



Department of
Higher Education

John R. Kasich, Governor
John Carey, Chancellor

REQUEST FOR QUOTE

Date Issued: August 16, 2018

The State of Ohio, through the Ohio Department of Higher Education (DHE), is requesting a quote for:

Online Program Approval Software System

Signed proposals must arrive by 5:00 PM, September 16, 2018.

Send to:
Ohio Department of Higher Education
Attn: Matt Exline
25 South Front Street, 2nd Floor
Columbus, OH 43215
Phone: (614) 728-3095
Email: mexline@highered.ohio.gov

Quotes will be accepted by mail or email.

Estimated Schedule

RFQ Release: 8/15/2018

Inquiry Period Ends: 9/18/2018

Evaluation of Responses: 10/31/2018

Anticipated Award Date: TBD

General Instructions for Quote Submittal

Proposal Submittal

Each offeror must submit a technical section, a cost section, evidence of experience with similar software, and extensive knowledge of higher education issues as part of its total proposal before the inquiry period due date. Documents may be submitted as Microsoft Office documents (e.g., Word or Excel) or as PDF documents via email or flash drive mailed to me.

Proposals are due no later than by 5:00 PM on September 16, 2018.

Offers must submit Proposals to:

Matt Exline
Assistant Director of Program Approval Operations
Ohio Department of Higher Education
25 South Front Street, 2nd Floor
Columbus, OH 43215
mexline@highered.ohio.gov

I. Background

The Chancellor of the Ohio Department of Higher Education (DHE) is responsible for reviewing and approving postsecondary instruction offered by colleges and universities that fall under his purview pursuant to chapters 1713 of the Ohio Revised Code and Chapters 3333-1.04 (associate degrees), 3333-1.05 (bachelor's degrees), 3333-1-07 (graduate programs) and 3333-1.08 (private and out-of-state institutions) of the Ohio Administrative Code. Guidelines and procedures for approval of new programs and changes to existing programs are described in the *Ohio Department of Higher Education's Guidelines and Procedures for Academic Program Review* (posted at: https://www.ohiohighered.org/sites/ohiohighered.org/files/uploads/program-approval/Academic-Program-Review-Guidelines_070516.pdf).

II. Scope of Work:

The Ohio Department of Higher Education requests quotes for a state level academic program review software system.

1. Platform for higher education institutions to submit applications, appendices to applications, change requests, institutional reauthorization documentation, and other academic program-related requests to the Ohio Department of Higher Education Office of Program Development and Approval staff for review.
2. System needs to be accessible by Program Approval staff and external consultant reviewers to review, create evaluation documents, track, and approve applications and requests to the system.
3. System should send out email notifications when action is taken on a proposal, as well as prompts for progress reports and reauthorization deadline.
4. Platform would serve as a database for a comprehensive list of programs approved in Ohio. System will be able to generate reports.
5. System will be the authoritative source for all academic programs submitted and approved by the Department of Higher Education. RESTful API(s) will need to be established between DHE's Higher Education Information (HEI) system and the chosen system via web service or other like mechanism for exchange of data.
6. System will have the ability to maintain custom attributes per data record which will maintain data integrity with the HEI system.
7. The chosen vendor will perform duties as agreed to in the state of Ohio's Master Cloud Service Agreement (MCSA) in Exhibit A and Exhibit B.

8. Chosen vendor will need to supply answers to a security practice questionnaire on an annual basis and will be responsible for remediation items. Vulnerability scan will be performed on a regular basis.

Please indicate your company's ability to accomplish the items above with the estimated implementation date for each item. Responders to the RFQ should have a software that has previously been developed and implemented at a statewide or accreditor level for academic programs at multiple degree levels (e.g., certificate, bachelor's, associates, and graduate levels). Response should provide an overview of this experience. In addition, the company should have evidence of success in developing and implementing program approval and/or program accreditation workflow systems and databases at the state level or for higher education accreditors. Extensive knowledge of higher education issues at the state and national level is required.

III. Cost

The Offeror must provide cost of the implementation of the online system.

The Offeror must provide Costs for maintenance and frequent of such costs.

IV. Training

The Offeror shall train ODHE staff on the operation of the system and software within thirty (30) days of delivery with approved appointment dates. A training manual will also be provided.

V. References

The Offeror must provide three (3) references from previous clients using a similar system during the past five (5) years.

Exhibit A
<Contractor>
Master Cloud Services Agreement

THIS MASTER CLOUD SERVICES CONTRACT (“Agreement”) is by and between _____ (“Contractor”), having an office at _____, and the State of Ohio (“State”), through its Department of Administrative Services (“DAS”), having its principal place of business at 30 East Broad Street, 40th Floor, Columbus, OH 43215. The State and the 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”).

1. General Information

1.1. Organization

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

1.2. Subscribers

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

1.3. Cooperative Purchasing Members

“Cooperative Purchasing Members” or “Co-op Members” are entities that qualify for participation in the State’s cooperative purchasing program under Section 125.04 of the Ohio Revised Code (“ORC”) and that have completed the steps necessary to participate in that program. They may include Ohio political subdivisions, such as counties, townships, municipal corporations, school districts, conservancy districts, township park districts, park districts created under Chapter 1545 of the ORC, regional transit authorities, regional airport authorities, regional water and sewer districts, and port authorities. They also may include any Ohio county board of elections, state institutions of higher education, private fire companies, private, nonprofit emergency medical service organizations, and chartered nonpublic schools.

1.4. Term

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

1.5. Agreement – Renewal

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

1.6. Service Attachment(s) – Renewal

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

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

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

1.7. Relationship of the Parties and Subscribers

The Contractor is an independent contractor and is not an agent, servant, or employee of the State. The Contractor 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, as an independent contractor, The Contractor is not a public employee and is not entitled to contributions from the State to any public employee retirement system or any other benefit of public employment.

Further, any individual providing personal Services under this Agreement is not a public employee for purposes of Chapter 145 of the Ohio Revised Code. And unless the

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”) the Contractor must have any individual performing work under this Agreement complete and submit to the ordering agency the Independent Contractor/Worker Acknowledgement form found at the following link:

<https://www.opers.org/forms-archive/PEDACKN.pdf#zoom=80>

The Contractor’s failure to complete and submit the Independent/Worker Acknowledgement form before providing any Service or otherwise doing any work hereunder will serve as the Contractor’s certification that the Contractor is a “Business entity” as the term is defined in ORC Section 145.037.

1.8. Dealers and Distributors

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

In doing the above, the Contractor warrants that:

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

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

Section 125.081 of the Ohio Revised Code requires the State to set-aside purchases for MBE and Executive Order 2008-13S encourages use of EDGE businesses. Therefore

the State encourages the Contractor to purchase goods and services from Ohio certified Minority Business Enterprises (MBE) and Encouraging Diversity, Growth and Equity (EDGE) vendors and to use such for its dealers and distributors under this Agreement.

1.9. Audits and Reports

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

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

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

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

1.10. Subscribers' Reliance on Agreement

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

1.11. 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 Service Attachment 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.

1.12. Non-Exclusivity

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

1.13. Competitive Pricing and Services

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

1.14. Conflict Resolution

If one Party believes the other Party has violated or is not complying with the terms of this Agreement or if any other dispute arises under this Agreement, the Party raising the matter may provide to the other Party written notice referencing this section and specifying the nature of the dispute (the "Dispute Notification"). The Parties then will seek to resolve the dispute in accordance with the procedures in this Section.

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

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

If following the 15 days in the previous section, the State's IT Contract Manager and the Contractor's Sales Director are unable to resolve the dispute, the Parties will then submit

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

The specific format for such discussions will be left to the discretion of the representatives of the State and Contractor responsible for attempting to resolve the dispute, but each Party will involve the business, technical, and legal resources reasonably necessary to attempt in good faith to resolve the dispute at the earliest possible time and without undue delay.

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

Nothing in this section is intended to limit the rights provided under termination section of this Agreement or be a prerequisite to exercising those rights.

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

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

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

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

2. General Requirements for Cloud Services

2.1. Standards

All Service subscriptions must provide a Service that maintains a redundant infrastructure that will ensure access for all of the State's enrolled users in 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 Service Attachment 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 will continue to use its best efforts through quality assurance procedures to ensure that there are no viruses or malware or undocumented features in its infrastructure and Services and that they do not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent any use of or access to them by the Subscribers. 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 Subscriber’s Active Directory or other Lightweight Directory Access Protocol (LDAP) service to support single sign-on capability for users and to ensure that every user is tied to an Active Directory or other LDAP account and to prevent user access when a user is disabled or deleted in the applicable Subscriber’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.

2.2. Object Reassignment

Any Service subscriptions that are provided by the number of items that may be used by or in conjunction with it, such as nodes, users, or connections (“Objects”), may be reassigned to other, similar Objects within the Subscriber’s organization at any time and without any additional fee or charge. For example, a named user subscription may be assigned to another user. But any such reassignment must be in conjunction with termination of use by or with the previous Object, if such termination is required to keep

the total number of licensed Objects within the scope of the applicable subscription. Should a Subscriber 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 Subscriber at any time and without a fee or charge. A later section in this Agreement governs assignment of a Subscriber's subscription to any Service to a successor in interest.

2.3. Generated Files

"Generated Files" are files storing information, instructions, or data that a Subscriber creates or modifies using the Contractor's Services and in which the data or other information was provided or created by a Subscriber. Such Generated Files are also included in the definition of "Subscriber's Data" in a later section of this Agreement. Examples of such files could include, among others, text files generated with a word processor, data tables created with a database engine, and image files created with a graphics application. Applications consisting of instruction sets created with a programming language that the Contractor provided to a Subscriber also would be considered Generated Files. As between the Subscriber and the Contractor, the Subscriber will own all Generated Files that the Subscriber 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 Subscriber 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 Subscriber 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 Subscriber 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.

2.4. Contractor Warranties

The Contractor warrants the following:

- i. It has validly entered into this Agreement and has the legal power to do so.
- ii. The Services will perform materially in accordance with the applicable user guide and the requirements of this Agreement.
- iii. Subject to any limitations specified in the applicable Service Attachment, the functionality of the Services will not be materially decreased during a subscription term.
- iv. It will not transmit viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs ("Malicious Code") to a Subscriber.

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

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

2.5. State and Subscribers Responsibilities

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

- i. Be responsible for the accuracy, quality, and legality of its data and of the means by which the data was acquired.
- ii. Use commercially reasonable efforts to prevent unauthorized access to or use of the Services to which it subscribes and notify the Contractor promptly of any unauthorized access or use of which it becomes aware.
- iii. 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.

A Subscriber may not:

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

3. Insurance, Indemnification, Limitation of Liability

3.1. 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.

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.

3.2. Indemnification for Bodily Injury and Property Damage

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

3.3. Indemnification for Infringement

The Contractor will release, protect, indemnify, defend, and hold the State and the Subscribers harmless from and against any claims of infringement by any third parties based on any Service provided under this Agreement. Any defense of the State or a State Subscriber 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 and Subscribers for any liability resulting

from any such claims, demands, or suits, as well as hold the State and the Subscribers harmless for the Contractor's liability, losses, and damages resulting from such. This obligation of defense and indemnification will not apply where the State or a Subscriber has modified or misused the Service and the claim or the suit is based on the modification or misuse. The State or affected Subscribers 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 Subscribers business:

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

3.4. Limitation of Liability - State

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

3.5. Limitation of Liability - Contractor

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

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

4. Confidentiality and Handling of Data

4.1. Confidentiality

The State may disclose to the 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 interests of the public, other contractors or potential contractors with the State, or individuals or organizations about whom the State keeps information. The Contractor may not disclose any Confidential Information to third parties and must use it solely to perform under this Agreement.

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

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

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

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

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

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

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

4.2. Public Records Requests.

Should the Contractor receive any public records request with respect to any Subscriber's Data, the Contractor will immediately notify any affected Subscriber and fully cooperate with the affected the Subscriber directs.

4.3. Handling of Subscriber's Data

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

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

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

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

The Contractor must use appropriate measures to secure a Subscriber's Data before transferring control of any systems or media containing that Subscriber's Data. The method of securing the data must be appropriate to the situation and may include erasure, destruction, or encryption of the data before transfer of control. The transfer of any such system or media must be reasonably necessary for the performance of the Contractor's obligations under this Agreement.

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

The Contractor may not allow Subscriber's Data to be loaded onto portable computing devices or portable storage components or media unless necessary to perform its obligations under this Agreement properly. Even then, the Contractor may permit such only if adequate security measures are in place to ensure the integrity and security of the data. Those measures must include a policy on physical security for such devices to

minimize the risks of theft and unauthorized access that includes a prohibition against viewing sensitive or confidential data in public or common areas. At a minimum, portable computing devices must have anti-virus software, personal firewalls, and system password protection. In addition, Subscriber's Data must be encrypted when stored on any portable computing or storage device or media or when transmitted from them across any data network. The Contractor also must maintain an accurate inventory of all such devices and the individuals to whom they are assigned.

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

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

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

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

All Subscriber Data will remain the property of the Subscriber. The Contractor must ensure that the Subscriber retains access and download capability for purposes of retrieving its data for research, investigation, transfer, or migration to other systems.

All Subscriber Data at rest in systems supporting the Contractor's Services must reside within the contiguous United States with a minimum of two data center facilities at two

different and distant geographic locations and be handled in accordance with the requirements of this section at all Contractor locations.

When the Contractor performs any Services under this Agreement 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 confidentiality 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 or whose results from such background check are unacceptable to the applicable Subscriber.

4.4. Subscriber Responsibilities

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

Further, a Subscriber may not intentionally make the Services available to anyone other than its employees and its contract personnel, unless the applicable Service or Services are designed to be publically facing or intended for interaction with clients of the Subscriber (e.g., hosted web sites), sell, resell, rent, or lease the Services, use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights. The Subscribers also may not intentionally use the Services to store or transmit Malicious Code, intentionally interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or attempt to gain unauthorized access to the Services or their related systems or networks.

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

5.1. Acceptance

The acceptance procedure for setup or installation of a Service will be a review by the Subscriber acquiring the Service to ensure that it meets the performance standards and other requirements in the applicable Service Attachment and that the setup or installation has been done in a professional manner and that the Service itself meets all requirements. For Services not requiring setup or installation, the acceptance procedure will be a review by the Subscriber to ensure the Service complies with the performance requirements in the applicable Service Attachment.

In addition to the requirements of the applicable Service Attachment, if ordering documents such as a statement of work are authorized in that Service Attachment, the review will include any additional requirements in the applicable Order Form. The Subscriber will have up to 15 days after the setup, installation, or establishment of the Service to do this. The Subscriber will not issue a formal letter of acceptance, unless otherwise specified in the applicable Service Attachment, and passage of 15 days will imply acceptance, though the Subscriber will issue written notice of noncompliance if setup, installation, or the Service does not meet the requirements in this Agreement.

If the Subscriber issues a noncompliance letter, the Contractor will have 30 days to correct the problems listed in the letter. If the Subscriber has issued a noncompliance letter, the Service, installation, or set up will not be accepted until that Subscriber 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 Subscriber 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 Subscriber, and the Subscriber will be entitled to a full refund of any payments made for the Service, setup, and installation.

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

5.2. Service, Termination, or Modification

All Orders for Service, as well as any modification to an Order, must be made through the State's Ordering System, except for Orders involving only Cooperative Purchasing Members.

Cooperative Purchasing Members do not use the State's Ordering System and will submit their Orders directly to the Contractor.

The Contractor must act as the sole point of contact for all Services under this Agreement and any related Service Attachments for all Subscribers. The Contractor may not require a Subscriber to contact any of the Contractor's third-party suppliers or otherwise transact business directly with such suppliers for any Services ordered under this Agreement, and in all respects, the Contractor must maintain a seamless, single-point-of-contact business relationship with each Subscriber for the Services ordered under this Agreement.

6. Termination – Agreement, Service Attachments, Orders

6.1. Termination by the State

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

- I. The State may terminate this Agreement, the applicable Service Attachment(s), or the affected Order(s) under this Agreement.
- II. The State may withhold payment for any affected Service until the Contractor cures the noncompliance or the Parties agree on the corrective action the Contractor must take to cure the noncompliance.
- III. The State may file a complaint for damages with a court of competent jurisdiction in Ohio.

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

If the termination of the Agreement or any Service Attachment(s) is for cause, then neither the State nor any Subscribers will be liable for any Early Termination Charge outlined in any affected Service Attachments. And the Contractor will fully cooperate in any disentanglement efforts any affected Subscribers reasonably request at no cost to the requesting Subscribers, even if disentanglement is a separately priced Service in the applicable Service Attachment(s).

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

6.2. Termination of Orders by Subscriber or Contractor

Under this Agreement, specific Orders also may be terminated by either a Subscriber or the Contractor, as follows:

6.2.1. By a Subscriber

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

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

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

6.2.2. By the Contractor

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

If the Subscriber cures the default before the cancellation of Service date, the Order will remain in full force and effect.

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

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

7.1. Fees

All applicable charges are fully documented in the appropriate Service Attachment(s). The Subscriber will not be responsible for any charges not documented in the applicable Service Attachment(s) or be responsible for any charges waived by the Contractor in this Agreement or the applicable Service Attachment(s).

Subscribers are not subject to increases in fees during the term of this Agreement.

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

7.2. Billing

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

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

A proper invoice must include the following information:

- i. Name and address of the Contractor as designated in this Agreement.
- ii. Federal Tax Identification Number of the Contractor as designated in this Agreement.
- iii. Invoice remittance address as designated in the Agreement.
- iv. A sufficient description of the Services to allow the Subscriber to identify the Services and perform an audit of the Services.

7.3. Payment

Payments for Services under this Agreement will be due on the 30th calendar day after the actual receipt of a proper invoice in the office designated to receive the invoice. The Contractor agrees to receive payment from approved vouchers by electronic fund transfer (“EFT”) for Subscribers that rely on them to make payment. The Contractor will cooperate with Subscribers in providing the necessary information to implement EFT. The date the EFT is issued in payment will be considered the date payment is made, or if a Subscriber does not use an EFT process, the date its check or warrant is issued in payment will be considered the date payment is made.

7.4. State Reporting Requirements

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

7.5. Service Level Guarantee and Credits

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

7.6. Cost Recovery

The Contractor must pay a fee to the State to cover the estimated costs the State will incur administering this Agreement and the Services offered under it (“Cost Recovery Fee”).

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

will generate an invoice to the Contractor for the quarterly Cost Recovery Fee based on reported revenue from the Contractor or the State's records, whichever is greater.

Examples of the calculation of a Cost Recovery Fee:

1. An example of a contractor with sales only to State Entities and thus no revenue from Co-op Members:

FY15				
Quarter	Revenue from State Entities	Revenue from Co-op Members	Revenue Share Due	Reported by
Q1	\$ 79,193	\$ 0	\$ 1,584	Name of Contact
Q2	\$ 10,392	\$ 0	\$ 208	Name of Contact
Q3	\$ 209,105	\$ 0	\$ 4,182	Name of Contact
Q4	\$ 74,970	\$ 0	\$ 1,499	Name of Contact

2. An example of a contractor with sales to both State Entities and Co-op Members and thus revenue from both:

FY15				
Quarter	Revenue from State Entities	Revenue from Co-op Members	Revenue Share Due	Reported by
Q1	\$ 79,193	\$ 20,963	\$ 2,003	Name of Contact
Q2	\$ 10,392	\$ 4,197	\$ 292	Name of Contact
Q3	\$ 209,105	\$ 63,210	\$ 5,446	Name of Contact
Q4	\$ 74,970	\$ 1,471	\$ 1,529	Name of Contact

3. An example of a contractor with sales to neither State Entities nor Co-op Members and thus no revenue to report:

FY15				
Quarter	Revenue from State Entities	Revenue from Co-op Members	Revenue Share Due	Reported by
Q1	\$0	\$0	\$0	Name of Contact
Q2	\$0	\$0	\$0	Name of Contact
Q3	\$0	\$0	\$0	Name of Contact
Q4	\$0	\$0	\$0	Name of Contact

The Contractor must use the State's Web-based system for reporting revenue generated under this Agreement.

The Contractor must remit the 2% Cost Recovery Fee to the State quarterly by check to the State of Ohio, Department of Administrative Services. The check must be made payable to the Treasurer, State of Ohio, and must be sent to the State at the following address:

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

To ensure that the payment is credited properly, the Contractor must identify the payment as a State of Ohio Cost Recovery Fee and reference this Agreement and the Quarterly Activity Reports supporting the check amount. The data requirements for the Quarterly Activity Reports will be detailed in the Service Attachment(s). Credit for the Cost Recovery Fee will begin in the month of execution of this Agreement.

A copy of the Quarterly Activity Report will be sent to the Contract Administrator at the following address:

Department of Administrative Services
Enterprise IT Contracting
30 E. Broad Street, 39th Floor
Columbus, Ohio 43215
Attention: Contract Analytics Manager

The first payment will be calculated against all Services rendered to the existing Subscribers transferred to the Agreement in the month of effective date. Subsequent payments will be calculated against all Subscribers as stated above.

The Contractor's contact person for Cost Recovery Section will be:

Name:
Address:
Phone:
Email:

8. Support

8.1. Service Support Generally

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

8.2. Equipment Support Generally

For any equipment used to provide the Services, remedial equipment maintenance by the Contractor will be completed within eight business hours after notification by the Subscriber 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 Subscriber, the Contractor will be in default. Failure of the Contractor to meet or maintain these requirements will provide the Subscriber 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 Service Attachment. The Contractor will provide adequate staff to provide the maintenance required by this Agreement.

8.3. Adjustments

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

8.4. Support Parameters

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

8.5. Incident Classification

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

The Contractor must designate a problem as “critical” if the Service is functionally inoperable, the problem prevents the Service or a major component or function from being used in production mode or there is significant potential for data integrity problems. This classification assumes there is no existing patch for the problem. The Contractor must classify a problem as “urgent” if the underlying problem significantly degrades the performance of the Service or a major function or component of it or materially restricts a Subscriber’s use of the Service in a production mode. A problem also will be considered urgent if a commonly used feature often generates application errors, causes the Service to freeze, locks up the computer on which the Service is

running, or otherwise routinely does not work as intended. Classification of a problem as urgent rather than critical assumes that an affected Subscriber still can conduct business with the Service and response times are consistent with the needs of the Subscriber for that type of Service. As with the critical classification, the urgent classification assumes there is no existing patch or acceptable workaround procedure for the problem. Finally, the Contractor may classify a support call as "routine" if the underlying problem is a question on end use or configuration of the Service. It also may be classified as routine when the problem does not materially restrict a Subscriber's use of the Service in its production environment, such as when a feature or combination of features generates minor or rare errors. Also, if any problem that otherwise should be classified as critical or urgent can be solved either by a known workaround or an existing patch that does not materially interfere with a Subscriber's use of the Service, the problem may be treated as routine.

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

8.6. 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 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.

8.7. Response Times

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

8.8. Escalation Process

Any support call that is not resolved must be escalated to the 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. If a critical problem is not resolved within one day, it must escalate to the CEO level after two days. The Contractor's support staff will escalate unresolved urgent problems to its support manager within three hours, to the director level after one day, and to the CEO level after two days.

8.9. Subscriber Obligations

To facilitate the Contractor meeting its support obligations, Subscribers must provide the Contractor with the information reasonably necessary to determine the proper classification of the underlying problem. They also must 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, Subscribers must 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.

8.10. Relationship to Support Level Agreements ("SLA")

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

9. Standard Provisions

9.1. Certification of Funds

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

- i. All statutory provisions under the ORC, including Section 126.07, have been met.

- ii. All necessary funds are made available by the appropriate State agencies.
- iii. If required, approval of this Agreement or the applicable Order is given by the Controlling Board of Ohio.
- iv. If the Subscriber is relying on federal or third-party funds for its Order, the Subscriber gives the Contractor written notice that such funds have been made available.

Additional or alternate legal requirements may apply to a political subdivision that is a Subscriber for an Order to be binding on it.

9.2. Excusable Delay

Neither Party will be liable for any delay in its performance arising from causes beyond its control and without its negligence or fault. The delayed Party will notify the other promptly of any material delay in performance and will specify in writing the proposed revised performance date or dates as soon as practicable after notice of delay. The proposed date or dates must be reasonable and cannot exceed the actual delay caused by the events beyond the control of the Party. In the case of such an excusable delay, the dates of performance or delivery affected by the delay will be extended for a period equal to the time lost by reason of the excusable delay. The delayed Party must also describe the cause of the delay and what steps it is taking to remove the cause.

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

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

9.3. Employment Taxes

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

9.4. Sales, Use, Excise, and Property Taxes

The State and most Subscribers are 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 any Service, such will be the sole and exclusive responsibility of the Contractor, and the Contractor will pay such taxes (together with any interest and penalties not disputed with the appropriate taxing authority) whether they are imposed at the time the Services are rendered or a later time.

9.5. Equal Employment Opportunity

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

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

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

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

9.6. 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 its employees, while working on State property or the property of any Subscriber, will not have or be under the influence of illegal drugs or alcohol or abuse prescription drugs in any way.

9.7. Conflicts of Interest

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

9.8. Assignment

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

9.9. Governing Law

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

9.10. Finding for Recovery

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

9.11. Anti-trust

The Parties recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by the State and the Subscribers. 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.

9.12. Use of Name

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

9.13. Executive Order 2011-12K Compliance

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

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

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

9.14. Campaign Contributions

By signing this document, the Contractor certifies that all applicable parties listed in ORC Section 3517.13 are in full compliance with ORC Section 3517.13.

9.15. Export Compliance

The Services and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Both the Contractor and the State represent that it is not named on any U.S. government denied-party list. Neither Party will permit others to access or use the Services in a US-embargoed country or in violation of any U.S. export law or regulation.

9.16. Safety and Security Rules

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

9.17. Ohio Ethics Law

The Contractor certifies that it is currently in compliance with 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 that section.

9.18. HIPPA Compliance

When the Contractor is handling Subscriber Data that includes health or medical data, the Contractor must comply with data handling and privacy requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its associated regulations.

9.19. Federal Tax Information

When the Contractor is handling Subscriber Data that includes Federal Tax Information, the Contractor must comply with the safeguards contained in the IRS 1075 Attachment hereto.

9.20. Entire Agreement

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

Only an executable Order attached to a Service Attachment as an exhibit and identified as such in the applicable Service Attachment may be executed by a Subscriber to evidence a transaction under this Agreement. Further, neither the Subscriber nor the Contractor may add or require additional terms as part of any authorized Order. Documents attached to a Service Attachment as exhibits to be executed by a Subscriber typically identify authorized Service options the Subscriber has selected, provide information about a Subscriber, identify installation or configuration requirements or similar statements of work to be done by the Contractor, set schedules for performance, and similar matters.

9.21. Severability

If any provision hereunder is held invalid, illegal, or unenforceable by a court of competent jurisdiction, this Agreement will be revised only to the extent necessary to make that provision legal and enforceable or, if that is not possible, the unaffected portions of this Agreement will remain in full force and effect so long as the Agreement remains consistent with the Parties' original intent.

9.22. Survival

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

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

9.23. No Waiver

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

9.24. Order of Precedence

If a conflict between the terms and conditions of this Master Services Agreement and those in a Service Attachment arises, this Master Services Agreement will prevail, unless the Service Attachment specifically provides otherwise. If a user guide or other documentation is incorporated into the Agreement by reference, this Agreement, including any applicable Service Attachment(s), will prevail over any conflicting terms or conditions in any such incorporated documentation.

9.25. Headings

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

9.26. Governmental Authorization, Regulatory Changes

This Agreement is subject to all applicable federal, state, and local laws, rules, orders, and regulations, and each Party must comply with such in performing its obligations hereunder. To the extent any provision of this Agreement conflicts with any such law, rule, order, or regulation, that law, rule, order, or regulation will supersede the conflicting provision of this Agreement.

The Contractor may discontinue, limit, or impose additional requirements to the provision of Service, upon no less than 30 days written notice, if required to meet federal, state or local laws, rules, orders, or regulations. But if any such action materially affects any Subscriber's use of a Service, the Subscriber may on written notice to the Contractor terminate its use of the Service without an Early Termination Charge and receive a pro rata refund of any amounts paid in advance for the Service.

9.27. Notices

Except as otherwise provided in this Agreement, all notices hereunder must be in writing and may only be sent by registered or certified mail, postage prepaid; facsimile transmission, overnight courier, or email, upon confirmation of receipt.

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

The State's address for notification is:

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

The Contractor's address for notification is:

<Contractor Address>

With a copy to:

<Contractor Address>

9.28. Travel Expenses

Any travel that the Contractor requires to perform its obligations under this Agreement will be at the Contractor's expense. The State will pay for any additional travel that it requests only with prior written approval. The State will pay for all additional travel expenses that it requests in accordance with the State's travel policy in Rule126-1-02 of the Ohio Administrative Code.

9.29. Amendments

No amendment or modification of this Agreement will be effective unless it is in writing and signed by both Parties.

9.30. IRS 1075 Form

The attached Internal Revenue Service issued Publication 1075 form is a part of this Agreement and incorporated herein by reference.

9.31. 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.

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	_____ Robert Blair Printed Name DAS Director
_____ Title	_____ Title
_____ Date	_____ Effective Date

STANDARD AFFIRMATION AND DISCLOSURE FORM
EXECUTIVE ORDER 2011-12K

Governing the Expenditure of Public Funds on Offshore Services

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

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

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

1. Principal location of business of the 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 the Contractor:

(Address) (City, State, Zip)

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

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

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

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

(Address)

(Address, City, State, Zip)

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

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

The Contractor also affirms, understands and agrees that the Contractor and its subcontractors are under a duty to disclose to the State any change or shift in location of Services performed by the Contractor or its subcontractors before, during and after execution of any agreement with the State. The Contractor agrees it will so notify the State immediately of any such change or shift in location of its Services. The State has the right to immediately terminate the Agreement, 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 Agreement that Contractor may enter into with the State and is incorporated therein.

By: _____
Contractor

Print Name: _____

Title: _____

Date: _____

IRS 1075 Attachment

To protect risk of loss, breach, or misuse of Federal Tax Information (“FTI”) held by government agencies, the Internal Revenue Service issued Publication 1075 which includes specific language to include in any State contract in which FTI may be disclosed. If FTI is involved, then the IRS Publication 1075 language below applies.

I Performance

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

- (1) All work will be done under the supervision of the Contractor or the Contractor’s employees.
- (2) Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Agreement. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Agreement. Disclosure to anyone other than an officer or employee of the Contractor will be prohibited.
- (3) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- (4) The Contractor certifies that the data processed during the performance of this Agreement will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- (5) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- (6) All computer systems receiving, processing, storing or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operations, and technical controls. All security

- features must be available and activated to protect against unauthorized use of and access to Federal Tax Information.
- (7) No work involving Federal Tax Information furnished under this Agreement will be subcontracted without prior written approval of the IRS.
 - (8) The Contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
 - (9) The agency will have the right to void the Agreement if the Contractor fails to provide the safeguards described above.

II Criminal Sanctions

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Agreement. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of the officer or employee (United States for Federal employees) in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC 7213A and 7431.
- (3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that

disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

- (4) Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (See Exhibit 4, *Sanctions for Unauthorized Disclosure*, and Exhibit 5, *Civil Damages for Unauthorized Disclosure*). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

III Inspection

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

Exhibit B
Service Attachment for SaaS Number <SA Number>
under
Master Cloud Service Agreement (“MCSA”) Number <Number>

This Service Attachment (the “Service Attachment”) is between _____ (“Contractor”), having an office at _____, and the State of Ohio, through the Department of Administrative Services (“State”), having its principal place of business at 30 East Broad Street, 40th Floor, Columbus, OH 43215. The State and the Contractor are sometimes referred to jointly as the "Parties" or individually as a “Party”. This Service Attachment is effective as of the date signed by the State. It amends that certain Master Cloud Services Agreement (“MCSA”) between the Parties dated _____.

1. Definitions. <None.>

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

2. Services.

Overview. <Provide a list of all Services available under this Service Attachment and a description of each. A separate Services Attachment must be used for each major Service of the Contractor.>

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

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

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

The Contractor Responsibilities. The Contractor must provide the Contractor’s basic support for the Services to the Subscribers at no additional charge and/or upgraded support if available and if purchased by a Subscriber. The Contractor also must use commercially reasonable efforts to make the Services <available 24 hours a day, 7 days a week>, except for planned downtime (of which the Contractor must give at least 8 hours notice via the Services and which the Contractor must schedule <10 p.m. and 6 a.m. Eastern Time and on Saturdays>, or any unavailability covered by the MCSA’s Excusable Delay clause or by the Service Level section

later herein. And the Contractor must provide the Services in full accordance with applicable laws and government regulations.

3. Fees and Payment

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

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

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

Invoicing and Payment. Fees will be invoiced <monthly in arrears> and otherwise in accordance with the Agreement. Fees are due in accordance with the terms of the MCSA and this Service Attachment, which no Order Form may alter. The Subscriber is responsible for providing complete and accurate billing and contact information to the Contractor and notifying the Contractor of any changes to such information.

4. Proprietary Rights

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

Restrictions. Subscribers will not intentionally permit any third party to access the Services, except as permitted herein or in an Order Form, create derivative works based on the Services except as permitted in the Agreement, reverse engineer the Services, or access the Services to build a competitive product or service or to copy any features, functions, or graphics of the Services. Nothing herein prohibits a Subscriber from porting and hosting Generated Files, as

defined in this Agreement, to other sites to support its own business purposes during and after any term of an Order.

State Applications and Code. If a Subscriber, a third party acting on a Subscriber's behalf, or a user creates applications data, or code using the Services, such will be part of the Subscriber's Data. The Subscriber authorizes the Contractor to host, copy, transmit, display, and adapt such Subscriber Data solely as necessary for the Contractor to provide the Services in accordance with this Agreement. Further, the Subscriber will be entitled to port, use, modify, disclose, license, sell, and host such anywhere.

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

5. Service Levels

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

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

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

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

- (i) Outages resulting from a Subscriber's equipment or its Internet service provider;

- (ii) A Subscriber's negligence or breach of its material obligations under this Agreement; and
- (iii) Excusable Delays, as provided for and handled in accordance with the Agreement.

SLA Credits.

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

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

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

Any such credits must be paid to the Subscriber within 30 days after the month in which the Contractor fails to meet the Target Availability Level.

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

Specific SLAs.

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

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

6. Terms and Termination

Term of Subscriptions. Subscriptions commence on the start date specified in the applicable Order Form and continue for the subscription term specified therein, subject to relevant

provisions in the Agreement, such as the MCSA's termination and the non-appropriation provisions. Should a Subscriber elect to renew a subscription, provided this Agreement remains in effect, the renewal will be at the Subscriber's option and will be for the same or greater discount from list as the subscription being renewed and under the same terms and conditions, unless a change in governmental law, rules, or regulations requires a modification, in which case the Parties will in good faith negotiate the modifications necessitated by such a change in governmental law, rules, or regulations.

7. Miscellaneous

Return of Subscriber Data

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

<Add anything not covered by the above sections.>

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

SERVICE PROVIDER	STATE OF OHIO, DEPARTMENT OF ADMINISTRATIVE SERVICES
_____ Signature	_____ Signature
_____ Printed Name	_____ Printed Name
_____ Title	_____ Title
_____ Date	_____ Effective Date



JOHN R. KASICH
GOVERNOR
STATE OF OHIO

Executive Order 2011-12K

Governing the Expenditure
of Public Funds for Offshore Services

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

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

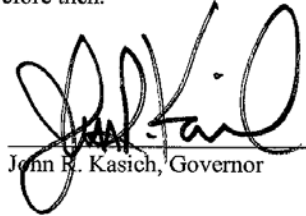
WHEREAS, the expenditure of public funds for services provided offshore may deprive Ohioans and other Americans of critical employment opportunities and may also undermine efforts to attract businesses to Ohio and retain them in Ohio, initiatives in which this State has invested heavily.

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

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

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

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



John R. Kasich, Governor

ATTEST:

Jon Husted, Secretary of State

STANDARD AFFIRMATION AND DISCLOSURE FORM
EXECUTIVE ORDER 2011-12K

Governing the Expenditure of Public Funds on Offshore Services

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

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

The Contractor will provide all the name(s) and location(s) where Services under this Agreement will be performed in the spaces provided below or by attachment. Failure to provide this information may subject the Contractor to sanctions. 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 stored, accessed, tested, maintained or backed-up, by Contractor:

(Address)

(Address, City, State, Zip)

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

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(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 agreement with the State. Contractor agrees it will so notify the State immediately of any such change or shift in location of its Services. The State has the right to immediately terminate the contract, unless a duly signed waiver from the State has been attained by the 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 agreement that Contractor may enter into with the State and is incorporated therein.

By: _____
Contractor

Print Name: _____

Title: _____

Date: _____

