

## INVITATION TO BID

**ITB NUMBER: ACQ1039**  
**DATE ISSUED: May 1, 2020**

The State of Ohio, through the Department of Administrative Services, Enterprise IT Contracting, is requesting bids for:

### ServiceNow On Demand Subscription Licensing

**INQUIRY PERIOD BEGINS: May 1, 2020**  
**INQUIRY PERIOD ENDS: May 12, 2020**  
**OPENING DATE: May 29, 2020**  
**OPENING TIME: 1:00 P.M.**  
**OPENING LOCATION: Department of Administrative Services**  
**General Services Division**  
**4200 Surface Road**  
**Columbus, Ohio 43228**

This ITB consists of five parts, eight attachments, and one exhibit, totaling 36 consecutively numbered pages. Please verify that you have a complete copy.

## PART ONE: EXECUTIVE SUMMARY

**Purpose.** This is an Invitation to Bid (“ITB”) under Sections 125.07 and 125.18 of the Ohio Revised Code (the “Revised Code”) and Rule 123:5-1-07 of the Ohio Administrative Code (the “Administrative Code”). The State of Ohio (the “State”), through the Department of Administrative Services, is soliciting bids (“Bids”) for providing ServiceNow On Demand subscription licenses. The specific requirements for this ITB are included in Attachment One, Requirements and Special Provisions, attached to this ITB and incorporated herein by reference.

**ITB Process.** If a participating vendor (“Bidder”) submits a suitable Bid in response to this ITB, the State, may enter into a contract (the “Contract”) to have the selected Bidder (the “Contractor”) provide all or part of the subscription licenses defined in Attachment Three to this ITB. This ITB provides details on what is required to submit a Bid, how the State will evaluate the Bids, and what will be required of the Contractor under the Contract.

This ITB also gives the estimated dates for the various events in the bid process and performance of the Contract. While these dates are subject to change, prospective Bidders 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 Contractor’s performance under the Contract is completed to the satisfaction of the State and the Contractor is paid or June 30, 2025, whichever is sooner. The State may renew this Contract for two additional two-year terms. The maximum duration through all renewals will be from the award date until June 30, 2029. Any renewal of all or part of the Contract is subject to the satisfactory performance of the Contractor and the needs of the State.

**The State may reject any Bid if the Bidder fails to meet a deadline in the bid process or objects to the dates for performance of the Contract or the terms and conditions in this ITB. The State also may reject any Bid if the Bidder fails to meet the requirements of this ITB.**

**Background.** The ServiceNow application™, a Software as a Service (SaaS) provider, is the center point for State of Ohio Office of Information Technology (“OIT”) Enterprise Service Management (“ESM”) across the State. OIT maintains enterprise licensing on behalf of State of Ohio agencies, boards, and commissions. ServiceNow based business solutions are offered by OIT as well as agency-specific uses of ESM suitable to their needs and requirements. Currently, 19 agencies use ServiceNow and the ESM administration continues to onboard additional agencies in using the ServiceNow SaaS solution. The State continues to purchase and add additional ServiceNow modules, functionality, and services. The ESM administration has been purchasing and managing ServiceNow On Demand subscription licenses directly through ServiceNow. ServiceNow is no longer managing subscription licensing directly and we are seeking a ServiceNow reseller to provide and manage purchases of ServiceNow On Demand subscription licensing for the state of Ohio and Cooperative Purchasing Members (“CPM”) as defined below. CPMs, through the Contract, will have an option to purchase ServiceNow On Demand subscription licenses. CPMs will also have the option to obtain ServiceNow subscription licenses via other cooperative agreements or resellers. State of Ohio includes OIT, agencies, commissions, and boards.

**Subscribing Entities** means State agencies, boards, and commissions that place orders through the State’s ordering system. It also includes other entities of the State such as the legislative and judicial branches of State government and the independent offices of elected State officials that may place orders under the Contract.

**Cooperative Purchasing Members (“CPM”)** are entities that qualify for participation in the State’s cooperative purchasing program under Section 125.04 of the Ohio Revised Code 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 Revised Code, 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.

**Objectives.** The State has the following objectives for this ITB, and it is the Bidder’s obligation to ensure that the Bidder’s response meets these objectives:

- Provide the State of Ohio with ServiceNow On Demand Subscription License services for all Subscribing Entities;
- Provide ServiceNow On Demand subscription license services for CPM if requested by a State of Ohio CPM;
- Bid prices for each product SKU ServiceNow subscriber licenses in a '% discount from Retail' format so the State can predict, anticipate and normalize cost for current and new ServiceNow product SKUs as they become available;
- Provide ServiceNow On Demand subscription licenses for modules, add-ons, plug-ins or other products currently licensed by Subscribing Entities;
- Provide Prices for ServiceNow delivered training and other ServiceNow delivered services as needed;
- Must be able to manage annual State of Ohio On Demand Subscription licensing renewals utilizing the State of Ohio payment schedule without interruption of service; and
- Maintain timeline for ordering, and fulfillment of ServiceNow license requests.

**Calendar of Events.** The schedule for the bid process is given below. The State may change this schedule at any time. If the State changes the schedule before the Bid Due Date, it will do so through an announcement on the State Procurement Website's question and answer area for this ITB. The Website announcement will be followed by an amendment to this ITB, also available through the State Procurement Website. After the Bid Due Date and before the award of the Contract, the State will make schedule changes through the ITB amendment process. It is each prospective Bidder's responsibility to check the Website question and answer area for this ITB for current information regarding this ITB and its Calendar of Events through award of the Contract.

**Dates:**

Firm Dates

<b>ITB Issued:</b>	<b>May 1, 2020</b>
Inquiry Period Begins:	<b>May 1, 2020</b>
<b>Inquiry Period Ends:</b>	<b>May 12, 2020 @ 8:00 a.m.</b>
<b>Bid Due Date:</b>	<b>May 29, 2020 @ 1:00 p.m.</b>

Estimated Dates

Contract Award:	June/July, 2020
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Delivery Date:

Within 30 days after receiving a purchase

There are references in this ITB to the Bid Due Date. Prospective Bidders must assume, unless it is clearly provided to the contrary in this ITB, that any such reference means the date and time (Columbus, Ohio local time) that the Bids are due and not just the date.

## **PART TWO: STRUCTURE OF THIS ITB**

**Organization.** This ITB is organized into five parts and eight attachments and one exhibit. The parts and attachments are listed below. All documents listed below are a part of and incorporated into this ITB.

### **Parts:**

Part One: Executive Summary  
Part Two: Structure of this ITB  
Part Three: General Instructions  
Part Four: Evaluation of Bids  
Part Five: Award of the Contract

### **Attachments:**

Attachment One Requirements and Special Provisions  
Attachment Two Requirements for Bids  
Attachment Three General Terms and Conditions  
Attachment Four Sample Contract  
Attachment Five Bidder Certification  
Attachment Six Buy Ohio and Buy American Certification  
Attachment Seven Cost Summary  
Attachment Eight Standard Affirmation and Disclosure Form

### **Exhibits:**

Exhibit One ServiceNow Terms and Conditions

### PART THREE: GENERAL INSTRUCTIONS

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

**Contacts.** The following person will serve as the Procurement Representative for the State during the ITB process:

Valerie Piccininni  
Department of Administrative Services  
Enterprise IT Contracting  
4200 Surface Rd.  
Columbus, Ohio 43228

During the performance of the Contract, a State representative (the "Contract Representative") will represent the Ohio Department of Administrative Services and be the primary contact for the Contract. The State will designate the Contract Representative in writing after the Contract award.

**Requirement and Special Provisions:** Attachment One provides specific requirements the State will use to evaluate the bids, including any mandatory requirements.

**Inquiries.** Prospective Bidders may make inquiries regarding this ITB anytime during the inquiry period listed in the Calendar of Events. To make an inquiry, prospective Bidders must use the following process:

- Access this procurement via the State's Procurement Website and on the right, select "**Bid Opportunities Search**";
- In the "**Document/Bid Number**" field, enter the ITB number, **ACQ1039**, of this ITB;
- Select "**Invitation to Bid**" 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 Bidder's representative (the Bidder Representative) who is responsible for the inquiry,
  - Name of the prospective Bidder,
  - The Bidder Representative's business phone number, and
  - The Bidder Representative's email address.
- Type the inquiry in the space provided including:
  - A reference to the relevant part of this ITB,
  - The heading for the provision under question, and
  - The page number of the ITB where the provision can be found.
- Enter the Confirmation Number at the bottom of the page
- Click the "Submit" button.

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

Prospective Bidders 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 ITB.

**Amendments to the ITB.** If the State amends this ITB before the Bids are due, it will announce all amendments on the State Procurement Website.

Bidders may view amendments by using the search function of the State's Procurement Webpage detailed above, and then clicking on the amendment number listed on the Bid Opportunity page to display the amendment.

When the State amends this ITB, it also may extend the Bid 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 Bids are due, and it is each prospective Bidder's responsibility to check for announcements and other current information regarding this ITB.

**Bid Submittal.** Each Bidder must submit two (2) completed, sealed, and signed copies of its Bid in an opaque package. The Bidder must clearly mark the exterior of the package "**ServiceNow Licensing Bid – ACQ1039**" on the outside.

In each sealed package, the Bidder must include an electronic copy of everything contained within the package on CD-ROM in Microsoft Office or PDF format, as appropriate. If there is a discrepancy between the hard copy and the electronic copy of the Bid, the hard copy will control, and the State will base its evaluation of the Bid on the hard copy.

Bids are due no later than 1:00 p.m. on the Bid Due Date. The State will reject Bids submitted by email or fax. Bidders must submit their Bids to:

Department of Administrative Services  
General Services Division  
Office of Procurement Services  
4200 Surface Road  
Columbus, Ohio 43228  
Attn: Bid desk

The State may reject any Bid or unsolicited modifications that it receives after the deadline. A Bidder that mails its Bid must allow for adequate mailing time to ensure its timely receipt. Additionally, Bidders 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.

Each Bidder must carefully review the requirements of this ITB and the contents of its Bid. Once opened, Bids cannot be altered or withdrawn, except as allowed by this ITB or as specifically permitted by the State.

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

All Bids and other material that Bidders submit will become the property of the State and may be returned only at the State's option. Bidders should not include any proprietary information in a Bid or in other material submitted as part of the evaluation process because the State will have the right to use any materials or ideas submitted without compensation to the Bidder. Additionally, all Bids will be open to the public after the Bid opening.

The State will retain all Bids, 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 Bids and any copies of them.

Prospective Bidders may not prepare or modify their Bids on State property.

**Cost Summary is included in Attachment Seven.** The Cost Summary is available on the Procurement website with the documents associated with the ITB. The Cost Summary is the document where the bidder provides bids for licenses as indicated. Current estimates of quantities of subscription licenses currently used by state of Ohio Subscribing Entities is included within the Cost Summary as well as the ServiceNow parts list currently in use or under considered for use by the state of Ohio.

**Waiver of Defects.** The State may waive any defects in any Bid or in the submission process followed by a Bidder. But the State will only do so if it believes that it is in the State's interests and will not cause any material unfairness to other Bidders.

**Changes to Bids.** The State will allow modifications to and withdrawals of Bids only if the State receives them before the Bid Due Date. No modifications or withdrawals will be permitted after the Bid Due Date, except as authorized by this ITB or as specifically permitted by the State.

**Bid Instructions.** Each Bid must be organized in an indexed binder ordered in the same manner as the response items are ordered in Attachment Two, Requirements for Bids, attached to this ITB and incorporated herein by reference, which describes the requirements for a Bid's contents and formatting. The State wants clear and concise Bids, but Bidders must answer questions completely and meet all the ITB's requirements.

**Bid Costs.** The State is not liable for any costs a Bidder incurs in responding to this ITB or from participating in the bidding process. This is true regardless of whether the State awards the Contract through this process, decides not to go forward with the procurement, cancels this ITB for any reason, or contracts for the subscription licenses through another ITB or a different process.

**Certification (Buy American, Buy Ohio, Veteran Preference).** The Bidder must complete and submit the Certification contained in Attachment Six to this ITB and incorporated herein by reference .

**Standard Affirmation and Disclosure.** The bidder must complete and submit the Certification contained in Attachment Eight. Certification affirms and understands that if awarded a contract, both the Contractor and any of its subcontractors shall perform no services requested under this Contract outside of the United States.

## PART FOUR: BID EVALUATION

**Bid Opening.** The State will open the Bids on the Bid Due Date at 1:00 p.m. and Bidders may attend the opening. The State will open the Bids in the presence of a representative of the Ohio Auditor of State. After the opening, the Procurement Representative will begin the initial review of the Bids.

**Rejection of Bids.** The State may reject any Bid that is late, not in the required format, does not address all of the requirements of this ITB, or that the State believes is excessive in price. The State also may reject any Bid in which the Bidder takes exception to the terms and conditions of this ITB, includes assumptions or conditions, or fails to comply with the procedures for participating in the ITB process. In addition, if the State believes it is in its interests to do so, it may cancel this ITB, reject all the Bids, and seek to make the procurement through a new ITB or other means.

**Evaluation of Bids.** The Bid evaluation process may consist of up to six phases:

1. Initial review
2. Determination of costs
3. Application of Buy Ohio and American preferences
4. Determination of responsiveness
5. Determination of responsibility
6. Award

**Clarifications and Corrections.** During the evaluation process, the State may request clarifications from any Bidder with a Bid under active consideration and may give any Bidder the opportunity to correct defects in its Bid. But the State will do so only if it believes that it is in the State's interests to do so and it will not result in an unfair advantage for the Bidder. The State may reject any clarification that is non-responsive or broader in scope than what the State requested. If the State does reject such a clarification, it then may request a corrected clarification, consider the Bid without the clarification, or disqualify the Bid.

Bidders may not prepare corrections or clarifications to their Bids on State property.

**Initial Review.** The Procurement Representative will review all Bids for their format and completeness. The Procurement Representative normally rejects incomplete or incorrectly formatted Bids, though he or she may waive any minor defects or allow a Bidder to submit a correction for such defects. Further, if the Auditor of State does not certify a Bid due to lateness, the Procurement Representative will not open it or evaluate it for format or completeness.

**Determination of Lowest Bid.** For the State to determine that a Bid is the lowest Bid, the State must determine that the Bid comes from a responsible Bidder, the Bid is responsive to the requirements of this ITB, and the Bid offers the lowest-cost in comparison to all other responsive Bids from responsible Bidders. The State will make this determination without regard to any discounts or incentives and only after application of any preferences, as further described below.

**Preferences.** The Contract award is subject to the domestic preference provisions of the Buy America Act, 41 U.S.C. Sections 10a-d (1976), as amended. It also is subject to the preference for Ohio products under Revised Code Sections 125.09 and 125.11 and Ohio Administrative Code Rule 123:5-1-06.

**Discounts and Incentives.** While Bidders may offer discounts for prompt payment and other similar incentives, discounts and incentives will not be used to determine the lowest Bidder.

**Determination of Responsiveness.** After the determination of the lowest Bid, the State will evaluate the lowest Bid to determine whether it is responsive. A Bid is responsive if it responds to the ITB's specifications in all material respects and contains no irregularities or deviations from the specifications that would affect the amount of the Bid, give the Bidder an unfair competitive advantage, or affect the value the State will receive from the award.

The State always will review the responsiveness of the selected Bid before making the award. If the State determines that the selected Bid is not responsive, the State may reject it and review the next lowest Bid for its responsiveness. The State may continue this process until it identifies a responsive Bid or determines that no acceptable Bid is responsive.

**Determination of Responsibility.** After the determination of the lowest responsive Bid, the State will review the background of the lowest Bidder and its subcontractors, if applicable, to ensure the responsibility of the Bidder. The State will not award the Contract to a Bidder that it determines is not responsible or that has proposed subcontractors that are not responsible. The State's determination of a Bidder's responsibility may include the following factors: experience, financial condition, conduct and performance on previous contracts, facilities, management skills, and ability to execute the Contract properly. The State may make this determination of responsibility based on information in the Bidder's Bid, from reference evaluations, from a review of the Bidder's financial ability, and any other sources that the State requests from the Bidder or that it determines is relevant.

The State always will review the responsibility of the selected Bidder before making the award. If the State determines that the selected Bidder is not responsible, the State may reject its Bid and review the next lowest Bidder for its responsibility. The State may continue this process until it identifies a responsible Bidder or determines that no Bidder with an acceptable Bid is responsible.

**Reference Checks.** As part of the State's determination of a Bidder's responsibility, the State will conduct reference checks to verify and validate the Bidder's past performance. Reference checks that indicate poor or failed performance by the Bidder may be cause for rejection of the Bid. Additionally, the State may reject a Bid as non-responsive if the Bidder fails to provide adequate reference information to complete its evaluation process.

References must be provided to demonstrate the Bidder's ability to provide the products and/or services required by the State. References will be verified. References provided by the Bidder must agree to be interviewed by representatives of the State.

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

**Debarment.** The State will not award the Contract to any Bidder that is listed on the State's debarment list at the time of the award. Further, the State will not award the Contract to any Bidder on the U.S. government's debarment list at the time of the award if the State is relying on federal funds to make payments under the Contract or otherwise believes it is not in the State's interest to do so.

**Section 9.24 Findings.** 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 Bid, the Bidder warrants that it is not subject to an unresolved Finding under Revised Code Section 9.24 at the time of its submission. Additionally, the Bidder warrants that it will notify the Procurement Representative in writing immediately upon becoming subject to such an unresolved Finding after submitting its Bid and before the award of a Contract under this ITB. Should the State select the Bidder for an award of a Contract, this warranty of immediate written notice will apply during the term of the Contract, including any renewals or extensions.

**Tie Bids.** If two or more Bidders offer the same cost and both are determined to be responsive and responsible, the State may break the tie with the flip of a coin, or the State may award to all responsive and responsible Bidders offering the same cost. If selection is made by a coin flip, then the State may assign "heads" and "tails" to the Bidders. The coin flip may be conducted in the presence of the Bidders, if they elect to be present. The flip will be the final determination of the lowest, responsive, and responsible Bidder.

**Unit Costs.** Bidders must provide a unit cost for each line item in the Cost Summary Form and not just a total cost. If this ITB expressly provides that some line items are optional, and the Bidder does not plan to offer the State an optional line item as part of its Bid, the Bidder must enter "No bid" on that line item. Unless this ITB expressly provides otherwise, all line items are mandatory. Bidders may not provide a cost using fractional cents, and the State may reject any Bid that does not provide its costs in whole cents.

**Estimated Quantities.** Unless otherwise expressly provided in this ITB, quantities of software licenses given in this ITB are estimates only. The State makes no guarantee that the State will make any purchases pursuant to this ITB or that the actual amount of software licenses the State purchases under the Contract will meet the estimates. Any estimated quantities are provided in Attachment One, and the selected Bidder must be prepared to meet those quantities. The State may procure additional items subsequent to the initial purchase. Additional purchases will be procured at the single unit cost as listed in the Cost Summary.

**Corrections after Bid Opening.** After the Bid opening, the State may permit a Bidder alleging an inadvertent error to correct its Bid, but only if the mistake and the correction are clearly evident from the Bid and the correction does not affect the amount of the Bid or otherwise give the Bidder an unfair competitive advantage.

**Bids are Firm.** Once opened, all Bids are firm and irrevocable for 90 days. Beyond 90 days, the Bidder will have the option of honoring its Bid or making a written request to withdraw it from consideration.

**Samples.** The State may require Bidders to provide sample supplies, equipment, or examples of work, and each Bidder must comply with the request at its sole expense. Samples must clearly identify the Bidder, the ITB number, and the item the sample represents in the Bidder's Bid. Upon the Bidder's timely request, the State will return samples that are not destroyed by testing to the Bidder at the Bidder's expense. The State may keep the samples of the Bidder that is awarded the Contract until the completion of the Contract. Unsolicited samples submitted in response to this ITB will not be evaluated, and the State may dispose of them in any way it chooses. Attachment One will indicate whether any samples are required and, if so, provide more details on the process for submitting them. If a Bidder fails to fully comply with the submission process, the State may reject the affected Bid.

**Communications.** During the evaluation process, any attempt by a Bidder to influence the evaluation process may be grounds for immediate disqualification of the Bidder.

**Certifications.** When submitting a Bid, the Bidder must sign and submit the Bidder Certification Form that is included as Attachment Five to this ITB and incorporated herein by reference. Failure to submit all the required certifications may result in the State disqualifying the Bidder. Certifications that require commitments during performance of the Contract will bind the Contractor to honor those commitments, and any failure to do so will be grounds for termination of the Contract for default. Additionally, the State may terminate the Contract immediately on notice should any of the certifications have been untrue when the successful Bidder submitted its Bid or at the time of the Contract award.

**Subcontracting.** The State does not permit subcontracting on this Contract. However, if it becomes necessary in the future for the Bidder to use a subcontractor to perform a portion of the work to be done under the Contract, the Bidder must be the primary contractor for the overall effort. The Bidder must identify its subcontractors, suppliers, and joint ventures for performance of the Contract. The Bidder must supplement its list of subcontractors, suppliers, or joint ventures if the Bidder's subcontractors, suppliers, or joint ventures change during the term of this Contract. The Bidder may not use any subcontractor that has been the subject of any government action to limit the subcontractor's right to do business with that government in the last seven years. The Bidder must provide a written explanation with its Bid if the Bidder's subcontractor cannot so certify. Further, the Bidder must obtain each subcontractor's agreement in writing to be bound to all the terms, conditions, and specifications of the Contract. The State may deny use of any subcontractor if the State determines that the Bidder will not be the primary Contractor who will perform the work under the Contract.

## PART FIVE: AWARD OF THE CONTRACT

**Contract Award.** The State plans to award the Contract based on the schedule in the ITB, if the State decides the procurement is in its best interests and has not changed the award date. Unless otherwise stated in this ITB, the State may award the Contract by item or as a whole.

If the State makes an award pursuant to this ITB, and the Contractor is unable or unwilling to perform under the Contract, the State may cancel the Contract, effective immediately on notice to the Contractor. The State then may return to the evaluation process under this ITB and resume the process without giving further consideration to the originally selected Bidder. Additionally, the State may seek such other remedies as may be available to the State in law or in equity for the selected Bidder's failure to perform under the Contract.

**Contract.** A sample contract is included in Attachment Four. The State will issue an original Contract to the Contractor upon award of this ITB. The Contractor will sign and return the original Contract as instructed by the State. The Contract will bind the State only when the State's duly-authorized representative signs all copies of the Contract and returns one to the Contractor and all other prerequisites identified in the Contract have occurred.

If this ITB results in an award, the Contract will consist of the one-page Contract in its final form, together with the documents listed in the one-page Contract, including this ITB with all attachments and exhibits, written amendments to this ITB, the Contractor's accepted Bid, and written, authorized amendments to the Contractor's Bid. It also will include any materials incorporated by reference in the above documents under the Contract. The general terms and conditions for the Contract are contained in Attachment Three to this ITB and incorporated herein by reference. The ServiceNow Terms and Conditions attached to this ITB as Exhibit One and incorporated herein by reference are also part of the Contract. If there are conflicting provisions between the documents that make up the Contract, the order of precedence for the documents is as follows:

1. The one-page Contract;
2. This ITB, as amended;
3. The documents and materials incorporated by reference in the ITB;
4. The Contractor's Bid, as amended, clarified, and accepted by the State; and
5. The documents and materials incorporated by reference in the Contractor's Bid, to the extent they are not inconsistent with any of the foregoing.

Notwithstanding the order listed above, amendments issued after the Contract is executed may expressly change the provisions of the Contract. If they do so expressly, then the most recent of them will take precedence over anything else that is part of the Contract. To be binding on the State, a duly authorized representative of the Department of Administrative Services must sign any change order under, or amendment to, the Contract.

The term of the Contract will be from the award date until the Contractor's performance under the Contract is completed to the satisfaction of the State and the Contractor is paid or June 30, 2025, whichever is sooner. The State may renew this Contract for up to two additional biennia, subject to and contingent on the discretionary decision of the Ohio General Assembly to appropriate funds for this Contract in each new biennium. The maximum duration through all renewals will be from award date until June 30, 2029. Any renewal of all or part of the Contract is subject to the satisfactory performance of the Contractor and the needs of the State.

## ATTACHMENT ONE: REQUIREMENTS AND SPECIAL PROVISIONS

This attachment describes the Bid requirements and what the Contractor must do to perform under the Contract. It also provides specifications for the ServiceNow On Demand subscription licenses under the Contract and gives performance and delivery dates, as applicable.

**Requirements.** The Contractor must meet all of the ITB's requirements, including the following:

- Bidder must be a current Sales certified ServiceNow reseller.
- Bidder must provide ServiceNow On Demand subscription licenses for all modules, add-ons, plug-ins and other ServiceNow Products used by the State of Ohio Subscribing Entities as outlined in Attachment 7 (the current number of licenses used today are included).
- Bidder must provide pricing for all available subscription licenses currently used by or available to the Subscribing Entities, prices must be shown in a \$xxx.xx format per subscription license.
- Bidder must provide pricing as a % discount from retail (List price) for all future, currently unavailable, unpublished or unknown subscription licensing.
- Bidder must provide pricing as a % discount from retail (List price) for ServiceNow delivered Training and professional services.
- Bidder must invoice State of Ohio Subscribing Entities for ServiceNow On Demand Subscription licenses on an annual basis that follows the state's fiscal Year (July 1st through June 30th). Bidder must invoice participating CPM partners per their individual annual fiscal Bidder must provide Ad Hoc delivery of ServiceNow On Demand Subscription licenses, which must be pro-rated dependent on request date.
- Bidder must provide ServiceNow On Demand Subscription Licenses for ServiceNow modules, add-ons and other products outlined for future use, as need arises (i.e. additional non-production environments, ServiceNow delivered Training or Services).
- Bidder may, at its option, provide subscription licenses pricing in Tiers (i.e. purchase price discounts when total volume threshold of used licenses for a particular SKU is surpassed).
- Bidder must follow the ServiceNow Terms and Conditions included in Exhibit One.
- Bidder will apply the same 'percent discount from Retail(List price)' approach for new ServiceNow subscriber licenses product SKUs as they become available and required by the State of Ohio Subscriber Entity and Cooperative Purchasing Members.
- Bidder must provide ServiceNow subscription licenses to Cooperative Purchasing Members (CPM). CPM purchases are optional for each CPM. Each CPM has current and separate subscription license agreements directly with ServiceNow that expire at different times between 2019 and 2021.
- Bidder affirms that the ServiceNow On Demand subscription licenses available to CMP subscribers will be the same price as applied to State of Ohio ServiceNow On Demand Subscription licenses.
- Bidder must provide a monthly written statement that shows monthly costs and number of licenses for each Product SKU.
- Bidder must provide bid price for ServiceNow delivered Training and Services as requests as a % discount for Retail, per unit (i.e. hour, session total, etc)

**Performance Dates.** The licenses must be delivered within 30 days after receiving a purchase order.

**Reimbursable Expenses.** None.

**Bill to Address.**

To be more efficient in our payment processing time, all billing/invoicing must be submitted to one of two payment options below; please do not submit to both.

Mail:

Ohio Shared Services  
PO Box 182880  
Columbus, OH 43218-2880

-Or-

E-mail:

invoices@ohio.gov

To avoid payment delays, please ensure the Purchase Order number (which will be provided upon contract award) is included on all invoice(s). For purchase from Cooperative Purchasing Partners, the purchaser will provide a billing address at time of order.

**Location of Data.** None.

## ATTACHMENT TWO: REQUIREMENTS FOR BIDS

**Bid Format.** Each Bid must include sufficient data to allow the State to verify the total cost for licensing and ServiceNow Support and all of the Bidder's claims of meeting the ITB's requirements in Attachment One. Further, each Bid must respond to every request for information in this attachment.

These instructions describe the required format for a responsive Bid. An identifiable tab sheet must precede each section of a Bid, and each Bid 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 Bid.

Each Bid must contain the following:

- Cover letter
- Supplier Information Form (OBM-5657)
- Bidder Certification Form (Attachment Five)
  - ServiceNow Authorized Reseller Documentation

- Proof of Insurance
- W-9 Form
- Affirmative Action
- References
- Certification (Buy American, Buy Ohio, Veteran Preference) (Attachment Six)
- Cost Summary (Attachment Seven)
- Standard Affirmation and Disclosure Form (Attachment Eight)

All originally signed documents must be included in the same Bid binder, and the Bidder must indicate on the outside of the binder which Bid contains the originally signed documents. Additional copies of the Bid may contain copies of these documents.

**Cover letter.** The Bidder must submit a signed cover letter with a brief company overview.

**Supplier Registration.** The State of Ohio is changing the way new suppliers register to do business with the State. To provide new suppliers with an enhanced registration experience, a new website dedicated to new and existing suppliers is now available. To register to do business in Ohio and to access supplier forms, click here <http://www.supplier.obm.ohio.gov/>.

**Bidder Certification Form.** Each Bidder must complete, sign, and submit the Bidder Certification Form included as Attachment Five.

**ServiceNow Authorized Reseller Documentation.** Bidder must include documentation from ServiceNow showing they are an authorized reseller in good standing. Reseller must have current ServiceNow Sales certification of Premier, Specialist, or Elite.

**Proof of Insurance.** The Bidder must provide the certificate of insurance in the form that Attachment Three requires. The policy may be written on an occurrence or claims made basis.

**W-9 Form.** The Bidder must submit at least one originally signed W-9. A current W-9 form is available at [www.irs.gov](http://www.irs.gov).

**Affirmative Action.** Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be completed at the following link: <http://das.ohio.gov/Divisions/EqualOpportunity/AffirmativeActionProgramVerification.aspx>

**References.** The Bidder must provide references demonstrating the Bidder's ability to provide the licenses required by the State (Part Four: Bid Evaluation – Reference Checks).

**Certification (Buy American, Buy Ohio, Veteran Preference).** The Bidder must complete and submit the Certification contained in Attachment Six to this ITB and incorporated herein by reference.

**Cost Summary.** This ITB includes a Cost Summary Form (Attachment Seven). The Cost Summary is available on the Procurement website with the documents associated with the ITB. Bidders may not reformat this form. Each Bidder must complete the Cost Summary Form in the exact format provided, since the State may reject any Bid with a reformatted Cost Summary Form.

Bidders must offer only the specified items based on the Cost Summary Form contained in Attachment Seven of this ITB and incorporated herein by reference. The total order quantity estimate that is supplied on the Cost Summary Form is for evaluation purposes only.

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

The Bidder's total cost for the licenses must be represented as the total price.

**The State will not be liable for or pay any costs that the Bidder does not identify in its Bid.**

**Affirmation and Disclosure Form.** The Bidder must complete and submit the Affirmation and Disclosure Form attached to this ITB as Attachment Eight.

## ATTACHMENT THREE: GENERAL TERMS AND CONDITIONS

### PART ONE: PERFORMANCE AND PAYMENT

**Statement of Work.** The ITB and the Contractor's Bid (collectively, the "ITB Documents") are a part of this Contract and describe the goods, services, and any other items (the "subscription licenses") the Contractor must deliver under this Contract. The Contractor must provide the subscription licenses in a proper, timely, and efficient manner. The Contractor also must furnish its own support staff necessary for the satisfactory performance of this Contract.

**Payment.** In consideration of the Contractor's promises and satisfactory performance, the State will pay the Contractor the amount(s) identified in the ITB Documents (the "Cost") for any ServiceNow subscription licenses actually ordered by issuance of a valid State purchase order, plus any other expenses identified as reimbursable in the ITB Documents. But in no event will payments under this Contract exceed the "single unit cost" amount in the ITB 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 under this Contract. Payment of the Fee also is contingent on the Contractor delivering a proper invoice and any other documents this Contract requires. 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. If the invoice properly reflects payment due to the Contractor and complies with all the State's requirements for a proper invoice, the State will pay the Contractor within 30 days after the State receives the invoice.

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

The State will pay the Contractor interest on any late payment, as provided in Ohio Revised Code (the "Revised Code") Section 126.30. 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 between the Contractor's appropriate executive and the Department of Administrative Services. The State will consult with the Contractor as early as reasonably possible disputed amount from its payment as a nonexclusive remedy. If the Contractor has committed a material breach, in the sole opinion of the State 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.

**Reimbursable Expenses.** The State will pay all reimbursable expenses identified in the ITB Documents, if any, according to the terms in the ITB Documents and, where applicable, Revised Code Section 126.31. The Contractor is solely responsible for all expenses that it incurs in the performance of this Contract that are not identified as reimbursable in the ITB 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 authorized 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.

**Ohio Payment Card.** The State may use the Ohio Payment Card to purchase subscription licenses from this Contract. Such purchases may not exceed \$2,500 unless the Office of Budget & Management (“OBM”) has approved the purchasing agency to exceed this limit. If OBM increases the dollar limit for payment cards for all State agencies, the State will post notice of the increase on its Procurement Website. Participating State agencies are required to use the Ohio Payment Card in accordance with OBM’s current guidelines for the Ohio Payment Card and the participating agency’s approved plan filed with OBM. The Contractor may process a payment in the payment card network only upon delivery and acceptance of the subscription licenses ordered. For partial deliveries or performance, the Contractor may process a payment for the amount delivered or completed only and not for the entire amount ordered by the participating agency. Upon delivery of the remaining subscription licenses, the Contractor may process a payment request in the payment card network for the remainder of the order. The Contractor will receive payment through its merchant bank within the time agreed on between the Contractor and that merchant bank. The Contractor should expect normal processing fees from its merchant bank for a payment card transaction. The Contractor may not pass on those fees to the State.

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

## PART TWO: 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 goods and services. The Contractor must fully cooperate with and coordinate its performance with all other contractors and State employees as may be required for the smooth and efficient fulfillment of this Contract. The Contractor may not act in any way that may unreasonably interfere with the work of any other contractors or the State's employees.

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

If an audit reveals any material deviation from the Contract's requirements, any misrepresentation, or any overcharge to the State, the State will be entitled to recover its damages, including the cost of the audit.

**Right to Terminate as a Result of Audit Findings.** In the event the State determines that the results of any examination of the Contractor is unsatisfactory per the requirements of the Contract and not remedied within a 30 day period following written notice from the State, the State may terminate this Agreement, in part or in full.

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

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

### MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): written on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be outside the policy limit.
2. Automobile Liability: covering Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with a limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation insurance as required by the State of Ohio, or the state in which the work will be performed, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than \$1,000,000 per accident for bodily

injury or disease. If Consultant is a sole proprietor, partnership or has no statutory requirement for workers' compensation, Consultant must provide a letter stating that it is exempt and agreeing to hold Entity harmless from loss or liability for such.

4. Technology Professional Liability (Errors and Omissions) Insurance appropriate to the Contractor's profession, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall cover all applicable Contractor personnel or subcontractors who perform professional services related to this agreement.

5. Cyber liability (first and third party) with limits not less than \$5,000,000 per claim, \$10,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The coverage shall provide for breach response costs as well as regulatory fines and penalties and credit monitoring expenses with limits sufficient to respond to these obligations.

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

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

**Additional Insured Status**

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

**Primary Coverage**

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

**Umbrella or Excess Insurance Policies**

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

**Notice of Cancellation**

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

**Waiver of Subrogation**

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

### **Deductibles and Self-Insured Retentions**

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

### **Claims Made Policies**

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

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

### **Verification of Coverage**

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

### **Subcontractors**

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

### **Special Risks or Circumstances**

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

### **Contract Remedies.**

1. **Actual Damages.** The Contractor is liable to the State for all actual and direct damages caused by the Contractor's default. The State may self-perform or buy substitute Deliverables from a third party for those that were to be provided by the Contractor. The State may recover the costs associated with acquiring substitute Deliverables, less any expenses or costs avoided by the Contractor's default.
2. **Liquidated Damages.** If actual and direct damages are uncertain or difficult to determine, the State may recover liquidated damages. Unless otherwise specified, liquidated damages will be in the amount of 1% of the value of the order, Deliverable, or milestone that are the subject of the default, for every day that the default is not cured by the Contractor.
3. **Deduction of Damages from Contract Price.** The State may withhold payment and deduct all or any part of the damages resulting from the Contractor's default from any part of the Contractor's compensation still due on the Contract.

**Suspension/Termination.** In the event of suspension or termination the State will issue a notice. Any notice of suspension or termination, in full or in part, will be effective as specified in the notice. The Contractor must immediately cease all work, refuse any additional orders, and take all steps necessary to minimize the costs the Contractor will incur related to this Contract as directed by the notice. Suspension, termination or expiration of this Contract will not limit the Contractor's continuing obligations with respect to Deliverables that the State paid for or limit the State's rights in such.

At the State's request, the Contractor must immediately prepare a final report and deliver such report to the State. The report must detail the work completed and/or the orders received and not processed prior to the time of notice. If applicable, the report must include the percentage of the Project's completion, estimated time for delivery of all orders received but not processed, any costs incurred by the Contractor in doing the Project to date, and any Deliverables completed or partially completed but not delivered to the State at the time of notice. Based on the State's approval of the final report and as directed, the Contractor must deliver work, whether completed or not, to the State. Any delivered work will be subject to approval by the State. The Contractor may be entitled to payment for any Deliverables that have been delivered and accepted at a pro-rated amount based on the compensation structure of this Contract.

## 1. Contract Suspension.

- a. **Suspension for Cause.** If the Contractor fails to perform any one of the Contractor's obligations under this Contract, the Contractor will be in default and the State may suspend rather than terminate this Contract. In the case of suspension for default, the State will be entitled to all remedies available under this Contract.
- b. **Suspension for Convenience.** In the case of a suspension for the State's convenience, the amount of compensation due to the Contractor for work performed before the suspension will be determined in the same manner as provided in Section 1.2.a. for termination for the State's convenience or the Contractor may be entitled to compensation for work performed before the suspension.

The notice of suspension whether, with or without cause, will be effective immediately, on the Contractor's receipt of the notice.

The State may not suspend the Work/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 Work/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.

## 2. Contract Termination.

- a. **Termination for Convenience.** The State may terminate this Contract, or an Ordering Agency may terminate an Order, for its convenience after issuing written notice to the Contractor. The Contractor will be entitled to the pro-rated contract price for any Deliverable or portion of a Deliverable that the Contractor has delivered and the State has accepted before the termination. Total payments will not exceed the amount payable to the Contractor as if the Contract had been fully performed. This will be the Contractor's exclusive remedy in the case of termination for convenience and is available to the Contractor only after the Contractor has submitted a proper invoice.
- b. **Termination for Cause.** If the Contractor fails to perform any of its obligations under this Contract, the Contractor will be in default and the State may terminate this Contract in accordance with this Section. Termination for cause includes but is not limited to:
  - 1) **Termination for Persistent Default.** The State may terminate this Contract for defaults that are cured, but are persistent. "Persistent" means three or more defaults. After the State has notified the Contractor of its third default, the State may terminate this Contract without providing the Contractor with an opportunity to cure. The three defaults are not required to be related to each other in any way.
  - 2) **Termination for Endangered Performance.** The State may terminate this Contract if the State determines that the performance of the Contract is endangered through no fault of the State.
  - 3) **Termination for Financial Instability.** The State may terminate this Contract if the Contractor fails to timely pay its subcontractors, files a petition in bankruptcy or similar action, or the State finds other evidence of the Contractor's financial instability.
  - 4) **Termination for Delinquency, Violation of Law.** The State may terminate this Contract if the State determines that the Contractor is delinquent in its payment of federal, state or local obligations including but not limited to taxes, workers' compensation insurance premiums, unemployment

compensation contributions, child support, court costs or any other obligation owed to a State agency or political subdivision. The State also may terminate this Contract if the State determines that the Contractor has violated any law during the performance of this Contract.

- 5) **Termination for Subcontractor Default.** The State may terminate this Contract for the default caused by the Contractor's subcontractors. Any claims of its subcontractors due to suspension or termination will be the sole responsibility of the Contractor.
- 6) **Termination for Failure to Retain Certification, License, and Permits.** The State may immediately terminate the Contract if Contractor fails to obtain and maintain all official permits, approvals, licenses, certifications (Including CRP, MBE, EDGE and Veteran Friendly Business Enterprise certifications), and similar authorizations required by this Contract or by any local, state, or federal law throughout the duration of this Contract.

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

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

Either party, upon written notice to the other party, may designate another representative.

**Work Responsibilities.** If the Contractor must work on the State's property, the State will provide the Contractor with reasonable access to the work site. After the work is complete, the Contractor must issue a completion letter and secure the signature of the Contract Representative certifying that work is complete. The letter must describe the nature, date, and location of the work, as well as the date the Contract Representative certified the work as complete and operational.

Unless otherwise provided in the ITB Documents, the Contractor is solely responsible for obtaining and maintaining all official permits, approvals, licenses, certifications, and similar authorizations required by any local, state, or federal agency for its performance under the Contract.

**Contract Compliance.** Participating State agencies will be responsible for the administration of the Contract with respect to their individual orders and will monitor the Contractor's performance and compliance with the terms, conditions, and specifications of the Contract. If an agency becomes aware of a breach of the Contractor's obligations under this Contract, such may be documented and conveyed to the Contractor for immediate correction. If the Contractor fails to rectify the breach, the agency may notify the Department of Administrative Services, Office of Procurement Services through a Complaint to Vendor (CTV) to help resolve the situation, and the Department of Administrative services will take the appropriate action under this Contract with respect to the breach, including among other things termination of this Contract, litigation, or initiation of debarment proceedings.

**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 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 will take 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 Revised Code 145.037 ("an entity with five or more employees that is a corporation, association, firm, limited liability company, partnership, sole proprietorship, or other entity engaged in business") Contractor shall have any individual performing services under this agreement complete and submit to the ordering agency the Independent Contractor/Worker Acknowledgement found at the following link: <https://www.opers.org/forms-archive/PEDACKN.pdf>.

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

### **PART THREE: PUBLICITY AND CONFIDENTIAL INFORMATION**

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

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

**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 that the State delivers to the Contractor will remain with the State. The Contractor must treat such Confidential Information as secret, if it is so marked, otherwise identified as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of the public, other contractors, 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 perform under this Contract. Additionally, 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 perform under this Contract. The Contractor will be liable for the disclosure of such information, whether the disclosure is intentional, negligent, or accidental, and the Contractor must indemnify the State against any claims made against the State due to the Contractor's improper disclosure of Confidential Information.

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 Personnel and subcontractors that have access to any Confidential Information must 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.

The Contractor must notify the State in writing as soon as the Contractor learns that the Contractor or any of the Contractor's People or its subcontractors or agents has disclosed any of the State's Confidential Information in a manner that is inconsistent with the requirements of this section.

#### **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.

**Indemnity for Property Damage, Bodily Injury, and Data Breach.** The Contractor must indemnify the State for all liability and expense resulting from bodily injury to any person (including injury resulting in death), damage to tangible or real property, or disclosure/breach of State data including personally identifiable information and State sensitive

information arising out of the performance of this Contract, provided that such bodily injury, property damage, or disclosure/breach is due to the negligence or other tortious conduct of the Contractor, its employees, agents, or subcontractors. The Contractor will not be responsible for any damages or liability to the extent caused by the negligence or willful misconduct of the State, its employees, its other contractors, or its 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 value of this Contract, provided such limitation does not impose an unlawful indemnification obligation upon the State. The limitations in this paragraph do not apply to any obligation of the Contractor to indemnify the State against claims made against it, disclosure/breach of State data including personally identifiable information or State sensitive information, or for damages to the State caused by the Contractor's negligence or other tortious conduct.

## **PART FIVE: ACCEPTANCE**

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

If the Contractor fails to bring a Deliverable into compliance after 60 calendar days from the start of the acceptance period, the Contractor will be in default and will not have a cure period.

## **PART SIX: CONSTRUCTION**

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

**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 will 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 performance and the time for meeting any final payment of compensation, except where such creates an absurdity.

## **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 of the Contractor's Personnel, while working on state property, will not have or be under the influence of illegal drugs or alcohol or abuse prescription drugs in any way.

**Conflicts of Interest.** None of the Contractor's Personnel may voluntarily acquire any personal interest that conflicts with their responsibilities under this Contract. Additionally, the Contractor may not knowingly permit any public official or public employee who has any responsibilities related to this Contract to acquire an interest in anything or any entity under the Contractor's control, if such an interest would conflict with that official's or employee's duties. The Contractor must disclose to the State knowledge of any such person who acquires an incompatible or conflicting personal interest related to this Contract. And the Contractor must take steps to ensure that such a person does not participate in any action affecting the work under this Contract. But this will not apply when the State has determined, in light of the personal interest disclosed, that person's participation in any such action would not be contrary to the public interest.

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

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

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

**Equal Employment Opportunity.** Contractor will comply with all state and federal laws regarding equal employment opportunity and fair labor and employment practices, including but not limited to Ohio revised Code Section 125.111 and all related Executive Orders.

Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be submitted to the 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/>.

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

No State Cabinet, Agency, Board or Commission will enter into any contract to purchase services provided outside the United States or that allows State data to be sent, taken, accessed, tested, maintained, backed-up, stored, or made available remotely outside (located) of the United States, unless a duly signed waiver from the State has been attained. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid for services the Contractor performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided the State in the Contract.

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

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

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

**Antitrust.** The State and the Contractor recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by the State. The Contractor therefore assigns to the State all state and federal antitrust claims and causes of action that the Contractor has or acquires relating to the goods and services acquired under this Contract.

**Legal Compliance.** The Contractor must comply with all applicable laws and regulations, including those of the State regarding conduct on any premises under the State's control, in the performance of this Contract.

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

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

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

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

**ATTACHMENT FOUR: SAMPLE CONTRACT**

**A CONTRACT BETWEEN  
THE DEPARTMENT OF ADMINISTRATIVE SERVICES  
AND**

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

**THIS CONTRACT**, which results from ITB ACQ1039, entitled **ServiceNow On Demand Subscription Licensing**, is between the State of Ohio, through the Department of Administrative Services, and \_\_\_\_\_ (the "Contractor").

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

This Contract consists of:

1. This one-page Contract in its final form;
2. The attached, amended and clarified version of Contractor's Bid in response to ITB ACQ1039 dated \_\_\_\_\_ ("Contractor's Response"). Contractor's Response includes Attachment Three - General Terms and Conditions, and all other Attachments, Supplements and materials included in Contractor's Response as accepted by the State; and
3. The attached Cost Proposal Workbook dated \_\_\_\_\_.

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.

The term of the Contract will from the award date until the Work is completed to the satisfaction of the State and the Contractor is paid or June 30, 2025, whichever is sooner. The State may renew this Contract for up to two (2) additional two (2) year term(s), subject to and contingent on the discretionary decision of the Ohio General Assembly to appropriate funds for this Contract in each new biennium for a maximum contract term expiring June 30, 2029. Any such renewal of all or part of the Contract also is subject to the satisfactory performance of the Contractor and the needs of the State.

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

CONTRACTOR

STATE OF OHIO  
DEPARTMENT OF ADMINISTRATIVE SERVICES

**SAMPLE – DO NOT FILL OUT**

By: \_\_\_\_\_

By: [Matthew M. Damschroder](#)

Title: \_\_\_\_\_

Title: [DAS Director](#)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT FIVE: BIDDER CERTIFICATION FORM**

The Bidder certifies that the following statements are true and accurate:

1. The Bid meets all the requirements of this ITB.
2. The Bidder has not taken any exception to the terms and conditions in this ITB, including Attachment Three and Exhibit One.
3. The Bidder will comply with all federal and Ohio laws, rules, and regulations that are in force currently or anytime during the term of the Contract.
4. The Bidder is not now subject to an “unresolved” finding for recovery under Revised Code Section 9.24, and the Bidder will notify the Procurement Representative any time it becomes subject to such a finding before the award of a Contract arising out of this ITB.
5. The Bidder will be the prime Contractor if a Contract is awarded based on this Bid.
6. The Bidder will not and will not allow others to perform work for the State of Ohio outside the geographic limitations contained in Attachment One or take data that belongs to the State of Ohio outside the geographic limitations contained in Attachment One without express written authorization from the State.
7. The Bidder affirms that any small business program participants will provide necessary data to ensure program reporting and compliance.
8. This Bid is genuine and not a sham and Bidder has not colluded, conspired, or agreed, directly or indirectly, with anyone or any entity to limit competition under this ITB or to set or otherwise control the prices, products, or services offered to the State under this ITB.
9. The Bidder certifies its and each of its subcontractors’ principal places of business are located at the addresses identified in the Supplier Information Form(s) included with this Bid.
10. The Bidder certifies its responses to the following statements are true and accurate. The Bidder’s answers apply to the last seven years. Please indicate yes or no in each column.

Yes/No	Description
	The Bidder has had a contract terminated for default or cause.
	The Bidder 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 Bidder was the subject of any governmental action limiting the right of the Bidder 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 Bidder, any officer of the Bidder, or any owner of a 20% interest or greater in the Bidder 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 Bidder, any officer of the Bidder, or any owner with a 20% interest or greater in the Bidder 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 Bidder must provide complete details about the matter, in an attached page. While an affirmative answer to any of these items will not automatically disqualify a Bidder 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 Bid. The State will make this decision based on its determination of the seriousness of the matter, the matter's possible impact on the Bidder's performance under the Contract, and the best interests of the State.

- 11. The Bidder certifies neither it nor any of its people that may work on or benefit from the Contract through the Bidder 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 Bidder acknowledges the State may reject a Bid 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 the Bidder did not disclose in its Bid.

- 12. The Bidder's personnel working on the Contract will have a valid I-9 form on file with the Bidder and will have presented valid employment authorization documents, if they are not United States citizens.
- 13. The Person signing below is an authorized representative of the Bidder and certifies to the truth and accuracy of the representations made above.
- 14. The Bidder certifies that they are an authorized reseller in good standing and have provided documentation from the appropriate Software application representative supporting this claim.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company Name of Bidder

\_\_\_\_\_  
Company D-U-N-S Number



4. Border state bidder: mined products mined in respective border state (Except for products mined in Michigan)  
 Yes  No  Not Applicable
- 

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

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

## **ATTACHMENT SEVEN: COST SUMMARY**

Bidders responding to the ITB must submit a complete Cost Summary Form available on the Procurement website with the documents associated with the ITB.

Any corrections or changes made to the figures in the UNIT or COST columns of the Table must be initialed or the Bid will be disqualified.



\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

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

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

By: \_\_\_\_\_  
Contractor

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT ONE: SERVICENOW TERMS AND CONDITIONS**



## PUBLIC SECTOR SUBSCRIPTION SERVICE TERMS

THESE PUBLIC SECTOR SUBSCRIPTION SERVICE TERMS (“TERMS OF SERVICE”) APPLY ONLY IF THE CUSTOMER IS AN ENTITY OF THE U.S. FEDERAL, STATE, OR LOCAL GOVERNMENT (“GOVERNMENT ENTITY”). THESE TERMS OF SERVICE SHALL BE INCORPORATED IN ANY ORDER ISSUED BY SUCH CUSTOMER. IF THE CUSTOMER IS NOT A GOVERNMENT ENTITY, THEN SERVICENOW’S SUBSCRIPTION SERVICE AGREEMENT (AVAILABLE AT [HTTPS://WWW.SERVICENOW.COM/UPGRADE-SCHEDULES.HTML](https://www.servicenow.com/upgrade-schedules.html)) APPLIES.

These Terms of Service include the General Terms and Conditions below, the Subscription Service Guide attached as Exhibit A.1 (which includes Exhibit A.2 - Customer Support Policy, Exhibit A.3 - Upgrades and Updates, Exhibit A.4 - Data Processing Addendum, and Exhibit A.5 - Data Security Guide), and any other terms expressly referenced herein, all of which are expressly incorporated in these Terms of Service and attached by this reference. References to the “Agreement” in the Subscription Service Guide shall generally mean these Terms of Service, and references to an agreement between ServiceNow and Customer shall mean the Ordering Document (as defined below) or Reseller Order (as defined below), as appropriate based on context, executed between the Customer and Reseller. References to a “Use Authorization” or “Order Form” in the Subscription Service Guide shall mean the Ordering Document. For purposes of these Terms of Service, “Customer” has the same meaning as Government Entity above.

Pursuant to a separate transaction between the Customer and ServiceNow’s authorized reseller (“Reseller”), Customer has purchased from Reseller certain services to be delivered by a ServiceNow entity identified in the Reseller Order (“ServiceNow”). These Terms of Service specify the terms and conditions under which those services will be provided by ServiceNow, apart from price, payment and other terms specified in the separate agreement between Customer and Reseller.

## GENERAL TERMS AND CONDITIONS

### 1. DEFINITIONS

**1.1 “Affiliates”** means any person or entity directly or indirectly Controlling, Controlled by, or under common Control with a party, where “Control” means the legal power to direct or cause the direction of the general management of the company, partnership, or other legal entity.

**1.2 “Ancillary Software”** means software licensed by ServiceNow to Customer that is deployed on machines operated by or for Customer to facilitate operation of the Subscription Service or interoperation of the Subscription Service with other software, hardware, or services. Ancillary Software may include code that is licensed under third-party license agreements, including open source made available or provided with the Ancillary Software.

**1.3 “Claim”** means any third-party suit, claim, action, or demand.

**1.4 “Confidential Information”** means: **(a)** ServiceNow Core Technology (which is Confidential Information of ServiceNow); **(b)** Customer Data and Customer Technology (which is Confidential Information of Customer); **(c)** any information of a party that is disclosed in writing or orally and is designated as *Confidential* or *Proprietary* at time of disclosure (and, for oral disclosures, summarized in writing within 30 days of initial disclosure and delivered in written summary form to the receiving party), or that, due to the nature of the information or circumstances of disclosure, receiving party would understand it to be disclosing party’s confidential information. Confidential Information excludes any information that: **(i)** is or becomes generally known to the public through no fault or breach of these Terms of Service by receiving party; **(ii)** was already rightfully in receiving party’s possession, without restriction on use or disclosure, when receiving party received it; **(iii)** is independently developed by receiving party without use of disclosing party’s Confidential Information; or **(iv)** was or is rightfully obtained by receiving party, without restriction on use or disclosure, from a third party not under a duty of confidentiality to disclosing party.

**1.5 “Customer Data”** means electronic data uploaded by or for Customer or Customer’s agents, employees, or contractors, and processed in the Subscription Service, excluding ServiceNow Core Technology.

**1.6 “Customer Technology”** means software, methodologies, templates, business processes, documentation, or other material originally authored, invented, or otherwise created by Customer (or on Customer’s

behalf, other than by ServiceNow or at ServiceNow's direction) for use with the Subscription Service, excluding ServiceNow Core Technology.

**1.7 "Deliverable"** means anything that is created by or on behalf of ServiceNow for Customer in the performance of Professional Services.

**1.8 "Documentation"** means the then-current ServiceNow product documentation relating to the operation and use of the Subscription Service or Ancillary Software published by ServiceNow at <https://docs.servicenow.com> or its successor website. Documentation includes technical program or interface documentation, user manuals, operating instructions, and release notes.

**1.9 "Intellectual Property Rights"** means all intellectual property or other proprietary rights worldwide, including patents, copyrights, trademarks, moral rights, trade secrets, and any other intellectual or industrial property, including registrations, applications, renewals, and extensions of such rights.

**1.10 "Law"** means any applicable law, rule, statute, decree, decision, order, regulation, judgment, and code of any government authority (federal, state, local, or international) having jurisdiction.

**1.11 "Newly Created IP"** means Intellectual Property Rights in the inventions or works of authorship that are made by ServiceNow specifically for Customer in the course of performing Professional Services for Customer that are expressly identified as "Newly Created IP" in an SOW, excluding ServiceNow Core Technology.

**1.12 "Ordering Document"** means a written agreement entered into solely between Reseller and Customer specifying the ServiceNow services that Customer has purchased, along with the term and scope of the authorized use thereof, subject to these ServiceNow Terms of Service. An Ordering Document is not binding on ServiceNow.

**1.13 "Product Overview"** means ServiceNow's published description of its products and their functionalities, solely to the extent attached to or expressly referenced in the Ordering Document.

**1.14 "Professional Services"** means any consulting, development, or educational services provided by or on behalf of ServiceNow pursuant to an agreed SOW or Service Description.

**1.15 "Reseller Order"** means supporting order executed by ServiceNow and Reseller or ServiceNow's authorized distributor, as applicable.

**1.16 "Service Description"** means the written description for a packaged Professional Service, attached to or referenced in an Ordering Document.

**1.17 "ServiceNow Core Technology"** means: **(a)** the Subscription Service, Ancillary Software, Documentation, and technology and methodologies (including products, software tools, hardware designs, algorithms, templates, software (in source and object forms), architecture, class libraries, objects, and documentation) created by or for, or licensed to, ServiceNow; and **(b)** updates, upgrades, improvements, configurations, extensions, and derivative works of the foregoing and related technical or end user documentation or manuals.

**1.18 "ServiceNow Products"** means, collectively, the Subscription Service, Ancillary Software, Documentation, and Deliverables.

**1.19 "SOW"** means a statement of work or work order that describes scoped Professional Services by and between ServiceNow and Reseller or ServiceNow's authorized distributor, as applicable.

**1.20 "Subscription Service"** means the ServiceNow software-as-a-service offering ordered by Customer under an Ordering Document.

**1.21 "Subscription Term"** means the period of authorized access to and use of the Subscription Service, as set forth in an Ordering Document.

## **2. ACCESS AND USE RIGHTS; RESTRICTIONS; PROVISION OF PROFESSIONAL SERVICES**

**2.1 ACCESS AND USE RIGHTS.** For each Subscription Term, ServiceNow grants the access and use rights set forth in this Section 2 for the ServiceNow Core Technology described in the Ordering Document.

**2.1.1. SUBSCRIPTION SERVICE.** Subject to these Terms of Service, ServiceNow authorizes Customer to access and use the Subscription Service during the Subscription Term stated in the applicable Ordering Document, solely for Customer's internal business purposes in accordance with the Documentation. Customer will not otherwise access or use the Subscription Service in a manner that exceeds Customer's authorized access and use rights as set forth in these Terms of Service and the applicable Ordering Document.

**2.1.2. ANCILLARY SOFTWARE.** ServiceNow grants Customer a limited, personal, worldwide, non-sublicensable, non-transferable (except as set forth in Section 12.1 (Assignment)), non-exclusive, royalty-free license during the Subscription Term to install and execute Ancillary Software on machines operated by or for Customer, solely to facilitate Customer's authorized access to and use of the Subscription Service.

**2.2 RESTRICTIONS.** With respect to the ServiceNow Core Technology, Customer will not (and will not permit others to): **(a)** use it in excess of contractual usage limits (including as set forth in the Ordering Document), or in a manner that circumvents usage limits or technological access control measures; **(b)** license, sub-license, sell, re-sell, rent, lease, transfer, distribute, time share, or otherwise make any of it available for access by third-parties, except as may otherwise be expressly stated in the Ordering Document; **(c)** access it for the purpose of developing or operating products or services for third-parties in competition with the ServiceNow Core Technology; **(d)** disassemble, reverse engineer, or decompile it; **(e)** copy, create derivative works based on, or otherwise modify it, except as may be otherwise expressly stated in these Terms of Service; **(f)** remove or modify a copyright or other proprietary rights notice in it; **(g)** use it to reproduce, distribute, display, transmit, or use material protected by copyright or other Intellectual Property Right (including the rights of publicity) without first obtaining permission of the owner; **(h)** use it to create, use, send, store, or run viruses or other harmful computer code, files, scripts, agents, or other programs, or otherwise engage in a malicious act or disrupt its security, integrity, or operation; or **(i)** access or disable any ServiceNow or third-party data, software, or network (other than Customer's instance of the Subscription Service under these Terms of Service). Before Customer engages in any of the foregoing acts that it believes it may be entitled to, it will provide ServiceNow with 30-days' prior notice to [legalnotices@servicenow.com](mailto:legalnotices@servicenow.com), and reasonably requested information to allow ServiceNow to assess Customer's claim. ServiceNow may, in its discretion, provide alternatives that reduce adverse impacts on ServiceNow's Intellectual Property Rights or other rights.

**2.3 PROVISION OF PROFESSIONAL SERVICES.** Customer and Reseller may enter into one or more SOWs in an Ordering Document which may incorporate one or more Service Descriptions for the provision of Professional Services by ServiceNow. ServiceNow will perform the Professional Services, subject to the fulfillment of any Customer responsibilities and payments due, as stated in the Ordering Document.

### 3. ORDERING

**3.1 RESELLER ORDERS.** Customer shall order and purchase the Subscription Service and Professional Services directly from Reseller pursuant to an agreement specifying price, payment, and other commercial terms reflected in an Ordering Document. ServiceNow is not a party to the Ordering Document but will provide the purchased services pursuant to a Reseller Order and these Terms of Service. Reseller is not authorized to make any changes to these Terms of Service or bind ServiceNow to any additional or different terms or conditions, except as ServiceNow may expressly agree in writing in a Reseller Order or any agreed SOW attached thereto. Subsequent or additional orders for ServiceNow products or services may be placed by Customer through Reseller.

**3.2 USE VERIFICATION.** ServiceNow or Reseller may remotely review Customer's use of the Subscription Service, and on ServiceNow or Reseller's written request, Customer will provide reasonable assistance to verify Customer's compliance with these Terms of Service, and access to and use of the Subscription Service. If ServiceNow or Reseller determines that Customer has exceeded its permitted access and use rights to the Subscription Service, ServiceNow or Reseller will notify Customer and within 30 days thereafter Customer shall either: **(a)** disable any unpermitted use, or **(b)** purchase additional subscription rights commensurate with Customer's actual use.

### 4. INTELLECTUAL PROPERTY

**4.1 SERVICENOW OWNERSHIP.** As between the parties, ServiceNow and its licensors exclusively own all right, title, and interest in and to all Intellectual Property Rights in the ServiceNow Core Technology, notwithstanding anything in an Ordering Document purportedly to the contrary. Except for the access and use rights, and licenses expressly granted in Section 2 (Access and Use Rights; Restrictions; Provision of Professional Services) of these Terms of Service, ServiceNow, on behalf of itself and its licensors, reserves all rights in the ServiceNow Core Technology and does not grant Customer any rights (express, implied, by estoppel, through exhaustion, or otherwise). Any ServiceNow Core Technology delivered to Customer or to which Customer is given

access shall not be deemed to have been sold, even if, for convenience, ServiceNow or Reseller makes reference to words such as “sale” or “purchase” in the applicable Ordering Document or other documents.

**4.2 CUSTOMER OWNERSHIP.** As between the parties, Customer and its licensors will retain all right, title, and interest in and to all Intellectual Property Rights in Customer Data and Customer Technology. Customer hereby grants to ServiceNow a royalty-free, fully-paid, non-exclusive, non-transferrable (except as set forth in Section 12.1 (Assignment)), worldwide, right to use Customer Data and Customer Technology solely to provide and support the ServiceNow Products for Customer.

**4.3 FEEDBACK.** ServiceNow encourages Customer to provide suggestions, proposals, ideas, recommendations, or other feedback regarding improvements to the ServiceNow Products (collectively, “Feedback”). If Customer provides such Feedback, Customer grants to ServiceNow a royalty-free, fully paid, sub-licensable, transferable (notwithstanding Section 12.1 (Assignment)), non-exclusive, irrevocable, perpetual, worldwide right and license to use, license, and commercialize Feedback (including by incorporation of such Feedback into ServiceNow Core Technology) without restriction.

**4.4 PROFESSIONAL SERVICES.** Subject to this Section 4.4, ServiceNow assigns (and in the future is deemed to have assigned) to Customer any Newly Created IP upon receipt of payment in full to ServiceNow for the Professional Service under which the Newly Created IP was created. If any ServiceNow Core Technology is incorporated into a Deliverable, ServiceNow grants to Customer a non-exclusive, royalty-free, non-transferable (except as set forth in Section 12.1 (Assignment)), non-sublicensable worldwide license to use the ServiceNow Core Technology incorporated into the Deliverable in connection with the Subscription Service as contemplated under these Terms of Service during the applicable Subscription Term. Nothing in these Terms of Service shall be deemed to restrict or limit ServiceNow’s right to perform similar Professional Services for any other party or to assign any employees or subcontractors to perform similar Professional Services for any other party or to use any information incidentally retained in the unaided memories of its employees providing Professional Services.

## 5. WARRANTIES; DISCLAIMER OF WARRANTIES

**5.1 LIMITED SUBSCRIPTION SERVICE WARRANTY.** ServiceNow warrants that, during the Subscription Term, Customer’s production instance of the Subscription Service will materially conform to the Product Overview. To submit a warranty claim under this Section 5.1, Customer will submit a support request to resolve the non-conformity as provided in the Subscription Service Guide. If the non-conformity persists without relief more than 30 days after notice of a warranty claim provided to ServiceNow under this Section 5.1, then Customer may terminate the affected Subscription Service, and submit to Reseller a claim for refund to Customer for any prepaid subscription fees covering that part of the applicable Subscription Term for the affected Subscription Service remaining after the effective date of termination. Notwithstanding the foregoing, this warranty will not apply to any non-conformity due to a modification of or defect in the Subscription Service that is made or caused by any person other than ServiceNow or a person acting at ServiceNow’s direction. **This Section 5.1 sets forth Customer’s exclusive rights and remedies (and ServiceNow’s sole liability) in connection with this warranty.**

**5.2 LIMITED PROFESSIONAL SERVICES WARRANTY.** ServiceNow warrants that the Professional Services will be performed in a competent and workmanlike manner, in accordance with accepted industry standards and practices and all material requirements set forth in the SOW or Service Description. Customer will notify Reseller of any breach within 30 days after performance of any non-conforming Professional Services performed by ServiceNow. On timely receipt of such notice from Reseller, in the event that the Professional Services performed by ServiceNow do not conform materially to the requirements of the SOW, ServiceNow, at its option, will either use commercially reasonable efforts to re-perform the Professional Services in conformance with these warranty requirements or will terminate the affected Professional Services, whereupon Customer may submit to Reseller a claim for a refund of any amounts paid for the nonconforming Professional Services. **This Section 5.2 sets forth Customer’s exclusive rights and remedies (and ServiceNow’s sole liability) in connection with this warranty.**

**5.3 DISCLAIMER OF WARRANTIES.** Except for the warranties expressly stated in this Section 5, to the maximum extent allowed by Law, ServiceNow disclaims all warranties of any kind (express, implied, statutory, or otherwise, oral or written, including warranties of merchantability, accuracy, title, non-infringement, or fitness for a particular purpose, and any warranties arising from usage of trade, course of dealing, or course of performance). Without limiting the foregoing, ServiceNow specifically does not

warrant that the ServiceNow Products will meet the requirements of Customer or others or will be accurate or operate without interruption or error. Customer acknowledges that it has not relied on any promise, warranty, or representation not expressly set forth in these Terms of Service with respect to ServiceNow Subscription Services or ServiceNow Professional Services.

## 6. CONFIDENTIAL INFORMATION

**6.1 CONFIDENTIALITY OBLIGATIONS.** To the extent permitted by Law, the recipient of Confidential Information will: **(a)** at all times protect it from unauthorized disclosure with the same degree of care that it uses to protect its own confidential information, and in no event use less than reasonable care; and **(b)** not use it except to the extent necessary to exercise rights or fulfill obligations under the Ordering Document. Each party will limit the disclosure of the other party's Confidential Information to those of its employees and contractors and the employees and contractors of its Affiliates with a need to access such Confidential Information for a party's exercise of its rights and obligations under the Ordering Document, and then only to employees and contractors subject to binding disclosure and use restrictions at least as protective as those in these Terms of Service. Each party's obligations under this Section 6 will remain in effect during, and for three years after termination of, the Subscription Term. Receiving party will, at disclosing party's request, return all originals, copies, reproductions, and summaries of Confidential Information and other tangible materials and devices provided to receiving party as Confidential Information, or at disclosing party's option, certify destruction of the same. Provisions for return of Customer Data are set forth in Section 11.2 (Return of Customer Data).

**6.2 THIRD PARTY REQUESTS.** These Terms of Service will not be construed to prevent receiving party from disclosing the disclosing party's Confidential Information to a court, or governmental body pursuant to a valid court order, Law, subpoena, or regulation, provided that the receiving party: **(a)** gives prompt notice (or the maximum notice permitted under Law) before making the disclosure, unless prohibited by Law; **(b)** except as prohibited by Law, provides reasonable assistance to disclosing party in any lawful efforts by disclosing party to resist or limit the disclosure of such Confidential Information; and **(c)** discloses only that portion of disclosing party's Confidential Information that is legally required to be disclosed. In addition, to the extent permitted by law, receiving party will cooperate and assist disclosing party, at disclosing party's cost, in relation to any such request and any response to any such communication. It is expressly understood by the parties that Customer is a public entity that may be subject to the Ohio Public Records Act, Ohio Revised Code 149.43 et seq (the "Act"). Upon receipt of a public records request, a Customer subject to the Act is required by law, within a reasonable period of time, to provide prompt inspection or copies of responsive records that Customer determines are public records subject to release. Regardless of any other term in these Terms of Service, release of public records in compliance with Ohio law will not constitute a breach of these Terms of Service.

## 7. INDEMNIFICATION

### 7.1 BY SERVICENOW.

**7.1.1. SERVICENOW OBLIGATION.** Subject to the limitations in this Section 7, ServiceNow will: **(a)** indemnify and hold harmless Customer, and its officers, directors, and employees against any Claim: **(i)** to the extent alleging that any ServiceNow Core Technology accessed or used in accordance with these Terms of Service infringes any third-party patent, copyright, or trademark, or misappropriates any third-party trade secret; or **(ii)** to the extent alleging that ServiceNow's personnel when onsite at Customer's premises caused death, bodily harm, or damage to tangible personal property due to their negligence or willful misconduct; and **(b)** pay any settlement amount or any court-ordered award of damages, under the forgoing subsections (a)(i) and (ii) to the extent arising from such Claim.

**7.1.2. MITIGATION.** To the extent any Claim alleges any part of the ServiceNow Core Technology infringes any third-party patent, copyright, or trademark, or misappropriates any third-party trade secret, ServiceNow may: **(a)** contest the Claim; **(b)** obtain permission from the claimant for Customer's continued use of its instance of the Subscription Service or any applicable ServiceNow Core Technology; **(c)** avoid such Claim by replacing or modifying Customer's access to and use of its instance of the Subscription Service or any applicable ServiceNow Core Technology as long as ServiceNow provides a substantially similar Subscription Service; or, if ServiceNow determines the foregoing (a), (b), and (c) are not commercially practicable, then **(d)** terminate Customer's access to and use of the affected Subscription Service on 60-days' prior notice, whereupon ServiceNow will refund to Reseller, upon request, any prepaid subscription fees covering that part of the applicable Subscription Term for such Subscription Service remaining after the effective date of termination.

**7.1.3. LIMITATIONS.** Notwithstanding the above, ServiceNow will have no obligation or liability for



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any Claim under Section 7.1.1(a)(i) to the extent arising in whole or in part from: **(a)** any access to or use of any ServiceNow Core Technology not expressly authorized under these Terms of Service, to the extent the Claim would have been avoided without such unauthorized access or use; **(b)** Customer Data or Customer Technology; or **(c)** access to or use of the ServiceNow Core Technology: **(i)** in violation of Law; **(ii)** after termination under Section 7.1.2(d); **(iii)** as modified to Customer's specifications or by anyone other than ServiceNow or its contractors, if the Claim would have been avoided but for such modifications; or **(iv)** combined with anything not provided by ServiceNow and for which the Core Technology was not designed or intended for use with, if the Claim would have been avoided but for such combination.

**7.2 CUSTOMER WARRANTY.** Customer warrants that (A) Customer Data, (B) Customer Technology, or (C) a modification to any ServiceNow Core Technology made to Customer's specifications or otherwise made by or on behalf of Customer by any person other than ServiceNow or a person acting at ServiceNow's direction (but only if the Claim would have been avoided by use of the unmodified ServiceNow Core Technology), does not infringe any patent, copyright, or trademark, misappropriates any third-party trade secret, or violates any third-party privacy rights.

**7.3 PROCESS.** The obligations of ServiceNow under this Section 7 are conditioned on Customer **(a)** notifying ServiceNow promptly in writing of any actual or threatened Claim, **(b)** upon express prior written consent from the Ohio Attorney General, Customer giving the indemnifying party sole control of the defense of such Claim and of any related settlement negotiations, or otherwise allowing Customer to participate in the defense or settlement, and **(c)** the indemnified party cooperating and, at ServiceNow's reasonable request and expense, assisting in such defense. Neither party will stipulate, acknowledge, or admit fault or liability on the other's part without the other's prior, written consent. ServiceNow will not publicize any settlement without the Customer's prior, written consent. Customer's participation in the defense and/or settlement shall be at its own expense, including any and all legal fees, but excluding the cooperation contemplated by this Section 7.3(c).

**7.4 FOR THE AVOIDANCE OF DOUBT, SECTION 7 IS NOT INTENDED TO COVER ANY FIRST PARTY CLAIMS BETWEEN CUSTOMER AND SERVICENOW. SECTION 7 STATES EACH PARTY'S ENTIRE LIABILITY AND THE OTHER PARTY'S EXCLUSIVE REMEDY FOR THIRD PARTY CLAIMS AND ACTIONS.**

## **8. LIMITED LIABILITY**

**ServiceNow shall pay the appropriate refunds required to support these Terms of Service to the Reseller or Distributor, as applicable, with the requirement that the Reseller provide the refunds required by these Terms of Service to the Customer. To the extent permitted by Law, and excluding the liability described in Section 7 of these Terms of Service, either party's total, cumulative liability arising out of or related to these Terms of Service and the products and services provided under it and the Ordering Document, whether based on contract, tort, or any other legal or equitable theory, will be limited to the amounts received for use of the ServiceNow Products or provision of the ServiceNow Professional Services giving rise to the claim during the 12-month period preceding the first event giving rise to liability. The existence of more than one claim will not enlarge this limit.**

## **9. EXCLUDED DAMAGES**

**To the extent permitted by Law, neither ServiceNow nor Customer will be liable to the other or any third party for lost profits (direct or indirect) or loss of use or data or for any incidental, other consequential, punitive, special, or exemplary damages (including damage to business, reputation, or goodwill), or indirect damages of any type however caused, whether by breach of warranty, breach of contract, in tort (including negligence), or any other legal or equitable cause of action, even if such party has been advised of such damages in advance or if such damages were foreseeable. The foregoing exclusions shall not apply to: (a) payments to a third party arising from a party's obligations under Section 7 (Indemnification); and (b) infringement by a party of the other party's Intellectual Property Rights.**

## **10. GROSS NEGLIGENCE; WILLFUL MISCONDUCT**

**As provided by Law, nothing herein shall be intended to limit a party's liability in an action in tort, separate and distinct from a cause of action for breach of these Terms of Service, for the party's gross negligence or willful misconduct.**

## **11. TERM AND TERMINATION**

### **11.1 RESERVED.**



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**11.2 SUBSCRIPTION SERVICE TERM.** The Subscription Term for the Subscription Service shall begin on the Term Start Date and continue until the Term End Date indicated in the Ordering Document. Professional Services are separately ordered from the Subscription Service and are not required for use of the Subscription Service. A breach by a party of its obligations with respect to Professional Services shall not by itself constitute a breach by that party of its obligations with respect to the Subscription Service even if the services are enumerated in the same Ordering Document.

**11.3 EFFECT OF TERMINATION OF SUBSCRIPTION SERVICE.** On termination or expiration of the Subscription Service, Customer will stop accessing and using, and ServiceNow will stop providing, the Subscription Service and all related rights granted to Customer in these Terms of Service will terminate immediately, automatically, and without further notice. ServiceNow will, within 30 days after the effective date of termination by Customer for ServiceNow's breach, refund to Reseller any prepaid fees paid to Reseller covering that part of the Subscription Term for the affected Subscription Service, if any, remaining after the effective date of termination.

**11.4 RETURN OF CUSTOMER DATA.** After termination or expiration of the Subscription Service, upon Customer's written request, ServiceNow will provide any Customer Data in the Subscription Service to Customer in ServiceNow's standard database export format at no additional charge. Customer must submit such request to ServiceNow within 45 days after termination or expiration of the Subscription Service. ServiceNow is not obligated to maintain or provide any Customer Data after such 45-day period and will, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control, and delete Customer's instances of the Subscription Service.

**11.5 SURVIVAL.** Sections 2.2 (Restrictions), 4 (Intellectual Property), 5 (Warranties; Disclaimer of Warranties) (solely in accordance with its terms), 6 (Confidential Information) through 10 (Gross Negligence; Willful Misconduct), 11 (Term and Termination) (solely in accordance with its terms), and 12 (General Provisions), together with any other terms required for their construction or enforcement, will survive termination or expiration of the Subscription Service.

## 12. GENERAL PROVISIONS

**12.1 ASSIGNMENT.** Neither party may assign or novate its rights or obligations under these Terms of Service, by operation of law or otherwise (any of the foregoing, "**Assign**"), without the other party's prior written consent. Notwithstanding the foregoing, on notice and without the other's consent: **(a)** either party may in connection with a merger, reorganization, or sale of all or substantially all of such party's assets or equity, Assign these Terms of Service in its entirety to such party's successor; and **(b)** ServiceNow may Assign these Terms of Service in its entirety to any ServiceNow Affiliate. Any attempted or purported Assignment in violation of this Section 12.1 will be null and void. Subject to the foregoing, these Terms of Service will bind and inure to the benefit of the parties, their respective successors, and permitted assigns.

**12.2 COMPLIANCE WITH LAWS.** ServiceNow will comply with all Laws generally applicable to its provision of the ServiceNow Products and ServiceNow Professional Services, including those applicable to privacy and security of personal information (including mandatory trans-border data transfers and mandatory data breach notification requirements), but excluding Laws not applicable to ServiceNow as a lower-tier supplier, and excluding Laws specifically applicable to Customer and its industry not generally applicable to information technology service providers regardless of industry. Customer will comply with all Laws applicable to its use of the ServiceNow Products, including those applicable to collection and processing of Customer Data in ServiceNow systems through the Subscription Service. Customer agrees to provide any required disclosures to and obtain any required consents for the transfer of Customer Data to ServiceNow.

**12.3 EXPORT COMPLIANCE.** Each party will comply with local and foreign export control Laws, including U.S. export control Laws. Customer acknowledges that the ServiceNow Products are subject to U.S. Export Administration Regulations ("**EAR**") and, to the extent applicable, that Customer will comply with EAR. Without limiting the foregoing: **(a)** Customer shall not be located in, and will not use any ServiceNow Products from, any country subject to U.S. export restrictions (currently including Cuba, Iran, North Korea, Sudan, Syria, and Crimea Region); **(b)** Customer shall not use the ServiceNow Products in the design, development, or production of nuclear, chemical, or biological weapons, or rocket systems, space launch vehicles, sounding rockets, or unmanned air vehicle systems; and **(c)** Customer shall not be prohibited from participating in U.S. export transactions by any federal agency of the U.S. Government. In addition, Customer is responsible for complying with any local Laws that may impact Customer's right to import, export, or use ServiceNow Products.

**12.4 U.S. GOVERNMENT RIGHTS.** ServiceNow software is commercial computer software (as defined in Federal Acquisition Regulation ("**FAR**") 2.101 for civilian agency purchases and Department of Defense ("**DOD**") FAR Supplement ("**DFARS**") 252.227-7014(a)(1) for defense agency purchases) and ServiceNow services are



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commercial items. If the software is licensed or services acquired by or on behalf of a civilian agency, ServiceNow provides the software, its documentation, and any other technical data subject to these Terms of Service consistent with FAR 12.212 (Computer Software) and FAR 12.211 (Technical Data). If software is licensed or services acquired by or on behalf of any DOD agency, ServiceNow provides the software, its documentation, and any other technical data subject to these Terms of Service consistent with DFARS 227.7202-3. If this is a DOD subcontract, the DOD agency Customer may acquire additional rights in technical data under DFARS 252.227-7015(b). This U.S. Government Rights clause is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses government rights in computer software or technical data

**12.5 FORCE MAJEURE.** ServiceNow is not, and may not be construed to be, in breach of these Terms of Service for any failure or delay in fulfilling or performing the Subscription Service or any Professional Services, when and to the extent such failure or delay is caused by or results from acts beyond ServiceNow's reasonable control, including: strikes, lock-outs, or other industrial disputes; trespass, sabotage, theft or other criminal acts export bans, sanctions, war, terrorism, riot, civil unrest, or government action; failure of Internet connectivity or backbone or other telecommunications failures, in each case outside of ServiceNow's local network; breakdown of plant or machinery; nuclear, chemical, or biological contamination; fire, flood, natural disaster, extreme adverse weather, or other acts of God (each a "**Force Majeure Event**"). ServiceNow will use reasonable efforts to mitigate the effects of such Force Majeure Event.

**12.6 HIGH RISK ACTIVITY.** The ServiceNow Products are not designed for any purpose requiring fail-safe performance, including stock trading, financial transaction processing, operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, weapons systems, or other management or operation of hazardous facilities or applications for which failure could result in death, personal injury, or severe physical, property, or environmental damage (each, a "**High Risk Activity**"). ServiceNow, its licensors, and suppliers expressly disclaim all warranties of fitness for any such use.

**12.7 WAIVER AND AMENDMENT.** Failure by either party to enforce any part of these Terms of Service will not be deemed a waiver of future enforcement of that or any other provision. A waiver of any right is effective only if in a writing signed by an authorized representative of the waiving party.

**12.8 SEVERABILITY.** If any term of these Terms of Service is held invalid, unenforceable, or void by a court of competent jurisdiction, such term will be enforced to the maximum extent permissible, such holding will not affect the remaining terms, and the invalid, unenforceable, or void term will be deemed amended or replaced by a valid, legal, and enforceable term that matches the intent of the original language as closely as possible.

**12.9 GOVERNING LAW; JURISDICTION AND VENUE.** If Customer is the U.S. Government, these Terms of Service shall be subject to the laws of the United States, and in the event of any dispute arising from or in relation to these Terms of Service, the parties consent to the exclusive jurisdiction of, and venue in, a court of competent jurisdiction under the laws of the United States. If Customer is a state or local government entity, these Terms of Service shall be subject to the laws of the state in which Customer is located, and in the event of a dispute arising from or in relation to these Terms of Service, the parties consent to the exclusive jurisdiction of, and venue in, a court of competent jurisdiction within such state. Each party expressly consents to service of process by registered mail. To the extent permitted by Law, choice of law rules and the United Nations Convention on Contracts for the International Sale of Goods will not apply. Notwithstanding the foregoing, either party may at any time seek and obtain appropriate legal or equitable relief in any court of competent jurisdiction for claims regarding such party's Intellectual Property Rights.

**12.10 CONSTRUCTION.** Section headings are for convenience only and are not to be used in interpreting these Terms of Service. Lists of examples following "including", "e.g.", "such as", or "for example" are interpreted to include "without limitation", unless qualified by words such as "only" or "solely." Unless stated or context requires otherwise: **(a)** all internal references are to these Terms of Service, its parties, and its Exhibits; **(b)** "days" means calendar days; **(c)** "may" means that the applicable party has a right, but not a concomitant duty; **(d)** all monetary amounts are expressed and, if applicable, payable, in U.S. dollars; **(e)** "current" or "currently" means "as of the Effective Date" but "then-current" means the present time when the applicable right is exercised or performance rendered or measured; **(f)** the word "or" will be deemed to be an inclusive "or"; **(g)** URLs are understood to also refer to successor URLs, URLs for localized content, and information or resources linked from within the websites at such URLs; **(h)** a writing is "signed" when it has been hand-signed (i.e., with a pen) or electronically signed using an electronic signature service by duly authorized representatives of both parties; **(i)** a party's choices, elections, and determinations under these Terms of Service are in its sole discretion; **(j)** the singular includes the plural and vice versa; **(k)** a reference to a document includes any amendment, replacement, or novation of it; and **(m)** a reference to a thing includes a part of that thing (i.e., is interpreted to include "in whole or in part").



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**12.11 ENTIRETY.** These Terms of Service (together with the Product Overviews, SOWs, and Service Descriptions, all of which are also deemed incorporated by this reference) is the parties' entire agreement regarding its subject matter and supersedes all prior or contemporaneous oral or written agreements, representations, understandings, undertakings, negotiations, letters of intent, and proposals, with respect to such subjects. The terms of these Terms of Service apply to the exclusion of any other terms Customer seeks to impose or incorporate, or that may be implied by trade, custom, practice, or course of dealing upon ServiceNow. Customer acknowledges it has not relied on any statement, promise, or representation made or given by or on behalf of ServiceNow that is not expressly stated in these Terms of Service. Customer's orders are not contingent, and Customer has not relied, on the delivery of any future functionality regardless of any verbal or written communication about ServiceNow's possible future plans.

**12.12 PROHIBITION OF THE EXPENDITURE OF PUBLIC FUNDS FOR OFFSHORE SERVICES.** ServiceNow and Reseller acknowledge that no State Cabinet, Agency, Board or Commission will enter into any contract to purchase services provided outside the United States or that allows State data to be sent, taken, accessed, tested, maintained, backed-up, stored, or made available remotely outside (located) of the United States, unless a duly signed waiver from the State has been attained. The State of Ohio recognizes that ServiceNow's Subscription Service offerings involve processing, testing, maintenance, access, support, and potentially hosting from locations outside of the United States and has therefore executed the duly signed waiver from these requirements attached hereto as Exhibit A.6. If Customer believes its Subscription Service instance is hosted outside of the United States, it will notify ServiceNow in writing, and ServiceNow will promptly work with the Customer to transfer the applicable instance to data centers located in the United States without being deemed in breach of these Terms of Service. Customer may also meet these requirements by purchasing ServiceNow's Government Community Cloud environment, or equivalent if available.

ServiceNow and Reseller each agree to complete the Affirmation and Disclosure Form attached hereto as Exhibit A.6. Also attached as part of Exhibit A.6 are any duly-signed waivers of the requirements of this Section 12.12 which are incorporated into and become a part of these Terms of Service for the duration of the term of the Terms of Service.

**12.13 RELATIONSHIP OF PARTIES.** It is fully understood and agreed that ServiceNow and Reseller are independent contractors and neither ServiceNow, Reseller nor their personnel shall at any time, or for any purpose, be considered agents, servants, or employees of the Customer or the State of Ohio, or public employees for the purpose of Ohio Public Employees Retirement Systems benefits.

## EXHIBIT A.1 - SUBSCRIPTION SERVICE GUIDE

### 1. SUPPORT

ServiceNow will provide support for the Subscription Service as set forth in the **Customer Support Policy** attached to this Subscription Service Guide as Exhibit A.2 and incorporated herein by reference. The Customer Support Policy may be updated periodically. If ServiceNow makes any changes to the Customer Support Policy, ServiceNow agrees that such changes will not result in a material reduction in the level of performance or availability of the applicable Services.

### 2. UPGRADES AND UPDATES

ServiceNow will provide upgrades and updates to the Subscription Service as described in Exhibit A.3 **Upgrades and Updates** attached to this Subscription Service Guide and incorporated herein by reference. The Upgrade and Update exhibit may be updated periodically.

### 3. DATA PROCESSING ADDENDUM

The parties' agreement with respect to the processing of personal information submitted to the Subscription Service is described in the **Data Processing Addendum** attached to this Subscription Service Guide as Exhibit A.4 and incorporated herein by reference. The Data Processing Addendum may be updated periodically.

### 4. DATA SECURITY GUIDE

ServiceNow will implement and maintain security procedures and practices appropriate to information technology service providers designed to protect Customer Data from unauthorized access, destruction, use, modification, or disclosure, as described in the **Data Security Guide** attached to this Subscription Service Guide as Exhibit A.5 and incorporated herein by reference. The Data Security Guide may be updated periodically.

### 5. INSURANCE

ServiceNow agrees to maintain in effect during the Subscription Term, at ServiceNow's expense, the following minimum insurance coverage:

**5.1** Workers' Compensation Insurance, in accordance with applicable statutory, federal, and other legal requirements;

**5.2** Employers' Liability Insurance covering ServiceNow's employees in an amount of not less than \$1,000,000 for bodily injury by accident and \$1,000,000 each employee for bodily injury by disease;

**5.3** Commercial General Liability Insurance written on an occurrence form and including coverage for bodily injury, property damage, products and completed operations, personal injury, and advertising injury arising out of the products or services provided by ServiceNow under this Agreement, with minimum limits of \$1,000,000 per occurrence/\$2,000,000 aggregate;

**5.4** Commercial Automobile Liability Insurance providing coverage for hired and non-owned automobiles used in connection with this Agreement in an amount of not less than \$1,000,000 per accident, combined single limit for bodily injury and property damage;

**5.5** Combined Technology Errors' & Omissions Policy with a \$5,000,000 per claim limit, including: **(a)** Professional Liability Insurance providing coverage for the services and software in this Agreement (which coverage will be maintained for at least two years after termination of this Agreement); and **(b)** Privacy, Security, and Media Liability Insurance providing liability coverage for unauthorized access or disclosure, security breaches, and system attacks, as well as infringements of copyright and trademark that might result from this Agreement; and

**5.6** Excess Liability over Employers' Liability, Commercial General Liability, and Commercial Automobile Liability, with a \$5,000,000 aggregate limit.

For the purpose of this Section 5, a "claim" means a written demand for money or a civil proceeding which is commenced by service of a complaint or similar pleading.

## 6. AVAILABILITY SERVICE LEVEL

### 6.1 DEFINITIONS.

**6.1.1. “Available”** means that the Subscription Service can be accessed by authorized users.

**6.1.2. “Excused Downtime”** means: **(a)** Maintenance Time of up to two hours per month; and **(b)** any time the Subscription Service is not Available due to circumstances beyond ServiceNow’s control, including modifications of the Subscription Service by any person other than ServiceNow or a person acting at ServiceNow’s direction, a Force Majeure Event although each party shall have disaster recovery and business continuity plans in place and routinely test those plans and utilize good faith efforts to perform its obligations under the Agreement in the event of any such occurrence, general Internet outages, failure of Customer’s infrastructure or connectivity (including direct connectivity and virtual private network (“VPN”) connectivity to the Subscription Service), computer and telecommunications failures and delays, and network intrusions or denial-of-service or other criminal attacks.

**6.1.3. “Infrastructure Modification”** means any repairs, maintenance, improvements, or changes to the cloud infrastructure used by ServiceNow to operate and deliver the Subscription Service.

**6.1.4. “Maintenance Time”** means the time the Subscription Service is not Available due to an Infrastructure Modification, Upgrade, and Update.

**6.1.5. “Availability SLA”** means that the production instances of the Subscription Service will be Available at least 99.8% of the time during a calendar month, excluding Excused Downtime.

**6.2 AVAILABILITY.** If Customer’s production instances of the Subscription Service fall below the Availability SLA during a calendar month, Customer’s exclusive remedy for failure of the Subscription Service to meet the Availability SLA is to request that either: **(a)** the affected Subscription Term be extended for the number of minutes the Subscription Service was not Available in the month in accordance with the Availability SLA; or **(b)** ServiceNow issue a service credit to Customer for the dollar value of the number of minutes the Subscription Service was not Available in the month in accordance with the Availability SLA (determined at the deemed per-minute rate ServiceNow charges to Customer for Customer’s use of the affected Subscription Service), which Customer may request ServiceNow apply to the next invoice for subscription fees.

**6.3 REQUESTS.** Customer must request all service credits or extensions in writing to ServiceNow within 30 days of the end of the month in which the Availability SLA was not met, identifying the support requests relating to the period Customer’s production instances of the Subscription Service was not Available. The total amount of service credits for any month may not exceed the subscription fee for the affected Subscription Service for that month and has no cash value. ServiceNow may delay issuing service credits until such amounts reach \$1,000 USD or equivalent currency specified in the applicable Order Form.

**6.4 NOTICE.** ServiceNow will give Customer 10 days’ prior notice of an Infrastructure Modification if ServiceNow, in its reasonable judgment, believes that the Infrastructure Modification will impact Customer’s use of its production instances of the Subscription Service, unless, in the reasonable judgment of ServiceNow, the Infrastructure Modification is necessary to: **(a)** maintain the availability, security, or performance of the Subscription Service; **(b)** comply with Law; or **(c)** avoid infringement or misappropriation of third-party Intellectual Property Rights.

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## EXHIBIT A.2 - CUSTOMER SUPPORT POLICY

This Customer Support Policy governs the support that ServiceNow will provide for its Subscription Service (“**Customer Support**”).

### 1. SCOPE

The purpose of Customer Support is to resolve defects that cause a nonconformity in the Subscription Service as compared to the Product Overview. A resolution to a defect may consist of a fix, workaround, or other relief, as ServiceNow deems reasonable. Customer Support does not include performing the following services:

- implementation services;
- configuration services;
- integration services;
- customization services or other custom software development;
- training; or
- assistance with administrative functions.

Customer Support is not required to provide resolutions for immaterial defects or defects due to modifications of the Subscription Service made by any person other than ServiceNow or a person acting at ServiceNow’s direction, or defects on any instance of the Subscription Service not in conformance with Exhibit A.3 - Upgrades and Updates.

### 2. BUSINESS HOURS

Customer Support is available 24 hours a day, 7 days a week, including all holidays.

### 3. ACCESS CONTACTS

ServiceNow’s Customer Support portal (“**Support Portal**”) is located at <https://hi.service-now.com/>. Customer may get login access to the Support Portal by contacting its ServiceNow administrator.

ServiceNow’s Customer Support may be reached by phone using one of the numbers at <http://servicenow.com/support/contact-support.html>.

### 4. INCIDENT PRIORITY

Incident priority for a defect is determined using the guidelines below.

Priority	Definition
P1	Any defect that causes an instance not to be Available.
P2	Any defect that causes a critical function to fail.
P3	Any defect that significantly impedes work or progress.
P4	Any defect that does not significantly impede work or progress.

## 5. RESPONSE TIMES AND LEVEL OF EFFORT

Customer may submit an incident with ServiceNow via the Support Portal or phone. Response times are not affected by the manner of contact. All support requests are tracked in the Support Portal and can be viewed by Customer's authorized contacts. ServiceNow will use reasonable efforts to meet the target response times and target level of effort stated in the table below.

Priority	Target Response Times	Target Level of Effort
P1	30 minutes	Continuously, 24 hours per day, 7 days per week
P2	2 hours	Continuously, but not necessarily 24 hours per day, 7 days per week
P3	1 business day	As appropriate during normal business hours
P4	N/A	Varies

## 6. CUSTOMER RESPONSIBILITIES

Customer's obligations with respect to Customer Support are as follows:

**6.1** Customer will receive from ServiceNow communications via email, phone, or through the Support Portal regarding the Subscription Service.

**6.2** Customer will appoint no more than 10 contacts ("**Customer Authorized Contacts**") to engage Customer Support for questions and technical issues.

**6.2.1.** Customer must maintain the following Customer Authorized Contacts:

- Primary Business Contact;
- Secondary Business Contact;
- Technical Contact;
- Support Contact;
- Primary Customer Administrator; and
- Security Contact.

**6.2.2.** Customer will maintain current information for all Customer Authorized Contacts in the Support Portal.

**6.2.3.** Only Customer Authorized Contacts will contact Customer Support.

**6.2.4.** Customer will train all Customer Authorized Contacts on the use and administration of the Subscription Service.

**6.3** Customer will cooperate to enable ServiceNow to deliver the Subscription Service and Customer Support.

**6.4** Customer is solely responsible for the use of the Subscription Service by its users.

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## EXHIBIT A.3 - UPGRADES AND UPDATES

“**Upgrades**” are new Release Families applied by ServiceNow to Customer’s instances of the Subscription Service at no additional fee during the Subscription Term. A “**Release Family**” is a complete solution with new features or enhancements to the Subscription Service, including previously released Updates, if applicable. “**Updates**” are ServiceNow’s releases (including patches and hotfixes) of the Subscription Service applied by ServiceNow to Customer’s instances of the Subscription Service at no additional fee during the Subscription Term that provide problem fixes or other changes, but do not generally include new functionality. ServiceNow has the discretion to provide new functionality either: **(a)** as an Upgrade, or **(b)** as different software or service for a separate fee. ServiceNow determines whether and when to develop, release, and apply any Upgrade or Update to Customer’s instances of the Subscription Service. Updates to the Services will not materially reduce the level of performance, functionality, security or availability of the Services.

ServiceNow shall use reasonable efforts to give Customer 30 days’ prior notice of any Upgrade to the Subscription Service. ServiceNow shall use reasonable efforts to give Customer 10 days’ prior notice of any Update. Notwithstanding the foregoing, ServiceNow may provide Customer with a shorter or no notice period of an Upgrade or Update if, in the reasonable judgment of ServiceNow it is necessary to: **(i)** maintain the availability, security, or performance of the Subscription Service; **(ii)** comply with Law; or **(iii)** avoid infringement or misappropriation of any third-party Intellectual Property Right. ServiceNow is not responsible for defects on any instance of the Subscription Service not in conformance with this Exhibit A.3 - Upgrades and Updates.

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## EXHIBIT A.4 - DATA PROCESSING ADDENDUM

This Data Processing Addendum (“**DPA**”) is deemed to include Sections 1 through 9 below, including the attached Appendix 1, and the Data Security Guide, all of which are expressly deemed incorporated in the Agreement by this reference.

In the event of any conflict between the terms of this DPA and the terms of the Agreement with respect to the subject matter herein, this DPA shall control. Any data processing agreements that may already exist between parties as well as any earlier version of the Data Security Guide to which the parties may have agreed are superseded and replaced by this DPA in their entirety. All capitalized terms not defined in this DPA will have the meaning given to them in other parts of the Agreement.

### 1. DEFINITIONS

**1.1 “Affiliates”** means any person or entity directly or indirectly Controlling, Controlled by or under common Control with a party to the Agreement, where “**Control**” means the legal power to direct or cause the direction of the general management of the company, partnership, or other legal entity.

**1.2 “Agreement”** means the Order Form or Use Authorization or other signed ordering document, as applicable, between ServiceNow and Customer and the signed master agreement (if any) for the purchase of the Subscription Service.

**1.3 “Data Controller”** means the natural or legal person, public authority, agency, or other body which, alone or jointly with others, determines the purposes and means of Processing of Personal Data. For purposes of this DPA, Data Controller is Customer and, where applicable, its Affiliates either permitted by Customer to submit Personal Data to the Subscription Service or whose Personal Data is Processed in the Subscription Service.

**1.4 “Data Processor”** means the natural or legal person, public authority, agency, or other body which Processes Personal Data on behalf of the Data Controller. For purposes of this DPA, Data Processor is the ServiceNow entity that is a party to the Agreement.

**1.5 “Data Protection Laws”** means all applicable laws and regulations regarding the Processing of Personal Data.

**1.6 “Data Subject”** means an identified or identifiable natural person.

**1.7 Reserved.**

**1.8 “Instructions”** means Data Controller’s documented data Processing instructions issued to Data Processor in compliance with this DPA.

**1.9 “Personal Data”** means any information relating to a Data Subject uploaded by or for Customer or Customer’s agents, employees, or contractors to the Subscription Service as Customer Data.

**1.10 “Process”** or “**Processing**” means any operation or set of operations which is performed upon Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination, or otherwise making available, alignment or combination, restriction, erasure or destruction.

**1.11 “Professional Services”** means any consulting or development services provided by or on behalf of ServiceNow pursuant to an agreed Statement of Work or Service Description described or referenced in a signed ordering document.

**1.12 “Sub-Processor”** means any legal person or entity engaged in the Processing of Personal Data by Data Processor. For the avoidance of doubt, ServiceNow’s colocation datacenter facilities are not Sub-Processors under this DPA.

**1.13 “Subscription Service”** means the ServiceNow software-as-a-service offering ordered by Customer under an Order Form, Use Authorization or other signed ordering document between ServiceNow and Customer.

**1.14 “Subscription Term”** means the term of authorized use of the Subscription Service as set forth in the Order Form, Use Authorization, or other ordering document signed by Customer and ServiceNow.

## 2. SCOPE OF THE PROCESSING

**2.1 COMMISSIONED PROCESSOR.** Data Controller appoints Data Processor to Process Personal Data on behalf of Data Controller to the extent necessary to provide the Subscription Service described in the Agreement and in accordance with the Instructions.

**2.2 INSTRUCTIONS.** The Agreement constitutes Data Controller's written Instructions to Data Processor for Processing of Personal Data. Data Controller may issue additional or alternate Instructions provided that such Instructions are: (a) consistent with the purpose and the scope of the Agreement; and (b) confirmed in writing by Data Controller. For the avoidance of doubt, Data Controller shall not use additional or alternate Instructions to alter the scope of the Agreement. Data Controller is responsible for ensuring its Instructions to Data Processor comply with Data Protection Laws.

**2.3 NATURE, SCOPE AND PURPOSE OF THE PROCESSING.** Data Processor shall only Process Personal Data in accordance with Data Controller's Instructions and to the extent necessary for providing the Subscription Service and the Professional Services, each as described in the Agreement. Data Controller acknowledges that all Personal Data it instructs Data Processor to Process for the purpose of providing the Professional Services must be limited to the Customer Data Processed within the Subscription Service.

**2.4 CATEGORIES OF PERSONAL DATA AND CATEGORIES OF DATA SUBJECTS.** Data Controller may submit Personal Data to the Subscription Service as Customer Data, the extent of which is determined and controlled by Data Controller in its sole discretion and is further described in Appendix 1.

## 3. DATA CONTROLLER

**3.1 COMPLIANCE WITH DATA PROTECTION LAWS.** Data Controller shall comply with all of its obligations under Data Protection Laws when Processing Personal Data.

**3.2 SECURITY RISK ASSESSMENT.** Data Controller agrees that in accordance with Data Protection Laws and before submitting any Personal Data to the Subscription Service, Data Controller will perform an appropriate risk assessment to determine whether the security measures within the Subscription Service provide an adequate level of security, taking into account the nature, scope, context and purposes of the processing, the risks associated with the Personal Data and the applicable Data Protection Laws. Data Processor shall provide Data Controller reasonable assistance by providing Data Controller with information requested by Data Controller to conduct Data Controller's security risk assessment. Data Controller is solely responsible for determining the adequacy of the security measures within the Subscription Service in relation to the Personal Data Processed. As further described in Section 7.1 (Product Capabilities) of the Data Security Guide, the Subscription Service includes, without limitation, column level encryption functionality and role-based access control, which Data Controller may use in its sole discretion to ensure a level of security appropriate to the risk of the Personal Data. For clarity, Data Controller may influence the scope and the manner of Processing of its Personal Data by its own implementation, configuration (i.e., different types of encryption) and use of the Subscription Service, including any other products or services offered by ServiceNow and third-party integrations.

**3.3 CUSTOMER'S AFFILIATES.** The obligations of Data Processor set forth herein will extend to Customer's Data Controller Affiliates to which Customer provides access to the Subscription Service or whose Personal Data is Processed within the Subscription Service, subject to the following conditions:

**3.3.1. COMPLIANCE.** Customer shall at all times be liable for its Affiliates' compliance with this DPA and all acts and omissions by a Data Controller Affiliate are considered acts and omissions of Customer; and

**3.3.2. CLAIMS.** Customer's Data Controller Affiliates will not bring a claim directly against Data Processor. In the event a Data Controller Affiliate wishes to assert a valid legal action, suit, claim or proceeding against Data Processor (a "**Data Controller Affiliate Claim**"): (i) Customer must bring such Data Controller Affiliate Claim directly against Data Processor on behalf of such Data Controller Affiliate, unless Data Protection Laws require that Data Controller Affiliate be party to such Data Controller Affiliate Claim; and (ii) all Data Controller Affiliate Claims will be considered claims made by Customer and are at all times subject to any aggregate limitation of liability set forth in the Agreement.

**3.3.3. DATA CONTROLLER AFFILIATE ORDERING.** If a Data Controller Affiliate purchased a separate instance of the Subscription Service under the terms of the signed master agreement between ServiceNow and Customer, then such Data Controller Affiliate will be deemed a party to this DPA and shall be treated as Customer under the terms of this DPA.

**3.4 COMMUNICATION.** Unless otherwise provided in this DPA, all requests, notices, cooperation, and communication, including Instructions issued or required under this DPA (collectively, “**Communication**”), must be in writing and between Customer and ServiceNow only and Customer shall inform the applicable Data Controller Affiliate of any Communication from ServiceNow pursuant to this DPA. Customer shall be solely responsible for ensuring that any Communications (including Instructions) it provides to ServiceNow relating to Personal Data for which a Customer Affiliate is Data Controller reflect the relevant Customer Affiliate’s intentions.

## 4. DATA PROCESSOR

**4.1 DATA CONTROLLER’S INSTRUCTIONS.** Data Processor will have no liability for any harm or damages resulting from Data Processor’s compliance with Instructions received from Data Controller. Where Data Processor believes that compliance with Data Controller’s Instructions could result in a violation of Data Protection Laws or is not in the ordinary course of Data Processor’s obligations in operating the Subscription Service or delivering Professional Services, Data Processor shall promptly notify Data Controller thereof. Data Controller acknowledges that Data Processor is reliant on Data Controller’s representations regarding the extent to which Data Controller is entitled to Process Personal Data.

**4.2 DATA PROCESSOR PERSONNEL.** Access to Personal Data by Data Processor will be limited to personnel who require such access to perform Data Processor’s obligations under the Agreement and who are bound by obligations to maintain the confidentiality of such Personal Data at least as protective as those set forth herein and in the Agreement.

**4.3 DATA SECURITY MEASURES.** Without prejudice to Data Controller’s security risk assessment obligations under Section 3.2 (Security Risk Assessment) above, Data Processor shall maintain appropriate technical and organizational safeguards to protect the security, confidentiality, and integrity of Customer Data, including any Personal Data contained therein, as described in Section 2 (Physical, Technical, and Administrative Security Measures) of the Data Security Guide. Such measures are designed to protect Customer Data from loss, alteration, unauthorized access, acquisition, use, disclosure, or accidental or unlawful destruction, and include:

**4.3.1. SERVICE ACCESS CONTROL.** The Subscription Service provides user and role-based access controls. Data Controller is responsible for configuring such access controls within its instance.

**4.3.2. LOGGING AND MONITORING.** The production infrastructure log activities are centrally collected and are secured in an effort to prevent tampering and are monitored for anomalies by a trained security team.

**4.3.3. DATA SEPARATION.** Customer Data shall be maintained within a logical single-tenant architecture on multi-tenant cloud infrastructure that is logically and physically separate from ServiceNow’s corporate infrastructure.

**4.3.4. SERVICE CONTINUITY.** The production database servers are replicated in near real time to a mirrored data center in a different geographic region.

**4.3.5. TESTING.** Data Processor regularly tests, assess and evaluates the effectiveness of its information security program and may periodically review and update such program to address new and evolving security technologies, changes to industry standard practices, and changing security threats.

**4.4 DELETION OF PERSONAL DATA.** Upon termination or expiration of the Agreement, Data Processor shall return and delete Customer Data, including Personal Data contained therein, as described in the Agreement. ServiceNow agrees that upon termination of this Agreement it shall erase, destroy, and render unreadable all Customer data according to the standards enumerated in NIST 800-88r1, as amended, or substantially equivalent. Upon Customer’s request, Data Processor will certify in writing that Customer Data, including Personal Data contained therein, has been deleted in accordance with this DPA.

**4.5 DATA CENTERS.** Data Processor will host Data Controller’s instances of the Subscription Service in data centers located in the geographic regions specified on the Order Form, Use Authorization, or other signed ordering document between ServiceNow and Customer.

**4.6 DATA PROTECTION IMPACT ASSESSMENTS (DPIA).** Data Processor will, on request, provide Data Controller with reasonable information required to fulfill Data Controller's obligations Data Protection Laws to carry out data protection impact assessments, if any, for Processing of Personal Data within the Subscription Service.

**4.7 PRIOR CONSULTATION.** Data Processor shall provide reasonable assistance (at Data Controller's expense) in connection with any prior consultation Data Controller is required to undertake with a supervisory authority under Data Protection Laws with respect to Processing of Personal Data in the Subscription Service.

**4.8 DATA PROCESSOR ASSISTANCE.** Data Processor will assist Data Controller in ensuring compliance with Data Controller's obligations pursuant to Data Protection Laws taking into account the nature of Processing by providing Data Controller with reasonable information requested pursuant to the terms of this DPA, including information required to conduct Data Controller's security risk assessment and respond to Data Subject Requests (defined below). For clarity, Data Controller is solely responsible for carrying out its obligations under this DPA. Data Processor shall not undertake any task that can be performed by Data Controller.

**4.9 DATA PROTECTION CONTACT.** ServiceNow and its Sub-Processor Affiliates (defined below) will maintain a dedicated data protection team to respond to data protection inquiries throughout the duration of this DPA and can be contacted at [privacy@servicenow.com](mailto:privacy@servicenow.com).

## 5. REQUESTS MADE FROM DATA SUBJECTS AND AUTHORITIES

**5.1 REQUESTS FROM DATA SUBJECTS.** During the Subscription Term, Data Processor shall provide Data Controller with the ability to access, correct, rectify, erase, or block Personal Data, or to transfer or port such Personal Data, within the Subscription Service, as may be required under Data Protection Laws (collectively, "**Data Subject Requests**").

**5.2 RESPONSES.** Data Controller will be solely responsible for responding to any Data Subject Requests, provided that Data Processor shall reasonably cooperate with the Data Controller to respond to Data Subject Requests to the extent Data Controller is unable to fulfill such Data Subject Requests using the functionality in the Subscription Service. Data Processor will instruct the Data Subject to contact the Customer in the event Data Processor receives a Data Subject Request directly.

**5.3 REQUESTS FROM AUTHORITIES.** In the case of a notice, audit, inquiry, or investigation by a government body, data protection authority, or law enforcement agency regarding the Processing of Personal Data, Data Processor shall promptly notify Data Controller unless prohibited by applicable law. Data Controller shall keep records of the Personal Data Processed by Data Processor and shall cooperate and provide all necessary information to Data Processor in the event Data Processor is required to produce such information to a data protection authority.

**5.4 COOPERATION WITH SUPERVISORY AUTHORITIES.** In accordance with Data Protection Laws, Data Controller and Data Processor shall cooperate, on request, with a supervisory authority in the performance of such supervisory authority's task.

## 6. BREACH NOTIFICATION

**6.1 NOTIFICATION.** Data Processor will report to Data Controller any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of or access to Customer Data ("**Breach**") that it becomes aware of within seventy two (72) hours following determination by ServiceNow that a Breach has occurred.

**6.2 REPORT.** The initial report will be made to Data Controller's security or privacy contact(s) designated in ServiceNow's customer support portal (or if no such contact(s) are designated, to the primary contact designated by Customer). As information is collected or otherwise becomes available, Data Processor shall provide without undue delay any further information regarding the nature and consequences of the Breach to allow Data Controller to notify relevant parties, including affected Data Subjects, government agencies and data protection authorities in accordance with Data Protection Laws. The report will include the name and contact information of the Data Processor contact from whom additional information may be obtained. Data Processor shall inform Customer of the measures that it will adopt to mitigate the cause of the Breach and to prevent future Breaches.

**6.3 DATA CONTROLLER OBLIGATIONS.** Data Controller will cooperate with Data Processor in maintaining accurate contact information in the customer support portal and by providing any information that is reasonably requested to resolve any security incident, including any Breaches, identify its root cause(s), and prevent a recurrence. Data Controller is solely responsible for determining whether to notify the relevant supervisory or regulatory authorities and impacted Data Subjects and for providing such notice.

## 7. CUSTOMER MONITORING RIGHTS

**7.1 REMOTE SELF-ASSESSMENTS.** Data Processor shall enable remote self-serve assessments of its Security Program (as defined in the Data Security Guide) by granting Data Controller, at all times and at no additional costs, access to the Data Processor self-access documentation portal (“**ServiceNow CORE**”). The information available on ServiceNow CORE will include documentation evidencing Data Processor’s policies, procedures and security measures, as well as copies of the certifications and attestations listed in Section 7.2 (Audit) below.

**7.2 AUDIT.** No more than once per year and upon written request by Data Controller, Customer shall have the right directly or through its representative(s) (provided however, that such representative(s) shall enter into written obligations of confidentiality directly with Data Processor), to access all reasonable and industry recognized documentation evidencing Data Processor’s policies and procedures governing the security of Customer Data (“**Audit**”). Such Audit shall include a written summary report of any assessment performed by an independent third-party of Data Processor’s information security management system supporting the Subscription Service against the objectives stated in ISO 27001, ISO 27018, SSAE 18 / SOC 1 and SOC 2 Type 2 (or equivalent or successor standards). Data Processor reserves the right to refuse to provide Customer (or its representatives) with any information which would pose a security risk to Data Processor or its customers, or which Data Processor is prohibited to provide or disclose under applicable law or contractual obligation.

**7.3 OUTPUT.** Upon completion of the Audit, Data Processor and Customer may schedule a mutually convenient time to discuss the output of the Audit. Data Processor may in its sole discretion, consistent with industry and Data Processor’s standards and practices, make commercially reasonable efforts to implement Customer’s suggested improvements noted in the Audit to improve Data Processor’s Security Program. The Audit and the results derived therefrom are Confidential Information of Data Processor.

**7.4 DATA CONTROLLER EXPENSES.** Any expenses incurred by Data Controller in connection with the Audit shall be borne exclusively by Data Controller.

## 8. SUB-PROCESSORS

**8.1 USE OF SUB-PROCESSORS.** Data Controller authorizes Data Processor to engage Sub-Processors appointed in accordance with this Section 8 to support the provision of the Subscription Service and to deliver Professional Services as described in the Agreement.

**8.1.1. SERVICENOW AFFILIATES.** As of the Effective Date, Data Processor engages, as applicable, the following ServiceNow Affiliates as Sub-Processors: ServiceNow, Inc. (USA), ServiceNow Nederland B.V. (the Netherlands), ServiceNow Australia Pty Ltd (Australia), ServiceNow Software Development India Private Limited (India), and ServiceNow UK Ltd. (United Kingdom) (collectively, “**Sub-Processor Affiliates**”). Data Processor will notify Data Controller of changes regarding such Sub-Processor Affiliates through Data Processor’s customer support portal (or other mechanism used to notify its general customer base). Each Sub-Processor Affiliate shall comply with the obligations of the Agreement in the Processing of the Personal Data.

**8.1.2. NEW SUB-PROCESSORS.** Prior to Data Processor or a Data Processor Affiliate engaging a Sub-Processor, Data Processor shall: **(a)** notify Data Controller by email to Customer’s designated contact(s) or by notification within the customer support portal (or other mechanism used to notify its customer base); and **(b)** ensure that such Sub-Processor has entered into a written agreement with Data Processor (or the relevant Data Processor Affiliate) requiring that the Sub-Processor abide by terms no less protective than those provided in this DPA. Upon written request by Data Controller, Data Processor shall make a summary of the data processing terms available to Data Controller. Data Controller may request in writing reasonable additional information with respect to Sub-Processor’s ability to perform the relevant Processing activities in accordance with this DPA.

**8.2** RIGHT TO OBJECT. Data Controller may object to Data Processor's proposed use of a new Sub-Processor by notifying Data Processor within 10 days after receipt of Data Processor's notice if Data Controller reasonably determines that such Sub-Processor is unable to Process Personal Data in accordance with the terms of this DPA ("**Controller Objection Notice**"). Data Processor shall notify Data Controller within 30 days from receipt of the Controller Objection Notice if Data Processor intends to provide the applicable Professional Service or Subscription Service with the use of the Sub-Processor at issue, and Customer may terminate the applicable Order Form(s), Use Authorization(s) or other signed ordering document between ServiceNow and Customer with respect to the Professional Service or Subscription Service that require use of the Sub-Processor at issue upon written notice to ServiceNow within 45 days of the date of Controller Objection Notice and, as Customer's sole and exclusive remedy, ServiceNow will refund to Customer any unused prepaid fees.

**8.3** LIABILITY. Use of a Sub-Processor will not relieve, waive, or diminish any obligation Data Processor has under the Agreement, and Data Processor is liable for the acts and omissions of any Sub-Processor to the same extent as if the acts or omissions were performed by Data Processor.

## **9. INTERNATIONAL DATA TRANSFERS**

**9.1** STANDARD CONTRACTUAL CLAUSES AND ADEQUACY. Where required under Data Protection Laws, Data Processor or Data Processor's Affiliates shall require Sub-Processors to abide by **(a)** the Standard Contractual Clauses for Data Processors established in third countries; or **(b)** another lawful mechanism for the transfer of Personal Data as approved by the European Commission.

**9.2** PRIVACY SHIELD. ServiceNow, Inc. shall comply with the EU-U.S. and Swiss-U.S. Privacy Shield Framework set forth by the United States Department of Commerce with respect to the Processing of Personal Data transferred from the European Economic Area and Switzerland to the United States.

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## APPENDIX 1 DETAILS OF PROCESSING

### Nature and Purpose of Processing

Data Processor will Process Personal Data as required to provide the Subscription Service and Professional Services and in accordance with the Agreement.

### Duration of Processing

Data Processor will Process Personal Data for the duration of the Agreement and in accordance with Section 4 (Data Processor) of this DPA.

### Data Subjects

Data Controller may submit Personal Data to the Subscription Service, the extent of which is solely determined by Data Controller, and may include Personal Data relating to the following categories of Data Subjects:

- clients and other business contacts;
- employees and contractors;
- subcontractors and agents; and
- consultants and partners.

### Categories of Personal Data

Data Controller may submit Personal Data to the Subscription Service, the extent of which is solely determined by Data Controller, and may include the following categories:

- communication data (e.g. telephone, email);
- business and personal contact details; and
- other Personal Data submitted to the Subscription Service.

### Special Categories of Personal Data

Data Controller may submit Special Categories of Personal Data to the Subscription Service, the extent of which is solely determined by Data Controller in compliance with Data Protection Law, and may include the following categories, if any:

- racial or ethnic origin;
- political opinions;
- religious or philosophical beliefs;
- trade union membership;
- genetic data or biometric data;
- health information; and
- sex life or sexual orientation.

### Processing Operations

The personal data transferred will be subject to the following basic processing activities:

- All activities necessary for the performance of the Agreement.

## EXHIBIT A.5 - DATA SECURITY GUIDE

This Data Security Guide forms a part of the Agreement and describes the measures ServiceNow takes to protect Customer Data.

In the event of any conflict between the terms of this Data Security Guide and the terms of the Agreement with respect to the subject matter herein, this Data Security Guide shall control. All capitalized terms not defined in this Data Security Guide will have the meaning given to them in other parts of the Agreement.

### 1. SECURITY PROGRAM

While providing the Subscription Service, ServiceNow will maintain a written information security program of policies, procedures and controls governing the processing, storage, transmission and security of Customer Data (the "Security Program"). The Security Program includes industry-standard practices designed to protect Customer Data from accidental or unlawful destruction, loss, alteration, unauthorized disclosure, or access. ServiceNow regularly tests, assesses, and evaluates the effectiveness of the Security Program and may periodically review and update the Security Program to address new and evolving security technologies, changes to industry standard practices, and changing security threats, although no such update will materially reduce the commitments, protections or overall level of service provided to Customer as described herein

### 2. PHYSICAL, TECHNICAL, AND ADMINISTRATIVE SECURITY MEASURES

#### 2.1 PHYSICAL SECURITY MEASURES.

**2.1.1. Data Center Facilities.** (a) Physical access restrictions and monitoring that may include a combination of any of the following: multi-zone security, man-traps, appropriate perimeter deterrents (e.g. fencing, berms, guarded gates), on-site guards, biometric controls, CCTV, and secure cages; and (b) fire detection and fire suppression systems both localized and throughout the data center floor.

**2.1.2. SYSTEMS, MACHINES AND DEVICES.** (a) Physical protection mechanisms; and (b) entry controls to limit physical access.

**2.1.3. MEDIA.** (a) Industry standard, as enumerated in NIST 800-88r1, and as amended, or substantially equivalent, destruction of sensitive materials before disposition of media; (b) secure safe for storing damaged hard disks prior to physical destruction; and (c) physical destruction of all decommissioned hard disks storing Customer Data.

#### 2.2 TECHNICAL SECURITY MEASURES.

**2.2.1. ACCESS ADMINISTRATION.** Access to the Subscription Service by ServiceNow employees and contractors is protected by authentication and authorization mechanisms. User authentication is required to gain access to production and sub-production instances. Access privileges are based on job requirements and are revoked upon termination of employment or consulting relationships. Production infrastructure includes appropriate user account and password controls (e.g., the required use of VPN connections, complex passwords with expiration dates, and a two-factored authenticated connection) and is accessible for administration.

**2.2.2. SERVICE ACCESS CONTROL.** The Subscription Service provides user and role-based access controls. Customer is responsible for configuring such access controls within its instance.

**2.2.3. LOGGING AND MONITORING.** The production infrastructure log activities are centrally collected and are secured in an effort to prevent tampering and are monitored for anomalies by a trained security team.

**2.2.4. FIREWALL SYSTEM.** An industry-standard firewall is installed and managed to protect ServiceNow systems by residing on the network to inspect all ingress connections routed to the ServiceNow environment.

**2.2.5. VULNERABILITY MANAGEMENT.** ServiceNow conducts periodic independent security risk evaluations to identify critical information assets, assess threats to such assets, determine potential vulnerabilities, and provide for remediation. When software vulnerabilities are revealed and addressed by a vendor patch, ServiceNow will obtain the patch from the applicable vendor and apply it within an appropriate timeframe in accordance with ServiceNow's then-current vulnerability management and security patch management standard

operating procedure and only after such patch is tested and determined to be safe for installation in all production systems.

**2.2.6. ANTIVIRUS.** ServiceNow updates antivirus, anti-malware, and anti-spyware software on regular intervals and centrally logs events for effectiveness of such software.

**2.2.7. CHANGE CONTROL.** ServiceNow ensures that changes to platform, applications, and production infrastructure are evaluated to minimize risk and are implemented following ServiceNow's standard operating procedure.

**2.2.8. DATA SEPARATION.** Customer Data shall be maintained within a logical single-tenant architecture on multi-tenant cloud infrastructure that is logically and physically separate from ServiceNow's corporate infrastructure.

### **2.3 ADMINISTRATIVE SECURITY MEASURES.**

**2.3.1. DATA CENTER INSPECTIONS.** ServiceNow performs routine reviews at each data center to ensure that it continues to maintain the security controls necessary to comply with the Security Program.

**2.3.2. PERSONNEL SECURITY.** ServiceNow performs background screening on all employees and all contractors who have access to Customer Data in accordance with ServiceNow's then-current applicable standard operating procedure and subject to Law.

**2.3.3. SECURITY AWARENESS AND TRAINING.** ServiceNow maintains a security awareness program that includes appropriate training of ServiceNow personnel on the Security Program. Training is conducted at time of hire and periodically, at least annually, throughout employment at ServiceNow.

**2.3.4. VENDOR RISK MANAGEMENT.** ServiceNow maintains a vendor risk management program that assesses all vendors that access, store, process, or transmit Customer Data for appropriate security controls and business disciplines.

## **3. SERVICE CONTINUITY**

**3.1 DATA MANAGEMENT; DATA BACKUP.** ServiceNow will host Customer's access to and use of purchased instances of the Subscription Service in a pair of data centers that attained SSAE 18 Type 2 attestations or have ISO 27001 certifications (or equivalent or successor attestations) acting in an active/active capacity for the Subscription Term. Each data center includes full redundancy (N+1) and fault tolerant infrastructure for electrical, cooling and network systems. The deployed servers are enterprise scale servers with redundant power to ensure maximum uptime and service availability. The production database servers are replicated in near real time to a mirrored data center in a different geographic region. Each Customer instance is supported by a network configuration with multiple connections to the Internet. ServiceNow backs up all Customer Data in accordance with ServiceNow's standard operating procedure.

**3.2 PERSONNEL.** In the event of an emergency that renders the customer support telephone system unavailable, all calls are routed to an answering service that will transfer to a ServiceNow telephone support representative, geographically distributed to ensure business continuity for support operations.

## **4. CERTIFICATIONS AND AUDITS**

**4.1 CERTIFICATIONS AND ATTESTATIONS.** ServiceNow shall establish and maintain sufficient controls to meet the objectives stated in ISO 27001, ISO 27018, SSAE 18 / SOC 1 and SOC 2 Type 2 (or equivalent standards) (collectively, the "**Standards**") for the information security management system supporting the Subscription Service. At least once per calendar year, ServiceNow shall obtain an assessment against such Standards by an independent third-party auditor.

### **4.2 CUSTOMER MONITORING RIGHTS.**

**4.2.1. REMOTE SELF ASSESSMENTS.** ServiceNow shall enable remote self-serve assessments of its Security Program by granting Customer, at all times and at no additional costs, access to the ServiceNow self-access documentation portal ("**ServiceNow CORE**"). The information available on ServiceNow CORE will include documentation evidencing ServiceNow's policies, procedures and security measures, as well as copies of the certifications and attestations listed in Section 4.2.2 (Audit) below.

**4.2.2. AUDIT.** No more than once per year and upon written request by Customer, Customer shall have the right directly or through its representative(s) (provided however, that such representative(s) shall enter into written obligations of confidentiality directly with ServiceNow), to access all reasonable and industry recognized documentation evidencing ServiceNow's policies and procedures governing the security of Customer Data ("**Audit**"). Such Audit shall include a written summary report of any assessment performed by an independent third-party of ServiceNow's information security management system supporting the Subscription Service against the objectives stated in ISO 27001, ISO 27018, SSAE 18 / SOC 1 and SOC 2 Type 2 (or equivalent or successor attestations). ServiceNow reserves the right to refuse to provide Customer (or its representatives) with any information which would pose a security risk to ServiceNow or its customers, or which ServiceNow is prohibited to provide or disclose under Law or contractual obligation.

**4.2.3. OUTPUT.** Upon completion of the Audit, ServiceNow and Customer may schedule a mutually convenient time to discuss the output of the Audit. ServiceNow may in its sole discretion, consistent with industry and ServiceNow's standards and practices, make commercially reasonable efforts to implement Customer's suggested improvements noted in the Audit to improve ServiceNow's Security Program. The Audit and the results derived therefrom are Confidential Information of ServiceNow.

**4.2.4. CUSTOMER EXPENSES.** Any expenses incurred by Customer in connection with the Audit shall be borne exclusively by Customer.

## **5. MONITORING AND INCIDENT MANAGEMENT**

### **5.1 MONITORING, MANAGEMENT AND NOTIFICATION.**

**5.1.1. INCIDENT MONITORING AND MANAGEMENT.** ServiceNow will monitor, analyze, and respond to security incidents in a timely manner in accordance with ServiceNow's standard operating procedure. ServiceNow's security group will escalate and engage response teams as may be necessary to address an incident.

**5.1.2. BREACH NOTIFICATION.** ServiceNow will report to Customer any accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Customer Data (a "**Breach**") within seventy two (72) hours following determination by ServiceNow that a Breach has occurred.

**5.1.3. REPORT.** The initial report will be made to Customer security or privacy contact(s) designated in ServiceNow's customer support portal (or if no such contact(s) are designated, to the primary contact designated by Customer). As information is collected or otherwise becomes available, ServiceNow shall provide without undue delay any further information regarding the nature and consequences of the Breach to allow Customer to notify relevant parties, including affected Data Subjects, government agencies, and data protection authorities in accordance with Data Protection Laws. The report will include the name and contact information of the ServiceNow contact from whom additional information may be obtained. ServiceNow shall inform Customer of the measures that it will adopt to mitigate the cause of the Breach and to prevent future Breaches.

**5.1.4. CUSTOMER OBLIGATIONS.** Customer will cooperate with ServiceNow in maintaining accurate contact information in the customer support portal and by providing any information that is reasonably requested to resolve any security incident, including any Breaches, identify its root cause(s), and prevent a recurrence. Customer is solely responsible for determining whether to notify the relevant supervisory or regulatory authorities and impacted Data Subjects and for providing such notice.

**5.2 USE OF AGGREGATE DATA.** ServiceNow may collect, use, and disclose quantitative data derived from Customer's use of the Subscription Service for industry analysis, benchmarking, analytics, marketing, and other business purposes in support of the provision of the Subscription Service. Any such data will be in aggregate form only and will not contain Customer Data. ServiceNow shall not sell Customer Data.

**5.3 COOKIES.** When providing the Subscription Service, ServiceNow uses cookies to: **(a)** track session state; **(b)** route a browser request to a specific node when multiple nodes are assigned; and **(c)** recognize a user upon returning to the Subscription Service. Customer shall be responsible for providing notice to, and collecting any necessary consents from, its authorized users of the Subscription Service for ServiceNow's use of cookies.

## 6. PENETRATION TESTS

**6.1** BY A THIRD-PARTY. ServiceNow contracts with third-party vendors to perform a penetration test on the ServiceNow application per family release to identify risks and remediation that help increase security.

**6.2** BY CUSTOMER. No more than once per calendar year Customer may request to perform, at its own expense, an application penetration test of a sub-production instance of the Subscription Service. Customer shall notify ServiceNow in advance of any test by submitting a request to schedule an application penetration test using ServiceNow's customer support portal per ServiceNow's then-current penetration testing policy and procedure, including entering into ServiceNow's penetration test agreement. ServiceNow and Customer must agree on a mutually acceptable time for the test; and Customer shall not perform a penetration test without ServiceNow's express written authorization. The test must be of reasonable duration, but in no event longer than 14 days and must not interfere with ServiceNow's day-to-day operations. Promptly on completion of the penetration test, Customer shall provide ServiceNow with the test results including any detected vulnerability. Upon such notice, ServiceNow shall, consistent with industry-standard practices, use all commercially reasonable efforts to promptly make any necessary changes to improve the security of the Subscription Service. Customer shall treat the test results as Confidential Information of ServiceNow subject to the confidentiality requirements in the Agreement.

## 7. SHARING THE SECURITY RESPONSIBILITY

**7.1** PRODUCT CAPABILITIES. The Subscription Service has the capabilities to: **(a)** authenticate users before access; **(b)** encrypt passwords; **(c)** allow users to manage passwords; and **(d)** prevent access by users with an inactive account. Customer manages each user's access to and use of the Subscription Service by assigning to each user a credential and user type that controls the level of access to the Subscription Service. Customer shall be responsible for implementing encryption and access control functionalities available within the Subscription Service for protecting all Customer Data containing sensitive data, including credit card numbers, social security and other government-issued identification numbers, financial and health information, Personal Data, and any Personal Data deemed sensitive or "special categories of personal data" under Data Protection Laws. Customer is solely responsible for its decision not to encrypt such data and ServiceNow will have no liability to the extent that damages would have been mitigated by Customer's use of such encryption measures. Customer is responsible for protecting the confidentiality of each user's login and password and managing each user's access to the Subscription Service. ServiceNow agrees that any and all Customer Data will be stored, processed, and maintained solely on solely servers within the subscription service and that no Customer Data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, unless that storage medium is appropriately encrypted.

**7.2** CUSTOMER COOPERATION. Customer shall promptly apply any Upgrade or Update that ServiceNow determines is necessary to maintain the security, performance, or availability of the Subscription Service.

**7.3** LIMITATIONS. Notwithstanding anything to the contrary in this Data Security Guide or other parts of the Agreement, ServiceNow's obligations extend only to those systems, networks, network devices, facilities, and components over which ServiceNow exercises control. This Data Security Guide does not apply to: **(a)** information shared with ServiceNow that is not Customer Data; **(b)** data in Customer's VPN or a third-party network; **(c)** any data processed by Customer or its users in violation of the Agreement or this Data Security Guide; or **(iv)** Integrated Products. For the purposes of this Data Security Guide, "**Integrated Products**" shall mean ServiceNow-provided integrations to third-party products or any other third-party products that are used by Customer in connection with the Subscription Service. Customer agrees that its use of such Integrated Products will be: **(i)** in compliance with all Laws, including but not limited to, Data Protection Laws; and **(ii)** in accordance with its contractual agreement with the provider of such Integrated Products. Any Personal Data populated from the Integrated Products to the Subscription Service must be collected, used, disclosed and, if applicable, internationally transferred in accordance with Customer's privacy policy, which will adhere to Data Protection Laws.

## EXHIBIT A.6 – AFFIRMATION AND DISCLOSURE FORM

### AFFIRMATION AND DISCLOSURE FORM

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

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

1. Principal location of business of Contractor:

2224 Lawson Ln  
(Address)

Santa Clara, CA  
(City, State, Zip)

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

**ServiceNow does not anticipate using any personal services subcontractors in direct support of orders placed by the State. ServiceNow may use subcontractors, vendors, and independent contractors to support ServiceNow’s platform or broader operations that may provide ancillary support for State orders.**

2. Location where services will be performed by Contractor:

**ServiceNow is providing a hosted software platform. As of the date of execution, the hosting locations for U.S.-hosted orders are described in the response to Question 3 below, the customer support locations are described in the chart attached at the end of this Exhibit A.6, and technical or administrative support through ServiceNow’s U.S. or global locations. g**

Name/Location where services will be performed by subcontractor(s): **Not applicable; see comment under Question 1 above**

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

[Redacted]

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

signed waiver from the State has been attained by the Contractor to perform the services outside the United States.

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

By:   
Contractor 18AC749447144E4...

Print Name: Mary Connolly

Title: Head of Americas Commercial Legal

Date: April 28, 2020



## REQUEST FOR WAIVER

Date of Request: 03/25/20

Name of Contractor: ServiceNow

Name of Agency Representative: Alex Buerger

Telephone No.: 614-902-4153

Email Address: [Alexandra.Buerger@das.ohio.gov](mailto:Alexandra.Buerger@das.ohio.gov)

Recommended by and

Signature of Agency Procurement Officer: \_\_\_\_\_

Date: \_\_\_\_\_

Acknowledged by and

Signature of Director/Executive Director: \_\_\_\_\_

Date: \_\_\_\_\_

Type of Contract:

- |   |  |
|---|--|
| <input type="checkbox"/> Personal Service     | <input checked="" type="checkbox"/> Competitively Bid Contract |
| <input type="checkbox"/> Request for Proposal | <input type="checkbox"/> Competitively Selected Contract       |
| <input type="checkbox"/> Request for Quotes   | <input type="checkbox"/> Other: _____                          |

**Nature of service(s) to be performed outside of the United States and the extent to which offshore services may be involved (please explain; additional sheets may be attached):**

ServiceNow is a U.S. based application with a global footprint. The state of Ohio instance of the application and associated database reside in the USA. ServiceNow provides support for our account with both onshore and offshore resources depending on time of day and nature of services needed. Typically, ServiceNow offshore resources may be used during non-business hours. Services that may be performed outside of the US, involving offshore services include: ServiceNow Incident (applicable to application, database, or 3rd party services), applying security patches, cloning and copying environments, scheduled/unscheduled application and database maintenance, and administrative support services. There is also the potential for initial offshore hosting of Ohio instances in Canada. This is only because ServiceNow does not have the means to automatically assign instances to be hosted in the U.S., however, once ordered, they can manually move the hosting to the U.S.

Duration of Contract: Five Years Total Contract Cost: \$17Million (estimated)

Justification:

- This Contract is an emergency: (Please explain; additional sheets may be attached)

This Contract is necessary: (Please explain; additional sheets may be attached)

ServiceNow is a Software-as-a-Service solution utilized by the State of Ohio to support the DAS CSC and other agencies' needs. The State's ServiceNow application supports 19 agencies, boards, and commissions with plans to expand to additional State entities. ServiceNow is an US based company with a global footprint. The State ServiceNow is and must be available 24/7. In order to meet this need, ServiceNow uses rotating Service Center locations across the globe to support the application. If a Priority 1 or Priority 2 support case is open with ServiceNow or a service is requested or required that can only be completed by ServiceNow, the responding ServiceNow Service Center location is dependent on the time of day

DAS Contact Information:

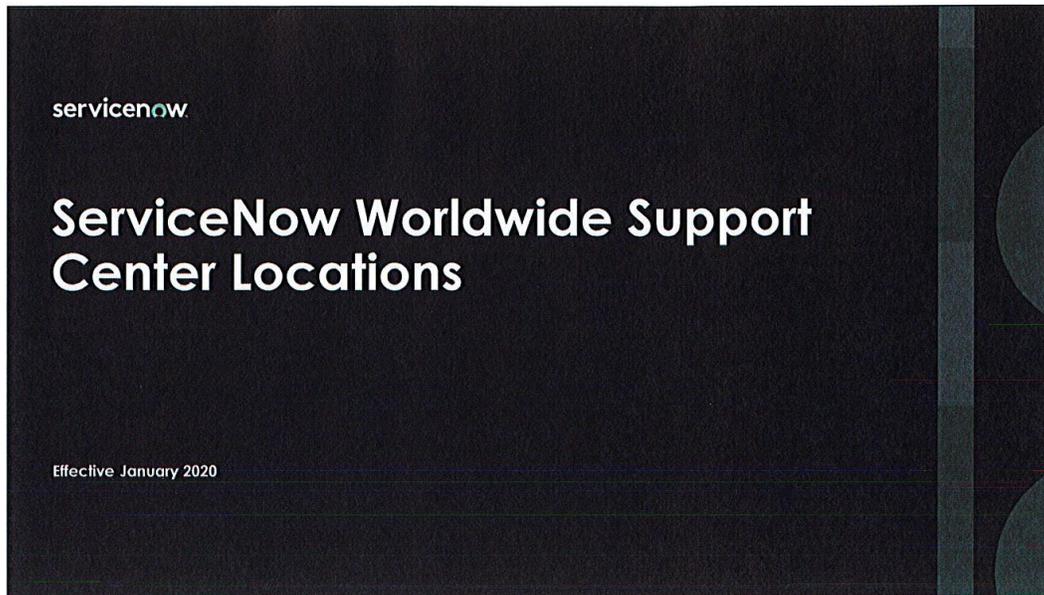
All forms should be sent to:

DAS, Office of Legal Services, ATTN: Shelia Smith  
30 E. Broad Street, Suite 4023, Columbus, OH 43215  
Telephone: 614-644-1773  
Email: [shelia.smith@das.ohio.gov](mailto:shelia.smith@das.ohio.gov)

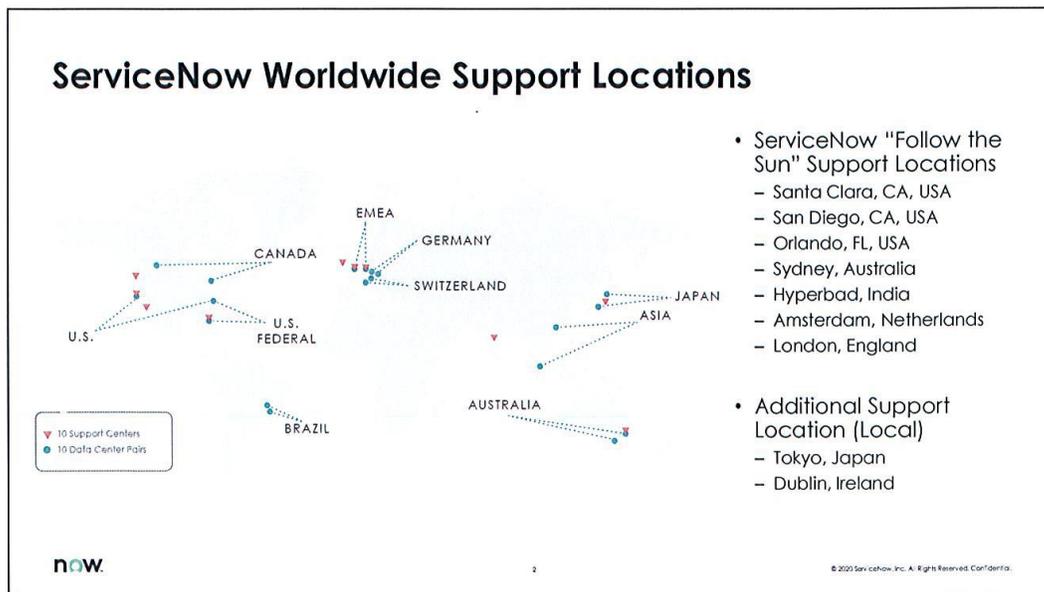
DAS Waiver Determination:

Approved  Denied

Date of Determination: April 1, 2020



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