it cover any billable services not listed in this Service Attachment as a Service.

After 90 days, the Service Provider may suspend the delinquent Subscribing Entity's access to the unpaid Services until all delinquent amounts are paid, notwithstanding the prohibition against self-help provided for elsewhere in the Agreement, but the Service Provider may not do so if the Subscribing Entity is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.

Invoicing and Payment. Fees will be invoiced [monthly in arrears] and otherwise in accordance with the Order Form and the Agreement. Fees are due in accordance with the terms of the Agreement, which no Order Form may alter. The Subscribing Entity is responsible for providing complete and accurate billing and contact information to the Service Provider and notifying the Service Provider of any changes to such information.

4. Proprietary Rights

Reservation of Rights in Services. Subject to the limited rights expressly granted hereunder, the Service Provider reserves all rights, title, and interest in and to the Services, including all related intellectual property rights. No rights are granted to the State or Subscribing Entities hereunder other than as expressly set forth herein or elsewhere in the Agreement.

Restrictions. Subscribing Entities will not intentionally permit any third party to access the Services, except as permitted herein or in an Order Form, create derivative works based on the Services except as permitted herein or elsewhere in the Agreement, reverse engineer the Services, or access the Services to build a competitive product or service or to copy any features, functions, or graphics of the Services. Nothing herein prohibits a Subscribing Entity from porting and hosting Generated Code, as defined in this Agreement, to other sites to support its own business purposes during and after any term of an Order.

State Applications and Code. If a Subscribing Entity, a third party acting on a Subscribing Entity's behalf, or a user creates applications or program code using the Services, such will be part of the Subscribing Entity's Data. The Subscribing Entity authorizes the Service Provider to host, copy, transmit, display, and adapt such applications and program code, solely as necessary for the Service Provider to provide the Services in accordance with this Agreement. Subject to the above, the Service Provider acquires no right, title or interest from the Subscribing Entity or its licensors under this Agreement in or to such applications or program code, including any intellectual property rights therein, and the Subscribing Entity is entitled to port, use, and host such anywhere.

Subscribing Entity Data. Subject to the limited rights granted by a Subscribing Entity hereunder, the Service Provider acquires no right, title, or interest from a Subscribing Entity or its licensors under this Agreement in or to the Subscribing Entity Data, including any intellectual property rights therein.

5. Service Levels

SLAs for the Services. This Agreement includes SLAs that will be used to monitor and manage the Service Provider's performance of Services. The minimum SLAs are listed below, but the Service Provider may supplement them with additional SLAs that are generally applicable to its other Services customers, so long as those additional SLAs cover parameters not addressed in the below SLAs or are more stringent than those listed below. Modifications to the SLAs provided below may only be made by the written agreement of the State and the Service Provider, except with respect to SLAs the Service Provider offers generally to other customers that are more stringent or in addition to those below.

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

A Service may be inaccessible to a Subscribing Entity's users during scheduled downtime. Scheduled downtime will occur for less than [one hour] between [10 p.m. and 6 a.m. Eastern Time and on Saturdays], but not more than once [monthly]. The Service Provider may change the scheduled downtime to other non-business hours upon reasonable notice to the affected Subscribing Entities. Scheduled downtime will not be considered times when the Services are Unavailable.

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

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

SLA Credits.

The “Target Availability Level” is the Service’s Availability Level that the Service Provider plans to meet or exceed during each calendar month. The “Service Availability Level” is the number of hours during a particular period that the Service was Available to the Subscribing Entity, excluding scheduled downtime permitted above, divided by the total number of hours during such period. The Target Availability Level is provided in the next section.

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

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

Any such credits must be paid to the Subscribing Entity within 30 days after the month in which the Service Provider fails to meet the Target Availability Level.

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

Specific SLAs.

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

[Insert SLAs for performance parameters such as response time, page refresh rate, a permissible window for disaster recover, etc.]

6. Terms and Termination

Term of Subscriptions. Subscriptions commence on the start date specified in the applicable Order Form and continue for the subscription term specified therein, subject to relevant provisions in the MCSA, such as termination and the non-appropriation provisions. Should a Subscribing Entity elect to renew a subscription, provided this Agreement remains in effect or is renewed, the renewal will be at the Subscribing Entity’s option and will be for the same or greater discount from list as the subscription being renewed and under the same terms and conditions, unless a change in governmental law, rules,

or regulations requires a modification, in which case the Parties will in good faith negotiate the modifications necessitated by such a change in governmental law, rules, or regulations.

7. Miscellaneous

Return of Subscribing Entity Data

At no additional cost to the Subscribing Entity, upon request made at anytime during a Service term or within 90 days after the effective date of termination or expiration of a Subscribing Entity’s Order for that Service, the Service Provider will make available to the Subscribing Entity for download its Subscribing Entity Data covered by that terminated or expired Service, including any Generated Files, in native format or any other format the Subscribing Entity reasonably requests within one day of the request and at no additional charge to the Subscribing Entity. After such 90-day period, the Service Provider will have no obligation to maintain the Subscribing Entity Data covered by an expired Service Order and must thereafter, unless legally prohibited, delete the applicable Subscribing Entity Data in its systems or otherwise in its possession or under its control.

[Add anything not covered by the above sections.]

In Witness Whereof, the Parties have executed this Service Attachment, which is effective on the date the State’s duly authorized representative signs it on behalf of the State, (“Effective Date”).

SERVICE PROVIDER

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

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Effective Date

Federal Tax ID



JOHN R. KASICH
GOVERNOR
STATE OF OHIO

Executive Order 2011-12K

Governing the Expenditure
of Public Funds for Offshore Services

WHEREAS, State of Ohio officials and employees must remain passionately focused on initiatives that will create and retain jobs in the United States in general and in Ohio in particular, and must do so especially during Ohio's continuing efforts to recover from the recent recession.

WHEREAS, allowing public funds to pay for services provided offshore has the potential to undermine economic development objectives in Ohio.

WHEREAS, the expenditure of public funds for services provided offshore may deprive Ohioans and other Americans of critical employment opportunities and may also undermine efforts to attract businesses to Ohio and retain them in Ohio, initiatives in which this State has invested heavily.

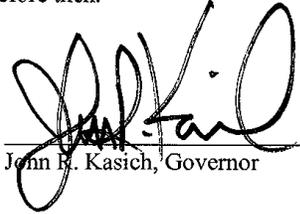
NOW THEREFORE, I, John R. Kasich, Governor of the State of Ohio, by virtue of the authority vested in me by the Constitution and the laws of this State, do hereby order and direct that:

1. No State Cabinet Agency, Board or Commission ("Executive Agency") shall enter into any contract which uses any public funds within its control to purchase services which will be provided outside the United States. This Executive Order applies to all purchases of services made directly by an Executive Agency and services provided by subcontractors of those providing services purchased by an Executive Agency.
2. This Executive Order will be personally provided, by the Director, Chair or other chief executive official of each Executive Agency, to the Chief Procurement Officer or other individual at that entity responsible for contracts for services.
3. The Department of Administrative Services, through Ohio's Chief Procurement Officer, shall have in place, by July 1, 2011, procedures to ensure all of the following:
 - a. All agency procurements officers (APOs), or the person with equivalent duties at each Executive Agency, have standard language in all Executive Agency contracts which:
 - i. Reflect this Order's prohibition on the purchase of offshore services.

- ii. Require service providers or prospective service providers to:
 - 1. Affirm that they understand and will abide by the requirements of this Order.
 - 2. Disclose the location(s) where all services will be performed by any contractor or subcontractor.
 - 3. Disclose the locations(s) where any state data associated with any of the services they are providing, or seek to provide, will be accessed, tested, maintained, backed-up or stored.
 - 4. Disclose any shift in the location of any services being provided by the contractor or any subcontractor.
 - 5. Disclose the principal location of business for the contractor and all subcontractors who are supplying services to the state under the proposed contracts.
 - b. All APOs confirm that all quotations, statements of work, and other such proposals for services affirm this Order's prohibition on the purchase of offshore services and include all of this Order's disclosure requirements.
 - i. Any such proposal for services lacking the affirmation and disclosure requirements of this Order will not be considered.
 - ii. Any such proposal where the performance of services is proposed to be provided at a location outside the United States by the contractor or any subcontractor will not be considered.
 - c. All procurement manuals, directive, policies, and procedures reflect the requirements of this Order.
 - d. All APOs have adequate training which addresses the terms of this Order.
4. Nothing in this Order is intended to contradict any state or federal law. In addition, this Order does not apply to:
- a. Services necessary to support the efforts of the Department of Development to attract jobs and business to the state of Ohio;
 - b. Academic, instructional, educational, research or other services necessary to support the international missions of Ohio's public colleges and universities; or
 - c. Situations in which the Director of the Department of Administrative Services, or the Director's designee, shall determine that it is an emergency or that it is necessary for the State to waive some or all of the requirements of this Order. The Director shall establish standards by which Executive Agencies may request a waiver of some or all of the requirements of this Order and by which such requests will be evaluated and may be granted.
5. Executive Order 2010-09S is hereby rescinded.

I signed this Executive Order on June 21, 2011 in Columbus, Ohio and it will expire on my last day as Governor of Ohio unless rescinded before then.





John R. Kasich, Governor

ATTEST:

Jon Husted, Secretary of State

STANDARD AFFIRMATION AND DISCLOSURE FORM
EXECUTIVE ORDER 2011-12K

Governing the Expenditure of Public Funds on Offshore Services

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

By the signature affixed hereto, the Service Provider affirms, understands and will abide by the requirements of Executive Order 2011-12K. If awarded a contract, both the Service Provider and any of its subcontractors will perform no Services requested under this Agreement outside of the United States.

The Service Provider will provide all the name(s) and location(s) where Services under this Agreement will be performed in the spaces provided below or by attachment. Failure to provide this information may subject the Service Provider to sanctions. If the Service Provider will not be using subcontractors, indicate "Not Applicable" in the appropriate spaces.

1. Principal location of business of Service Provider:

(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 Service Provider:

(Address) (City, State, Zip)

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

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

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

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

(Address)

(Address, City, State, Zip)

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

(Name)

(Address, City, State, Zip)

Service Provider also affirms, understands and agrees that Service Provider and its subService Providers are under a duty to disclose to the State any change or shift in location of Services performed by Service Provider or its subcontractors before, during and after execution of any Agreement with the State. Service Provider agrees it will 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 Service Provider to perform the Services outside the United States.

On behalf of the Service Provider, 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 Agreement that Service Provider may enter into with the State and is incorporated therein.

By: _____
Service Provider

Print Name: _____

Title: _____

Date: _____