



Department of Job and Family Services

**Request for Letterhead Bids
Employee Business Services
I-9 Employment Eligibility Verification Form
RLB#: RLB-OIS-13-004**

Purpose

The Ohio Department of Job & Family Services (ODJFS) Employee Business Services (EBS) through the Office of Information Systems (OIS) is soliciting proposals from vendors that provide cloud based SaaS (Software as a Service) to manage Federal requirements for I-9 Employment Eligibility Verification forms and to interface with DHSs E-Verify service to verify that employees are legally allowed to work in the United States.

All U.S. employers must complete and retain a Form I-9 for each individual they hire for employment in the United States. This includes citizens and noncitizens. The employer must examine the employment eligibility and identity document(s) an employee presents to determine whether the document(s) appear to be genuine and reflect the individual's identity. The information is then incorporated into the completion of the information on the Form I-9 and verification through Homeland Security that the individual is legally allowed to work within the United States.

The vendor must provide services described in Section VI and meet the contractual obligations outlined within this RLB.

Through this Request for Letterhead Bids (RLB), ODJFS seeks proposals from qualified persons or organizations (hereinafter "vendors") that can perform this work. In addition to providing further details on the work to be performed, this RLB specifies qualifications and experience needed, provides instructions for preparing and submitting proposals, and identifies the criteria and process by which ODJFS will select a Contractor. References within this RLB to "contractor" indicate the vendor selected through this RLB process.

The selected vendor must also provide product upgrades and maintenance, ongoing product training for the initial contract period of approximately three months (from contract effective date through June 30, 2013), and for up to two additional two-year contract renewals (*i.e.*, through June 30, 2017).

Vendors that wish to be considered for award of a contract for this work are to submit a proposal to ODJFS using the instructions provided through this RLB. The contract expected to result from this RFP process will be an agreement between the State and the selected vendor. The selected vendor will be required to negotiate a master services cloud agreement (see attachment E) with the Department of Administrative Services. The resulting Contract may be available for use by all State agencies that require I-9 services. All communications regarding this competitive opportunity are to take place in the open forum as provided for in Section IV, Internet Question and Answer Period; RLB Clarification Opportunity.

II. Time and Date of Submission

Organizations, companies, firms, or individuals who are interested in submitting letterhead bids must make their submission not later than **10:00 a.m. Eastern Standard Time on Tuesday, March 19th, 2013**. *Faxes will not be accepted.* Proposals must be addressed to:

**Office of Information Services
Ohio Department of Job and Family Services
Attn: OIS IT Procurement Unit
RLB#: RLB-OIS-13-004
4200 E. Fifth Ave.
Columbus, Ohio 43219**

For hand delivery on the due date all proposals will be accepted at the Security Guard Desk at 4200 E. Fifth Ave., Columbus, Ohio 43219. **DAS/OIT or ODJFS- Contracts & Acquisitions WILL NOT ACCEPT PROPOSALS FOR THIS RLB.** ODJFS is not responsible for any proposals delivered to any address other than the address provided above.

All submissions, whether by mail or hand delivery, must be received complete by the above date and time. Materials received after the submission deadline date, or partial submissions received regardless of the date, will not be added to previous submissions, nor be considered. The State may reject any Proposals or unsolicited modifications it receives after the deadline. An offeror that mails its Proposal must allow for adequate mailing time to ensure its timely receipt. Offerors also must allow for potential delays. Offerors must allow sufficient time since the State may reject late Proposals regardless of the cause for the delay. No confirmations of mailed proposals received can be provided.

Submission of a proposal indicates acceptance by the vendor of the conditions contained in this RLB, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between ODJFS and the vendor selected.

III. Anticipated Procurement and Project Timetable

2/26/2013	ODJFS Releases RLB to Potential Vendors. Q & A Period Opens - Vendors may submit inquiries for RLB clarification.
3/7/2013	Vendor Q & A Period closes, 8:00 a.m. for inquiries for RLB clarification - No further inquiries for RLB clarification will be accepted.
3/19/2013	Deadline for Vendors to Submit Proposals (10:00 a.m., Eastern time).
4/3/2013	ODJFS Issues an intent to Award Notification Letter (Estimated).
4/12/2013	Contract negotiation and completion (Estimated).
4/19/2013	Purchase Order approval – work may not begin until a state Purchase Order has been fully approved by OBM. (Estimated Date).
4/22/2013	Training and implementation of services begins.

ODJFS reserves the right to revise this schedule if in the best interest of the State of Ohio and/or to comply with the State of Ohio procurement procedures and regulations.

* According to requirements of ORC 126.07, State contracts are not valid and enforceable until the Office of Budget and Management (OBM) certifies the availability of appropriate funding, which is indicated by the approval of the Purchase Order (P.O.) The selected vendor may neither perform work nor submit an invoice for payment for work performed for this project for any time period prior to the State providing notice that the requirements of section 126.07 of the Ohio Revised Code have been met.

** Subject to all necessary approvals, this agreement is expected to be in effect from approximately April 22, 2013 through June 30, 2013, (i.e., through the remainder of the current state fiscal biennium) with renewal contracts to be in effect, contingent upon satisfactory performance, and continued availability of funding. State law prohibits the State from making financial commitments beyond the fiscal biennium and therefore the agreement with the selected vendor will be subject to renewal or rebid for ongoing services. Renewal is at the discretion of the State.

IV. Internet Question & Answer Period; RLB Clarification Opportunity

Potential vendors may ask clarifying questions regarding this RLB via the Internet during the Question and Answer (Q & A) Period as outlined in Section III. Anticipated Procurement Timetable. To ask a question, potential vendors must use the following Internet process:

- * Access the ODJFS Web Page at <http://jfs.ohio.gov>;
- * Select “Doing Business with JFS” listed on the bottom of the page;
- * Select “OIS RFx's”
- * Select RLB Number ***RLB-OIS-13-004***; in the section titled **Current OIS RFP/RLB/RFQ/RFIs, etc.:**
- * Follow the link to the dedicated web page;
- * Select “Submit Inquiry” near the bottom of the web page; and
- * Follow the instructions and guidelines as follows to send an e-mail question.

Questions for this RLB must reference the relevant part of this RLB by identifying the page number, heading or section number where the requirement under question will be found. The potential vendor must also include his or her name, the company name, and business phone number. ODJFS may, at its option, disregard any questions which do not appropriately reference an RLB provision or location, or which do not include identification for the originator of the question. ODJFS will not respond to any questions submitted after **8:00 a.m.** on the date that the Q & A period closes.

ODJFS responses to all questions asked via the Internet will be posted on the Internet web site identified above for reference by all potential vendors. Potential vendors will not receive personalized or individual e-mail responses. Clarifying questions asked and the ODJFS responses will comprise the “ODJFS Question and Answer Document” for this RLB; when possible, ODJFS may post an interim Q & A Document as well as the final version. Vendor proposals in response to this RLB are to take into account any information communicated by ODJFS in the Final Q & A Document for the RLB.

It is the responsibility of all potential vendors to check this site on a regular basis for responses to questions, as well as for any amendments or other pertinent information regarding any RLB.

IMPORTANT: Requests from potential vendors for copies of previous RLBs, past vendor proposals, score sheets or contracts for this or similar past projects, are Public Records Requests (PRRs), and are not clarification questions regarding the present RLB. PRRs, submitted in accordance with directions provided in Section XVI. Prohibited Communications, will be honored. The posted time frames for ODJFS responses to Internet or faxed questions for RLB clarification do not apply to PRRs.

Vendors are to base their RLB responses and costs of their proposal on the requirements and performance expectations established in this RLB and, if applicable, in the Q&A document. Vendors are not to use

requirements from a current or previous contract as content for this project. If vendors ask questions about existing or previous contracts using the Internet Q&A process, ODJFS will use its discretion in deciding whether to provide answers.

ODJFS will only answer those questions submitted within the established time period for the vendor Q & A process (see Section III. Anticipated Procurement Timetable, above), and which pertain to issues of RLB clarity, and which are not requests for public records. ODJFS is under no obligation to acknowledge questions submitted through the Q & A process if those questions are not in accordance with these instructions.

V. Qualifications

The vendor's proposal must address the following requirements, to the satisfaction of ODJFS, in order to be considered for award of the contract expected to result from this RLB to be selected for the phase II review.

Vendor proposals failing to meet ANY of the following mandatory requirements shall be disqualified from all consideration.

A. Required Vendor Qualifications

JFS requests that interested vendors have an Ohio presence, proposals submitted from any other entity or individuals may be rejected. Ohio presence is defined as having an office and operations within the state of Ohio.

B. Organizational Experience and Capabilities

JFS requires that interested vendors provide the following:

1. Background information on the vendor, indicating organizational experience and staffing to provide the services and perform the required work.
2. Names and contact information from at least three (3) entities for which the vendor is providing services for a minimum of one year as defined in Section VI, Scope of Work.

C. Staff Experience and Capabilities

The vendor must demonstrate expertise providing I-9 processing that includes an escalation and problem resolution process that meets agreed upon services level objectives.

JFS requires that interested vendors provide the following:

1. Identify the individual to be assigned for the duration of the contract who will be responsible for problem resolution and representing the services provided by the vendor.
2. Describe hours of availability and expected outages for routine maintenance.
3. Describe problem escalation and resolution processes.

Sensitive Personal Information:

Important: It is the affirmative responsibility of the vendor submitting a proposal to remove all personal confidential information (such as home addresses and social security numbers) of vendor staff from any part of the proposal package. Following submission to ODJFS, all proposals submitted become part public record. ODJFS reserves the right to disqualify any vendor whose proposal is found to contain prohibited personal information.

Administrative Structures—Proposed Work Plan

Vendors are to include, at minimum, the following administrative structures and technical approach for the proposed work plan. The vendor shall:

- A. Provide a plan outlining training and implementation;
- B. Provide a current organizational chart and specify the key management and administrative personnel who will be assigned to implement and administrate the contract.
- C. Provide a timeline for all phases of the work.

VI. Scope of Work

ODJFS is requesting proposals from qualified vendors interested in providing a fully functional I-9 tracking system, including system implementation, collecting and storing I-9 forms and related documentation which is used to verify that employees are authorized to work in the United States.

The proposed services and solution must also be capable of collecting and scanning and storing of existing JFS I-9 forms, estimated to be approximately 4,000 employees.

Expected JFS Volume is 1 - 200 per month. If additional state agencies use this contract for I-9 services the volume described here will increase. Vendor proposals must describe in detail how the entire scope of work would be addressed to the satisfaction of ODJFS, in accordance with the standards, requirements, and expectations set forth in this section and in the RLB generally.

A demonstration of the required services may be requested and will be required to be at ODJFS onsite or via Webcast. Any travel or incurred expenses as part of the demonstration is not reimbursable by ODJFS.

A. The vendor must complete the implementation of Services no later than four weeks after issuance of the purchase order.

B. General Requirements

1. The Vendor will represent or be a subject matter expert in any legal forum or court of competent jurisdiction to include audits by the DOL etc. (Department of Labor).
2. Ensure successful data entry of I-9 data can be performed and then maintain the capability throughout the effective term of the contract.
3. Maintaining the system and all data backups. ODJFS has ownership of all data, and within 180 days of the contract end date, all data must be forwarded to ODJFS in an electronic format agreed to by ODJFS.
4. In the event a subsequent contract is awarded to a different vendor upon termination of the contract provide data files for transfer of all I-9 data belonging to the State of Ohio. The vendor chosen as a result of this proposal will assure cooperation in the transfer to the new vendor.
5. The vendor must provide all software, equipment, related maintenance and disaster recovery capabilities for the application.
6. The vendor must provide the data center and related infrastructure to allow secure Web access to the application as part of the solution.
7. The application or services must be compliant with the American Disability Act (ADA).

C. I-9 Services:

Workflow

1. The solution must be Web based and provide electronic I-9 capture, storage and workflow services for ODJFS/EBS.
2. An indexing system that permits the identification and retrieval for viewing or reproducing of State owed documents and records maintained in an electronic storage system.
3. The ability to reproduce legible and readable paper copies.
4. Instantly check for I-9 form errors and signal invalid data entry.
5. Integrate with the **DHS's E-Verify®** system to automatically submit employee data and receive alerts for any non-confirmation issues. Process must return a response within twenty four hours (24) of submission to DHS.
6. Allow the ability to upload and attach scanned documents to the I-9.
7. Services must also include the ability to scan, index and audit ODJFS/EBS existing I-9's.
8. I-9 Forms must be stored for three years after the date an employee is hired, or one year after the employee's employment ends, whichever is later. For example, if an employee retires after 15 years, his or her Form I-9 will have to be retained for a total of 16 years.
9. Ensure that deleted documents are permanently deleted and unrecoverable on the main database and all backups.

Electronic Signatures

1. The system for capturing electronic signatures must allow signatories to acknowledge that they read the attestation and attach the electronic signature to an electronically completed I-9 Form and adhere to Form I-9, section 274A(a)(1)(B) of the INA (8 CFR Part 274a.2(b)(2)).
2. The system must capture electronic signature of the new hires as well as those representing the State of Ohio.
3. Affix the electronic signature at the time of the transaction.
4. Create and preserve a record verifying the identity of the person producing the signature.
5. Upon request of the employee, provide a printed confirmation of the transaction.

Security

1. Reasonable controls to ensure the integrity, accuracy, and reliability of the electronic storage system.
2. Vendor is to notify their state contact within 2 hours of detecting a security breach.
3. Reasonable controls designed to prevent and detect the unauthorized or accidental creation of, addition to, alteration of, deletion of, or deterioration of an electronically completed or stored Form I-9, including the electronic signature.
4. Automated audit trail to enable tracking of who entered, uploaded or modified data related to the I-9 Form.
5. Require a complex password, for example minimum of 8 characters in length, maximum of 15 characters in length, minimum of 1 alphabetic character, minimum of 1 numeric character, maximum number of times a specific character can be used is six, cannot be the same as the user id, cannot repeat any of the last 12 passwords, case sensitive passwords, passwords must expire every 30 days.
6. Provide role based access to the application.
7. Disaster recovery plan and services to ensure the application and data is recoverable and available within 24 hours of a major catastrophe to the vendor's primary data center.
8. Encrypting and storing Form I-9 data at rest and in transit.
 - A. The vendor agrees to safeguard all information by implementing a records security program that ensures that only authorized personnel have access to electronic records.
 - B. Provides for backup and recovery of records to protect against information loss.
 - C. Ensures that employees are trained to minimize the risk of unauthorized or accidental alteration or erasure of electronic records.

- D. Ensures that whenever an individual creates', updates, modifies, alters, or corrects an electronic record, the system creates a secure and permanent record that establishes the date of access, the identity of the individual who accessed the electronic record, and the particular action taken.
- E. All Personal Identifiable Information (i.e. Social Security number, date of birth, etc.) is to be encrypted 'at rest' with the highest level of security allowed by U.S. law, currently 128-bit AES.
- F. All communications (i.e. in transit) between users and servers are to be encrypted with VeriSign Class 3 256-bit Encryption utilizing SSLv3/TLSv1.
- G. Data center security must have monitored access to the building and secure all infrastructure supporting the application through the use of physical monitoring via a guard, video monitoring and the use of Identification cards with a PIN or biometric authorization.

Reporting

- A. Automatically alert for Forms that can be purged according to the required retention rules.
- B. Allow for notification to the new hire the status of the I9 process and be able to notify the state and employees when their visa or work permits are expiring.
- C. Allow the state administration to see what's in progress and the status of current and new hire I-9s through online access and ability to generate customizable reports.
- D. Automatically identify and alert the State to required signatures, re-verification or other issues including tentative non-confirmations.
- E. Upon request and within Two (2) weeks the vendor must provide data extracts that contain indexing data and related data and keys to link uploaded attachments and the I-9 forms in Excel, PDF or other database compliant formats.
- F. Reports are to be available 24 hours 7 days a week, or per agreed upon Service Level Agreement (SLA) on demand from the website.
- G. Provide audit reports that meet ICE auditing requirements and assist with all State or Federal audit requests at no additional charge.

Support

- A. Help Desk support during the core business hours, M–F, 7am – 6pm.
- B. Application available 24x7x365 or per agreed upon SLA.
- C. Provide implementation support to State staff that includes Web-based (or on-site) training.
- D. Provide issue resolution and escalation processes to ensure data is processed to meet State and Federal requirements for I-9 Forms and eVerify.
- E. Have in place a quality assurance program that regularly evaluates the system to ensure compliance with State and Federal requirements for I-9 processing.
- F. Provide support should the State receive an ICE Notice of Inspection (NOI).
- G. Ensure that the application maintains compliance in the event I-9 laws are changed.
- H. Establish a mutually agreed upon SLA and process for managing routine and emergency maintenance that requires the site to be unavailable.

Other services

The State is requesting that the proposal provide information on other services that the vendor may provide to manage the hiring process, ie. Background checks, reference checks, criminal record checks, candidate screening and assessment, etc.

This area of the proposal should be brief and no more than one page listing the services with a description outlining key functions provided and potential benefits. This information will be evaluated and scored as either meets or does not meet.

VII. Service Level Agreement

Availability of Services

A 99.5% uptime guarantee of Internet services is the desired SLA. Uptime specifically refers to the availability of the Vendor's web servers, connectivity to the Internet and application functioning. Uptime calculations do not include scheduled maintenance.

The Vendor will credit the State 10% of the average monthly Transaction or License fee for every 2 hours of downtime in excess of 4 hours in a single month (not including scheduled maintenance). The maximum amount of credit will be equal to the monthly average Transaction fee and/or License fee. This credit will be applied to the next month's invoicing.

Unscheduled outage credits must be reported to the State via mutually agreed upon format within 10 days after the end of the month.

The application is to provide an average response time of no more than 15 seconds per transaction.

Scheduled Maintenance

The Vendor must announce any scheduled maintenance plans at least two weeks in advance of the actual maintenance. The Vendor must make every effort to schedule maintenance on off-peak periods.

Communication and Support

The Vendor must have a comprehensive policy and process aimed at addressing customer support. The process must track problems and provide communication related to specific issues. Items that do not affect the ability for new hires or the State to access the system can be handled during core business hours.

1. The Vendor must provide a guaranteed response time of no more than one (1) hour to acknowledge that the State has contacted the Vendor's Support person.
2. Provide hourly updates to keep the State informed of progress on the issue until resolution unless otherwise agreed upon.
3. Technical support must be provided after hours and weekends for system issues that cause lack of availability for new hires and the State.
4. Support for instances that the system is experiencing intermittent outages or unexpected errors or actions for new hires or State staff.

Browser compatibility

The Vendor will ensure that the services provided are compatible with Internet Explorer, Safari, Google Chrome, and Firefox.

Compliance

The vendor and its employees shall comply with the requirements of all applicable provisions of Federal and State laws or regulations pursuant to industry standards, and specifically the federal FCRA (Fair Credit Reporting Act), GLB (Gramm-Leach Bliley Act - known as the "protection of non-public personal information" act). The vendor agrees to be in compliance with regulatory and/or screening requirements imposed by federal or state regulations or statutes or ordinances.

The vendor must also be compliant with the Department of Homeland Security Regulations for I-9. The link of Homeland Security is <http://www.dhs.gov> then search on I-9.

VIII. Format of Submission

Vendors interested in submitting letterhead bids must submit three (3) copies of their response in hard copy and one (1) copy of their response on non-rewritable compact disc (CD) in Microsoft Word, Microsoft Excel, or Adobe Portable Document Format (PDF).

The response is to be no more than twelve (12) pages in length using both sides of the page for Tab B and C or it will be rejected. Attachment A, C and D and the cost quote do not count towards the page limit. The cost quote must be submitted as a separate sealed document and not included in the proposal.

If there is any discrepancy between the paper copy and the electronic copy of the Proposal, the paper copy will control, and the Department will base its evaluation of the vendor's proposal on the paper copy. A proposal which is incomplete, vague, unjustifiably wordy (i.e. in excess of 12 pages in length), unclear, or poorly organized will not be successful.

The proposal must contain the following components (organized in seven (7) primary tabs) as described below. Any other information thought to be relevant, but not applicable to a specific RLB section number/letter such as charts, tables, timelines, excerpts of past related projects, etc., must be provided as an appendix to the proposal and so marked as an additional tab.

The proposal will be scored based on the relevancy to the stated scope of work as well as the conciseness, clarity, flow, and professionalism of the information presented. Vendors may add information not called for in the RLB, but ODJFS reserves the right to review or not review any non-required materials. All pages shall be sequentially numbered.

The following outlines the expected format of the Proposal to this RLB.

Tab A – Cover Letter

Tab B – Vendor Qualifications

Tab C – Scope of Work

I-9 Services

Work flow

Electronic Signature

Security

Reporting

Support

Other Services

Tab D – Request for Taxpayer ID Form W-9

Tab E – Workers Compensation & Insurance Verification

Tab F – Required Vendor Information and Certifications Documents

Attachments A, C and D

Tab G – Cost Summary: Quote for this project

Tab A – Cover Letter: The cover letter must provide the following and be signed by an individual authorized to legally bind the vendor.

- A. A statement regarding the vendor’s legal structure, federal tax identification number, and principle place of business;
- B. The name, address, phone number, and fax number of a contact person who has authority to answer questions regarding the proposal; and
- C. If Vendor has STS (State Term Schedule), vendors are required to submit a copy of their STS cover page as part of their proposals which includes their valid State Term Schedule (STS) number and expiration date.

Tab B – Vendor Qualifications: The vendor qualifications must include the type of organization (corporation, partnership, etc.), the type of ownership (corporate officers, partners), number of employees, presence in the State of Ohio, number of employees engaged in tasks directly related to the work in this request, and any other information that will help the evaluators gauge the ability of the vendor to fulfill the obligations of a subsequent contract.

Vendors should describe how they are qualified to conduct the work described above. Vendors must submit references as described in Section V., B. for work done which is substantially similar to the scope of work described above. Other documents supporting vendor qualifications may also be submitted.

Tab C – Scope of Work: In this section the vendor must describe how they meet the requirements outlined in the section VI Scope of work.

Tab D –Request for Taxpayer ID Form W-9: Vendors must complete, sign in Blue ink, and return with their proposal as part of Tab D of vendor proposal. **A copy can be obtained at the website below.**

<http://www.irs.gov/pub/irs-pdf/fw9.pdf>

Tab E – Workers Compensation & Insurance Verification: Bidding vendors must provide proof (copy of current certificate) that the vendor is covered by Worker’s Compensation Insurance. The bidding vendor must also provide proof of Employers Liability or Contractor’s Insurance. **All bidding vendors are subject to this requirement.**

Tab F – Required Vendor Information and Certifications Documents: Vendors must complete, sign in Blue ink, and return with the proposal package as part of Tab F of vendor’s proposal.
Refer to Attachment A, C and D.

Tab G – Cost Summary: Vendors are to provide the cost of each deliverable outlined below.

Deliverable	Proposed Cost
Set up fee	
Cost per I-9 document processed and stored. The number is expected to be from 1 – 200 in an average month.	
Cost per attachment or other storage fees per I-9 document processed and stored.	
Monthly usage, licensing or subscription fee above document processing fees.	
Training services.	
Define any fees not listed that are required to meet scope of work.	
Cost per document for Scanning and loading existing I-9's (approximately 4,000). Service provided by the Vendor.	
Cost per document for Scanning and loading existing I-9's (approximately 4,000). Work to be performed by the State.	

IX. Selection Process

Vendors submitting a response will be evaluated based on the capacity and experience demonstrated in their Proposal. All proposals will be reviewed and scored by a Proposal Review Team (PRT) comprised of staff from ODJFS. Vendors should not assume that the review members are familiar with the vendor capabilities or previous work at ODJFS. Proposals containing assumptions, lack of sufficient detail, poor organization, lack of proofreading, and unnecessary use of self-promotional claims will be evaluated accordingly. Final selection of the vendor will be based upon the requirements specified in Sections V and VI and cost. The PRT reserves the right to reject any and all proposals, in whole or in part, received in response to this request.

The PRT may waive minor defects that are not material when no prejudice will result to the rights of any vendor or to the public. JFS reserves the right to require clarification of any information provided in vendors' proposals. In scoring the proposals, JFS will score in three phases:

A. Phase I Review—Initial Qualifying Criteria:

In order to be fully reviewed and scored, proposals submitted must pass the following Phase I Review. **Any “no” for Phase I criteria will eliminate the proposal from further consideration.**

1. Was the vendor’s proposal received by the deadline as specified in the RLB?
2. Does the vendor have a presence in the State of Ohio?
3. Vendor’s proposal includes all required affirmative statements and certifications, signed by the vendor’s responsible representative, as described in this RLB, and provide copies of their Worker’s Compensation and Insurance verifications as stated within this RLB?
4. Does ODJFS’ review of the Auditor of State website verify that the vendor is not excluded from contracting with ODJFS by ORC Section 9.24 for an unresolved finding for recovery (*i.e.*, the proposal of any vendor whose name appears on the Auditor’s website as having an unresolved finding for recovery will be eliminated from further consideration.)?
5. Did the review team (in its initial/cursory review of the vendor’s proposal) determine that the proposal was free of trade secret/proprietary information as specified/restricted in the RLB? **Please Note:** Any findings of trade secret/proprietary information will **disqualify** your proposal from further consideration immediately upon the discovery of such unallowable claim.

B. Phase II. Review—Criteria for Scoring the Vendor’s Proposal:

The PRT will then score qualifying vendor’s proposals not eliminated in Phase I. by assessing how well the vendor meets the requirements as specified in Sections V., and VI. The score sheet in attachment B will be utilized to reach consensus score for the vendor proposal.

A vendor’s proposal must achieve a minimum 45 points to qualify for continued consideration. Any proposal which does not meet the minimum required points will be disqualified from any further consideration and its cost proposal will neither be opened nor considered.

Technical Performance Scoring Definitions:

“Does Not Meet Requirement”-a particular requirement was not addressed in the vendor’s proposal, **Score: 0**

“Meets Requirement”- Vendor proposal fulfills requirement in all material respects, potentially with only minor, non-substantial deviation, **Score: 5**

“Exceeds Requirement”- Vendor proposal fulfills a requirement in all material respects, and offers some additional level of quality in excess of ODJFS expectations, **Score: 9**

C. Phase III. Review -- Costs Scoring:

Cost will be scored by ranking the vendors on total cost submitted with the proposal. The final grand total score for each qualified vendor will be the sum of the Phase II total proposal score plus the vendor's Phase III cost score. Refer to Attachment B for details on cost scoring.

D. Final Selection

The PRT will recommend for selection the qualified vendor with the highest final grand total score. At its sole discretion, Vendors submitting proposals may be requested to participate in an interview and/or a demonstration of their product as part of the evaluation process.

The interview and/or demonstration may include participants from ODJFS and any representatives it may appoint. ODJFS reserves the right to select the vendor(s) and may not ask all vendors to participate in the Interview or Software demonstration process.

The vendor shall bear all costs of any interview or demonstration which may be held at State offices or via Webcam. The outcome of that demonstration will then be used to finalize the scoring defined in Attachment B.

X. Health Insurance Portability & Accessibility Act (HIPAA) Requirements

As a condition of receiving a contract from ODJFS, the contractor, and any subcontractor(s), will be required to comply with 42 U.S.C. Sections 1320d through 1320d-8, and to implement regulations at 45 C.F.R. Section 164.502 (e) and Sections 164.504 (e) regarding disclosure of protected health information under the Health Insurance Portability and Accountability Act (HIPAA) of 1996. Protected Health Information (PHI) is information received by the contractor from or on behalf of ODJFS that meets the definition of PHI as defined by HIPAA and the regulations promulgated by the United States Department of Health & Human Services, specifically 45 CFR164.501 and any amendments thereto.

HIPAA compliance requires, at minimum, that the contractor:

1. Shall not use or disclose PHI except as specifically required under the terms of the contract with ODJFS, or as otherwise required under the HIPAA regulations or other applicable law.
2. Shall use appropriate safeguards to protect against use or disclosure not provided for by this Agreement.
3. Shall promptly report to ODJFS any knowledge of uses or disclosures of PHI that are not in accordance with the contract or applicable law. In addition, the CONTRACTOR shall mitigate any adverse effects of such a breach to the extent possible.
4. Shall ensure that all its agents and subcontractors that receive PHI from or on behalf of the contractor and/or ODJFS agree to the same restrictions and conditions that apply to contractor with respect to the use or disclosure of PHI.
5. Shall make available to ODJFS such information as ODJFS may require to fulfill its obligations to provide access to, provide a copy of, and account for disclosures with respect to PHI pursuant to HIPAA and related regulations.
6. Shall make PHI available to ODJFS in order for ODJFS to fulfill its obligations pursuant to HIPAA to amend the information and shall, as directed by ODJFS, incorporate any amendments into the information held by the contractor and ensure incorporation of any such amendments into information held by its agents or subcontractors.

Shall make available its internal practices, books and records relating to the use and disclosure of PHI received from ODJFS, or created and received by the contractor on behalf of ODJFS, to ODJFS and to the Secretary of the U.S. Department of Health and Human Services for the purpose of determining ODJFS compliance with HIPAA and the regulations promulgated by the United States Department of Health & Human Services and any amendment thereto.

Shall, upon termination of this Agreement, at the option of ODJFS, return to ODJFS, or destroy, all PHI in its possession, and keep no copies of the information except as requested by ODJFS or required by law. If the contractor or its agent or subcontractors destroy any PHI, then the contractor will provide ODJFS with documentation evidencing such destruction. Any PHI maintained by the contractor shall continue to be extended the same as required by HIPAA and ODJFS for as long as it is maintained.

In the event of a material breach of contractor obligations under this section, ODJFS may at its option terminate the agreement for services according to provisions within the contract for termination.

XI. State Contracts

Responses must list any current contracts the vendor has with State of Ohio agencies. The list must indicate the purpose of the contract, the amount of the contract, the time period covered by the contract, and the percent of the project completed. Vendors must complete a copy of the Required Vendor Information and Certifications Document (provided as **Attachment C**) to report this information, and include the completed document in the vendor's proposal as specified in **Section VII., Instructions for Format of Submissions**, of this RLB.

XII. Trade Secrets Prohibition; Public Information Disclaimer

Vendors are prohibited from including any trade secret information as defined in ORC 1333.61 in their proposals in response to any ODJFS Requests for Proposals (RFP), Requests for Letterhead Bids (RLB) or other procurement efforts. ODJFS shall consider all proposals voluntarily submitted in response to an ODJFS RLB to be free of trade secrets and such proposals shall, in their entirety, be made a part of the public record.

All proposals and any other documents submitted to ODJFS in response to any RFP, RLB, etc., shall become the property of ODJFS. After the selection of the vendor, any proposals submitted in response to an RLB are deemed to be public records pursuant to R.C. 149.43. The term “proposal” shall mean the Services/Licensing and the cost proposals submitted by the vendor, to include any attachments, addenda, appendices, or sample products.

Any proposals submitted in response to any ODJFS RFP, RLB, etc. which make claims of trade secret information shall be disqualified from consideration immediately upon the discovery of such unallowable claim.

XIII. Contractual Requirements

The selected vendor will be required to enter into a contract with the Department of Administrative Service (DAS), Office of Information Technology based on the terms and conditions of the Master Cloud Services Agreement. The terms of which are provided in Attachment D. The resulting Contract will then be made available for use by all state agencies. .

Any purchase order resulting from the issuance of this solicitation is subject to the terms and conditions as provided in the Master cloud Services Agreement.

A. Ethical and Conflict of Interest Requirements

1. No vendor or individual, company or organization seeking a contract shall promise or give to any ODJFS employee anything of value that is of such character as to manifest a substantial and improper influence upon the employee with respect to his or her duties.
2. No vendor or individual, company or organization seeking a contract shall solicit any ODJFS employee to violate any of the conduct requirements for employees.
3. Any vendor acting on behalf of ODJFS shall refrain from activities which could result in violations of ethics and/or conflicts of interest. Any vendor or potential contractor who violates the requirements and prohibitions defined here or of Section 102.04 of the Ohio Revised Code is subject to termination of the contract or refusal by ODJFS to enter into a contract.
4. ODJFS employees and vendors who violate Sections 102.03, 102.04 2921.42 or 2921.43 of the Ohio Revised Code may be prosecuted for criminal violations.
5. In submitting a proposal in response to this solicitation the vendor certifies that it has reviewed, knows, and understands the State of Ohio’s ethics and conflict of interest laws and the Governor’s Executive Order 2007-01S pertaining to ethics. The vendor further agrees that it will not engage in any action(s) inconsistent with Ohio ethics laws or the aforementioned executive order.

B. Start Work Date

The selected vendor must be able to begin work no later than seven (7) working days after the time funds are encumbered and approved by the Office of Budget & Management. The selected vendor will be notified by the ODJFS contract manager when work may begin. **Any work begun by a contractor prior to this notification will NOT be reimbursable by ODJFS.**

C. Proposal Costs

Costs incurred in the preparation of the proposal, interviews and/or demonstrations are to be borne by the vendor. ODJFS will not reimburse in any manner the costs incurred by the vendor for preparation of the proposal, demonstration or interviews.

D. Travel and Parking Expense Reimbursement

No travel or parking expenses, nor any other expenses, will be covered.

E. Public Release of Records

Public release of any evaluation or monitoring reports funded under this contract will be made only by the State. Prior to public release of such reports, the State must have at least a 30-day period for review and comment.

F. Confidentiality

All contracts or other business agreements will require that the contractor maintain the confidentiality of information and records which state and federal laws, rules, and regulations require to be kept confidential.

G. Contract Termination

Should the selected Vendor go out of business, it is to notify the State of that fact within 5 business days of that decision, and is to return all data owned by the State within 10 business days in a mutually agreed upon format.

Should the selected Vendor experience a change of ownership, it is to notify the State of that fact within 5 business days of that decision. The State will then have the option of terminating the contract agreement with the Vendor and having all data returned, or to continue to receive the same services from the new owner under the same or new contract agreement.

XIV. Other Requirements

A. Unresolved Findings for Recovery (R.C. 9.24)

Ohio Revised Code Section 9.24 prohibits ODJFS from awarding a contract to any entity against whom the Auditor of State has issued a finding for recovery if the finding for recovery is “unresolved” at the time of award. By submitting a proposal, the vendor warrants that it is not now, and will not become, subject to an “unresolved” finding for recovery under R.C. 9.24 prior to the award of any contract or business agreement arising out of this RLB, without notifying ODJFS of such finding. ODJFS will review the Auditor of State’s website prior to the evaluations of any proposal submitted pursuant to this RLB. ODJFS will not evaluate a proposal from any vendor whose name, or the name of any of the subcontractors proposed by the vendor, appears on the website of the Auditor of the State of Ohio as having an “unresolved” finding for recovery.

B. Mandatory Contract Performance Disclosure

Each proposal must disclose whether the vendor’s performance, or the performance of any of the proposed subcontractor(s), under contracts for the provision of services that are the same or similar to those described in this RLB, has resulted in any “formal claims” for breach of those contracts. For purposes of this disclosure, “formal claims” means any claims for breach that have been filed as a lawsuit in any court, submitted for arbitration (whether voluntary or involuntary,

binding or not), or assigned to mediation. If any such claims are disclosed, the vendor shall fully explain the details of those claims, including the allegations regarding all alleged breaches, any written or legal action resulting from those allegations, and the results of any litigation, arbitration or mediation regarding those claims, including terms of any settlement. While disclosure of any formal claims in response to this section will not automatically disqualify a vendor from consideration, at the sole discretion of ODJFS, such claims and a review of the background details may result in a rejection of the vendor's proposal. ODJFS will make this decision based on its determination of the seriousness of the claims, the potential that the behavior that led to the claims could negatively impact vendor's performance of the work, and the best interests of ODJFS.

C. Mandatory Disclosures of Governmental Investigations

Each proposal must indicate whether the vendor and any of the proposed subcontractor(s) has been the subject of any adverse regulatory or adverse administrative governmental action (federal, state, or local) with respect to vendor's performance of services similar to those described in this RLB. If any such instances are disclosed, vendor must fully explain, in detail, the nature of the governmental action, the allegations that led to the governmental action, and the results of the governmental action including any legal action that was taken against vendor by the governmental agency. While disclosure of any governmental action in response to this section will not automatically disqualify a vendor from consideration, such governmental action and a review of the background details may result in a rejection of the vendor's proposal at the sole discretion of ODJFS. The decision by ODJFS on this issue will be based on a determination of the seriousness of the matter, the matter's potential impact on the vendor's performance of the work, and the best interests of ODJFS.

D. Vendor Selection Restriction

Any vendor deemed not responsible, or submitting a proposal deemed not to be responsive to the terms of this RLB, shall not be selected for this project.

E. Waiver of Minor Proposal Errors

ODJFS may, at its sole discretion, waive minor errors or omissions in proposals, bids, and/or forms when those errors do not unreasonably obscure the meaning of the content. Additionally, ODJFS reserves the right to request clarifications or revisions from vendors to any information presented in their proposals, bids, and/or forms, and may request such clarification as it deems necessary at any point in the proposal/bid review process.

XV. ODJFS Selection obligation

ODJFS is under no obligation to select a vendor as a result of this solicitation if, in the opinion of ODJFS and the proposal review team, none of the proposals are responsive to the objectives and needs of the Department. ODJFS reserves the right to not select any vendor should ODJFS decide not to proceed with the project.

XVI. Prohibited Communications

From the issuance date of this RLB until the contract award has been formally announced by the ODJFS Director, there may be no communications concerning the RLB between any vendor which expects to submit a proposal and any employee of ODJFS in the issuing office, or any other ODJFS employee, or any other individual regardless of their employment status, who is in any way involved in the development of the RLB or the selection of the vendor(s).

The only exceptions to this prohibition are as follows:

1. Communications conducted pursuant to Section IV, Internet Question and Answer Period;
2. As necessary in any pre-existing or on-going business relationship between ODJFS and any vendor which could submit a proposal in response to this RLB;
3. As part of an interview or proposal clarification process initiated by ODJFS as necessary to make a final vendor selection;
4. If it becomes necessary to revise any part of this RLB, ODJFS will post those revisions, amendments, etc., to the website dedicated to this RLB;* and
5. Any Public Records Request (PRR) made through the ODJFS Office of Legal Services.

*** Important Note:** Amendments to the RLB or to any documents related to it will be accessible to interested vendors through the original web page established for the RLB. All interested vendors must refer to that web page regularly for amendments or other announcements. ODJFS will not specifically notify any vendor of changes or announcements related to this RLB except through the website posting. It is the affirmative responsibility of interested vendors to be aware of and to fully respond to all updated information posted on this web page.

ODJFS is not responsible for the accuracy of any information regarding this RLB that was obtained or gathered through a source other than the Question and Answer process described in this RLB. Any attempts at prohibited communications by vendors may result in the disqualification of those vendors' proposals.

XVII. Protests

Any potential or actual vendor objecting to the award of a contract resulting from the issuance of this solicitation may file a protest of the award of the contract, or any other matter relating to the process of soliciting the proposals. Such a protest must comply with the following guidelines:

1. A protest may be filed by a prospective or actual bidder objecting to the award of a purchase order resulting from this solicitation. The protest shall be in writing and shall contain the following information:
 - a. The name, address, and telephone number of the protestor;
 - b. The name and number of the solicitation being protested;
 - c. A detailed statement of the legal and factual grounds for the protest, including copies of any relevant documents;
 - d. A request for a ruling by ODJFS;
 - e. A statement as to the form of relief requested from ODJFS; and
 - f. Any other information the protestor believes to be essential to the determination of the factual and legal questions at issue in the written protest.
2. A timely protest shall be considered by ODJFS, if it is received by ODJFS' Office of Legal Services, within the following periods:
 - a. A protest based on alleged improprieties in the issuance of the RLB or any other event preceding the closing date for receipt of proposals which are apparent or should be apparent prior to the closing date for receipt of proposals shall be filed no later than 3:00 p.m. of the closing date for receipt of proposals as specified in Section II., Time and Date of Submission.

- b. If the protest relates to the announced intent to award the RLB(s), the protest shall be filed no later than 10:00 a.m. of the **seventh (7th) calendar** day after the issuance of formal letters sent to all responding applicants regarding the State's intent to make the awards. The date on these ODJFS letters to responding applicants is the date used to determine if a protest regarding the intent to award is submitted by the end of the protest period.
3. An untimely protest may be considered by ODJFS if ODJFS determines that the protest raises issues significant to the department's procurement system. An untimely protest is one received by ODJFS' Office of Legal Services after the time periods set forth in Item #2 of this section.
4. All protests must be filed at the following location:

Chief Legal Counsel, Office of Legal Services
Ohio Department of Job and Family Services
30 East Broad Street, 31st Floor
Columbus, Ohio 43215-3414
5. When a timely protest is filed, a contract award shall not proceed until a decision on the protest is issued or the matter is otherwise resolved, unless the Director of ODJFS determines that a delay will severely disadvantage the Department. The vendor(s) who would have been awarded the contract shall be notified of the receipt of the protest.
6. ODJFS' Office of Legal Services shall issue written decisions on all timely protests and shall notify any vendor who filed an untimely protest as to whether or not the protest will be considered.

XVIII. ATTACHMENTS

- A) Standard Affirmation and Disclosure Form (*Vendors are to complete, sign, & return with their proposal as part of **TAB F** of proposal*)
- B) Proposal Score Sheet (*Provided for vendor self-evaluation - **not to be returned with the proposal***)Required
- C) Vendor Information and Certification Document (*Vendors are to complete, sign, & return with their proposal as part of **TAB F** of proposal*)
- D) Master Cloud Agreement – This will be completed upon award of contract.

Attachment A

ODJFS RLB #: RLB-OIS-13-004
DEPARTMENT OF ADMINISTRATIVE SERVICES
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
STANDARD AFFIRMATION AND DISCLOSURE FORM
EXECUTIVE ORDER 2011-12K
Banning the Expenditure of Public Funds on Offshore Services

This form must be completed and signed by every bidder, offeror, applicant, grantee, or vendor seeking to do business with Ohio Department of Job and Family Services. This form must either be submitted as part of the response to any invitation to bid, request for proposals, state term schedule, multiple award contract, request for quotations, informal quotations, and statement of work or submitted during the negotiation of a business relationship but prior to the execution of an agreement.

CONTRACTOR/SUBCONTRACTOR AFFIRMATION AND DISCLOSURE:

By the signature affixed to this response, the Signee affirms, understands and will abide by the requirements of Executive Order 2011-12K issued by Ohio Governor John R. Kasich. If awarded an agreement, the Signee becomes the Contractor/Grantee and affirms that both the Contractor/Grantee and any of its subcontractors/subgrantees shall perform no services requested under this Agreement outside of the United States. The Executive Order is attached and is available at the following website: (<http://www.governor.ohio.gov/Default.aspx?tabid=1495>).

The Signee shall 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 as part of the response will deem the Signee not responsive and no further consideration will be given to the response. Signee's offering will not be considered. If the Signee will not be using subcontractors/subgrantees, indicate "Not Applicable" in the appropriate spaces.

1. Principal location of business of Contractor/Grantee:

(Address)

(City, State, Zip)

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

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

2. Location where services will be performed by Contractor/Grantee:

(Address)

(City, State, Zip)

Attachment A –Standard Affirmation and Disclosure Form Executive Order 2011-12K

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

(Address)

(Address, City, State, Zip)

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

(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)

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

(Address)

(Address, City, State, Zip)

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

Attachment A –Standard Affirmation and Disclosure Form Executive Order 2011-12K

By signing below, I hereby certify and affirm that I have reviewed, understand, and will abide by the Governor’s Executive Order 2011-12K. I attest that no funds provided by ODJFS for this project will be used to purchase services provided outside the United States or to contract with a subcontractor who will use the funds to purchase services provided outside the United States. I will promptly notify ODJFS if there is a change in the location where any of the services relating to this project will be performed. If I am signing this on behalf of a company, business, or organization, I hereby acknowledge that I have the authority to make this certification on behalf of that entity.

Signature

Date

Entity Name

Address (Principal Place of Business)

Printed name of individual authorized to sign
on behalf of entity.

City, State, Zip



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.

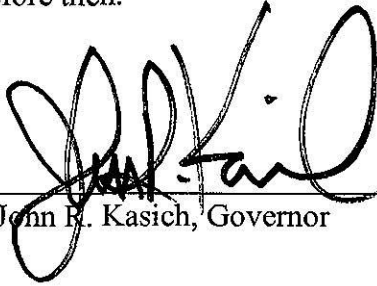
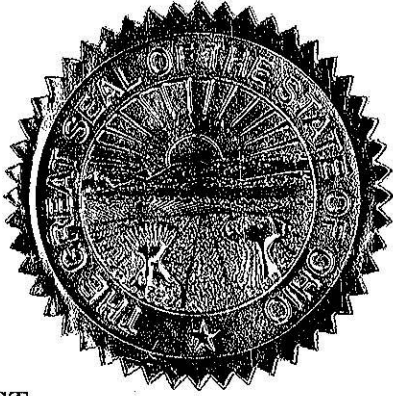
WHEREAS, the expenditure of public funds for services provided offshore may deprive Ohioans and other Americans of critical employment opportunities and may also undermine efforts to attract businesses to Ohio and retain them in Ohio, initiatives in which this State has invested heavily.

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 E. Kasich, Governor

ATTEST:

Jon Husted, Secretary of State



Attachment B

**I-9 Employment Eligibility Verification Form
Scoring Criteria
RLB#: RLB-OIS-13-004**

PHASE I: Initial Qualifying Criteria

The proposal must meet all of the following Phase I proposal acceptance criteria in order to be considered for further evaluation. Any proposal receiving a "no" response to any of the following qualifying criteria **shall be disqualified**.

Vendor Name: _____

ITEM	PROPOSAL ACCEPTANCE CRITERIA	RLB Section Reference	YES	NO
1	Was the vendor's proposal received by the deadline as specified in the RLB?	II.		
2	Vendor has an Ohio presence?	V.		
3	Vendor's proposal includes all required affirmative statements and certifications, signed by the vendor's responsible representative, as described in this RLB, and provide copies of their Worker's Compensation and Insurance verifications as stated within this RLB?	VII.		
4	Does ODJFS' review of the Auditor of State website verify that the vendor is not excluded from contracting with ODJFS by ORC Section 9.24 for an unresolved finding for recovery (<i>i.e.</i> , the proposal of any vendor whose name appears on the Auditor's website as having an unresolved finding for recovery will be eliminated from further consideration.)?	VIII.		
5	Did the review team (in its initial/cursory review of the vendor's proposal) determine that the proposal was free of trade secret/proprietary information as specified/restricted in the RLB? Please Note: Any findings of trade secret/proprietary information will disqualify your proposal from further consideration immediately upon the discovery of such unallowable claim.	VIII.		

PHASE II: Criteria for Scoring Proposal

Proposals passing all Phase I criteria will be collectively scored by a Proposal Review Team (PRT) appointed by ODJFS. For each of the evaluation criteria on the score sheet, reviewers will collectively judge whether the proposal meets, exceeds or fails to meet the requirements. Point values will be assigned as follows:

- Does Not Meet Requirement/Expectation = 0 points
- Meets Requirement/Expectation = 5 points
- Exceeds Requirement/Expectation = 9 points

The proposals that have less than a minimum score of forty five (**45**) points out of a maximum of eighty six (**86**) points will be disqualified from further consideration. Only those candidates who earn scores at or above the minimum required points will advance to Phase III of the selection process.

Proposals will be scored based on an evaluation of responses to requirements outlined in Section V Qualifications, and Scope of Work defined in section VI.

Attachment B - I-9 Employment Eligibility Verification Form – Score sheet

Evaluation Criteria		Doesn't Meet (0)	Meets (5)	Exceeds (9)	Points Awarded	Maximum Points Allowed
1	Sufficient organizational experience and staffing to perform the required work by April 22, 2013.				0	9
2	Qualifications requirements defined section V				0	9
3	Names and contact information from at least two (2) entities for which the vendor has performed similar scale projects in the past five (5) years.				0	9
4	Section VI, C, I-9 Services workflow				0	9
5	Section VI, C, Electronic Signatures				0	9
6	Section VI, C, Security				0	9
7	Section VI, C, Disaster Recovery				0	9
8	Section VI, C, Reporting				0	9
9	Section VI, C, Support				0	9
10	Section VI, C, Additional services provided			n/a	0	5
TOTAL POINTS AWARDED						86

Based upon the Phase II Total Technical Score earned, does the vendor's proposal proceed to the Phase III evaluation? (Vendor's Phase II Total Technical Score must be a minimum of forty five (45) points.)

Yes: _____

No: _____ (If "No," this vendor is disqualified from further consideration for this project.)

Attachment B

PHASE III: Cost Evaluation

Vendors earning at a minimum of forty five (45) points in Phase II scoring will advanced to Phase III review. The Phase III cost score earned by a vendor will be added to the Phase II scores for each of the qualifying vendors.

The vendor offering the lowest cost will earn a score of five (5) points for the Phase III cost score.

Vendors offering costs no more than 10% above the lowest cost will earn a score of four (4) points;

Vendors offering costs 11% above but less than or equal to 20% above the lowest cost will earn three (3) points;

Vendors offering costs 21% above but less than or equal to 30% above the lowest cost will earn two (2) points;

Vendors offering costs 31% above but less than or equal to 40% above the lowest cost will earn one (1) point.

Vendors offering costs greater than 40% above the lowest cost will earn no points in the Phase III.

The final score for the qualified vendor will be the sum of Phase II and Phase III scores. ODJFS will select the proposal based on the highest score from the PRT.

Note: When scoring ODJFS reserves the right to waive minor defects, errors, or omissions in a vendor's submissions if those items do not unreasonably obscure the meaning of the information in the proposals. ODJFS further reserves the right to contact vendors to request clarification of any information or materials in the proposal. Any such communication initiated by ODJFS is not considered a violation of the Communication Prohibition Section of this RLB (Section XIV.).



Attachment C

REQUIRED VENDOR INFORMATION and CERTIFICATIONS

Purpose: The Ohio Department of Job and Family Services (ODJFS) requires the following information for vendors who submit proposals or bids in response to ODJFS Requests for Proposals (RFPs) or Requests for Letterhead Bids (RLBs) to facilitate the development of the contract (or finalization of a purchase) with the selected vendor. ODJFS reserves the right to reject your proposal if you fail to provide this information fully, accurately, and by the deadline set by ODJFS. Further, some of this information (as identified below) **must** be provided in order for ODJFS to accept and consider your proposal\bid. **Failure to provide such required information will result in your proposal's immediate disqualification.**

Instructions: Vendors may either print this attachment, complete and sign it, or may provide the required information and certifications (each fully re-stated from this attachment) on their letterhead as the opening pages of their proposals. It is mandatory that the information provided is certified with an original signature (in blue ink, please) from a person with authority to represent the vendor. Vendors are to provide the completed and signed information and certifications as the cover pages of their original proposal submitted to ODJFS.

IMPORTANT: If the RFP\RLB specified a maximum page limit for vendor proposals\bids, the attachment of any required certifications, other documents, or additional pages needed to fully provide the information requested here will NOT be counted against that page limit.

Vendors must provide all information

1. ODJFS RFP/RLB #:	2. Proposal Due Date:
3. Vendor Name: (legal name of the vendor – person or organization – to whom contract/purchase payments would be made)	4. Vendor Federal Tax ID # or Social Security #: (this number MUST correspond with the name in Item # 3)
5. Vendor Corporate Address:	6. Vendor Remittance Address: (or "same" if same as Item # 5)
7. Print or type information on the vendor representative/contact person <u>authorized to answer questions on the proposal\bid</u> : Vendor Representative: Representative's Title: Address: Phone #:	

Fax #:

E-Mail:

8. Print or type the name of the vendor representative authorized to address contractual issues, including the authority to execute a contract on behalf of the vendor, and to whom legal notices regarding contract termination or breach, should be sent (if not the same individual as in #7, provide the following information on each such representative and specify their function):

Vendor Representative:

Representative's Title:

Address:

Phone #:

Fax #:

E-Mail:

9. Is this vendor an Ohio certified MBE? Yes No If yes, attach a copy of current certification to proposal\bid. (If ODJFS has specified the RFP\RLB\purchase document as an opportunity open exclusively to Ohio Certified MBEs, then failure to attach a copy of current certification WILL RESULT IN DISQUALIFICATION.)

10. Mandatory Vendor Certifications:

ODJFS may not enter into contracts with/make purchases from any vendors who have been found to be ineligible for state contracts under specific federal or Ohio statutes or regulations. Vendors responding to any ODJFS RFP\RLB or other purchase opportunity MUST certify that they are NOT INELIGIBLE by signing each of the three statements below. **Failure to provide proper affirming signature on any of these statements will result in the disqualification of your proposal\bid.**

I _____ (signature of representative shown in Item # 7, above) **hereby certify and affirm that** _____ (name of the vendor shown in Item # 3, above), **has not been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by the United States Department of Labor, the United States Department of Health and Human Services, or any other federal department or agency as set forth in 29 CFR Part 98, or 45 CFR Part 76, or other applicable statutes.**

AND

I _____ (signature of representative shown in Item #7, above) **hereby certify and affirm that** _____ (name of the vendor shown in Item # 3, above), **is not on the list established by the Ohio Secretary of State, pursuant to ORC Section 121.23, which identifies persons and businesses with more than one unfair labor practice contempt of court finding against them.**

AND

I _____ (signature of representative shown in Item #7, above) **hereby certify and affirm that** _____ (name of the vendor shown in Item # 3, above), **either is not**

subject to a finding for recovery under ORC Section 9.24, or has taken appropriate remedial steps required under that statute, or otherwise qualifies under that section to enter into contracts with the State of Ohio.

11. Work Location Declaration: Identify the location(s) (city, state/province, country) where all work for the proposed project will be performed, by the proposing Vendor and by any Subcontractors: -

12. Equal Employment Opportunity Information on the Vendor and any Subcontractor(s)

A. Provide vendor employee data both nationwide (including Ohio staff), and Ohio office employees separately:

	<u>Nationwide:</u>	<u>Ohio Offices:</u>
Total Number of Employees:	_____	_____
% of those who are Women:	_____	_____
% of those who are Minorities:	_____	_____

B. **If you are the selected vendor, will you subcontract any part of the work?**

NO -or- YES, but for less than 50% of the work

-or-

YES, for 50% or more of the work

If yes, provide the following information on each subcontractor (additional pages may be added as needed):

Subcontractor Name: _____

Address: _____

Work To Be _____

Performed: _____

(a brief description)

Subcontractor's Estimated Percentage of Total Project (in % of work, not % of dollars):

If 50% or more of the work will be subcontracted, then ALSO provide the following information on ALL proposed subcontractors:

	<u>Nationwide:</u>	<u>Ohio Offices:</u>
Total Number of Employees:	_____	_____
% of those who are Women:	_____	_____
% of those who are Minorities:	_____	_____

C. Identify all state contracts which the vendor has had approved by the Controlling Board since the beginning of the last fiscal year (i.e., since July 01, 2011) through this fiscal year to date. Also include contracts approved for ODJFS or institutions of higher education:

Total number of contracts: _____

For each state contract, list the state agency and provide the following information:

State Agency/Educational Institution:

Contract Dollar Amount: _____

State Agency/Educational Institution:

Contract Dollar Amount: _____

State Agency/Educational Institution:

Contract Dollar Amount: _____

Attach additional pages if needed

13. Vendor and Grantee Ethics Certification

As a vendor or grantee doing business with* or receiving grants from the State of Ohio, I certify on behalf of _____ (name of vendor or grantee):

- (1) I have reviewed and understand Ohio ethics and conflict of interests laws, as found in Chapter 102, and Sections 2921.42 and 2921.43 of the Ohio Revised Code.
- (2) I have reviewed and understand Governor Kasich's Executive Order Number 2011-12K.
- (3) I will not do anything inconsistent with those laws or Executive Order Number 2011-12K.
- (4) I acknowledge that failure to comply with this certification, is, by itself, grounds for termination of this contract or grant with the State of Ohio.

Signature of authorized agent

Date

*"Doing business with" includes all contracts for goods and services, excluding purchases made using the State of Ohio's Payment Card Program that cost less than \$1,000.

14. I _____, (vendor representative in Item # 7) hereby affirm that this proposal accurately represents the capabilities and qualifications of _____ (vendor's name), and I hereby affirm that the cost(s) bid to ODJFS for the performance of services and/or provision of goods covered in this proposal in response to the ODJFS RFP/RLB/other purchase opportunity is a firm fixed price, inclusive of all incidental as well as primary costs. **(Failure to provide the proper affirming signature on this item may result in the disqualification of your proposal\bid.)**

Attachment D - MASTER CLOUD SERVICES AGREEMENT

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

1. General Information

1.1. Organization

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

1.2. Subscribing Entities

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

1.3. Cooperative Purchasing Members

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

1.4. Term

The current General Assembly cannot commit a future General Assembly to any expenditure. Therefore, this Agreement along with all Service Attachments will automatically expire at the end of the State’s current biennium, which is June 30, 20[XX].

1.5. Agreement – Renewal

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

1.6. Service Attachment(s) – Renewal

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

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

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

1.7. Relationship of the Parties and Subscribing Entities

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

1.8. Dealers and Distributors

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

In doing so, the Service Provider warrants that:

- (a) The Service Provider has provided the dealer with a copy of this Agreement, and a duly authorized representative of the dealer has agreed, in writing, to be bound by the terms and conditions in this Agreement.
- (b) Such agreement specifically provides that it is for the benefit of the State as well as the Service Provider.

- (c) The Service Provider will remain liable under this Agreement for the Services of its dealers and will remedy any breach of any of its dealers under this Agreement.
- (d) Payments under this Agreement for the Services of any dealer may be made directly to that dealer, and the Service Provider will look solely to the dealer for any payments due to the Service Provider once the State has paid the dealer.
- (e) To the extent that there is any liability to the State arising from doing business with a dealer that has not signed the agreement required under this section with the Service Provider, the Service Provider will indemnify the State for such liability.

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

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

1.9. Audits and Reports

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

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

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

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

1.10. Subscribing Entities' Reliance on Agreement

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

1.11. Third-Party Suppliers

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

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

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

1.12. Non-Exclusivity

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

1.13. Competitive Pricing and Services

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

1.14. Conflict Resolution

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

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

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

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

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

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

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

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

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

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

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

2. General Requirements for Cloud Services

2.1. Standards

All Service subscriptions must provide a Service that maintains a redundant infrastructure that will ensure access for all of the State's enrolled users in the event of failure at any one of the Service Provider locations, with effective contingency planning (including back-up and disaster recovery capabilities) and [24x7] trouble shooting service for inquiries, outages, issue resolutions, etc. All such Services must be dependable and provide response rates that are as good as or better than industry standards. They also must meet the Service Level Agreements ("SLAs") provided in the

applicable Service Attachment and be supported with sufficient connectivity and computing resources to handle reasonably anticipated peak demand, and the Service Provider must ensure that sufficient bandwidth and computing resources are dedicated to the Services to meet peak demand times without material degradation in performance.

The Services must also operate at the [moderate level baseline] as defined in National Institute of Standards and Technology (“NIST”) 800-53 Rev. 3 [“moderate baseline requirements”], be consistent with Federal Information Security Management Act (“FISMA”) requirements, and offer a customizable and extendable capability based on open-standards APIs that enable integration with third party applications. Additionally, they must provide the State’s systems administrators with 24x7 visibility into the services through a real-time, web-based “dashboard” capability that enables them to monitor, in real or near real time, the Services’ performance against the established SLAs and promised operational parameters.

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

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

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

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

2.2. Object Reassignment

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

2.3. Generated Files

“Generated Files” are files storing information, instructions, or data that a Subscribing Entity creates or modifies using the Service Provider’s Services and in which the data or other information was provided or created by a Subscribing Entity. Such Generated Files are also

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

2.4. Service Provider Warranties

The Service Provider warrants that (i) it has validly entered into this Agreement and has the legal power to do so, (ii) the Services will perform materially in accordance with the applicable user guide and the requirements of this Agreement, (iii) subject to any limitations specified in the applicable Service Attachment, the functionality of the Services will not be materially decreased during a subscription term, and (iv) it will not transmit viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs (“Malicious Code”) to a Subscribing Entity, provided it is not a breach of this subpart (iv) if a Subscribing Entity uploads a file containing Malicious Code into the Services and later downloads that file containing Malicious Code. For any breach of a warranty above, the State’s and individual Subscribing Entities’ remedies will be as provided in the section of this Agreement dealing with termination.

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

2.5. State and Subscribing Entities Responsibilities

The State and each Subscribing Entity will be responsible for their respective compliance with this Agreement. Additionally, each Subscribing Entity will (i) be responsible for the accuracy, quality, and legality of its data and of the means by which the data was acquired, (ii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services to which it subscribes and notify the Service Provider promptly of any unauthorized access or use of which it becomes aware, and (iii) use the Services only in accordance with the applicable user guide, to the extent it is not inconsistent with this Agreement, applicable laws, and government regulations. A Subscribing Entity may not (a) intentionally make the Services available to anyone other than its employees and contractors acting on the State’s behalf, (b) sell, resell, rent or lease the Services, (c) 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, (d) intentionally use the Services to store or transmit Malicious Code, (e) intentionally interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services or their related systems or networks.

3. Insurance, Indemnification, Limitation of Liability

3.1. Insurance

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

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

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

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

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

(C) Commercial Automobile Liability insurance with a combined single limit of \$500,000. **The policy must be endorsed to include a waiver of subrogation.**

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

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

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

Whenever a Subscribing Entity locates its equipment at facilities owned or controlled by the Service Provider or one of its contractors, the Service Provider must maintain (a) property insurance insuring the equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement used by the Service Provider for its own property or that in common use in the industry, and any other risks reasonably required and covered by the Service Provider's insurance. The coverage must be in an amount at least equal to the reasonable replacement value of the equipment, and (b) workers' compensation coverage as required by the laws of the state in which the equipment is located. The Service Provider must furnish evidence of the coverage throughout each Order's term. All such insurance must be with insurers that are authorized to issue such insurance in the state. All such property insurance must name the applicable Subscribing Entity as the loss payee. All such insurance also must contain a provision to the effect that it cannot be canceled or modified without first giving written notice thereof to the Service Provider and the applicable Subscribing Entities without at least 30 days written notice. Such changes may not become effective without the applicable Subscribing Entities' prior written consent.

3.2. Indemnification for Bodily Injury and Property Damage

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

3.3. Indemnification for Infringement

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

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

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

3.4. Limitation of Liability - State

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

3.5. Limitation of Liability - Service Provider

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

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

4. Confidentiality and Handling of Data

4.1. Confidentiality

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

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

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

- (1) Was already in the possession of the Receiving Party without an obligation of confidence;
- (2) Is independently developed by the Receiving Party, provided documentary evidence exists to support the independent development;
- (3) Except as provided in the next paragraph, is or becomes publicly available without a breach of this Agreement;
- (4) Is rightfully received by the Receiving Party from a third party without an obligation of confidence;
- (5) Is disclosed by the Receiving Party with the written consent of the Disclosing Party; or
- (6) 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 (3) in the preceding paragraph does not apply, and the Service Provider must treat such information as Confidential Information whether it is available elsewhere or not.

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

The disclosure of the Confidential Information of the Disclosing Party in a manner inconsistent with the terms of this provision may cause the Disclosing Party irreparable damage for which remedies other than injunctive relief may be inadequate, and each Receiving Party agrees that in the event of a breach of the Receiving Party's obligations hereunder, the Disclosing Party will be

entitled to seek temporary and permanent injunctive relief to enforce the provisions of this Agreement without the necessity of proving actual damages. However, this provision does not diminish or alter any right to claim and recover damages.

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

4.2. Public Records Requests.

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

4.3. Handling of Subscribing Entity Data

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

- (1) 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.
- (2) Ensure that its internal security policies, plans, and procedures address the basic security elements of confidentiality, integrity, and availability.
- (3) 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.
- (4) Maintain appropriate identification and authentication process for information systems and services associated with Subscribing Entity Data.
- (5) Maintain appropriate access control and authorization policies, plans, and procedures to protect system assets and other information resources associated with Subscribing Entity Data.
- (6) Implement and manage security audit logging on information systems, including computers and network devices.

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

Unless a Subscribing Entity instructs the Service Provider otherwise in writing, the Service Provider must assume all Subscribing Entity Data is both confidential and critical for Subscribing Entity operations, and the Service Provider’s security policies, plans, and procedure for the handling, storage, backup, access, and, if appropriate, destruction of that data must be commensurate to this level of sensitivity. As part of the Service Provider’s protection and control of access to and use of data, the Service Provider must employ appropriate intrusion and attack prevention and detection capabilities. Those capabilities must track unauthorized access and

attempts to access Subscribing Entity Data, as well as attacks on the Service Provider's infrastructure associated with Subscribing Entity Data. Further, the Service Provider must monitor and appropriately address information from its system tools used to prevent and detect unauthorized access to and attacks on the infrastructure associated with Subscribing Entity Data.

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

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

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

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

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

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

including but not limited to, any discovery of a use or disclosure that is not consistent with this Agreement by an employee, agent, or subcontractor of the Service Provider.

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

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

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

4.4. Subscribing Entity Responsibilities

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

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

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

5.1. Acceptance

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

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

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

5.2. Service, Termination, or Modification

All Orders for Service, as well as any termination of an Order or modification to an Order, must be made through the State’s Technology (formerly Telecommunications) Service Request (“TSR”) system or any replacement system used by the State at the time an Order for Service, termination, or modification is requested. Therefore, the Service Provider must notify the State when an Order is received that was placed outside the TSR, or a replacement system, and the Service Provider will not accept the Order. If a Service Provider accepts an Order outside the TSR, or any replacement system, the State or the Subscribing Entity may either withhold payment for the unverified Order or require termination of the Service under the unverified Order without cost or obligation to the State or the Subscribing Entity.

The Service Provider agrees to keep Subscribing Entities’ Orders updated and current in the TSR System.

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

6. Termination – Agreement, Service Attachments, Orders

6.1. Termination by the State

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

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

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

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

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

6.2. Termination of Orders by Subscribing Entity or Service Provider

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

6.2.1. By a Subscribing Entity

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

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

If a termination of any Service under one or more Orders is for cause or non-appropriation of funds, as described in this Section 6, the Subscribing Entity will not be liable for any Early

Termination Charge, if such are otherwise applicable to the Service or Services so terminated. If the termination is for cause, the Service Provider will fully cooperate in any disentanglement efforts the Subscribing Entity reasonably requests at no cost to the Subscribing Entity.

6.2.2. By the Service Provider

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

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

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

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

7.1. Fees

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

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

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

7.2. Billing

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

Invoices must be submitted to the office designated in the purchase order or TSR as the "bill to address". The invoice must be submitted within 60 days of the Service. If the Subscribing Entity does not receive the invoice within the 60 days of the date of Service, the Subscribing Entity will be entitled to deny payment of the invoice.

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

1. Name and address of the Service Provider as designated in this Agreement;
2. Federal Tax Identification Number of the Service Provider as designated in this Agreement;
3. Invoice remittance address as designated in the Agreement; and
4. A sufficient description of the Services to allow the Subscribing Entity to identify the Services and perform an audit of the Services.

7.3. Payment

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

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

7.4. State Reporting Requirements

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

7.5. Service Level Guarantee and Credits

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

7.6. Cost Recovery

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

The Cost Recovery Fee will be 2% of the total dollar amount of Services the Service Provider invoices under this Agreement to all Subscribing Entities, including all State-level entities and all Cooperative Purchasing Members. The State will generate notification to the Service Provider via email on the last day of the calendar quarter advising the Service Provider to complete a revenue reporting form provided by the State within 30 days after the close of the quarter. The State may compare the form provided by the Service Provider to information in the State's accounting system, the TSR, and other records for purposes of verifying the accuracy of the form. The State will generate an invoice to the Service Provider for the quarterly Cost Recovery Fee based on reported revenue from the Service Provider or the State's records, whichever is greater.

Example of calculation of a Cost Recovery Fee:

Example 1			
Service Provider Revenue Report	\$1,000.00	X 2%	\$20.00
State Expenditure Report	\$900.00		

Example 2			
Service Provider Revenue Report	\$800.00		
State Expenditure Report	\$1,000.00	X 2%	\$20.00

The Service Provider must remit to the State the 2% Cost Recovery Fee within 30 days of receipt of the invoice from the State by check to the State of Ohio, Office of Information Technology. The

check must be made payable to the Treasurer, State of Ohio, Fund 133, and must be sent to the State at the following address:

Department of Administrative Services
Office of Information Technology
Infrastructure Services Division
30 E. Broad Street – 39th Floor
Columbus, OH 43215
Attn: Business Manager

To ensure that the payment is credited properly, the Service Provider must identify the check as a State of Ohio Cost Recovery Fee and reference this 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 of 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 [Insert Title] at the following address:

Department of Administrative Services
Office of Information Technology
Infrastructure Services Division
1320 Arthur E. Adams Drive, 3rd Floor
Columbus, Ohio 43221
Attention: [Insert Title]

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

8. Support

8.1. Service Support Generally

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

8.2. Equipment Support Generally

For any equipment used to provide the Services, remedial equipment maintenance by the Service Provider will be completed within eight business hours after notification by the Subscribing Entity that maintenance is required. In the case of preventative maintenance, the Service Provider will perform such in accordance with the manufacturer's published schedule and specifications. If maintenance is not completed within eight hours after notification by the Subscribing Entity, the

Service Provider will be in default. Failure of the Service Provider to meet or maintain these requirements will provide the Subscribing Entity with the same rights and remedies as specified elsewhere in this Agreement for default, except that the Service Provider will only have eight hours to remedy a default. Nothing contained herein will limit the application of any credits for failure to meet any service level agreements in the applicable Service Attachment. The Service Provider will provide adequate staff to provide the maintenance required by this Agreement.

8.3. Adjustments

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

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

8.4. Support Parameters

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

8.5. Incident Classification

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

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

its production environment, such as when a feature or combination of features generates minor or rare errors. Also, if any problem that otherwise should be classified as critical or urgent can be solved either by a known workaround or an existing patch that does not materially interfere with a Subscribing Entity's use of the Service, the problem may be treated as routine.

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

8.6. Incident Response

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

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

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

8.7. Response Times

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

8.8. Escalation Process

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

8.9. Subscribing Entity Obligations

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

8.10. Relationship to SLAs

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

9. Standard Provisions

9.1. Certification of Funds

None of the rights, duties, or obligations in this Agreement will be binding on the State or a Subscribing Entity, and the Service Provider will not begin its performance under any Order, until all the following conditions occur for that Order: (a) all statutory provisions under the ORC, including Section 126.07, have been met; (b) all necessary funds are made available by the appropriate State agencies; (c) if required, approval of this Agreement or the applicable Order is given by the Controlling Board of Ohio; and (d) if the Subscribing Entity is relying on federal or third-party funds for its Order, the Subscribing Entity gives the Service Provider written notice that such funds have been made available. Additional or alternate legal requirements may apply to political subdivisions that are a Subscribing Entity for an Order to be binding on it.

9.2. Excusable Delay

Neither Party will be liable for any delay in its performance that arises from causes beyond its control and without its negligence or fault. The delayed Party will notify the other promptly of any material delay in performance and will specify in writing the proposed revised performance date or dates as soon as practicable after notice of delay. The proposed date or dates must be reasonable and cannot exceed the actual delay caused by the events beyond the control of the Party. In the case of such an excusable delay, the dates of performance or delivery affected by the delay will be extended for a period equal to the time lost by reason of the excusable delay. The delayed Party must also describe the cause of the delay and what steps it is taking to remove the cause. The delayed Party may not rely on a claim of excusable delay to avoid liability for a delay if the delayed party has not taken commercially reasonable steps to mitigate or avoid the delay. Things that are controllable by the Service Provider's suppliers will be considered controllable by the Service Provider.

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

9.3. Employment Taxes

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

9.4. Sales, Use, Excise, and Property Taxes

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

9.5. Equal Employment Opportunity

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

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

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

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

9.6. Drug-Free Workplace

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

9.7. Conflicts of Interest

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

9.8. Assignment

The Service Provider may not assign this Agreement or any of its rights or obligations under this Agreement without the prior, written consent of the State, which consent the State will not be obligated to provide.

9.9. Governing Law

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

9.10. Finding for Recovery

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

9.11. Anti-trust

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

9.12. Use of Name

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

9.13. Executive Order 2011-12K Compliance

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

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

9.14. Campaign Contributions

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

9.15. Declaration Regarding Terrorist Organization

The Service Provider represents and warrants that it has not provided any material assistance, as that term is defined in ORC Section 2909.33(C), to an organization that is included on, the United States Department of State Terrorist Exclusion List and that it has truthfully answered "no" to every question on the DMA form. The Service Provider further represents and warrants that it has provided or will provide the DMA form through the Ohio Business Gateway at <http://business.ohio.gov/efiling/> before execution of this Agreement. If these representations and warranties are found to be false, this Agreement will be void and the Service Provider will immediately repay to the State any funds paid under this Agreement.

9.16. Export Compliance

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

9.17. Safety and Security Rules

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

9.18. Ohio Ethics Law

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

9.19. Entire Agreement

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

Only executable Order Forms attached to a Service Attachment as an exhibit and identified as such in the applicable Service Attachment may be executed by a Subscribing Entity to evidence a transaction under this Agreement, though a Subscribing Entity may issue its own purchasing forms, such as a purchase order. Further, the Subscribing Entity may not add or require additional terms as part of any authorized Order Form. Documents attached to a Service Agreement as exhibits to be executed by a Subscribing Entity typically identify authorized Service options the Subscribing Entity has selected, provide information about a Subscribing Entity, identify installation or configuration requirements or similar statements of work to be done by the Service Provider, set schedules for performance, and similar matters.

9.20. Severability

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

9.21. Survival

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

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

9.22. No Waiver

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

9.23. Order of Precedence

In the case of a conflict between the terms and conditions of this Master Cloud Services Agreement and those of a Service Attachment, the Master Cloud Services Agreement will prevail, unless the Service Attachment expressly provides otherwise. In any such case, the conflicting provision in the Service Attachment will be applicable only to that Service Attachment and then only to the Services thereunder that are intended to be covered by that provision.

9.24. Headings

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

9.25. Governmental Authorization, Regulatory Changes

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

9.26. Notices

Except as otherwise provided in this Agreement, all notices hereunder must be in writing and sent by (a) registered or certified mail, postage prepaid; (b) facsimile transmission; (c) overnight courier; (d) or email, upon confirmation of receipt. Alternatively, such notices may be hand delivered if confirmation of receipt is attained at delivery.

The State's address for notification is:

Department of Administrative Services
 Office of Information Technology
 Infrastructure Services Division
 1320 Arthur E. Adams Drive, 3rd Floor
 Columbus, Ohio 43221
 Attention: [Insert Title]

The Service Provider's address for notification is:

With a copy to:

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates indicated below.

SERVICE PROVIDER

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

 Signature

 Signature

 Printed Name

 Printed Name

 Title

 Title

 Date

 Effective Date

Federal Tax ID

SERVICE ATTACHMENT _____

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

1. Definitions. [None.]

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

2. Services.

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

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

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

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

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

3. Fees and Payment

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

Fees. The Subscribing Entities will pay all fees specified in all Order Forms hereunder, subject to the terms of the Agreement. Except as otherwise specified herein or in an Order Form, fees are based on

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

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

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

4. Proprietary Rights

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

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

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

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

5. Service Levels

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

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

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

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

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

SLA Credits.

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

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

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

than eight hours for any calendar month. And if the failure to meet the Target Availability Level is greater than eight hours, the Subscribing Entity will be entitled to the entire fee applicable to that month.

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

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

Specific SLAs.

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

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

6. Terms and Termination

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

7. Miscellaneous

Return of Subscribing Entity Data

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

[Add anything not covered by the above sections.]

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

SERVICE PROVIDER

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

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Effective Date

Federal Tax ID