

REQUEST FOR PROPOSALS

RFP NUMBER: 0A1258

DATE ISSUED: March 1, 2019

The State of Ohio, through the Department of Administrative Services on behalf of the Ohio Department of Medicaid is requesting proposals for:

An Ohio Medicaid Enterprise System (OMES), Provider Network Management RFP

INQUIRY PERIOD BEGINS: March 1, 2019

INQUIRY PERIOD ENDS: March 29, 2019

PROPOSAL DUE DATE: April 26, 2019

OPENING TIME: 1:00 p.m. (Columbus Local Time)

**OPENING LOCATION: Department of Administrative Services
General Services Division**

Bid Desk

4200 Surface Road

Columbus, Ohio 43228-1313

This RFP consists of five (5) parts and eleven (11) attachments, totaling 116 consecutively numbered pages. Three (3) supplements, eleven (11) response templates, and one (1) exhibit document also are included with this RFP. Please verify that you have a complete copy.

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

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1. PART ONE: EXECUTIVE SUMMARY

1.1. PURPOSE

This is a Request for Competitive Sealed Proposals (“RFP”) under Sections 125.071 and 125.18 of the Ohio Revised Code (the “Revised Code”) and Section 123:5-1-8 of the Ohio Administrative Code (the “Administrative Code”). The Ohio Department of Medicaid (ODM), have asked the Department of Administrative Services (DAS) to solicit competitive sealed proposals (“Proposals”) for an Ohio Medicaid Enterprise System (OMES), Provider Network Management (the “Project”), and this RFP is the result of that request.

The State Provider Network Management services are to assist in the modernization of the Medicaid Management Information System (MMIS) and integration of new modules and functionality.

If a suitable offer is made in response to this RFP, the State of Ohio (the “State”), through the Department of Administrative Services, may enter into a contract (the “Contract”) to have the selected offeror (the “Contractor”) perform all or part of the Project. This RFP provides details on what is required to submit a Proposal for the Project, how the State will evaluate the Proposals, and what will be required of the Contractor in performing the work.

This RFP also gives the estimated dates for the various events in the submission process, selection process, and performance of the work. While these dates are subject to change, prospective offerors must be prepared to meet them as they currently stand.

Once awarded, the Contract will be in effect until June 30, 2021. ODM may at its discretion, renew this Contract for up to five (5) additional two-year terms, contingent on Contractor performance, the future needs of ODM, and the availability of funds for this Contract.

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

1.2. BACKGROUND

ODM is the State Medicaid agency for the State of Ohio and is responsible for administering Titles XIX (Medicaid) and XXI (Children’s Health Insurance Program (CHIP)) of the Social Security Act. ODM oversees the provision of health care services for nearly three million eligible enrolled individuals through a network of more than 135,000 providers and six capitated Managed Care Plans (MCPs). ODM provides health care services through a suite of programs, including Medicaid, CHIP, Medicaid Waiver programs, and additional related programs supported by State and federal funding sources.

Following CMS guidelines, Ohio considers the OME to consist of ODM and the Sister State Agencies that participate in Medicaid and related program operations. CMS encourages states to leverage technology investments across all participating agencies, and ODM intends to support the Sister State Agencies with the planned OMES.

1.3. OBJECTIVES

The successful Contractor must demonstrate an understanding of the OME objectives for the modernization of the current system components and describe how their proposed solution facilitates achievement of these objectives by the OME and the Sister State Agencies. The objectives apply to all components and stakeholders of the OMES, and include:

- Enhanced statewide data sharing across agencies
- Improved access to broader sets of harmonized data for analytical and reporting purposes
- Improved services to individuals through increased self-service capabilities supporting the ODM suite of medical programs
- Increased interagency collaboration to better support overall program needs through collaborative program definitions and potential sharing of resources across agencies
- Increased flexibility in system logic for payment mechanisms, oversight of waiver and demonstration programs, and isolation of business logic from applications with the use of business rules engines as appropriate
- Improved availability of flexible reporting and specialized analytical tools using comprehensive sets of Medicaid data
- Broader access to clinical data analysis tools
- Expanded use of automation in business and system task activities through improved integration and automation across for business operations
- Increased management and monitoring of performance in systems and programs
- Transitioning of system functions from older, isolated systems to modern technical components
- Procurement of comprehensive provider management services including improved eligibility determination, screening, enrollment, credentialing, monitoring, and automated background checks for all providers
- Procurement of comprehensive services supporting Long Term Care (LTC) oversight including robust management of facility service agreements, LTC rate setting, integration of required facility reporting data, and tracking of resident grievance activities
- Better automation supporting oversight of the Managed Care Plans (MCPs) in establishing and adjusting capitated rates, maintenance of comprehensive encounter data and other MCP data to monitor administrative and clinical performance
- Comprehensive financial management related to Medicaid operations across all State agencies through improved integration of financial data for State and federal reporting purposes, centralized management of payments, reconciliation, recoupment and recovery, and financial management in accordance with Generally Accepted Accounting Principles or equivalent accounting principles

- Operational responsibility assignment for select business functions to experienced groups or individuals

1.4. SCOPE OF WORK

An overview of the project is provided below. The project Scope of Work and requirements are provided in greater detail within *Supplement One* and *Supplement Two* to this RFP.

In summary, the required functionality for the OMES Provider Network Management solution includes:

- **Provider Application Processing** – A centralized and consolidated approach to enrollment for all OME provider applicants and providers desiring participation in programs operated by the agencies within the OME, including Fee-for-Service (FFS), managed care, and waiver providers
- **Provider Eligibility, Screening, and Credentialing** – Highly automated and streamlined eligibility determination processes including screening, certification, and credentialing conducted based on the applicant's requested program participation
- **Provider Enrollment Processing** – Highly automated processes to associate eligible providers to their requested programs and the services they are authorized to provide within the program(s)
- **Provider Management and Oversight Activities** – Highly automated and self-service processes to monitor and support the network of providers servicing the OME programs, including provider communications, provider performance monitoring, processing of potentially adverse information regarding providers, and ongoing monitoring of providers for continued enrollment
- **Provider Information Management** – Maintenance of the OMES Provider Registry, the system of record for provider information used throughout OMES in support of operational processing of all OMES functions
- **Provider Portal** – Operation and support for a self-service portal allowing providers access to information and functions necessary to conduct business with the OME, accessed via browser and mobile platforms
- **Technical Requirements** – Technical and application architecture for the proposed solution, and support for project planning, configuration, and integration activities in compliance with related standards
- **Implementation Requirements** – Support for project management, certification, and deployment activities including testing and training, that drive the implementation of the solution
- **Maintenance and Operations Requirements** – Ongoing technical and operational support following implementation to ensure the solution is fully functional and performing optimally throughout its life cycle

Any potential future enhancements will be based on the Interval Deliverable Agreement (IDA) process (see Attachment Two).

1.5. CALENDAR OF EVENTS

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

1.5.1. Dates

1.5.2. Firm Dates

| | |
|------------------------|-----------------------|
| RFP Issued: | March 1, 2019 |
| Inquiry Period Begins: | March 1, 2019 |
| Inquiry Period Ends: | March 29, 2019 |
| Proposal Due Date: | April 26, 2019 |

1.5.3. Estimated Dates

| | |
|-------------|--------------------|
| Award Date: | August 2019 |
|-------------|--------------------|

1.5.4. Estimated Work Dates

| | |
|--------------|-----------------------|
| Work Begins: | September 2019 |
|--------------|-----------------------|

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

2. PART TWO: STRUCTURE OF THIS RFP

2.1. ORGANIZATION

This RFP is organized into five (5) parts and has eleven (11) attachments. The parts and attachments are listed below. There also may be one or more supplements to this RFP listed below.

2.2. PARTS

Part 1 Executive Summary

Part 2 Structure of this RFP

Part 3 General Instructions

Part 4 Evaluation of Proposals

Part 5 Award of the Contract

2.3. ATTACHMENTS

| | |
|-------------------|--|
| Attachment One | Evaluation Criteria |
| Attachment Two | Interval Deliverable Agreement & Special Provisions |
| Attachment Three | Requirements for Proposals |
| Attachment Four | General Terms and Conditions |
| Attachment Five | Sample Contract |
| Attachment Six | Offeror Certification Form |
| Attachment Seven | Offeror Profile |
| Attachment Eight | Standard Affirmation and Disclosure Form (EO 2011-2012K) |
| Attachment Nine | Cost Summary (Cost Proposal) |
| Attachment Ten | Business Associate Agreement (BAA) |
| Attachment Eleven | Master License and Cloud Services Agreement (ON PREMISES AND CLOUD PROPOSAL) |

2.4. SUPPLEMENTS AND EXHIBITS

| | |
|------------------|--|
| Supplement One | Scope of Work |
| Supplement Two | System Requirements |
| Supplement Three | State Architecture and Computing Standards, Security, Privacy and Data Handling Requirements |
| Supplement Four | System Retirement and Transition Plan |

2.5. RESPONSE TEMPLATES

| | |
|------------|--|
| Template A | Cover Letter, Executive Summary, and Subcontractor Letters |
| Template B | Terms and Conditions |
| Template C | Offeror Profile |
| Template D | Project Organization and Staffing |
| Template E | Module-Specific Approach |
| Template F | Technical Approach |
| Template G | Implementation Approach |
| Template H | Maintenance and Operations Approach |
| Template I | Proposed Work Plan |
| Template J | Administrative Forms |
| Template K | Cost Workbook |

3. PART THREE: GENERAL INSTRUCTIONS

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

3.1. CONTACTS

The following Procurement Representative will represent the State during the RFP process:

Andrew Miller
Acquisition Analyst
Department of Administrative Services
Enterprise IT Contracting
30 East Broad Street, 39th Floor
Columbus, Ohio 43215

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

3.2. INQUIRIES

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

- Access the State’s Procurement Website at <http://procure.ohio.gov/>;
- From the Quick Links menu on the right, select “**Bid Opportunities Search**”;
- In the “**Document/Bid Number**” field, enter the RFP number found on the first page of this RFP (the RFP number begins with zero followed by the letter “A”);
- Select “**Request for Proposals**” from the Opportunity Type dropdown;
- Click the “Search” button;
- On the Opportunity Search Results page, click on the hyperlinked Bid Number;
- On the Opportunity Details page, click the “Submit Inquiry” button;
- On the document inquiry page, complete the required “Personal Information” section by providing:
 - First and last name of the prospective offeror’s representative (the “Offeror Representative” who is responsible for the inquiry,
 - Name of the prospective offeror,
 - The Offeror Representative’s business phone number, and

- The Offeror Representative's email address;
- Type the inquiry in the space provided including:
 - A reference to the relevant part of this RFP,
 - The heading of the provision in question, and
 - The page number of the RFP where the provision can be found.
- Enter the Confirmation Number at the bottom of the page
- Click the "Submit" button.

An offeror submitting an inquiry will receive an immediate acknowledgement that the State has received the inquiry as well as an email acknowledging receipt. The offeror will not receive a personalized response to the question nor notification when the State has answered the question. Offerors may view inquiries and responses on the State's Procurement Website by using the "Bid Opportunities Search" feature described above and by clicking the "View Q & A" button on the document information page.

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

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

3.3. AMENDMENTS TO THE RFP

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

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

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

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

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

3.4. PROPOSAL SUBMITTAL

Each offeror must submit a technical section and a cost section as part of its total Proposal before the Proposal due date. The offeror must submit the technical section and the cost section of its Proposal in separate, opaque packages. The package with the technical section of the Proposal must be sealed and contain one (1) originally signed technical section and ten (10) copies of the technical section. The package with the cost section must be sealed and contain three (3) complete copies of the cost section of the Proposal. Further, the offeror must mark the outside of each package with either **"0A1258 Ohio Medicaid Enterprise System (OMES), Provider Network Management RFP – Technical Proposal"** or **"0A1258 Ohio Medicaid Enterprise System (OMES), Provider Network Management RFP – Cost Proposal,"** as appropriate.

All offerors are subject to the Architecture and Computing Standards, and Security, Privacy and Data Handling Requirements of *Supplement Three*, regardless of the offeror's proposed solution.

Included in each sealed package, the offeror also must provide an electronic "searchable" copy of everything contained within the package on CD-ROM in Microsoft Office (native format), Microsoft Word (native format), Microsoft Project (native format), Microsoft Excel (native format) or Adobe Acrobat format, as appropriate. If there is a discrepancy between the hard copy and the electronic copy of the Proposal, the hard copy will control, and the State will base its evaluation of the offeror's Proposal on the hard copy.

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

Department of Administrative Services
Attn: Andrew Miller c/o Bid Desk 0A1258
4200 Surface Road
Columbus, Ohio 43228
Bid Desk Main Phone Number: 614-466-5090

The State may reject any Proposals or unsolicited modifications it receives after the deadline. An offeror that mails its Proposal must allow for adequate mailing time to ensure its timely receipt. Offerors also must allow for potential delays due to increased security. The Bid Desk accepts packages between the hours of 7:30 A.M. to 4:00 P.M. Monday through Friday, excluding State Holidays. No deliveries will be accepted before or after these hours without prior arrangements. Offerors must allow sufficient time since the State may reject late Proposals regardless of the cause for the delay.

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

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

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

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

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

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

The State will retain all Proposals, or a copy of them, as part of the Contract file for at least three (3) years. After the three (3) year retention period, the State may return, destroy, or otherwise dispose of the Proposals and any copies of them.

3.5. WAIVER OF DEFECTS

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

3.6. MULTIPLE OR ALTERNATE PROPOSALS

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

3.7. CHANGES TO PROPOSALS

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

3.8. PROPOSAL INSTRUCTIONS

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

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

4. PART FOUR: EVALUATION OF PROPOSALS

4.1. DISCLOSURE OF PROPOSAL CONTENTS

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

4.2. REJECTION OF PROPOSALS

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

4.3. EVALUATION OF PROPOSALS GENERALLY

The evaluation process may consist of up to six distinct phases:

1. Initial review
2. Technical evaluation
3. Cost evaluation
4. Requests for more information
5. Determination of responsibility
6. Contract Negotiations

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

4.4. CLARIFICATIONS AND CORRECTIONS

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

Corrections and clarifications must be completed off State premises.

4.5. INITIAL REVIEW

The State will review all Proposals for format and completeness. The State normally rejects incomplete or incorrectly formatted Proposals, though it may waive any defects or allow an offeror to submit a correction, if the State believes doing so would not result in an unfair advantage for the offeror and is in the State's interest. Late proposals will not be opened or considered. Additionally, during the initial review, offeror proposals are reviewed for egregious and/or a significant amount of exceptions to Attachment Four: General Terms and Conditions. The State may at its discretion reject proposals based upon offeror exceptions. Finally, Minimum Mandatory Requirements are reviewed. Offeror proposals not meeting the requirements will be disqualified from evaluation. After the initial review, the State will forward all timely, complete, and properly formatted Proposals to an evaluation team, led by the Procurement Representative.

4.6. TECHNICAL EVALUATION

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

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

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

All offeror proposals meeting the minimum score of 520 points, qualify to have their Cost Proposal evaluated.

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

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

4.7. REQUIREMENTS

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

In the case of any requirements that call for a team of people, the offeror must submit a team that collectively meets all the team requirements. But the experience of multiple candidates may not be combined to meet a single requirement. Further, previous experience of the candidate submitted for a Project Manager position may not be used to meet any other team member requirements. Each candidate proposed for the Work team must meet at least one (1) of the requirements.

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

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

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

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

4.8. COST EVALUATION

Once the technical merits of the Proposals are considered, the State may consider the costs of one or more of the highest-ranking Proposals. But it is within the State's discretion to wait until after any interviews, presentations, and demonstrations to evaluate costs. Also, before evaluating

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

The State may select one (1) or more of the Proposals for further consideration in the next phase of the evaluation process based on the price performance formula contained in Attachment One. The Proposal(s) selected for consideration in the next phase always will be the highest-ranking Proposal(s) based on this analysis. That is, the State may not move a lower-ranking Proposal to the next phase unless all Proposals that rank above it also are moved to the next phase, excluding any Proposals that the State disqualifies because of excessive cost or other irregularities.

If the State finds that it should give one (1) or more of the highest-ranking Proposals further consideration, the State may move the selected Proposals to the next phase. The State alternatively may choose to bypass any or all subsequent phases and make an award based solely on its scoring of the preceding phases, subject only to its review of the highest-ranking offeror's responsibility, as described below.

4.9. REQUESTS FOR MORE INFORMATION

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

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

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

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

4.10. DETERMINATION OF RESPONSIBILITY

The State may review the background of one (1) or more of the highest-ranking offerors and its or their key team members and subcontractors to ensure their responsibility. For purposes of this RFP, a key team member is a person that an offeror identifies by name in its Proposal as a member of its proposed team. The State will not award the Contract to an offeror that it determines is not responsible or that has proposed candidates or subcontractors to do the Work that are not responsible. The State's determination of an offeror's responsibility may include the following factors: experience of the offeror and its key team members and subcontractors, its and their past conduct on previous contracts, past performance on previous contracts, ability to execute this Contract properly, and management skill. The State may make this determination of responsibility based on the offeror's Proposal, reference evaluations, a review of the offeror's financial ability, and any other information the State requests or determines is relevant.

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

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

4.11. REFERENCE CHECKS

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

The State may consider the quality of an offeror's and its candidates' and subcontractors' references as part of the technical evaluation phase, as well as in the State's determination of the offeror's responsibility. The State also may consider the information it receives from the references in weighing any requirement contained in the technical evaluation phase, if that information is relevant to the requirement. In checking an offeror's or any of its proposed candidates' or subcontractors' references, the State will seek information that relates to the

offeror's previous contract performance. This may include performance with other governmental entities, as well as any other information the State deems important for the successful performance and management of the Work and a positive working relationship between the State and the offeror. In doing this, the State may check references other than those provided in the offeror's Proposal. The State also may use information from other sources, such as third-party reporting agencies. On behalf of itself and each of its candidates and subcontractors, each offeror submitting a Proposal consents to parties contacted by the State as part of the reference check process providing the State with reasonable information requested by the State. The offeror warrants that it has the authority to grant this consent on behalf of each of its candidates and subcontractors.

4.12. FINANCIAL ABILITY

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

4.13. CONTRACT NEGOTIATIONS

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

The State may limit negotiations to particular aspects of any Proposal or the RFP, limit the offerors with whom the State negotiates or to dispense with negotiations entirely. Should the evaluation result in a top-ranked Proposal, the State may limit negotiations to only that offeror and not hold negotiations with any lower-ranking offeror. If negotiations are unsuccessful with the top-ranked offeror, the State then may go down the line of remaining offerors, according to rank, and negotiate with the next highest-ranking offeror. Lower-ranking offerors do not have a right to participate in negotiations conducted in such a manner.

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

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

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

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

From the opening of the Proposals to the award of the Contract, everyone evaluating Proposals on behalf of the State will seek to limit access to information contained in the Proposals solely to those people with a need to know the information. The State also will seek to keep this information away from other offerors, and the State may not tell one (1) offeror about the contents of another offeror's Proposal in order to gain a negotiating advantage.

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

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

4.14. FAILURE TO NEGOTIATE

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

5. PART FIVE: AWARD OF THE CONTRACT

5.1. CONTRACT AWARD

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

Included with this RFP, as Attachment Five, is a sample of the Contract for the RFP. The State will issue two (2) originals of the Contract to the Contractor proposed for award. The offeror must sign and return the two (2) originals to the Procurement Representative. The Contract will bind the State only when the State's duly authorized representative signs all copies and returns one to the Contractor with an award letter, the State issues a purchase order, and all other prerequisites identified in the Contract have occurred.

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

5.2. BUSINESS ASSOCIATE AGREEMENT

Prior to Contract award, the offeror must sign the Business Associate Agreement in Attachment Ten of this RFP. This Health Insurance Portability and Accountability Act of 1996 (hereafter, HIPAA) Business Associate Agreement will be made a part of the Contract.

The Associate performs certain services on behalf of or for the Agency pursuant to the underlying Contract that requires the exchange of information including protected health information protected by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) (the "HITECH Act"), any associated regulations and the federal regulations published at 45 CFR parts 160 and 164 (sometimes collectively referred to as "HIPAA"). The Agency's Health Plan is a "Covered Entity" as that term is defined in HIPAA, and the parties to the underlying Contract are entering into this Agreement to establish the responsibilities of both parties regarding HIPAA-covered information and to bring the underlying Contract into compliance with HIPAA.

5.3. CONTRACT

If this RFP results in a Contract award, the Contract will consist of this RFP, including all attachments, written amendments to this RFP, the Contractor's Proposal, and written, authorized amendments to the Contractor's Proposal. It also will include any materials incorporated by reference in the above documents and any purchase orders and change orders issued under the Contract. The form of the Contract is included as a one-page attachment to this RFP, but it incorporates all the documents identified above. The general terms and conditions for the

Contract are contained in Attachment Four to this RFP. If there are conflicting provisions between the documents that make up the Contract, the order of precedence for the documents is as follows:

1. The RFP, including the supplements and attachments, amended and clarified version of Contractor's Response. Contractor's Response includes Attachment Four – General Terms and Conditions, and all other Attachments, Supplements and materials included in Contractor's Response
2. The attached Cost Proposal Workbook
3. The applicable Purchase Order
4. The one-page Contract (Attachment Five) in its final form

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 be from the award date until June 30, 2021. The State may at its discretion, renew this Contract for up to five (5) 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. 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.

6. Attachments

6.1. ATTACHMENT ONE: EVALUATION CRITERIA

Evaluation Model. Proposal evaluation and scoring will be done through a phased approach, with the Technical Proposal and Cost Proposal scoring based on the four (4) global criteria. Each phase of evaluation is outlined below.

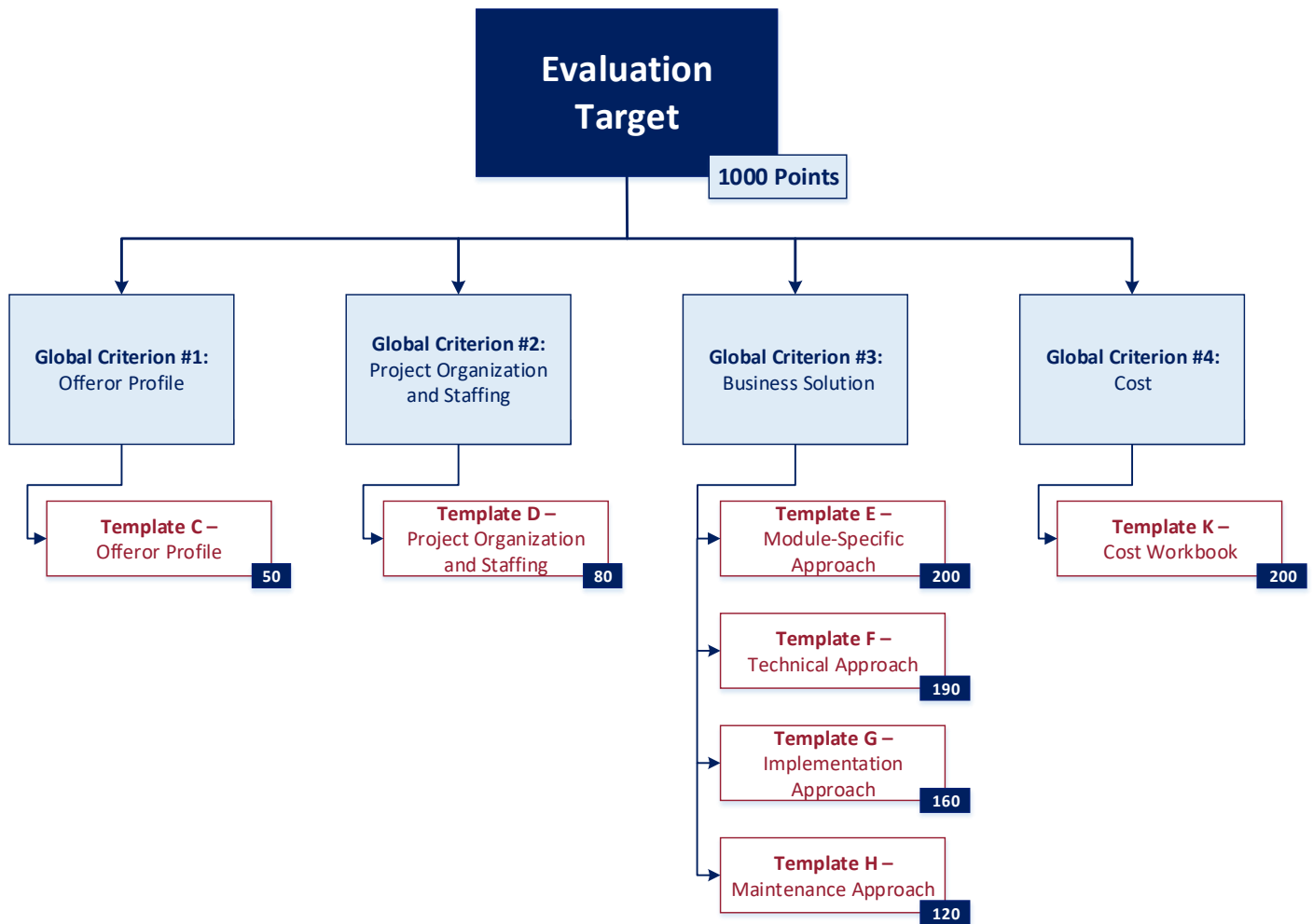
- **Initial Review** – Proposals are reviewed for timeliness, format, completeness, conflicting terms and conditions, and adherence to the minimum mandatory requirements.
 - ✓ Format and Completeness – The State normally rejects incomplete or incorrectly formatted Proposals, though it may waive any defects or allow an offeror to submit a correction.
 - ✓ Conflicting Terms and Conditions – The State will review offeror exceptions to *Attachment Four: General Terms and Conditions* and at its discretion reject offeror proposals with egregious or a significant number of exceptions.
 - ✓ Minimum Mandatory Requirements – Offerors must adhere to and provide relevant information needed, to meet each mandatory requirement. Any proposal failing to do so will be disqualified from evaluation.
- **Technical Evaluation Phase** – Offeror proposals meeting the minimum mandatory requirements will be evaluated and scored based upon the offeror's response to the following:
 - ✓ *Template C – Offeror Profile*
 - ✓ *Template D – Project Organization and Staffing*
 - ✓ *Template E – Module-Specific Requirements Approach*
 - ✓ *Template F – Technical Requirements Approach*
 - ✓ *Template G – Implementation Requirements Approach*
 - ✓ *Template H – Maintenance and Operations Requirements Approach*
- **Cost Evaluation Phase** – Offeror proposals receiving a minimum of 520 points, will be evaluated and scored based upon the offeror's comprehensive proposed solution price, provided in:
 - ✓ *Template K – Cost Workbook*

MINIMUM MANDATORY REQUIREMENTS (PASS/FAIL)

The mandatory requirements for the RFP are listed below. Offerors are expected to provide their response to each mandatory requirement in *Template C – Offeror Profile, Section 2.1*.

1. The offeror must demonstrate experience within the last three (3) years as the prime contractor for at least three (3) federal, state, local government or private healthcare entities where the solution of similar size and scope is currently being or has been implemented.
2. The offeror must provide a detailed plan which demonstrates that a minimum of fifteen (15) % of the cost of the work each fiscal year under the resulting Contract will be subcontracted through one or more Ohio Certified Minority Business Enterprise (MBE) vendors. The MBE plan shall include, at minimum, the name(s) of the MBE vendor(s), percent of total project cost allocated to each MBE vendor, description of work to be performed by each MBE vendor, letter(s) of intent signed by each identified MBE vendor, and MBE Certification letters for each MBE vendor. If collaborating with more than one MBE vendor, please attach separate forms for each MBE vendor.
3. Offeror must provide a signature by an authorized signatory legally binding the offeror, indicating compliance with the Affirmation and Disclosure form.

Proposals meeting the Initial Review criteria including the above Minimum Mandatory Requirements will be evaluated and scored across four (4) global criteria, with each receiving a percentage of the overall total (1000) points, as seen in the image below.



Technical Evaluation Phase (800 Points). During the technical evaluation phase, proposals will be evaluated and scored based on the offeror's response to and weight of each response template and requirements therein. The following is a breakdown of expected components and weighted scoring assigned to the Technical Evaluation Phase:

GLOBAL CRITERION #1: OFFEROR PROFILE (50 POINTS)

➤ Template C – Offeror Profile (50 points)

| Sub-Criteria | Points |
|------------------------------|-----------|
| ➤ Organization Overview | 20 |
| ➤ Offeror Profile Summary | 20 |
| ➤ Provided References | 5 |
| ➤ Offeror Certification Form | 5 |
| Total | 50 |

GLOBAL CRITERION #2: PROJECT ORGANIZATION AND STAFFING (80 POINTS)

➤ Template D – Project Organization and Staffing (80 points)

| Sub-Criteria | Points |
|-------------------------------------|-----------|
| ➤ Project Organization and Staffing | 30 |
| ➤ Key Project Personnel | 50 |
| Total | 80 |

GLOBAL CRITERION #3: BUSINESS SOLUTION (670 POINTS)

➤ Template E – Module-Specific Approach (200 points)

| Sub-Criteria | Points |
|------------------------|------------|
| ➤ Provider Application | 26 |
| ➤ Provider Eligibility | 26 |
| ➤ Provider Enrollment | 26 |
| ➤ Continued Enrollment | 26 |
| ➤ Provider Information | 26 |
| ➤ Provider Management | 26 |
| ➤ Facility Oversight | 20 |
| ➤ Provider Portal | 24 |
| Total | 200 |

➤ **Template F – Technical Approach (190 points)**

| Sub-Criteria | Points |
|---------------------------|------------|
| ➤ Systems and Application | 17 |
| ➤ Technical Services | 15 |
| ➤ Data Management | 20 |
| ➤ Security | 18 |
| ➤ Privacy | 18 |
| ➤ User Interface | 15 |
| ➤ User Documentation | 15 |
| ➤ Reporting and Analytics | 15 |
| ➤ OMES Integration | 17 |
| ➤ Hosted Solution | 40 |
| Total | 190 |

➤ **Template G – Implementation Approach (160 points)**

| Sub-Criteria | Points |
|----------------------|------------|
| ➤ Project Management | 40 |
| ➤ CMS Certification | 45 |
| ➤ Testing | 40 |
| ➤ Training | 35 |
| Total | 160 |

➤ **Template H – Maintenance and Operations Approach (120 points)**

| Sub-Criteria | Points |
|---|------------|
| ➤ Maintenance and Operations | 50 |
| ➤ Business Continuity/Disaster Recovery | 30 |
| ➤ Compliance | 40 |
| Total | 120 |

Cost Evaluation Phase (200 Points). Offeror Technical proposals meeting the minimum score of 520 points will move on to the Cost Evaluation Phase. The following is a breakdown of expected components and weighted scoring assigned to the Cost Evaluation Phase. Offerors are expected to provide a cost for each area outlined in *Template K – Cost Workbook*, as outlined below.

GLOBAL CRITERION #4: COST (200 POINTS)

- **Template K – Cost Workbook (200 points)**
 - ✓ Labor Rates
 - ✓ Implementation Costs
 - ✓ Software Maintenance and Operations Support Costs
 - ✓ Hosting and Disaster Recovery Costs
 - ✓ Packaged Software Costs
 - ✓ Hardware Costs

SCORING

Scoring: Technical. Qualifying technical proposals are collectively scored by the Proposal Review Team (PRT). Each sub-criterion is collectively reviewed and judged by the PRT, and awarded a score of 0 - 4 based on the qualifications described in the rubric below.

| Rating | Relation to Requirements |
|--------|--|
| 4 | Exceeds the specified requirement(s) |
| 3 | Fully addresses the requirement(s) |
| 2 | Addresses the requirement(s), but is limited in some areas |
| 1 | Partially addresses the requirements or is very limited |
| 0 | Fails to address the requirement(s) |

Upon completion of the PRT's consensus scoring review, each offeror's Technical Proposal will receive a score with a maximum of 800 points. All offeror proposals meeting **520 point total** qualify to have their Cost Proposal evaluated.

Scoring: Cost. The offeror with the lowest proposed Not-To-Exceed Fixed Price will receive 200 points. The remaining offerors will receive a percentage of the maximum cost points available based upon the following formula:

- **(Lowest Not-To-Exceed Fixed Price/Offeror's Not-To-Exceed Fixed Price) X 200**

Scoring: Total Points. Total points are calculated using the following formula.

- **Technical Points + Cost Points**

6.2. ATTACHMENT TWO: INTERVAL DELIVERABLE AGREEMENT & SPECIAL PROVISIONS

PART ONE: INTERVAL DELIVERABLE AGREEMENT

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

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

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

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

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

The Contractor will not be compensated until the Deliverable is accepted and any additional cost associated with the iterations required to obtain acceptance are the responsibility of the Contractor.

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

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

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

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

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

- Name, title, identification of the employer (prime or subcontractor) and number of staff;
- Staff work hours with any known exceptions noted;
- Description of the work to be performed by the Contractor;
- Specific Contractor resources assigned;

- Individual rate for each Contractor resource assigned;
- Projected number of Contractor hours allocated (per resource);
- Dates covered in the work;
- Dependencies;
- Management or staffing issues;
- Standards of performance; and
- Work Breakdown Schedule (WBS) for all Work in the IDA.

In addition, the following information may also be required:

- Staffing Issues
- Required work related travel and training.

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

The State's intent is for all IDAs to be developed and negotiated in partnership between the State and the Contractor, with each having a vested interest in its success. In the event that the State and the Contractor are unable to negotiate an IDA, the State, may request mediation.

PART TWO: SPECIAL PROVISIONS

Software Licenses. The Contractor must provide or arrange software licenses for all Commercial Software necessary to meet the requirements of this RFP. For the Key Commercial Software, the State requires Enterprise license rights to ultimately serve its entire Ohio Medicaid Enterprise, which consists of hundreds of personnel workers, and hundreds of technical administrators and third-party contractors who may work with the software. Sufficient seats for all such individuals will be required, and if multiple copies of the system will be needed, the right to copy and deploy multiple copies of the software in production, test, and development environments. For all other Commercial Software, the State requires a license that provides adequate usage rights to meet the State's current need, as identified elsewhere in this RFP and as disclosed in the selected Contractor's Cost Summary. The State may also copy the software for use on computers owned and controlled by third parties, if the purpose of doing so is to facilitate disaster recovery, emergency needs, including testing and training for such purposes, and to permit a third party to host the Key Commercial Software on behalf of the State in an outsourcing arrangement. This license also gives the State the right to provide the authorized individuals described above access to the Key Commercial Software remotely through a browser or client software and an Internet or similar connection for all uses and purposes identified above.

NOTE: The State will retain all licenses, software, and systems procured through this RFP.

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

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

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

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

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

The State form authorizing payment and the payment itself do not indicate that the State has accepted the Deliverables associated with the payment. The State's acceptance of the

Deliverables that are part of developing the Project is conditioned on a successful performance test upon completion of the Project or Services (if applicable).

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

Inconsistencies between Contract and Deliverables. If any terms and conditions incorporated in a Deliverable, or other work product, are in addition to, inconsistent with, or conflict with the Contract, such terms and conditions are excluded and the Contract will prevail.

The Contractor's Fee Structure. The Contract award will be for a Not-To-Exceed Fixed Price as agreed in the offerors Cost Summary Microsoft Excel® Workbook, Attachment Nine, (in native MS Excel format) payable in accordance with the following:

Project Deliverables. The Contractor may submit an invoice for Deliverables or milestones upon receipt of a signed Deliverable Submittal Form indicating: (i) the Deliverable or milestone completed conformed to the Contract in all material respects; and (ii) payment should be made. Project Deliverables will be paid within 30 days of receipt of a proper invoice, noting that the Deliverable has been accepted in accordance with the Contractor's proposed Project Plan.

Operational Run Services. The Contractor may submit an invoice for monthly operations/run services, inclusive of any service level credits. Monthly operations/run will be paid within 30 days of receipt of a proper invoice.

Reimbursable Expenses. None.

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

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. 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, the Contractor must not change the location(s) disclosed on the Affirmation and Disclosure Form, unless a duly signed waiver from the State has been attained to perform the services outside the United States.

Federal Provisions. The Contractor must adhere to the following federal provisions:

- <https://www.medicaid.gov/medicaid/data-and-systems/mita/index.html>
- <https://www.medicaid.gov/medicaid/data-and-systems/mita/mita-30/index.html>
- The Contractor shall comply with all applicable federal civil rights laws including, but not limited to: Title VII of the Civil Rights Act of 1964 (Pub.L.88-352); Title VI of the Civil Rights Act of 1964 (42 USC 2000d, et seq.); Americans with Disabilities Act of 1990 ([42 U.S.C. § 12101](#), et seq.); and the Age Discrimination Act of 1975 (42 USC 6101, et seq.).

MBE Set-aside and Reporting. In the State's commitment to make more State contracts, services, benefits and opportunities available to minority business enterprises (MBE), the State included in the Evaluation Scoring Formula of this RFP, a provision for the offeror to seek and set aside work for MBE subcontractors. The State requires fifteen (15) % of the cost of the work each fiscal year to be Set-aside for Ohio Certified MBE. In seeking proposals, the offeror must:

- Utilize a competitive process to which only Ohio certified MBEs may respond;
- Have established criteria by which prospective MBEs will be evaluated including business ability and specific experience related to the work requirements;
- Require the MBE subcontractor to maintain their certification throughout the term of the Contract, including any renewals; and,
- Propose the awarded MBE as a subcontractor under this RFP.

After award of the RFP, the Contractor must submit a monthly report to the State Contract Manager or designee documenting the work performed by and payments made to the MBE subcontractor. These reports must reflect the level of MBE commitment agreed to in the Contract. The reports must be filed at a time and in a form prescribed by the State Contract Manager or designee.

Notes:

1. For this RFP Ohio certified MBEs that are the prime must subcontract with an Ohio certified MBE to meet the above requirement.
2. For purposes of calculating the MBE Set-aside points, the State will not award any points for proposed MBE services that are optional elements of the Scope of Work.

Veteran-Friendly Business Enterprise (VBE) Program. The State of Ohio's Veteran-Friendly Business Enterprise (VBE) Procurement program provides preference to certified companies that compete to contract with the state to supply the goods or services it needs, including eligible construction services.

In order to be eligible for certification, the applicant business must satisfy one of the following criteria:

- At least ten percent of its employees are veterans or on active service;
- At least fifty-one percent of the applicant business is owned by veterans or persons on active service;

- If the applicant business is a corporation fifty-one percent of which is not owned by veterans or persons on active service, at least fifty-one percent of the board of directors are veterans or persons on active service; or
- The business is certified by the United States Department of Veterans Affairs as a Service-Disabled Veteran-Owned Small Business or a Veteran-Owned Small Business and the owner(s) of the business meets the definition of veteran as defined in [Rule 123:5-1-01\(II\) of the Ohio Administrative Code](#).

Information regarding how to obtain this Business Certification can be located at the following link:
[http://das.ohio.gov/Divisions/EqualOpportunity/BusinessCertification/Veteran-FriendlyBusinessEnterprise\(VBE\)Program.aspx](http://das.ohio.gov/Divisions/EqualOpportunity/BusinessCertification/Veteran-FriendlyBusinessEnterprise(VBE)Program.aspx).

6.3. ATTACHMENT THREE: REQUIREMENTS FOR PROPOSALS

PROPOSAL FORMAT

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

Alterations to the State provided baseline RFP language is strictly prohibited. The State will compare offeror responses to the baseline RFP and deviations or alterations to the State's RFP requirements may result in a rejection of the offeror's Proposal.

To ensure that each Proposal addresses the required sections of the RFP, offerors must **identify and address each RFP requirement** using the associated requirement number and language. The offeror must provide their proposed solution or response to the requirement(s) in-line. Please note that offerors are expected to provide a 'one-to-one' response, in other words, each requirement should be easily identifiable with a corresponding response.

Below is an example of the expected format for responding to the RFP requirements within each requirements category and subcategory.

| | |
|--|---|
| 9. OMES INTEGRATION | |
| Instructions: The following two categories are located in both the OMES Requirements and Provider Requirements. When providing a response, please thoroughly review both areas in Supplement One and Supplement Two to ensure all OMES Integration requirements are addressed through narrative. | |
| 9.1 OMES | |
| This area covers integration requirements describing activities related to the integration with other OMES modules and State components. This category includes requirements for the contractor to collaborate with the systems integration contractor for the OMES. | |
| Refer to the relevant OMES requirements located in Supplement Two and pertinent narrative in Supplement One to cover solution capabilities in this area. The offeror must describe its approach to OMES integration below. The narrative response for this category must be organized using the appropriate subcategories as per Supplement One and Supplement Two. For example: | |
| > General | |
| > Technology | |
| 9.1.1 General | |
| The following is ABC Enterprise's response to the OMES – General requirements. | |
| OMES-110.000.010 | The contractor must collaborate with the SI module contractor and other impacted OMES module contractors to coordinate integration of their components with other components within the Ohio Medicaid Enterprise System (OMES) environment. |
| <Response> | |
| 9.1.2 Technology | |
| OMES-110.010.050 | The contractor's solution must ensure each transaction is uniquely identifiable and that transaction flow is traceable from end to end. |
| <Response> | |
| OMES-110.010.060 | The contractor's solution must support federated transactions. |
| <Response> | |

Each Proposal must include a response to every request for information in this Attachment and *Supplement One* whether the request requires a simple "yes" or "no" or requires a detailed explanation. When a detailed response is required, simply repeating the RFP's requirement and agreeing to comply may be an unacceptable response and may cause the Proposal to be rejected.

Offerors are required to limit their responses to *Supplement One* and *Supplement Two* to no longer than a total of three times the State provided page count for *Supplement One* and *Supplement Two*. For example, if *Supplement One* is eighty (80) pages and *Supplement Two* is eighty (80) pages, the offeror's in-line responses, inclusive of the text of the State requirements, will not exceed 480 pages in total. Offerors must choose a similarly sized typeface (generally 11 point for text and 9 point for tables) to that used for the State's requirements and not utilize smaller than 9 point fonts to work under this page limit restriction.

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

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

| Proposal Section | Response Template/Contents |
|--------------------|---|
| Technical Proposal | Template A – Cover Letter, Executive Summary, and Subcontractor Letters |
| Contents: | <ul style="list-style-type: none"> ➤ Cover Letter ➤ Offeror Information ➤ Executive Summary ➤ Subcontractor Letters ➤ Table of Contents |
| Technical Proposal | Template B – Terms and Conditions |
| Contents: | <ul style="list-style-type: none"> ➤ RFP Terms and Conditions ➤ State Customary Terms and Conditions ➤ Mandatory Terms and Documents ➤ Performance Standards, Fee at Risk, Retainage, and Service Credits ➤ Pre-existing Materials ➤ Commercial Materials ➤ Terms for Commercial Materials ➤ Exceptions |
| Technical Proposal | Template C – Offeror Profile |
| Contents: | <ul style="list-style-type: none"> ➤ Organization Overview ➤ Offeror Profile Summary and Forms ➤ References ➤ Offeror Certification Form (Attachment Six) |

| Proposal Section | Response Template/Contents |
|--------------------|--|
| Technical Proposal | Template D – Project Organization and Staffing |
| Contents: | <ul style="list-style-type: none"> ➤ Project Organization and Staffing Approach ➤ Key Project Personnel ➤ Resumes ➤ Assumptions |
| Technical Proposal | Template E – Module-Specific Approach |
| Contents: | <ul style="list-style-type: none"> ➤ Provider Application ➤ Provider Eligibility ➤ Provider Enrollment ➤ Continued Enrollment ➤ Provider Information ➤ Provider Management ➤ Facility Oversight ➤ Provider Portal ➤ Assumptions |
| Technical Proposal | Template F – Technical Approach |
| Contents: | <ul style="list-style-type: none"> ➤ Systems and Application ➤ Technical Services ➤ Data Management ➤ Security ➤ Privacy ➤ User Interface ➤ User Documentation ➤ Reporting and Analytics ➤ OMES Integration ➤ Hosting Approach ➤ Equipment and System Elements ➤ Assumptions |
| Technical Proposal | Template G – Implementation Approach |
| Contents: | <ul style="list-style-type: none"> ➤ Project Management ➤ Testing ➤ Training ➤ Centers for Medicare and Medicaid Services (CMS) Certification ➤ Value-Added Benefits ➤ Assumptions |

| Proposal Section | Response Template/Contents |
|--------------------|--|
| Technical Proposal | Template H – Maintenance and Operations Approach |
| Contents: | <ul style="list-style-type: none"> ➤ Maintenance and Operations (M&O) ➤ Business Continuity/Disaster Recovery ➤ Compliance ➤ Product Support and Transition ➤ Assumptions |
| Technical Proposal | Template I – Proposed Work Plan |
| Contents: | <ul style="list-style-type: none"> ➤ Introduction ➤ Assumptions |
| Technical Proposal | Template J – Administrative Forms |
| Contents: | <ul style="list-style-type: none"> ➤ Supplier Information Form ➤ W-9 Form ➤ Independent Contractor Acknowledgment Form ➤ Standard Affirmation and Disclosure Form ➤ Affirmative Action Program Verification |
| Cost Proposal | Template K – Cost Workbook |

TECHNICAL PROPOSAL

Offerors are advised that all response templates and attachments for this RFP are available to be downloaded. Documents can be downloaded from procure.ohio.gov. It shall be the sole responsibility of the offeror to obtain the templates, supplements, and attachments. The offeror shall not be relieved of any responsibility for performance under the subsequent Contract due to the failure of the offeror to obtain a copy of the complete RFP including templates, supplements, and attachments. The following provides a summary of the expected content for each of the response template outlined above.

Template A – Cover Letter, Executive Summary, and Subcontractor Letters

Cover Letter. The cover letter must be in the form of a standard business letter and must be signed by an individual authorized to legally bind the offeror.

Offeror Information. Offeror information includes the offeror's payment and legal notice address, offeror's legal structure, and information regarding the individuals responsible for putting together the offeror's proposal.

Executive Summary. A brief three (3) to five (5) page overview of the offeror's qualifications, approach to delivering requested services, timeline to deliver services, proposed team, and the advantages of the offeror's proposal to the State.

Subcontractor Letters. For each proposed subcontractor, the offeror must attach a letter from the subcontractor, signed by an individual authorized to legally bind the subcontractor.

Table of Contents. Must include all parts of the Proposal including response forms and attachments, identified by section and page number.

Template B – Terms and Conditions

The offeror must review and sign *Template B – Terms and Conditions* using blue ink in order to note the offeror's acknowledgement, intent of compliance, and any exceptions to the State's Terms and Conditions. If exceptions are not noted in *Template B* of the RFP but raised during contract negotiations, the State reserves the right to cancel the negotiation if, at its sole discretion, it deems that to be in the best interests of the State. Offerors must include a statement indicating that the offeror has read, understands, and agrees to the General Terms and Conditions.

The selected offeror(s) will sign a Contract with the State to provide the goods and services described in its response.

Pre-Existing Materials. The offeror must list any Pre-existing Materials it owns that will be included in a Deliverable if the offeror wants a proprietary notice on copies that the State distributes. For example, the offeror may have standard user interfaces or standard shells that it incorporates in what is otherwise custom software. (See the Ownership of Deliverables section of the General Terms and Conditions.) The State may reject any Proposal that includes existing materials for a custom solution, if the State believes that such is not appropriate or desirable for the Project.

Commercial Materials. The offeror must list any commercial and proprietary materials that the offeror will deliver that are easily copied, such as Commercial Software, and in which the State will have less than full ownership ("Commercial Materials"). Generally, these will be from third parties and readily available in the open market. The offeror need not list patented parts of equipment, since they are not readily copied.

Terms for Commercial Materials. If the offeror proposes a Deliverable that contains Commercial Software or other Commercial Materials with terms that differ from the terms in Attachment Four for Commercial Software and Materials and Attachment Eleven, other than Key Commercial Software, which must be dealt with in accordance with the preceding section, then those terms must be detailed here, and any proposed separate agreement covering those items must be included in the offeror's Proposal. This is required even if the State will not be expected to sign the agreement. Any deviation from the standard terms in Attachment Four may result in a rejection of the offeror's Proposal.

Template C – Offeror Profile

Offerors are advised there are a number of standard forms located throughout this document. In order to organize offeror responses please respond to the following DAS forms and Attachments in *Template C*.

- *Attachment Six: Offeror Certification Form*
- *Attachment Seven: Offeror Profile (as it relates to the proposed work)*

Offeror Profile. The offeror must include a description of the offeror capability, capacity, and experience in support of the narrative and requirements in *Supplement One* and *Supplement Two* using *Template C, Section 1*. The description should include the date the offeror was established, its leadership, number of employees, number of employees the offeror will engage in tasks directly related to the Project, and any other background information or relevant experience that will help the State assess the ability of the offeror to fulfill the obligations of the Contract.

Offeror Profile Summary Form(s). The offeror must use this form and fill it out completely to provide the required information.

The Offeror Profile Summary Form contained in the Attachment Seven has been customized for the applicable offeror requirements. Please ensure to respond to Attachment Seven in *Template C*. Each page of the form may contain minor variations. If an offeror elects to duplicate the form electronically, the offeror must carefully review each page of the form to ensure that it has been copied accurately. Failure to duplicate the form exactly may lead to the rejection of the offeror's Proposal.

Each offeror must meet all the mandatory requirements in the RFP. If an offeror does not meet all the mandatory requirements, the State may reject the offeror's Proposal as non-responsive, the offeror must use the Offeror Profile Summary Form(s) (Attachment Seven) and fill them out completely to provide the required information. All offerors must also demonstrate experience to meet each of the applicable mandatory requirement(s) evaluation criteria by responding in Section 2.1 in *Template C – Offeror Profile*. Each offeror must meet the applicable mandatory requirement(s) in the RFP. If an offeror does not meet the applicable mandatory requirement(s), the State may reject the offeror's Proposal as non-responsive.

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

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

- **Contact Information.** The offeror must provide a client contact name, title, phone number, email address, company name, and mailing address. The offeror also must include the same information for an alternate client contact, in case the State cannot reach the primary contact. Failure to provide this information or providing information that is inaccurate or out of date may result in the State not including the reference in the evaluation process or rejecting the offeror's Proposal. The contact information given must be for a person within the client's organization and not a co-worker or a contact within the offeror's organization, subsidiaries, partnerships, etc.

- **Project Name.** The offeror must provide the name of the project where it obtained the mandatory experience.
- **Dates of Experience.** The offeror must complete this area with a beginning month and year and an ending month and year to show the length of time the offeror actually performed the work, not just the length of time the offeror was engaged by the reference.
- **Description of the Related Service Provided.** The State will not assume that, since the experience requirement is provided at the top of the page, all descriptions on that page relate to that requirement. The offeror must reiterate the experience being described, including the capacity in which the work was performed and the role of the offeror on the Project. It is the offeror's responsibility to customize the description to clearly substantiate the qualification.
- Description of how the related service shows the offeror's (or proposed subcontractor's) experience, capability, and capacity to develop the deliverables and to achieve the milestones within the scope of work of this RFP.
- The offeror must list each project experience separately and completely every time it is referenced, regardless of whether it is on the same or different pages of the form.

Offeror Certification Form. The offeror must complete Attachment Six. Please note, this form must be included in *Template C*.

Conflict of Interest Statement. Each Proposal must include a statement indicating whether the offeror or any people that may work on or benefit from the Project through the offeror have a possible conflict of interest (e.g., employed by the State of Ohio, etc.) and, if so, the nature of that conflict. The State may reject a Proposal in which an actual or apparent conflict is disclosed. The State also may terminate the Contract if it discovers any actual or apparent conflict of interest that the offeror did not disclose in its Proposal.

Template D – Project Organization and Staffing

Initial Staffing Plan. The offeror must provide an Initial Staffing Plan that includes: staffing levels, and how the staffing levels will achieve consistent, dependable service regardless of changes that may influence work volume, process for replacing key personnel, a summary of all roles and responsibilities, identification of subcontractor staff, if applicable.

Key Project Personnel Resume Summary Form. In addition to detailed, chronological resumes for proposed personnel, the offeror must complete the following summary form to demonstrate how each proposed team member fulfills minimum qualification requirements specified for their role.

Key Personnel References Form. The offeror must provide three (3) references for which each proposed key personnel candidate has successfully demonstrated meeting the requirements of the RFP.

Supporting Requirements. The offeror must describe the support it wants from the State other than what the State has offered in this RFP.

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

Template E – Module-Specific Approach (Proposed Solution)

The offeror must provide a narrative overview of how the proposed system will meet the module-specific requirements in *Template E*. The following questions are a vital portion of the RFP response and will be evaluated by the State. Responses should reference requirements using the appropriate requirement IDs from *Supplement Two*. The State also expects the offeror to propose its approach for meeting any narrative included in *Supplement One*.

Responses in this section must be highly focused on the Provider-specific business processes and requirements and not simply provide generic or marketing descriptions of solution capabilities.

Template F – Technical Approach (Proposed Solution)

Technical requirements include those that drive how systems should be designed and built in a way that provides for long-term use and reuse, in compliance with related standards (e.g., service oriented architecture, State adopted standards, Medicaid Information Technology Architecture (MITA), and the Centers for Medicare and Medicaid Services (CMS) “Seven Conditions and Standards”), as well as defining the minimum set of technical capabilities expected from certain infrastructure components.

The offeror must provide a narrative overview of how the proposed system will meet the OMES requirements and narrative in *Supplement One*. Responses in this section must be highly focused on the State business processes and requirements and not simply provide generic or marketing descriptions of solution capabilities.

Equipment and System Elements. The offeror must identify all proposed equipment needed for the Project during the installation, customization (as applicable), implementation, and ongoing operations. The offeror's Proposal must include the proposed manufacturer's name and model for all equipment. Additionally, the offeror must identify any equipment that the State will require for the implementation and ongoing operation of the Project that is not otherwise specified in this RFP.

The equipment and other system specifications in this RFP are minimum Project requirements. The offeror may include features, equipment, or other elements in excess of the minimum but must clearly identify them as such. All elements of the proposed solution must meet the mandatory technical requirements for the Project. If any element of the proposed solution does not meet the minimum requirements, the offeror's Proposal may be rejected as non-responsive.

Template G – Implementation Approach (Proposed Solution)

The offeror must provide a narrative overview of how their proposal meets OMES requirements as they relate to Implementation. *Template G* focuses on Project Management, Design Development, and Implementation, Deployment Methodology, Testing, and Training.

Responses in this section must be highly focused on the State business processes and requirements and not simply provide generic or marketing descriptions of solution capabilities.

Template H – Maintenance and Operations Approach (Proposed Solution)

The offeror must provide a narrative overview of how their proposals meets OMES requirements as they relate to Maintenance and Operations. The offeror must use response sections to provide specific details of the proposed approach to meeting the maintenance requirements in each process area. Be advised, while some sections only require narrative around requirements others may also contain pointed questions. Responses should, when necessary, reference requirements using the appropriate requirement IDs from *Supplement Two*.

Responses in the sections below must be highly focused on the State business processes and requirements. The State also expects the offeror to propose its approach for meeting the narrative included in *Supplement One*.

Template I – Proposed Work Plan

The offeror must provide a proposed Work Plan and Work Breakdown Structure (WBS) by project phase. Each project phase is defined in *Supplement One*. The State's "Conceptual Work Plan" also located in *Supplement One* would be a starting point for the offeror; any significant changes to the "assumed work plan" must be described in the offeror's response.

This Work Plan and WBS should show all task details with responsibilities, timelines, durations, milestone dates, deliverables, and offeror personnel hours by deliverables for each project phase, State personnel hours by phase deliverable, and all critical dependencies for the project's milestones and deliverables. *Template I – Proposed Work Plan* must be an attachment to the offeror's Technical Proposal and tabbed as such in the submission as well as an electronic version of the Microsoft Project® version in the offeror's electronic submission of the Technical Proposal.

Template J – Administrative Forms

Offerors are expected to provide completed forms as outlined below. These forms should be provided as part of the offeror's proposal. Any missing or incomplete 'administrative form' could result in the offeror's proposal being disqualified from evaluation.

The following forms are expected to accompany the offeror's response to the RFP.

1. *Supplier Registration* – The offeror must register with Ohio Shared Services and affirm they have completed the registration process. The registration is available at:
✓ <http://ohiosharedservices.ohio.gov/>
2. *W-9 Form* – The offeror must complete a W-9 form in its entirety. The offeror must submit at least one originally signed W-9. All other copies of a Proposal may contain copies of the W-9. The **offeror must indicate on the outside of the binder which Proposal contains the originally signed W-9**. A current version of the Internal Revenue's W-9 form is available at:
✓ <https://www.irs.gov/pub/irs-pdf/fw9.pdf>
3. *Independent Contractor Acknowledgement Form* – Unless the offeror is a "business entity" as that term is defined in ORC. 145.037 ("an entity with five or more employees that is a corporation, association, firm, limited liability company, partnership, sole proprietorship, or other entity engaged in business"), the offeror must complete and submit an originally signed Independent Contractor Acknowledgement form in its entirety. All other copies of a Proposal may contain copies of the Independent Contractor Acknowledgement form. The **offeror must indicate on the outside of the binder which Proposal contains the originally signed Independent Contractor Acknowledgement form**. A current version of the Independent Contractor Acknowledgement form is available at:
✓ <https://www.opers.org/forms-archive/PEDACKN.pdf>
4. *Standard Affirmation and Disclosure Form* – The offeror must complete and sign the Affirmation and Disclosure Form as part of its Proposal. Offerors are to use Attachment Eight: Standard Affirmation and Disclosure Form located in Section 6.8 of the RFP.
5. *Affirmative Action Form* – Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be completed. Offerors must file an Affirmative Action Program Verification application through the Ohio Business Gateway at:
✓ <http://das.ohio.gov/Divisions/Equal-Opportunity/Construction-Compliance/Affirmative-Action-Program-Verification>

COST PROPOSAL

Offeror's Cost Proposal - Microsoft Excel Workbook - *Template K – Cost Workbook* (must be separately sealed, **in native Excel format – not PDF**). Please be advised, *Attachment Nine – Cost Summary* will also direct the offeror to use the above-mentioned response template.

Template K – Cost Workbook

Cost Workbook (must be separately sealed package). *Template K* is a Cost Workbook in Microsoft Excel®. Offerors may not reformat the State's Cost Workbook. Each offeror must complete *Template K* in the exact format provided. Be advised, the State may reject any Proposal with a reformatted Cost Workbook or that is not separately sealed.

The offeror's response must provide sufficient detailed information to allow the State to assess the reasonableness of the offeror's cost for each defined component of the project as detailed in the Cost Workbook (a Microsoft Excel Spreadsheet provided as part of this RFP). The offeror's Cost Proposal must be inclusive and complete for each area identified in the Cost Workbook. The offeror should note that the State's goal is to compare total offeror's costs to deliver the services to the State. Therefore, all Cost Proposals will be evaluated based on a proposed cost and total cost basis. Line items identified as 'Optional' will not be evaluated for scoring purposes.

In all cases, costs that are not specified by the offeror in this template will not be considered nor allowable. All assumptions regarding the offeror's cost proposal must be included in the identified tab in *Template K – Cost Workbook*. Please note that the offeror must keep all cost information separate from the Technical Proposal submission.

Completion of the Cost Workbook and Worksheets is mandatory. Alterations to the Cost Workbook and Worksheets (Forms) or their respective formulas is prohibited (except for those specific areas in which instructions allow the offeror to define or add rows). Any alterations to the Workbook, Worksheets (Forms) and their respective formulas may result in the rejection of the Proposal. Offerors should model their costs outside of the State provided Cost Workbook but propose them to the State using the Cost Workbook as part of their final RFP response.

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

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

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

6.4. ATTACHMENT FOUR: GENERAL TERMS AND CONDITIONS

PART ONE: PERFORMANCE AND PAYMENT

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

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

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

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

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

The State also may have certain obligations to meet. Those obligations, if any, are also listed in the RFP Documents. If the State agrees that the Contractor's failure to meet the delivery, milestone, or completion dates in the RFP Documents is due to the State's failure to meet its own obligations in a timely fashion, then the Contractor will not be in default, and the delivery, milestone, and completion dates affected by the State's failure to perform will be extended by the

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

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

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

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

The State will pay the Contractor interest on any late payment, as provided in Section 126.30 of the Ohio Revised Code (the "Revised Code"). If the State disputes a payment for anything covered by an invoice, within 15 business days after receipt of that invoice, the State will notify the Contractor, in writing, stating the grounds for the dispute. The State then may deduct the disputed amount from its payment as a nonexclusive remedy. If the Contractor has committed a material breach, in the sole opinion of the State, the State also may withhold payment otherwise due to the Contractor. Both parties will attempt to resolve any claims of material breach or

payment disputes through discussions among the Contractor's Implementation Manager (e.g., Contractor's Project Manager), the Contractor's Project executive, the State's Project Representative, and the State Contract Management Administrator. The State will consult with the Contractor as early as reasonably possible about the nature of the claim or dispute and the amount of payment affected. When the Contractor has resolved the matter to the State's satisfaction, the State will pay the disputed amount within 30 business days after the matter is resolved. The State has no obligation to make any disputed payments until the matter is resolved, and the Contractor must continue its performance under this Contract pending resolution of the dispute or claim.

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

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

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

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

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

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

against any payments due from the State to the Contractor under this or any other contracts with the State.

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

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

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

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

PART TWO: WORK AND CONTRACT ADMINISTRATION

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

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

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

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

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

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

for small-dollar subcontracts. Should the Contractor fail to pass through any provisions of this Contract to one of its subcontractors and the failure damages the State in any way, the Contractor must indemnify the State for the damage.

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

Access. During the term of this Contract, Contractor shall provide representatives from the State and Federal Government with full access to the system, including onsite inspection, at any time requested by the State or Federal Government to determine whether conditions in 42 CFR 433, subpart C are being met.

Audits. During the term of this Contract and for three (3) 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.

The State and the Federal Government also reserve the right to inspect, review, investigate, or audit all parts of the Contractor's and subcontractors' facilities engaged in performing work related to this RFP at any time while the Contract is active. In this capacity, the State or its representatives must have access to facilities, records, reports, personnel and any other appropriate aspects of the System.

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 45-day period following written notice from the State, the State may terminate this Agreement, in part or in full.

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

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

Insurance. Contractor shall procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees. Contractor shall procure and maintain for the duration of the Contract insurance for claims arising out of their professional 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 Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with a limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation insurance as required by the State of Ohio, or the state in which the work will be performed, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease. If Contractor is a sole proprietor, partnership or has no statutory requirement for workers' compensation, Contractor must provide a letter stating that it is exempt and agreeing to hold Entity harmless from loss or liability for such.
4. Technology Professional Liability (Errors and Omissions) Insurance appropriate to the Contractor's profession, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall cover all applicable Contractor personnel or subcontractors who perform professional services related to this agreement.
5. Cyber liability (first and third party) with limits not less than \$5,000,000 per claim, \$10,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The coverage shall provide for breach response costs as well as regulatory fines and penalties and credit monitoring expenses with limits sufficient to respond to these obligations.

The Insurance obligations under this agreement shall be the minimum Insurance coverage requirements and/or limits shown in this agreement. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are

applicable to a given loss, shall be available to the State of Ohio. No representation is made that the minimum Insurance requirements of this agreement are sufficient to cover the obligations of the Contractor under this agreement.

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

Additional Insured Status

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

Primary Coverage

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

Umbrella or Excess Insurance Policies

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

Notice of Cancellation

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

Waiver of Subrogation

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

Deductibles and Self-Insured Retentions

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

Claims Made Policies

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

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 Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of Contract work. The Discovery Period must be active during the Extended Reporting Period.

Verification of Coverage

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

Subcontractors

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

Special Risks or Circumstances

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

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

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

If the Contractor removes a person listed in the RFP Documents from the Project for any reason other than those specified above, the State may assess liquidated damages in the amount of \$1,800.00 for every day between the date on which the individual was removed and the date that this Contract is terminated or the individual's qualified replacement, selected in accordance with the process identified in this section, starts performing on the Project. The State also may provide

the Contractor with written notice of its default under this section, which the Contractor must cure within 30 days. Should the Contractor fail to cure its default within the 30-day cure period, the State may terminate immediately for cause, and the State will be entitled to damages in accordance with the Suspension and Termination Section of this Contract due to the termination. Should the State assess liquidated damages or otherwise be entitled to damages under this provision, it may offset those damages from any Fees otherwise due to the Contractor under this Contract.

The Contractor must have qualified replacement people available to replace any people listed in the RFP Documents by name or identified as a key individual on the Project. When the removal of a listed person is permitted under this Section, or if a person becomes unavailable due to no fault of the Contractor, the Contractor must submit the resumes for a minimum of two replacement people to the State for each person removed or who otherwise becomes unavailable. The Contractor must submit the resumes, along with such other information as the State may reasonably request, within five business days after the decision to remove a person is made or the unavailability of a listed person becomes known to the Contractor.

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

- (a) The State may assess liquidated damages in the amount of \$1,800.00 for every day between the date on which the Contractor failed to provide the applicable notice, failed to provide the two replacement candidates, or the date the State rejected all candidates for cause and the date on which the Contractor affects a cure or the Contract expires without renewal or is terminated.
- (b) The State may terminate this Contract immediately for cause and without any cure period.

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

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

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

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

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

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

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

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

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

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

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

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

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

to the Contractor other than those payments specified in this Contract and in accordance with the payment schedule specified in this Contract for properly completed work.

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

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

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

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

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

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

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

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

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

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

Changes. The State may make reasonable changes within the general scope of the Project. The State will do so by issuing a written order under this Contract describing the nature of the change ("Change Order"). Additionally, if the State provides directions or makes requests of the Contractor without a change order, and the Contractor reasonably believes the directions or requests are outside the specifications for the Project, the Contractor may request a Change Order from the State. The parties will handle such changes as follows: The Contractor will provide pricing to the State. The State will execute a Change Order once it and the Contractor have agreed on the description of and specifications for the change, as well as any equitable adjustments that need to be made in the Contractor's Fee or the performance schedule for the work. Then within five business days after receiving the Change Order, the Contractor must sign it to signify agreement with it.

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

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

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

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

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

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

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

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

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

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

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

Confidentiality. The State may disclose to the Contractor written material or oral or other information that the State treats as confidential ("Confidential Information"). Title to the Confidential Information and all related materials and documentation the State delivers to the Contractor will remain with the State. The Contractor must treat such Confidential Information as secret, if it is so marked, otherwise identified as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interest of the public, other contractors, potential contractors with the State, or individuals or organizations about whom the

State keeps information. By way of example, information must be treated as confidential if it includes any proprietary documentation, materials, flow charts, codes, software, computer instructions, techniques, models, information, diagrams, know-how, trade secrets, data, business records, or marketing information. By way of further example, the Contractor also must treat as confidential materials such as police and investigative records, files containing personal information about individuals or employees of the State, such as personnel records, tax records, and so on, court and administrative records related to pending actions, any material to which an attorney-client, physician-patient, or similar privilege may apply, and any documents or records excluded by Ohio law from public records disclosure requirements.

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

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

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

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

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

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

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

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

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

For Deliverables that include custom materials such as software, scripts, or similar computer instructions developed for the State, the State is entitled to the source material. Scripts and similar functionality may not be locked or otherwise protected from access by the State, unless the State has any passwords or other tools necessary to access the material. Source material must include annotations or comments according to industry standards. Further, the State is entitled to any working papers the Contractor has developed during the performance of the Project that would

reasonably assist the State in using the Deliverables that include source materials or that would help the State protect its interests in the Deliverable or update, modify, or otherwise maintain the Deliverable. This also includes all design and architectural materials, such as schemas.

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

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

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

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

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

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

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

1. Used or copied for use in or with the computer or computers for which it was acquired, including use at any State installation to which such computer or computers may be transferred;
2. Used or copied for use in or with a backup computer for disaster recovery and disaster recovery testing purposes or if any computer for which it was acquired is inoperative;

3. Reproduced for safekeeping (archives) or backup purposes;
4. Modified, adapted, or combined with other computer software, but the modified, combined, or adapted portions of the derivative software incorporating any of the Commercial Software will be subject to same restrictions set forth in this Contract;
5. Disclosed to and reproduced for use on behalf of the State by support service contractors or their subcontractors, subject to the same restrictions set forth in this Contract; and
6. Used or copied for use in or transferred to a replacement computer.

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

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

PART FOUR: REPRESENTATIONS, WARRANTIES, AND LIABILITIES

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

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

The warranties regarding material defects, merchantability, and fitness are one-year warranties. All other warranties will be continuing warranties. If any portion of the Project fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor must correct such

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

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

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

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

Software so that it will properly operate in conjunction with changes in the operating environment in which it is designed to operate.

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

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

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

Limitation of Liability. Neither party will be liable for any indirect, incidental, or consequential loss or damage of the other party, including but not limited to lost profits, even if the parties have been advised, knew, or should have known of the possibility of such damages. Additionally, neither party will be liable to the other for direct or other damages in excess of a) two times the Not-To-Exceed Fixed Price of this Contract for the RFP including all Supplements and separately, b) two times the most recent twenty-four (24) months of the Managed Services charges paid or payable for such work contained in the RFP including all Supplements. The limitations in this paragraph do not apply to any obligation of the Contractor to indemnify the State against claims made against it or for damages to the State caused by the Contractor's negligence or other tortious conduct.

PART FIVE: ACCEPTANCE AND MAINTENANCE

Standards of Performance and Acceptance. There will be a period for performance testing of the completed Project. During the performance period, the State, with the assistance of the Contractor, will perform acceptance testing. The performance period will last no less than 30 calendar days, during which time the Project must meet the standard of performance required by the RFP Documents for 14 consecutive calendar days. The performance criteria in the RFP Documents will be supplemented with the relevant user manuals, technical materials, and related writings, to the extent that the specifications in those writings supplement and refine rather than contradict the performance criteria in the RFP Documents. Acceptance of the Project depends on a successful completion of the performance period defined in this section and the RFP Documents. This section applies to the Project, and any part of it, as well as replacements or substitutes for the Project after completion of a successful performance period.

If the Project does not meet the standard of performance during the initial performance period, the State will give the Contractor details about the problems in a timely manner and in a useful and relevant form. Until the Contractor demonstrably corrects all outstanding problems, the second performance period will not start, and the State will not accept the Project (or part thereof). The second performance test will continue on a day-by-day basis until the standard of performance is met for a total of 14 consecutive calendar days or until the 30-day performance period has ended without meeting the standard of performance.

If the Project fails to meet the standard of performance after 30 calendar days from the start of the second performance period, the Contractor will be in default and will not have a cure period. In addition to all other remedies the State may have under this Contract, the State may request a correction or replacement of the relevant portion of the Project.

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

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

The Project "downtime" is that period when any part of the Project is inoperable due to failure of the Project or a particular Deliverable to operate according to the specifications in the RFP

Documents, the user documentation, or the published technical specifications. During a period of downtime, the State may use operable components of the Project when that will not interfere with repair of inoperable components of the Project. Downtime will start from the time the State notifies the Project Manager of the inoperable condition of the Project until the Project is returned in proper operating condition.

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

Should it be necessary, the State may delay the start of the performance period, but the delay will not exceed 14 consecutive calendar days after the scheduled date for implementation of the Project. Such a delay will not be considered a suspension of work under the Suspension and Termination section of this Contract.

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

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

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

For software classified as Commercial Software in the Ownership of Deliverables section and for which the State has not signed a separate license agreement, the Contractor must acquire for the State the right to maintenance for one year. That maintenance must be the third-party licensor's standard maintenance program, but at a minimum, that maintenance program must include all, updates, patches, and fixes to the software. It also must include a commitment to keep the software current with the operating environment in which it is designed to function (and, if applicable, the subject matter covered by the software) and to correct material defects in the software in a timely fashion. Additionally, the Contractor must obtain a commitment from the licensor to make maintenance available for the product for at least five years after the first year of maintenance. The Contractor also must obtain a commitment from the licensor to limit increases in the annual Fee for maintenance to no more than 7% annually. If the licensor is unable to provide maintenance during that five-year period, then the licensor must be committed to doing one of the

following two things: (a) give the State a *pro rata* refund of the license fee based on a five-year useful life; or (b) release the source code for the software (except third party software) to the State for use by the State solely for the purpose of maintaining the copy(ies) of the software for which the State has a proper license. For purposes of receiving the source code, the State agrees to treat it as confidential and to be obligated to the requirements under the Confidentiality section of this Contract with respect to the source code. That is, with respect to the source code that the State gets under this section, the State will do all the things that the Confidentiality section requires the Contractor to do in handling the State's Confidential Information.

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

Travel time and expenses related to remedial and preventive maintenance will not be considered billable but will be included in the Contractor's firm, fixed Fee for the Project during the warranty period and a part of the annual maintenance Fee during later annual maintenance periods.

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

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

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

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

PART SIX: CONSTRUCTION

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

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

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

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

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

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

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

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

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

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

PART SEVEN: LAW AND COURTS

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

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

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

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

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

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

Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be submitted to the Department of Administrative Services Equal Opportunity Division to comply with the affirmative action requirements.

Minority Business Enterprise Subcontracting Requirement. The State is committed to making more State contracts and opportunities available to minority business enterprises (MBE) certified by the Ohio Department of Administrative Services pursuant to Section 123.151 of the Ohio Revised Code and Rule 123:2-15-01 of the Ohio Administrative Code. This RFP contains a sheltered solicitation requirement which requires the offeror to seek and set aside a portion of the Work to be exclusively performed by Ohio certified MBE businesses. For more information regarding Ohio MBE certification requirements, including a list of Ohio certified MBE businesses, please visit the DAS Equal Opportunity Division web site at:

<http://das.ohio.gov/Divisions/EqualOpportunity/MBEEDGECertification/tabid/134/default.aspx>

Sheltered Solicitation. In seeking solicitations from Ohio certified MBE subcontractors, the offeror must:

- a. Utilize a competitive process to which only Ohio certified MBEs may respond;
- b. Have established criteria by which prospective Ohio MBEs will be evaluated including business ability and specific experience related to the Work requirements; and
- c. Require the Ohio certified MBE maintain a valid certification throughout the term of the Contract, including any renewals.

MBE Subcontractor Plan. Offeror's proposal must include an Ohio certified MBE subcontractor plan (Plan). The Plan must (a) state the specific percentage of the cost of the Work that it will set aside for Ohio certified MBE subcontractors only which must equal, at a minimum, 15% of the cost of the Contract; (b) include a description of a competitive process used for the selection of Ohio certified MBE subcontractors to which only Ohio certified MBEs may respond; and (c) identification of proposed portions of the Work to be performed by Ohio certified MBE subcontractors.

Scoring. Pre-award identification of Ohio certified MBE subcontractor and Agency required minimum percentage. In the Evaluation Scoring Formula of the RFP, the offeror who identifies one or more qualified Ohio certified MBE subcontractor and has the highest percentage of its cost proposal meeting or exceeding the minimum percentage set aside exclusively for Ohio certified MBE subcontractors' Work will receive the maximum number of points set forth in the RFP. If remaining Offerors meet the minimum percentage and have identified one or more qualified Ohio certified MBE subcontractor, the offeror will receive a percentage of the maximum points allowed. Offerors who do not meet the minimum percentage or do not identify one or more Ohio certified MBE subcontractor will receive zero points

Tracking. Once awarded, Contractor shall indicate on all invoices submitted to the Agency the dollar amount attributed to the goods or services provided by the selected Ohio certified MBE subcontractors along with documentation of the Ohio certified MBE subcontractor's activities. Offeror shall report all Ohio certified MBE subcontractor payments under this Contract monthly to the Agency. Compliance with [OFFEROR OR BIDDER]'s proposed cost set-aside percentage is a term of this Contract and failure to attain the proposed percentage by the expiration of the Contract may result in the [OFFEROR OR BIDDER] being found in breach of contract.

REMEDIES

Modification or Waiver.

Contractor may apply in writing to the Agency, on a form prescribed by DAS, for a waiver or modification of its proposed MBE set-aside cost percentage. However, no modification or waiver request may be submitted before at least [thirty percent (30%)] of the Work is completed or after eighty percent (80%) of the work is completed. Contractor shall submit evidence acceptable to Agency demonstrating that Contractor made every reasonable effort to seek Ohio certified MBE subcontractors, in order to justify the granting of a waiver or modification. Within 30 days of receipt of the request, Agency will determine whether Contractor's good faith efforts and submitted documentation justify the granting of a waiver or modification. If a waiver or modification is denied, Contractor will have an opportunity to attain the percentage before the completion of the work. Compliance with any modified cost set-aside percentage is a term of this Contract and failure to attain the percentage each fiscal year of the Contract may result in the Contractor being found in breach of contract.

Fee at Risk.

Compliance with offeror's proposed cost MBE set-aside percentage is a term of this Contract. Contractor agrees to place fifteen percent of its payment at risk for failure to attain the MBE set-aside percentage.

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

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. 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, the Contractor must not change the location(s) disclosed on the Affirmation and Disclosure Form, unless a duly signed waiver from the State has been attained to perform the services outside the United States.

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

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

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

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

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

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

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

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

6.5. ATTACHMENT FIVE: SAMPLE CONTRACT

A CONTRACT BETWEEN
THE DEPARTMENT OF ADMINISTRATIVE SERVICES
ON BEHALF OF THE _____

AND

(CONTRACTOR)

THIS CONTRACT, which results from RFP 0A1227, entitled _____, is between the State of Ohio, through the Department of Administrative Services, on behalf of _____, and _____ (the "Contractor").

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

This Contract consists of:

1. This one-page Contract (Attachment Five) in its final form;
2. The attached, amended and clarified version of Contractor's Response to RFP 0A1258 dated _____ ("Contractor's Response"). Contractor's Response includes Attachment Four - General Terms and Conditions, and all other Attachments, Supplements and materials included in Contractor's Response;
3. The attached Cost Proposal Workbook dated _____; and
4. The applicable Purchase Order.

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

The term of the Contract will from the award date until June 30, 2021. The State may renew at its discretion, this Contract for up to five (5) additional two-year term(s), subject to and contingent on the discretionary decision of the Ohio General Assembly to appropriate funds for this Contract in each new biennium. Any such renewal of all or part of the Contract also is subject to the satisfactory performance of the Contractor and the needs of the State.

.

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

CONTRACTOR

STATE OF OHIO

DEPARTMENT OF ADMINISTRATIVE
SERVICES

By: **SAMPLE – DO NOT FILL OUT**

By: _____

Name: _____

Name: _____

Title: _____

Title: Director _____

Date: _____

Date: _____

6.6. ATTACHMENT SIX: OFFEROR CERTIFICATION FORM

Please include the offeror's response to Attachment Six in *Template C – Offeror Profile*.

Attachment Six is comprised of several forms which exist in Template C.

6.7. ATTACHMENT SEVEN: OFFEROR PROFILE

Please include the offeror's response to Attachment Seven in *Template C – Offeror Profile*.

Attachment Seven is comprised of several forms which exist in Template C.

6.8. ATTACHMENT EIGHT: STANDARD 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.

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

1. Principal location of business of Contractor:

(Address)

(City, State, Zip)

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

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

2. Location where services will be performed by Contractor:

(Address)

(City, State, Zip)

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

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

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

(Address)

(Address, City, State, Zip)

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

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

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

immediately terminate the contract, unless a duly signed waiver from the State has been attained by the Contractor to perform the services outside the United States.

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

By: _____
Contractor

Print Name: _____

Title: _____

Date: _____

6.9. ATTACHMENT NINE: COST SUMMARY (COST PROPOSAL)

Attachment Nine is included as a Response Template in for the Provider Network Management RFP.

The Cost Proposal is to be submitted in *Template K – Cost Workbook* in native Excel format – not PDF.

6.10. ATTACHMENT TEN: BUSINESS ASSOCIATE AGREEMENT

OHIO DEPARTMENT OF MEDICAID DATA SHARING AND CONFIDENTIALITY AGREEMENT

D-1617-00-0000

This Data Sharing and Confidentiality Agreement (Agreement) is entered into by and between the Ohio Department of Medicaid (ODM) and **Awarded Vendor** in furtherance of the Contract entitled _____ between the Ohio Department of Administrative Services and _____ (the DAS Contract).

ARTICLE I - PURPOSE AND LEGAL AUTHORITY

- A. This Agreement is entered into by ODM and **Awarded Vendor**, in accordance with the terms and conditions of the DAS Contract that require the use or disclosure of protected health information.
- B. The authority to release this data is found in Title 42 of the Code of Federal Regulations (CFR), specifically 42 CFR 431.300, 431.302, 431.304, 431.305 431.306, 435.945; Privacy regulations 45 CFR 164.502(e); 164.504(e) and security regulations 45 CFR 164.308, 164.314 issued pursuant to the Health Insurance Portability and Accountability Act [42 USC 1320d - 1320d-8]; relevant amendments effected by the American Recovery and Reinvestment Act of 2009 [Pub. L. 111-5, §§ 13400, *et seq.*] and the terms of this Agreement, or more stringent provisions of the law, rules, or regulations of the State of Ohio.
- C. The parties agree that any data or records provided under this Agreement may only be used or disclosed in accordance with Medicaid regulations.

ARTICLE II – DESCRIPTION OF RECORDS

TO BE PROVIDED TO OR ACCESSED BY **AWARDED VENDOR**

The **Awarded Vendor** shall have the minimal amount of access necessary to protected health information records to perform the work required under the DAS Contract.

ARTICLE III - CONFIDENTIALITY OF INFORMATION

- A. **Awarded Vendor** agrees that it shall not use any information, systems, or records made available to it for any purpose other than to fulfill the obligations specified herein. **Awarded Vendor** specifically agrees to comply with state and federal confidentiality and information disclosure laws, rules, and regulations applicable to programs under which this Agreement exists, including, but not limited to:
1. United States Code, 42 USC 1320d through 1320d-8 (HIPAA);
 2. Code of Federal Regulations, 42 CFR 431.300, 431.302, 431.305, 431.306, 435.945, 45 CFR 164.502(e), 164.504(e), and 162.100;
 3. Ohio Revised Code, ORC 173.20, 173.22, 2305.24, 2305.251, 3701.243, 3701.028, 4123.27, 5101.26, 5101.27, 5160.39, 5168.13, and 5165.88; and
 4. Corresponding Ohio Administrative Code rules.
- B. **Awarded Vendor** agrees that any data created, received, maintained or transmitted on behalf of ODM by **Awarded Vendor** shall be returned to ODM not later than 90 calendar days following termination of this Agreement and shall certify that no copies of source data were retained by **Awarded Vendor**, unless as may be otherwise provided for in this Agreement or by law.
- C. **Awarded Vendor** shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the paper and/or electronic protected personal data and health information that it creates, receives, maintains, or transmits on behalf of ODM against use or disclosure not provided for by this Agreement.
- D. **Awarded Vendor** agrees that access to the records and data provided by ODM and described in ARTICLE II will be restricted to only those authorized employees, officials, subcontractors, and other persons who need it to perform duties related to this Agreement. **Awarded Vendor** agrees to provide the ODM Agreement Manager with a complete listing of any and all such persons who shall have access to the above referenced records and/or data.
- E. **Awarded Vendor** agrees that the above records and/or data and any records, reports, databases, and/or other derivative documents created from the information provided under this Agreement shall be stored in an area that is physically safe from access from unauthorized persons during duty and non-duty hours. Information provided under this Agreement shall be protected electronically to prevent unauthorized access by computer, remote access, or any other means. **Awarded Vendor** expressly agrees that no records will be accessed, tested, maintained, backed up or stored outside of the United States.
- F. **Awarded Vendor** shall assure that all persons who have access to the above referenced information shall be fully apprised as to the confidential nature of the information, the safeguards required to protect the information, and the applicable civil and criminal sanctions and penalties associated with any intentional or non-intentional disclosure. No

subcontractor shall receive any information without a written agreement with **Awarded Vendor** incorporating these assurances.

- G. **Awarded Vendor** shall not disclose any of the above referenced information to any third party without the specific written authorization of the Director of ODM.
- H. **Awarded Vendor** shall permit onsite inspection by the State of Ohio (including but not limited to ODM, the Auditor of the State of Ohio, the Inspector General of Ohio, the Ohio Attorney General or any duly authorized law enforcement officials) and by agencies of the United States government.
- I. ODM will prepare data pursuant to the security and encryption standards found in Ohio IT Standard ITS-SEC-01, Data Encryption and Cryptography; and NIST Special Publication 800-53. **Awarded Vendor** shall retain this encryption while the data is in transit or at rest.
- J. The express terms and conditions of this Article shall be included in all subcontracts executed by **Awarded Vendor** for any and all work under this Agreement.

ARTICLE IV - TIME OF PERFORMANCE

- A. This Agreement shall be in effect upon execution by the Director of ODM, until the DAS Contract is terminated, unless this Agreement is suspended or terminated pursuant to ARTICLE VI prior to the termination date.
- B. The Confidentiality and Business Associate provisions of this Agreement shall survive the termination of this Agreement.

ARTICLE V - COST OF DATA PREPARATION

The parties agree that no reimbursement will be sought under the terms of this Agreement.

ARTICLE VI - SUSPENSION AND TERMINATION

- A. Upon 30 calendar days written notice to the other party, either party may terminate this Agreement.
- B. Notwithstanding Section A of this Article, ODM may suspend or terminate this Agreement immediately upon delivery of written notice to **Awarded Vendor**, if ODM discovers any illegal conduct on the part of **Awarded Vendor** or if there is any breach of the confidentiality provisions of ARTICLE III or ARTICLE XI herein.
- C. Notice of termination or suspension under either Section A or B of this Article must be sent to: the ODM Chief Legal Counsel, 50 West Town Street, 4th Floor, Columbus, Ohio 43215; and to **Awarded Vendor's** representative at the address appearing on the signature page of this Agreement.

ARTICLE VII - BREACH OR DEFAULT

- A. Upon breach or default of any of the provisions, obligations or duties embodied in this Agreement, ODM may exercise any administrative, contractual, equitable or legal remedies available, without limitation. The waiver of any occurrence of breach or default

is not a waiver of subsequent occurrences, and ODM retains the right to exercise all remedies hereinabove mentioned.

- B. If either of the parties fails to perform an obligation or obligations under this Agreement and thereafter such failure(s) is (are) waived by the other party, such waiver shall be limited to the particular failure(s) so waived and shall not be deemed to waive other failure(s) hereunder. Waiver by ODM shall not be effective unless it is in writing signed by the ODM Director.

ARTICLE VIII - AMENDMENTS

This Agreement may be modified or amended provided that any such modification or amendment is in writing and is signed by the Director of ODM and **Awarded Vendor**. It is agreed, however, that any amendments to laws, rules, or regulations cited herein will result in the correlative modification of this Agreement, without the necessity for executing a written amendment.

ARTICLE IX - INDEPENDENT CONTRACTOR

Awarded Vendor agrees that no agency, employment, joint venture, or partnership has been or will be created between the parties hereto pursuant to the terms and conditions of this Agreement. **Awarded Vendor** also agrees that, as an independent contractor, it assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums which may accrue as a result of compensation received for services or deliverables rendered hereunder. **Awarded Vendor** agrees that it is an independent contractor for all purposes including, but not limited to, the application of the Fair Labor Standards Act, the Social Security Act, the Federal Unemployment Tax Act, the Federal Insurance Contribution Act, provisions of the Internal Revenue Code, Ohio Tax law, Workers Compensation law, and Unemployment Insurance law. **Awarded Vendor** certifies that all approvals, licenses, or other qualifications necessary to conduct business in Ohio have been obtained and are operative. If at any time during the contractual period **Awarded Vendor** becomes disqualified from conducting business in Ohio, for whatever reason, **Awarded Vendor** must immediately notify ODM of the disqualification and will immediately cease performance of its obligations hereunder.

ARTICLE X - LIMITATION OF LIABILITY

To the extent allowable by law, **Awarded Vendor** agrees to defend, indemnify and hold ODM, its officials, employees and agents harmless from and against any and all liability, loss and expense (including reasonable attorneys' fees) or claims for personal injury, property damage, patent and copyright infringement, or for any liability or claims under ARTICLE XI, Business Associate Requirements Under HIPAA, below, and/or any other type of claim that arises from the performance under this Agreement. **Awarded Vendor's** sole and exclusive remedy for any ODM failure to perform under this Agreement will be an action in the Ohio Court of Claims pursuant to ORC Chapter 2743 that will be subject to the limitations set forth in this Article. In no event will ODM be liable for any indirect or consequential damages, including loss of profits, even if ODM knew or should have known of the possibility of such damages. To the extent that ODM is a party to any litigation arising out of or relating in any way to this Agreement or the performance

thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio. Subject to ORC 109.02, **Awarded Vendor** agrees to defend ODM against any such claims or legal actions if called upon by ODM to do so.

ARTICLE XI - BUSINESS ASSOCIATE REQUIREMENTS UNDER HIPAA

- A. The definitions contained in this Section are derived from federal law. Should there be any conflict between the meanings assigned in this Agreement and the meanings defined in applicable federal law (even in the event of future amendments to law that create such conflict), the definitions found in federal law will prevail.
1. **General Definitions.** The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information and Use.
 2. **Specific Definitions.**
 - a. HIPAA means the Health Insurance Portability and Accountability Act of 1996, the American Recovery and Reinvestment Act of 2009 (ARRA) and any other applicable federal statute or regulation.
 - b. HIPAA Rules shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
 - c. Covered Entity means a health plan, a health care clearinghouse, or health care provider under 45 CFR 160.103.
 - d. Business Associate means a person or entity that, on behalf of the Covered Entity, maintains, performs, or assists in the performance of a function or activity that involves the use or disclosure of "Protected Health Information" under 45 CFR 160.103.
 - e. Protected Health Information (PHI) means individually identifiable information including but not limited to the past, present or future physical or mental health or condition of an individual, provision of health care to an individual, or the past, present or future payment for health care provided to an individual, as more fully defined under 45 CFR 164.501 and any amendments thereto, received or sent on behalf of the Department.
- B. **Awarded Vendor** acknowledges that ODM is a Covered Entity under HIPAA. **Awarded Vendor** further acknowledges that it is a Business Associate of ODM, and, in carrying out the work described in this Agreement, agrees to comply with all of the following provisions:
1. **Permitted Uses and Disclosures.** **Awarded Vendor** will not use or disclose PHI except as provided in this Agreement or as otherwise required under HIPAA regulations or other applicable law.

2. **Safeguards.** **Awarded Vendor** will implement sufficient safeguards, and comply with Subpart C of 45 CFR Part 164 pertaining to electronic PHI to prevent the use or disclosure of PHI other than as provided for under this Agreement. Safeguards will be implemented for all paper and electronic PHI created, received, maintained, or transmitted on behalf of ODM.
3. **Reporting of Disclosures.** **Awarded Vendor** agrees to promptly report to ODM any inappropriate use or disclosure of PHI that is not in accordance with this Agreement or applicable law, including breaches of unsecured protected health information as required at 45 CFR 164.410 and any security incident the **Awarded Vendor** has knowledge of or reasonably should have knowledge of under the circumstances.
4. **Mitigation Procedures.** **Awarded Vendor** agrees to coordinate with ODM to determine specific actions that will be required of the Business Associates for mitigation, to the extent practical, of the breach. These actions will include notification to the appropriate individuals, entities, or other authorities. Notification or communication to any media outlet must be approved, in writing, by ODM prior to any such communication being released. **Awarded Vendor** will report all of its mitigation activity to ODM and shall preserve all relevant records and evidence.
5. **Incidental Costs.** **Awarded Vendor** shall bear the sole expense of all costs to mitigate any harmful effect, of any breaches or security incidents of which **Awarded Vendor** has knowledge which are directly caused by the use or disclosure of protected health information by **Awarded Vendor** in violation of the terms of this Agreement. These costs will include, but are not limited to, the cost of investigation, remediation and assistance to the affected individuals, entities or other authorities.
6. **Agents and Subcontractors.** **Awarded Vendor**, in compliance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2) as applicable, will ensure that all its agents and subcontractors that create, receive, maintain, or transmit PHI from or on behalf of **Awarded Vendor** and/or ODM agree to have, in a written agreement, the same restrictions, conditions, and requirements that apply to **Awarded Vendor** with respect to the use or disclosure of PHI.
7. **Accessibility of Information.** **Awarded Vendor** will make available to ODM such information as ODM may require to fulfill its obligations to provide access to, provide a copy of any information or documents with respect to PHI pursuant to HIPAA and regulations promulgated by the United States Department of Health and Human Services, including, but not limited to, 45 CFR 164.524 and 164.528 and any amendments thereto.
8. **Amendment of Information.** **Awarded Vendor** shall make any amendment(s) to PHI as directed by, or agreed to, by ODM pursuant to 45 CFR 164.526, or take other steps as necessary to satisfy ODM's obligations under 45 CFR 164.526. In the event that **Awarded Vendor** receives a request for amendment directly from the individual, agent, or subcontractor **Awarded Vendor** will notify ODM prior to making any such amendment(s). **Awarded Vendor's** authority to amend information is explicitly limited to information created by **Awarded Vendor**.

9. **Accounting for Disclosure.** **Awarded Vendor** shall maintain and make available to ODM or individuals requesting the information as appropriate, records of all disclosures of PHI in a Designated Record Set as necessary to satisfy ODM's obligations under 45 CFR 164.528. For every disclosure the record will include, at a minimum, the name of the individual who is the subject of the disclosure, the date of the disclosure, reason for the disclosure if any, and the name and address of the recipient to which the protected health information was disclosed.
10. **Obligations of ODM.** When **Awarded Vendor** is to carry out an obligation of ODM under Subpart E of 45 CFR 164, **Awarded Vendor** agrees to comply with all applicable requirements of Subpart E that would apply to ODM in the performance of such obligation.
11. **Access to Books and Records.** **Awarded Vendor** shall make available to ODM and to the Secretary of the U.S. Department of Health and Human Services any and all internal practices, documentation, books, and records related to the use and disclosure of PHI received from ODM, or created or received on behalf of ODM. Such access is for the purposes of determining compliance with the HIPAA Rules.
12. **Material Breach.** In the event of material breach of **Awarded Vendor's** obligations under this Article, ODM may immediately terminate this Agreement as set forth in ARTICLE VI, Section B. Termination of this Agreement will not affect any provision of this Agreement, which, by its wording or its nature, is intended to remain effective and to continue to operate after termination.
13. **Return or Destruction of Information.** Upon termination of this Agreement and at the request of ODM, **Awarded Vendor** will return to ODM or destroy all PHI in **Awarded Vendor's** possession stemming from this Agreement as soon as possible but no later than 90 days, and will not keep copies of the PHI except as may be requested by ODM or required by law, or as otherwise allowed for under this Agreement. If **Awarded Vendor**, its agent(s), or subcontractor(s) destroy any PHI, then **Awarded Vendor** will provide to ODM documentation evidencing such destruction. Any PHI retained by **Awarded Vendor** will continue to be extended the same protections set forth in this Section, HIPAA regulations and this Agreement for as long as it is maintained.
14. **Survival.** These provisions shall survive the termination of this Agreement.

ARTICLE XII – COUNTERPART

This Agreement may be executed in one, or more than one counterpart, and each executed counterpart shall be considered an original, provided that such counterpart is delivered to the other party by facsimile, mail courier or electronic mail, all of which together shall constitute one and the same agreement.

ARTICLE XIII – CONSTRUCTION

This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Ohio. Should any portion of this Agreement be found to be unenforceable by operation of statute or by administrative or judicial decision, the operation of the balance of this Agreement is not affected thereby; provided, however, the absence of the illegal provision does not render the performance of the remainder of this Agreement impossible.

SIGNATURE PAGE FOLLOWS

**OHIO DEPARTMENT OF MEDICAID
DATA SHARING AND CONFIDENTIALITY AGREEMENT**

Signature Page

D-1617-00-0000

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the signature of the Director of the Ohio Department of Medicaid.

Awarded Vendor

Ohio Department of Medicaid

Authorized Signature (Blue Ink Please)

Director

Printed Name

Date

Date

50 West Town Street
Columbus, Ohio 43215

Address

City, State, Zip

6.11. ATTACHMENT ELEVEN: MASTER LICENSE AND CLOUD SERVICES AGREEMENT

<Contractor>

Master License and Cloud Services Agreement OPENING RECITAL AND BACKGROUND

THIS SERVICES AGREEMENT ("Agreement") is by and between _____ ("Contractor"), with offices at [street address, city, state and zip code] and whose Federal Tax ID Number is [the Contractor's TIN] and D-U-N-S Number is [the Contractor's D-U-N-S], and the State of Ohio ("State"), through the Department of Administrative Services ("DAS"), having its principal place of business at 30 East Broad Street, 40th Floor, Columbus, OH 43215.

The State and the Contractor also are sometimes referred to jointly as the "Parties" or individually as a "Party". The effective date of this Agreement is the date it is signed on behalf of the State ("Effective Date").

The purpose of this Contract is to define and govern the relationship between the State and the Contractor in regard to the licensing, deployment, instruction, use, update, and maintenance of software licensed by the State, regardless of how it is deployed, stored, maintained or updated.

It is the intent of this licensing to allow the State to utilize the above-licensed materials and programs regardless of the method or mode of deployment, i.e., whether hosted on the premises of or accessed through a browser on a cloud-based location. Any such licenses will be described in one or more schedules to this Contract ("Schedules") and will include a license to use the Software's or Cloud Services' user and technical documentation (the "Documentation"). It also may include a license to use the Software's source code and related material ("Source Code"), if it is so indicated elsewhere in this Contract or on the applicable Schedule. This agreement shall detail the rights and responsibilities of the parties to this agreement and the individuals receiving access to software or services ("Subscribers"). Additionally, this Contract governs the Contractor's obligation to provide the State with assistance troubleshooting the Software or Cloud Services and with updates, correction, enhancements, and new releases ("Support").

General Terms and Conditions

Generated Files

"Generated Files" are files storing information, instructions, or data that the State creates or modifies using the Contractor's Services and in which the data or other information was provided or created by a user. Examples of such files could include, among others, text files generated with

a word processor, data tables created with a database engine, and image files created with a graphics application. Applications consisting of instruction sets created with a programming language that the Contractor provided to the State also would be considered Generated Files. As between the State and the Contractor, the State will own all Generated Files that the State prepares by using the Services, excluding such portions of the Generated Files that consist of embedded portions of the Software. The Contractor or its licensors will retain ownership of any portions of the Software embedded into Generated Files. But the Contractor grants to the State a nonexclusive, royalty-free right to reproduce and distribute to third parties any portions of the intellectual property embedded in any Generated Files that the State creates while using the Services in the manner in which the Services are designed to be used. In the Subscriber's distribution of the Generated Files, the State may not use the Contractor's name, logo, or trademarks, except to the extent that such are incorporated in such Generated Files by the design of a Service when used as intended.

Upgrades, Updates, and Corrections

The Contractor must make all Software updates and service packs, as well as new releases and new versions of the Software or Cloud Service, available to the State at no additional charge and as part of its Software and Service Support. The Contractor must notify the State of the availability of any such updates, new versions, and releases within 30 days of publication. The Contractor must provide support to currently supported operating systems. All portions of the Software, including any corrections, patches, service packs, updates, upgrades, and new versions and releases are the property of Contractor, are part of the Software, and are governed by the State's license in the Software. In no event will the Software or any modification of it be deemed a work made for hire, even if the Contractor has made the modification expressly for the State, unless the parties agree otherwise in writing. For purposes of definition, a "critical application" is any computer application that is necessary for the Software to function. An example would be illustrated by Software that requires an Oracle database engine to function, thereby making the Oracle database engine a critical application for that particular Software.

Network Security

The Contractor may not connect to the State's internal computer network without the prior, written consent of the State, which the State will reasonably provide if necessary or appropriate for the Contractor to provide Support. But as a condition of connecting to the State's computer network, the Contractor must secure its own connected systems in a manner consistent with the State's then-current security policies, which the State will provide to the Contractor on request. The State, or its designee may audit the Contractor's security measures in effect on any such connected systems without notice. The State also may terminate the Contractor's network connections immediately should the State determine that the Contractor's security measures are not consistent with the State's policies or are otherwise inadequate given the nature of the connection or the data or systems to which the Contractor may have access.

Contractor Warranties

In addition to the warranties detailed in Attachment Four: General Terms and Conditions, Part Four: Representations, Warranties and Liabilities, the Contractor warrants the following:

1. The Services will perform materially in accordance with the applicable user guide and the requirements of this Agreement. In addition, any Software will be free of material defects and will function in substantial conformance to its Documentation when used in the operating environment for which it is intended and in accordance with its Documentation. The Contractor also warrants that the Software will be merchantable and fit for the particular purpose for which the State acquired it.
2. Subject to any limitations specified in the RFP, the functionality of the Services will not be materially decreased during a subscription term.
3. The Services or Software will not transmit viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs ("Malicious Code") to the State.

For any breach of a warranty above, the State's and individual users' remedies will be as provided in Part Two: Work and Contract Administration, Suspension and Termination.

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

State Responsibilities

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

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

The State may not:

1. Sell, resell, rent or lease the Services or Software.
2. Use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights.
3. Intentionally use the Services to store or transmit Malicious Code.
4. Intentionally interfere with or disrupt the integrity or performance of the Services or third-party data contained therein.
5. Attempt to gain unauthorized access to the Services or their related systems or networks.

License Restrictions

The State may not reverse engineer, de-compile, or disassemble any Software for which it is not licensed to use the Software's Source Code. Additionally, the State may not assign, transfer, or redistribute the Software to any party in whole or in part, except as expressly provided by this Contract or the applicable Schedule. It also may not rent, time share, or operate a service bureau with respect to the Software. And the State may not charge a fee to any third party for access to or use of the Software, unless this Contract or the applicable Schedule permits such. (One Affiliated Entity using the Software on behalf of another Affiliated Entity is not the operation of a service bureau for purposes of this Contract, even if the Affiliated Entity charges the other Affiliated Entity for the costs of the service.) Additionally, except as authorized in this Contract or the applicable Schedule, the State may not grant any sublicense to access or use the Software. Notwithstanding the foregoing and provided they have agreed in writing to honor the terms of this Contract, the State's Affiliated Entities may use the Software in the same manner as the State, subject to the applicable limits on the license and the obligations contained in this Contract. Further, for any Software designed for communications, such as e-commerce applications, or for Web presentations, the State may communicate with third parties using the Software and use the Software for presentations to third parties via the Internet. Additionally, the State engages various contractors to do work for it, and the State may provide such contractors with access to and use of the Software solely for use on behalf of the State, including in a facilities management, hosting, disaster recovery, or outsourcing arrangement. But the State may not provide access to the Software to any such contractors except for use solely on behalf of the State.

Hazardous Environments

The State recognizes that some Software may not be designed or intended for use as or with online control equipment or systems in hazardous environments requiring fail-safe performance. This includes equipment or systems such as those used in the operation of nuclear facilities, aircraft navigation, air traffic control, direct life support machines, and munitions. It also includes any other equipment or systems in which the State reasonably can foresee that failure of the Software could lead to death, personal injury, or severe physical or environmental damage. For any Software designated as not intended for hazardous environments in the applicable Schedule, the State may not use or permit the use of the Software in conjunction with any such equipment or systems.

Term

The term of this Contract will be determined by the terms established in Attachment Four: General Terms and Conditions, Part One: Performance and Payment of the Base RFP.

Agreement – Renewal

The State may renew at its discretion, this Contract in accordance with Part One: Executive Summary, Purpose of the Base RFP.

Third-Party Suppliers

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

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

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

Pricing

Subject to the limitations in this section, the Contractor may modify its pricing for Software or Support at any time and without notice to the State. But no such change will apply to any Software or Support that the State orders or for which it receives an invoice before the effective date of the change. Nor will any price increase apply to any Software for which the State and the Contractor have entered in to a Price-hold Addendum; the pricing for such Software will be fixed for the term of the price-hold. Additionally, for seven years from the date of the State's first license of any Software, the State will be entitled to acquire additional licenses for the same Software at a discount that is equal to the discount extended to the State for the initial license of the Software, even though the list price for the Software may have increased. Such licenses will be granted under the terms contained in this Contract via the execution of a Schedule hereto. Thereafter, the State will not be obligated to pay more than the Contractor's then current, published License Fee for any such Software, less the discount described in the following sentence. For all additional licenses acquired more than seven (7) years after the initial license in the same Software, the State still will be entitled to a discount of X% from the then current list price for the license. Support Fees under this Contract may not increase from one Support Period to the next by more than X% for any license in the Software. Further, in no event will the Support Fee the State pays be greater than the fee paid by any other customer of the Contractor for the same type license.

Informal Dispute Resolution

The State and Contractor (Parties) will make efforts to first resolve disputes informally. If the disputed matter has not been resolved by the identified responsible Party, the disputed matter will be reviewed and resolved according to the governance structure identified above within a commercially reasonable period.

If for whatever reason the Contractor and the State cannot resolve a dispute, the Contractor and the State agree to choose a mutually agreeable neutral third party who will mediate the dispute between the parties. The mediator chosen must be an experienced mediator and must not be: a current or former employee of either Party or associated with any aspect of the Government of the State of Ohio; associated with any equipment or software supplier; or associated with the Contractor or the State. As to each prohibition this means either directly or indirectly or by virtue

of any material financial interests, directly or indirectly, or by virtue of any family members, close friendships or in any way that would have the reasonable appearance of either conflict or potential for bias. If the parties are unable to agree on a qualified person, the mediator will be appointed by the American Arbitration Association.

The mediation must be non-binding and must be confidential to the extent permitted by law. Each Party must be represented in the mediation by a person with authority to settle the dispute. The parties must participate in good faith in accordance with the recommendations of the mediator and must follow procedures for mediation as suggested by the mediator. All mediation expenses, except expenses of the individual parties, must be shared equally by the parties. The parties must refrain from court proceedings during the mediation process insofar as they can do so without prejudicing their legal rights.

If the disputed matter has not been resolved within thirty (30) days thereafter, or such longer period as agreed to in writing by the Parties, each Party will have the right to commence any legal proceeding as permitted by law.

Locking Devices

Some Software may require the use of a key to prevent unauthorized installation and use of the Software, but the Software may not include expiration codes, “time bombs”, or similar devices that can disable the software once a proper key is provided. Further, the software may not contain any routines, functions, or devices that can or are designed to transmit or transfer any data surreptitiously to the Contractor or any other party. Nor may the software contain any routines, functions, or similar devices designed to permit the Contractor or a third party to surreptitiously access data on the State’s network or on any of the State’s computers. Should the State need assistance with a key or similar device to use the Software within the State’s scope of license, the Contractor will assist the State at any time and without charge or fee, regardless of whether such Software is then under Support.

Upgraded Support

The Contractor Responsibilities. The Contractor may offer upgraded support if available to be purchased by the State. During the term of the resulting Contract, the Contractor must provide the State with assistance and advice for using all Services covered by the Contract. The Contractor also must provide troubleshooting and problem resolution by developing and providing fixes or patches for errors in any software it provides and contract with any third-party providing software that supports similar Services. The Contractor also must keep its own software offering compatible with any updated third-party software that is part of the Services or supports the Services. Each Support Period will be one year in duration, with the first Support Period beginning on the [first anniversary of the] Start Date for the applicable license. Subsequent Support Periods will begin on each anniversary of the Start Date of the applicable license (the “Anniversary Date”). During each Support Period for which the State has paid the applicable Support Fee, the Contractor will provide the State with telephonic assistance and advice for using the Software. The Contractor also will provide remote troubleshooting and problem resolution by developing and providing fixes or patches for errors in the Software.

Follow-on Software

If the Contractor stops supporting or upgrading any Software but then offers or later releases another product that performs substantially similar functions, the State will be entitled to convert its license for the unsupported Software to a license in the new Software. Any such conversion will be without charge to the State, provided only that the State has paid all applicable Support Fees for the unsupported Software since first acquiring it through the time when the Contractor terminated Support.

Equipment Support Generally

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

Functionality Margin

If the Contractor eliminates functionality material to the use or performance of any Software licensed under this Contract ("Original Software") and then includes the functionality in a new product ("New Software"), the Contractor must grant the State a license to use the migrated functionality of such New Software, but not to any other functionality in the New Software, if (i) the State is a subscriber to Support for the Original Software at the time the New Software is available and is entitled to receive subsequent releases of the Original Software, and (ii) the New Software is available for the same operating system or technical environment as the Original Software. The license granted to the State for the New Software will be (i) pursuant to the terms and conditions of this Contract and the applicable Schedule governing the Original Software, (ii) subject to the use restrictions and other limitations for the Original Software in this Contract and applicable Schedule, (iii) granted without the payment of additional fees other than fees for Support which would otherwise be due for the Original Software.

Support Parameters

The State may initiate support requests for problems it encounters with the Software or Services by telephone, email, or the internet, and the Contractor must maintain lines of communication that support all three forms of communication. The Contractor must make support available during local time in Columbus, Ohio during XX-XX times (fill in the timing per contract).

Incident Response

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

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

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

Escalation Process

Any support call that is not resolved must be escalated to the Contractor's management under the following parameters. Unresolved problems that are classified as critical must be escalated to the Contractor's support manager within one hour and to the director level after **four hours (or within four hours and to the director level after one day)**. If a critical problem is not resolved within **one (1) day**, it must escalate to the CEO level **after two (2) days**. The Contractor's support staff must escalate unresolved urgent problems to its support manager within **three (3) hours**, to the director level after **one (1) day**, and to the CEO level after **two (2) days (corporate officer level after fourteen (14) days)**.

State Obligations

To facilitate the Contractor meeting its support obligations, the State will provide the Contractor with the information reasonably necessary to determine the proper classification of the underlying problem. They also will assist the Contractor as reasonably necessary for the Contractor's support personnel to isolate and diagnose the source of the problem. Additionally, to assist the Contractor's tracking of support calls and the resolution of support issues, the State will make a reasonable effort to use any ticket or incident number that the Contractor assigns to a particular incident in each communication with the Contractor. The State also will install and implement the most recently available Software updates, including service packs and patches, if the Contractor reasonably believes it to be necessary to achieve a satisfactory resolution of a problem.

Uniform Computer Information Transactions Act (UCITA)

The UCITA will not apply to this Contract. To the extent that UCITA, or any version of it that is adopted by any jurisdiction in any form, is applicable, the parties agree to opt out of it pursuant to the opt-out provisions contained therein. Likewise, the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Contract.

Anti-trust

The Parties 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 now has or may acquire relating to the Services that are covered by this Agreement.

Insurance

Contractor must procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees. Contractor shall procure and maintain for the duration of the Contract insurance for claims arising out of their professional 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 Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with a limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation insurance as required by the State of Ohio, or the state in which the work will be performed, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease. If Contractor is a sole proprietor, partnership or has no statutory requirement for workers' compensation, Contractor must provide a letter stating that it is exempt and agreeing to hold Entity harmless from loss or liability for such.
4. Technology Professional Liability (Errors and Omissions): Insurance appropriate to the Contractor's profession, with limits not less than \$5,000,000 per occurrence or 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 cover all applicable Contractor personnel or subcontractors who perform professional services related to this agreement.
5. Cyber liability: (first and third party) with limits not less than \$5,000,000 per claim, \$10,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Pre-Qualified Contractor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The coverage shall provide for breach response costs as well as regulatory fines and penalties and credit monitoring expenses with limits sufficient to respond to these obligations.

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

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

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

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

Umbrella or excess 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.

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

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

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

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 Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work. The Discovery Period must be active during the Extended Reporting Period.

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

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

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.

Indemnification for Bodily Injury and Property Damage

The Contractor must indemnify the State against all direct damages, liability or expense resulting from bodily injury to any person (including death) or damage to property arising out of its performance under this Agreement, provided such bodily injury or property damage is due to the negligence, willful misconduct or other tortious conduct of the Contractor, its employees, agents, or subcontractors. The Contractor also agrees to indemnify, defend, and hold the State harmless from and against all claims, liabilities, demands, losses, expenses (including by way of example only, court costs and experts' and attorneys' fees), and causes of action of every kind and character in favor of any third-party caused or arising out of the activities or performance of the Contractor or the Contractor's Personnel. The foregoing obligations do not apply to the extent caused by the State's actual negligence or willful misconduct. Any defense of the State requires and is subject to the approval and consent of the Ohio Attorney General.

Indemnification for Infringement

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

If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement or similar claim that is pending actually may succeed, the Contractor will do one of

the following four things as soon as reasonably possible to avoid or minimize any interruption of the State's business:

1. Modify the offending Software, Source Code, Documentation or Service so that it is no longer infringing but provides substantially the same functionality as before the modification.
2. Replace the offending Software, Source Code, Documentation or Service with an equivalent or better, non-infringing offering.
3. Acquire the right for the State to use the infringing Software, Source Code, Documentation or Service as it was intended to be used under this Agreement.
4. Terminate the infringing Service and refund the amount the State paid for the Service and the amount of any other Service that requires the availability of the infringing Software, Source Code, Documentation or Service for it to be useful to the State.

On Premise Solutions

In the event that the awarded Contractor proposes an on premise solution, the Contractor will grant one or more perpetual, nonexclusive licenses to the State to use certain Software, Source Code, Documentation or Services that the Contractor publishes or markets, in accordance with 45 CFR 95.617.

Standards

All On-premise Solutions must provide a configuration that supports a redundant infrastructure that will ensure access for all of the State's enrolled users in case of a failure at any one of the State's locations, with effective contingency planning (including back-up and disaster recovery capabilities) and 24x7 trouble shooting service for inquiries, outages, issue resolutions, etc. All such solutions must be dependable and provide response rates that are as good as or better than industry standards. They also must be capable of meeting the Service Level Agreements ("SLAs") provided in the applicable Scope of Work and be designed to use state connectivity and computing resources to handle reasonably anticipated peak demand, and the Contractor must detail the requirements of the solution to ensure that sufficient bandwidth and computing resources are identified for the Solution to meet peak demand times without material degradation in performance.

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

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

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

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

Object Reassignment

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

Organization and Grant of License

The Contractor grants to the State a nonexclusive perpetual license to use the executable code version of any Software identified in each Schedule under this Contract, along with the related Documentation, and if indicated in an applicable Schedule, the Source Code for the Software. The license begins on the date identified in the applicable Schedule as the start date for the license (the "Start Date"). Unless indicated otherwise in this Contract, such use will be limited to use solely for the exercise of any function of State government by any State agency or political subdivision of the State ("Affiliated Entities"). The applicable Schedule governing the license will describe the scope of each license granted to the State in further detail, and the State agrees to limit its use of the Software as described in the applicable Schedule. The State may not republish the Software or the Documentation or distribute it to any third party, unless and only to the extent that this Contract or the scope of license in the applicable Schedule expressly so permits. The State will have a right to use the Software at any of its locations worldwide, subject only to applicable restrictions on export of technology from the US, the scope of license in the applicable Schedule, and the restrictions in this Contract on using the Software in hazardous environments.

Copies

In addition to the copies of the Software authorized by the license in the applicable Schedule, the State may make a reasonable number of copies of the Software for backup, archival, disaster recovery, testing, development, and image management purposes. And the State may use these copies for such purposes without paying any additional fee or charge, so long as any such additional copies are not used in a production environment while the production copy or copies of the Software are used for production. No other copies of the Software may be made by or for the State. With respect to the Documentation for any Software, the State may make as many copies of it in either paper-based or electronic form as the State may reasonably require for its own internal purposes. Additionally, the State may incorporate portions of the Documentation in other materials, such as training and reference manuals, provided that such materials are used solely for the internal purposes of the State and the use bears a reasonable nexus to the State's use of the Software. Each copy of the Software or Documentation that the State makes must bear the same copyright and other proprietary notices that appear on the original copy provided to the State. If the Contractor has granted the State a license to use the Source Code for the Software, the State may make a reasonable number of copies of the Source Code, modify it, compile it, and otherwise use it as reasonably necessary to support its licensed use of the Software.

Acceptance

The acceptance procedure for setup or installation of any On-premise Solution will be a review by the State to ensure that it meets the performance standards and other requirements in the Contract and that the setup or installation has been done in a professional manner and that the On-premise Solution itself meets all requirements. In addition to the requirements of the Contract, if ordering documents such as a scope of work are authorized in the Contract, the review will include any additional requirements in the applicable order form. The State will have up to 15 business days after the setup, installation, or establishment of the On-premise solution to do this. The State will issue a formal letter of acceptance if setup, installation, or other Service does not meet the requirements in the Contract, the State will issue a written notice of noncompliance.

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

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

Cloud Services Solutions

Standards

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

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

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

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

The Contractor must obtain an annual audit report that complies with the AICPA's SOC 1 standards, and one that complies with the AICPA's SOC 2 standards. The reports must cover all operations pertaining to the Services covered by this Agreement. The reports will be at the sole expense of the Contractor, and a copy of each must be provided to the State within 30 days of its completion each year.

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

Object Reassignment

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

Organization and Grant of License

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

Provision of Services

The Contractor will make the Services available to the Subscribers pursuant to the Agreement, including the Scope of Work and the applicable Order Forms, during each Order Term. The State agrees that purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by the Contractor regarding future functionality or features.

Acceptance

The acceptance procedure for setup or installation of any Cloud Services will be a review by the State to ensure that it meets the performance standards and other requirements in the Contract and that the setup or installation has been done in a professional manner and that the Cloud Services itself meets all requirements. For other Cloud Services not requiring setup or installation, the acceptance procedure will be a review by the State to ensure the Cloud Services comply with the performance requirements in the Contract. In addition to the requirements of the Contract, if ordering documents such as a scope of work are authorized in the Contract, the review will include any additional requirements in the applicable order form. The State will have up to 15 business days after the setup, installation, or establishment of the Cloud Services to do this. The State will issue a formal letter of acceptance if setup, installation, or other Service does not meet the requirements in the Contract, the State will issue a written notice of noncompliance.

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

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

Adjustments

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

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

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

<Contractor>

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

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Effective Date

PRICE HOLD ADDENDUM NUMBER [0000000.00]

This license addendum ("Addendum") is between the State of Ohio (the "State"), through the Department of Administrative Services with offices at 30 East Broad Street, Columbus, Ohio 43215, and *[Company name of the Contractor]* (the "Contractor"), with offices at *[street address, city, state and zip code for the Contractor]*, and is entered into under that certain Master Contract for Software Licensing between the State and the Contractor that is dated *[Date of the Contract]* and numbered [0000000] (the "Contract").

This Addendum does not represent a license of Software. Instead, it provides a price-hold for the Software listed below and permits the State to acquire the Software in exchange for the License Fees and Support Fees listed below. The State is not obligated to license any of the Software listed below, but if it does at any time during the period starting on the date this Addendum is signed and _____ thereafter (Price-hold Period), the State will be entitled to acquire such Software for the Fees specified below. The State may acquire such Software by executing a standard Schedule in the form of that attached to the Contract. The State has the right to acquire some or all of the Software listed below and to acquire the Software in increments during the Price-hold Period using multiple Schedules. Nothing in the Addendum commits the State to any volume of licensing or total expenditure. The State may acquire some, all, or none of the Software in such volumes as it determines during the Price Hold Period.

| Software | Copies Delivered | License Type | # of Licenses (e.g., Users) | List License Price | Discount | Actual License Fee* | Support Percentage† | Operating System(s) | Start Date |
|----------|------------------|--------------|-----------------------------|--------------------|----------|---------------------|---------------------|---------------------|------------|
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*The License Fee [] does [] does not include the Support Fee for the first Support Period for each Software license identified above.

† The Support percentage is based on [] list price [] discounted price. Any increase in annual maintenance must be equal to or less than the annual increase in the list price of the Software and is subject to the caps specified in the Contract.

License Descriptions

| License Type | Description of License |
|------------------------------|-------------------------------------|
| <i>[Insert License Type]</i> | <i>[Insert License Description]</i> |
| <i>[Insert License Type]</i> | <i>[Insert License Description]</i> |
| | |

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

FOR THE CONTRACTOR:

FOR STATE OF OHIO

**DEPARTMENT OF
ADMINISTRATIVE SERVICES**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: Director

Date: _____

Date: _____

LICENSE SCHEDULE NUMBER [0000000.00]

This license schedule ("Schedule") is between the State of Ohio (the "State"), through the Department of Administrative Services with offices at 30 East Broad Street, Columbus, Ohio 43215 for the beneficial use of *[agency]*, and *[Company name of the Contractor]* (the "Contractor"), with offices at *[street address, city, state and zip code for the Contractor]*, and is entered into under that certain Master Contract for Software Licensing between the State and the Contractor that is dated *[Date of the Contract]* and numbered [0000000] (the "Contract").

Granted Licenses

| Software | Copies Delivered | License Type | # of Licenses (e.g., Users) | List License Price | Discount | Actual License Fee* | Support Percentage† | Operating System(s) | Start Date |
|----------|------------------|--------------|-----------------------------|--------------------|----------|---------------------|---------------------|---------------------|------------|
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*The License Fee [] does [] does not include the Support Fee for the first Support Period for each Software license identified above.

† The Support percentage is based on [] list price [] discounted price. Any increase in annual maintenance must be equal to or less than the annual increase in the list price of the Software and is subject to the caps specified in the Contract.

License Descriptions

| License Type | Description of License |
|------------------------------|-------------------------------------|
| <i>[Insert License Type]</i> | <i>[Insert License Description]</i> |
| <i>[Insert License Type]</i> | <i>[Insert License Description]</i> |
| <i>[Insert License Type]</i> | <i>[Insert License Description]</i> |

Location Information

| <i>Service Types</i> | Locations |
|---|---------------------------|
| Locations where the Contractor will provide Support: | <i>[Insert Locations]</i> |
| Locations where the Contractor will provide services or keep the State's data or from which the data may be accessed: | <i>[Insert Locations]</i> |
| Locations where any subcontractor will provide support or keep the State's data or from which the data may be accessed: | <i>[Insert Locations]</i> |

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

FOR THE CONTRACTOR:

FOR STATE OF OHIO

**DEPARTMENT OF
ADMINISTRATIVE
SERVICES**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: Director

Date: _____

Date: _____