

## Street Sweepers

### REQUIREMENTS/SPECIFICATIONS

**Section 1: Intent**

The purpose of this invitation to bid is to establish term contracts with qualified suppliers of Street Sweeper Units. Quantities and types of units to be purchased by ODOT and Political Subdivisions through this contract are undefined. Purchases will be made on an as needed basis.

**Section 2: Multiple Award**

ODOT will accept all responsive bids submitted on or before the specified bid opening date and make an award to all responsive bidders pursuant to O.R.C. 5513.02.

**Section 3: Contract Duration**

The effective duration of this contract shall be for twelve (12) months from the **Date of Award**.

ODOT reserves the right to unilaterally extend this Contract up to one (1) calendar month beyond the original contract expiration date at the original unit bid prices awarded.

**Section 4: Free on Board (F.O.B.) Destination**

The net unit bid prices submitted shall include delivery charges, Free on Board (F.O.B.) Place of Destination to any of ODOT's twelve (12) Districts and eighty-eight (88) county destination locations in the State of Ohio, as per the enclosed map: **NOTE:** Purchase orders/ordering documents when issued, will detail specific destination points.

District 1 - Lima	District 7 - Sidney
District 2 - Bowling Green	District 8 - Lebanon
District 3 - Ashland	District 9 - Chillicothe
District 4 - Akron	District 10 - Marietta
District 5 - Jacksontown	District 11 - New Philadelphia
District 6 - Delaware	District 12 - Garfield Heights
Central Garage - Columbus (CG)	OPI/CCI - Chillicothe

**Section 5: Delivery**

Delivery of the unit(s) will be F.O.B. Destination to the ship to address listed on the purchase order (this includes Co-Op) locations.

Delivery of all placed orders must be completed within **300 calendar days** upon receipt of a Purchase Order.

**5.1 Delivery Hours**

All deliveries made to a Department of Transportation facility must be made between the hours of 8:00 a.m. and 2:30 p.m., Monday through Friday, unless special permission is granted by the Department to temporarily waive or adjust this requirement.

**5.2 Fuel and Diesel Exhaust Fluid**

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Each unit purchased through this contract must be delivered with a full tank of fuel and diesel exhaust fluid, if applicable.

### **Section 6: Purchase Orders**

Purchase Orders will be made out to the vendor who submitted the bid and was awarded. They cannot be made out to the dealers under this vendor.

The awarded vendor must be able to accept orders for the entire duration of the contract, inclusive of any contract extensions exercised or agreed upon between the Parties.

### **Section 7: Additional Charges**

The net unit bid prices submitted shall include installation/assembly costs, labor costs, and inspection costs.

### **Section 8: Invoicing**

In order to streamline the invoice payment process, the Office of Equipment Management requires vendors to email an attached copy of the invoice to the following address: [dot.cen.oem@dot.ohio.gov](mailto:dot.cen.oem@dot.ohio.gov). Invoice is to be sent on the date that the ordered commodity is delivered to the Department.

Paper invoice to be mailed to the "Bill To" contact and address located on the purchase order. If the order is processed through a credit card, the vendor will remit the invoice to the Credit Card holder's name and address.

### **Section 9: Identification Number**

With invoicing, provide description and serial/vin number for each commodity being built.

### **Section 10: Trade-In**

The Ohio Department of Transportation reserves the right to offer used, operational equipment. The trade-in equipment will be complete and in running condition. The Administrator of the Office of Equipment Management reserves the right to reject or refuse any trade-in allowances offered if it is determined by ODOT that refusal will be in ODOT's best interest.

Quoted trade-in values must be held firmly. The only exception would be if damage occurred to the equipment being traded-in after the quotations have been accepted by ODOT. This change in the quotation must be preapproved by ODOT before the used equipment is transferred to the vendor. It is ODOT's responsibility to notify the awarded vendor of any damage that has occurred after the award.

If there is trade in equipment at the site when dropping the new unit off, the awarded vendor must haul it away.

### **Section 11: Certificate of Title or Certificate of Origin**

Certificate of Title or Certificate of Origin to be furnished within thirty (30) days after delivery of the unit. Title to be filed in Franklin County and made out to: State of Ohio, Department of Transportation, 1620 West Broad Street, Columbus, Ohio 43223. Delivery will not be considered complete unit the title is received by Department.

### **Section 12: Dealers and Service**

It will be the responsibility of the awarded vendor/manufacture to provide a list of authorized on-site service providers or authorized dealers in the State of Ohio to provide warranty and service repair.

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Any warranty repairs/part orders that take longer than a week, the vendor is to provide a loaner until ODOT's machine is back on site. If down repairs take longer than 48 hours, the vendor is to provide a loaner until ODOT's machine is back on site.

ODOT is not responsible for incurring travel expenses.

### **Section 13: Fluids & Lubricants**

Vendor must fill out "FLUIDS & LUBRICANTS" tab to the manufacture's standard recommendation. Must fill out accordingly to the equipment being bid through this contract.

The vendor may add more rows & columns if there are more fluids or lubricants not covered in the spreadsheet.

### **Section 14: Options List**

**All bidders are highly recommended to provide a complete manufacturer's options list for the make and model bid. If ODOT plans to purchase a piece of equipment with an option that you had not bid, it could exclude you from consideration for that specific purchase.**

**This shall be included on pricing page excel options sheet.**

### **Section 15: Descriptive Literature**

Bidders are required to submit with their bids, the latest literature that fully describes the units being bid. The Department may, at its own discretion, find a bid non-responsive for failure to submit this descriptive literature. Bidders shall submit this literature in electronic format to ensure that this requirement is fully met.

By signing and submitting a bid for this solicitation, the bidder is certifying that the make and models of all items bid herein are the latest and most current manufacturers' models and will include the manufacturer's latest engineering changes.

### **Section 16: Price Change**

All bid pricing shall not increase for the first sixty (60) calendar days after the date of the bid opening. Thereafter, a request for a price increase may be submitted in writing to the Department's Office of Contract Sales along with all documentation that supports the need for the price increase. No price increase will be effective until it is approved by the Department and the Vendor is notified of such approval in writing. The price increase will take effect upon the date the Vendor is notified. In the event that a price increase is accepted by the Department, the Vendor may not seek an additional price increase for at least thirty (30) calendar days. The Department reserves the right to reject any proposed price increase, or to cancel the contract if such action is determined to be in the best interest of the Department.

In the event of a general price decrease, the Department shall be guaranteed full benefit of the price reduction for all undelivered purchase orders on the effective date of the decrease and thereafter. The Department will be entitled to a price decrease any time the Vendor sells a product or a service to any similarly situated customer for less than the price agreed to between the Department and the Vendor under this Contract. Any time the Vendor sells a product or provides a service to any customer or dealer for less than it is available to the Department under this Contract, the Vendor must notify the Department of that event within thirty (30) calendar days of its occurrence and immediately reduce the price of the affected goods or services to the Department under this Contract. If the Department believes it is appropriate, it will ask to renegotiate the price under this Contract of the goods and services affected by the general reduction in price. If the Vendor and the Department cannot agree on a renegotiated price, the Department will have the right, upon notice to the Vendor, to immediately remove the affected products and services from this Contract.

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### Section 17: Product Specifications

All parts not specifically mentioned, which are necessary to provide a complete unit, or normally furnished as standard equipment shall be furnished. The parts shall conform in strength, quality of material and workmanship to what is normally provided in the industry.

This equipment must meet ALL Federal and State regulations.

The signing of this bid shall be considered a certification that the model as bid herein is the latest current model and will include the manufacturer's latest engineering changes.

The Ohio Department of Transportation will consider the performance history of similar equipment, vendor's service and vendor's overall responsiveness to the Department of Transportation's utility of the products.

The Bidder of the equipment, which is considered for award shall, at the request of the Ohio Department of Transportation, demonstrate the equipment at a location chosen by the Department Personnel to prove any feature or performance capabilities which may be in question. Should the Demonstration Equipment fail to meet Department requirements, the equipment shall be adjudged as non-conforming to bid specifications. Any equipment failing to meet the Department's requirements/specifications, set forth in this bid document, can be removed from the contract at any time.

Compliance check boxes: Located to the right of each minimum specification are the "Comply or Don't Comply" check boxes. Check the Comply Box if the equipment being bid meets or exceeds the minimum specifications. If the equipment does not meet or exceed the department's minimum specifications, then the bidder must check the Don't Comply box and supply an explanation, on the ODOT excel pricing tab called "EXCEPTION", for the non-compliant specification. The department has the right to review the "Don't Comply" explanation and decide to accept or deny the equipment being bid. The bid package will be determined non-compliant and rejected by ODOT if the bidder fails to check either a Comply or Don't Comply box for each and every line of the specification being bid. This section is located in the ODOT supplied excel pricing spreadsheet, on the "SPECIFICATIONS" tab.

**All other remarks, comments, etc. that are not check marks located in the check boxes will deem the vendor non-compliant.**

**(Specifications are located in the excel pricing sheet)**

### Section 18: Required Ohio Shared Services Vendor Registration

All vendors that are deemed awarded any portion of this invitation to bid are required to be registered through the Ohio Shared Services Office to obtain an OAKS Vendor Identification Number, if they have not already obtained one, in order for an award of this invitation to occur. An award of this invitation cannot be completed until this vendor registration process has taken place and an OAKS Vendor Identification Number has been assigned. It is strongly encouraged that prospective bidders submit their vendor registration paperwork to Ohio Shared Services as soon as possible before the day of the bid opening of this invitation to bid. This will avoid delays in the awarding of this invitation to bid and allow contract purchasing to commence sooner. The required forms to become registered through Ohio Shared Services can be found by following the link below:

<http://ohiosharedservices.ohio.gov/SupplierOperations/Forms.aspx>

Completed forms are required to be submitted directly to Ohio Shared Services, per the submission instructions on the forms. Completed forms or questions regarding this vendor registration process should not be directed to ODOT. Any questions regarding this registration process should be directed to Ohio Shared Services Customer Service by calling 1-877-644-6771.

**PLEASE NOTE: THIS VENDOR REGISTRATION PROCESS DOES NOT APPLY TO VENDORS WHO REGULARLY PARTICIPATE ON ODOT PURCHASING CONTRACTS. IF THE DEPARTMENT HAS**

**ISSUED TO YOUR COMPANY A PURCHASE ORDER IN THE PAST SEVERAL YEARS, AS A DIRECT RESULT OF AN AWARDED PURCHASING CONTRACT SUCH AS THIS ONE, YOU WOULD HAVE ALREADY OBTAINED AN OAKS VENDOR IDENTIFICATION NUMBER THROUGH OHIO SHARED SERVICES.**

**Section 19: Submitting Bids in Ohio Buys**

Vendors must submit their Bid Responses electronically in OhioBuys before the published deadline date & time, Columbus, Ohio local time on the Proposal due date. Vendors will not be able to submit Bid Responses, or unsolicited Proposal amendments after the deadline.

Vendors must allow adequate time for uploading a Bid Response prior to the due date and time. ODOT recommends that vendors submit Bid Responses as early as possible. If a second round is issued for any reason, vendors must resubmit their bid if they had already submitted in a previous round, as the previously submitted Bid Responses do NOT carry over to the new round.

The Signature process takes place after the award now. The email will come from documents@esign.ohio.gov and will go to the signatory that was identified in the bid submission. The subject line will be the bid # Signature Request, (example: 101G-25 Signature Request).

No contract can be issued to your company until we receive your signature to complete the process. And you must have an OAKS Payor ID before a contract can be issued. To obtain that, you will need to go into <https://ohiopays.ohio.gov>.

**Section 20: Registration with the Secretary of State.** The contractor certifies that it is one of the following:

A company that is properly registered with the Ohio Secretary of State; or

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

Exempt from the registration requirements of the Ohio Secretary of State.

**Section 21: Compliance with E-Verify Workforce Integrity Act**

Contractor and any Subcontractor must, at all times during performance of the Contract, comply with the provisions of the State of Ohio's E-Verify Workforce Integrity Act (Ohio Revised Code 4151.01 to 4151.03) and must verify the identity and legal working status of each employee hired to perform work on the Project through the e-verify program.

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**State of Ohio, Department of Transportation (ODOT)**

**Office of Contract Sales, Purchasing Services**

**ODOT COOPERATIVE PURCHASING PROGRAM REQUIREMENTS**

(Last Revised 6/2016)

In accordance with Ohio Revised Code Section 5513.01 (B), the Department may permit and approve any Political Subdivision, State university or college, Ohio Turnpike and Infrastructure Commission, or State agency (collectively the "Ordering Agencies") to participate in this Contract. The Office of Contract Sales, Purchasing Services section shall notify the Vendor, in writing, of the name of the Ordering Agency that has been authorized by the Department to participate in this Contract. Once approved, the responsibilities and obligations of the Ohio Department of Transportation shall cease at this point. Both the Ordering Agency and the Vendor will be bound by the Contract's terms and conditions. The Vendor shall deal directly with the Ordering Agency that has been authorized to participate in this contract. All orders placed by the Ordering Agency shall be filled in accordance with the terms and conditions of this particular contract. All invoices for such purchases shall be sent directly by the Vendor to the Ordering Agency's provided billing address.

The Vendor agrees indemnify the State of Ohio, Department of Transportation for any and all claims, damages, lawsuits, costs, judgments, expenses, and any other liabilities resulting from bodily injury to any person (including injury resulting in death) or damage to property that may arise out of or are related to an Ordering Agency's participation in the ODOT Cooperative Purchasing Program and its performance under this Contract.

Political Subdivisions are defined in Ohio Revised Code Section 5513.01©(1) as "any county, township, municipal corporation, conservancy district, township park district, park district created under Chapter 1545. Of the Revised Code, port authority, regional transit authority, regional airport authority, regional water and sewer district, county transit board, school district as defined in section 5513.04 of the Revised Code, regional planning commission formed under section 713.21 of the Revised Code, regional council of government formed under section 167.01 of the Revised Code, or other association of local governments established pursuant to an agreement under sections 307.14 to 307.19 of the Revised Code."

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### **Co-op requests should be submitted through OhioBuys.**

If you are a new Co-op user who would like to gain access to OhioBuys, here are the steps to follow:

Complete the Co-op User Account Request Form. The Co-op User Account Request form can be found on the OhioBuys Resources and Forms page under Templates and Forms.

Send the completed form to [OBM.ContactCenter@obm.ohio.gov](mailto:OBM.ContactCenter@obm.ohio.gov) and put "OhioBuys" in the subject line. An OhioBuys State Admin will then use the information provided to create your new account. After your account has been created, you will be contacted.

Navigate to <https://eprocurement.ohio.gov> and enter your account credentials to log in to OhioBuys.

Participants also assume responsibility for ordering directly from the supplier and payment to them for any supplies or services purchased from ODOT contracts.

For more information regarding the program, please contact:

Maureen Studer: [maureen.studer@das.ohio.gov](mailto:maureen.studer@das.ohio.gov) | 1-614-728-3723

Renee Hinte: [renee.hinte@das.ohio.gov](mailto:renee.hinte@das.ohio.gov) | 1-614-466-6530

How to Submit a DOT Contract Request - 06.09 OhioBuys Submit a Co-op Contract Request Job Aid.

## STANDARD TERMS & CONDITIONS

### I. GLOSSARY

The following definitions are applicable to all components of the Contract. If a conflict exists between these definitions and any definition listed in the specifications or scope of work, the specifications or scope shall prevail.

- A. **ACCEPTANCE**: Approval and retention by ODOT of any goods, products, services or other Deliverables, delivered to fulfill Contract requirements.
- B. **AGENCY/ODOT/DEPARTMENT**: Ohio Department of Transportation
- C. **AUTHORIZED DEALER/DISTRIBUTOR**: The vendor that maintains written legal agreements with manufacturers to act as their agent and provide goods, products, or services listed in the bid/RFQ/contract. The authorized Dealer/Distributor must maintain active and sufficient facilities necessary to perform the awarded Contract, own title to the goods, products, or services and maintain available stock on a continuous basis and in sufficient quantity to provide uninterrupted access to the Contract Deliverable.
- D. **BIDDER**: The company and/or authorized representative of the company who has signed and is submitting a bid response and who will be responsible for ensuring proper performance of the contract awarded pursuant to the bid. The term bidder, proposer, contractor, supplier, or vendor may be used interchangeably in this document.
- E. **CONTRACT DATA**: State data that the Contractor has access to, transmits, processes, possesses, creates, or stores in providing service to ODOT.
- F. **DEFAULT**: The omission or failure to perform any obligation under this Contract.
- G. **DELIVERABLE**: Any Contractor-provided products, supplies, services, work or product described in the specifications of the Contract.
- H. **F.O.B PLACE OF DESTINATION**: The Vendor pays, and includes the cost of such in its bid, and bears the risk for the transportation and delivery of goods delivered to the specified locations provided by the Department.
- I. **GOODS**: Anything that can be purchased that is not a service or real property.
- J. **INVOICE**: An itemized listing showing delivery of the goods or performance of the services described in the order that must include the date of the purchase or rendering of the service, an itemization of the things done, material supplied, equipment used or labor furnished, and the sum due pursuant to the contract or obligation.
- K. **LOWEST RESPONSIVE AND RESPONSIBLE BIDDER**: A bidder who offers the lowest cost for the goods or services listed in the bid; and whose proposal responds to bid specifications in all material respects and contains no irregularities or deviations from the specifications which would affect the amount of the bid or otherwise give them a competitive advantage; and whose experience, financial condition, conduct and performance on previous contracts, facilities, management skills evidences their ability to execute the contract properly.
- L. **MBE OR EDGE CERTIFIED**: MBE means Minority Business Enterprise and EDGE means Encouraging Diversity, Growth and Equity.
- M. **ORDER**: A copy of a contract or a statement of the nature of a contemplated expenditure, a description of the goods to be purchased or services to be performed, other than services performed by officers and regular employees of the state, and per diem of the national guard, and the total sum of the expenditure to be made therefor, if the sum is fixed and ascertained, otherwise the estimated sum thereof, and an authorization to pay for the contemplated expenditure, signed by the person instructed and authorized to pay upon receipt of a proper invoice.
- N. **PRIME VENDOR/CONTRACTOR**: The vendor who, upon being awarded a contract, becomes the prime vendor who is the primary source for providing the goods or services listed in the awarded Contract and the party to whom payment will be made upon delivery of the goods and/or completion of the Contract.

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- O. PROCUREMENT/CONTRACT/AGREEMENT:** All documents, whether attached or incorporated by reference, utilized for soliciting bids. Upon completion of the evaluation and award of the bidder's response, the procurement becomes the contract between ODOT and the successful bidder, both governed by the laws of the state of Ohio.
- PURCHASE:** To buy, purchase, installment purchase, rent, lease, lease purchase, or otherwise acquire goods or services. "Purchase" also includes all functions that pertain to the obtaining of goods or services, including description of requirements, selection, and solicitation of sources, preparation, and award of contracts, all phases of contract administration, receipt and acceptance of the goods and services, and financial consideration for the goods and services by either a state agency or a third party.
- P. PRODUCTS:** Materials, supplies, merchandise, goods, wares, and foodstuffs.
- Q. REQUEST FOR QUOTE (RFQ)/INVITATION TO BID (ITB)/COMPETITIVE SEALED BIDDING:** A solicitation for goods, products, or services in which ODOT invites vendors to submit price quotes/bid responses for the supply of such goods, products, or services.
- R. REQUEST FOR PROPOSAL (RFP):** A solicitation for goods, products, or services in which ODOT invites vendors to submit responses that have comprehensive performance requirements, technical provisions, and specific evaluation criteria including price for scoring offers. Award is made to the bidder whose proposal is determined to be most advantageous to the state, taking into consideration factors such as price and the evaluation criteria set forth in the RFP.
- S. SERVICES:** The furnishing of labor, time, or effort by a person, not involving the delivery of a specific end product other than a report which, if provided, is merely incidental to the required performance. "Services" does not include services furnished pursuant to employment agreements or collective bargaining agreements.
- T. STATE:** The State of Ohio which also includes ODOT as applicable.
- U. STATE DATA:** All data and information provided by, created by, created for, or related to the activities of the State and any information from, to, or related to all persons that conduct business or personal activities with the State, including, but not limited to Confidential Data. All State Data is and will remain the property of ODOT and, unless specifically provided otherwise in the Contract, Contractor acquires no right, title, or interest in or to State Data.
- If any of Contractor's intellectual property becomes embedded in State Data, Contractor hereby licenses a non-exclusive license to ODOT to use such embedded data subject to the terms of Contractor's license agreement.
- State Data includes any information derived by or through the use of the services being provided by the Vendor, excluding any embedded portions of any service that might be in the data or information which might be the intellectual property of the Contractor.
- Confidential Data includes data that is required to be protected by law or regulation, is intended for confidential use, and may not be copied or removed from the State's operational control without authorized permission. This classification includes data that, if compromised, may result in loss of life, serious injury, or other harm to an individual or group, or disruption to critical agency operations.
- Confidential Data includes, but is not limited to:
1. Certain types of personally identifiable information (PII) that are also sensitive, such as medical information, social security numbers, and financial account numbers;
  2. Federal Tax Information (FTI) under IRS Publication 1075;
  3. Protected Health Information (PHI) under the Health Insurance Portability and Accountability Act (HIPAA);
  4. Criminal Justice Information (CJI) under the Federal Bureau of Investigation's Criminal Justice Information Services (CJIS) Security Policy and the Law Enforcement Automated Data System (LEADS) Policy; and
  5. Other types of information not associated with an individual such as security and infrastructure records, trade secrets, and business bank account information.
- V. SPECIFICATION:** Any description of the physical or functional characteristics or of the nature of goods, products, or services. It may include a description of any requirements for inspecting, testing, or preparing goods, products, or services.

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- W. TIME AND MATERIALS CONTRACT:** A contract in which Contractor is paid the following: (1) an hourly rate for labor actually performed; and (2) if applicable and with prior approval by ODOT, for the cost of the materials, equipment or supplies actually used by the Contractor. Such rates and costs shall be established through Contractor's submission of a price sheet, written quote, estimate, or invoice, as approved by ODOT. Hourly rates may include wages, overhead, general and administrative expenses, and reasonable profit. Materials or supplies may include the Contractor's direct and indirect costs attributable to the work performed. Equipment may include vendor-owned equipment billed at a specified rate or costs associated with rental of equipment specific to the contract.
- X. UNBALANCED:** Any unit price contained in the bid submittal which is obviously unbalanced either above or below reasonable cost analysis and/or unreasonably disproportionate to current market prices as determined by the Director of ODOT, or if such unbalanced prices are contrary to the interest of the department.
- Y. SUBVENDOR:** An individual, firm, or corporation to whom the Vendor sublets part of the contract to be performed.

### II. QUOTE/BID RESPONSE REQUIREMENTS

- A. INFORMATION REQUESTED:** Vendors shall furnish all information as requested in the solicitation. At the discretion of the Director, additional information necessary for evaluation of the quote/bid response may be attached to the solicitation and shall be properly identified as being part of the quote/bid response. ODOT reserves the right to request literature, or other documentation for clarification, although such may not have been set forth in the RFQ/bid response. Vendors must provide documentation from the manufacturer as part of the quote/bid response that they are an authorized dealer/distributor of the goods, products or services being purchased. ODOT also reserves the right to require a Vendor to be a registered supplier with the State of Ohio through the OhioPays Portal. Failure to provide the required information or complete supplier registration with the State of Ohio within seven business days of the award may render the quote/bid response invalid. Vendor shall comply with the Ohio Secretary of State's registration requirements for domestic and foreign corporations and limited liability corporations. **If a Vendor that is a foreign corporation or foreign limited liability company intends to assert an exemption as described in Section 1703.02 or Section 1706.512 of the Ohio Revised Code, a Vendor shall provide sufficient documentation that demonstrates exemption from the requirement to register with the Ohio Secretary of State's office within seven business days of the award. Failure to do so to the satisfaction of ODOT may render the quote/bid response invalid.**
- B. SAMPLES REQUESTED:** When requested, samples shall be furnished at the Vendors' expense and unless otherwise specified, prior to closing of the solicitation. Samples shall be clearly identified by Vendor's name, the solicitation number, corresponding items in the solicitation and the closing date. ODOT acknowledges that it may receive quotes/bid submittals from multiple vendors and authorized dealers/distributors quoting the same manufacturer's products. In such situations, samples may be submitted by manufacturers on behalf of multiple vendors or authorized dealers/distributors, provided that such samples shall be accompanied by written documentation, on manufacturer's letterhead, signed by an authorized representative of manufacturer, listing the named dealers/distributors and vendors for whom the samples are provided. Any vendor or authorized dealer/distributor not appearing on this listing and who has failed to furnish requested samples shall be considered non-responsive. Unless otherwise stated, any sample submitted with the quote/bid response shall not be deemed to vary from any of the provisions, specifications, or terms and conditions of the solicitation. When requested in writing, samples not destroyed in testing shall be returned at the vendor's expense. Samples not so requested shall become the property of ODOT. Unsolicited samples which are submitted shall be at the vendor's risk and shall not be examined or tested and shall not be considered in the evaluation process. ODOT reserves the right to request samples although such may not have been set forth in the solicitation.
- C. SPECIFICATIONS:** ODOT is authorized to prepare specifications to obtain goods, products, and services. The purpose of the specification is to describe the goods, products, or services to be purchased and will serve as a basis for comparison of quotes/bid responses. The Department may use any form of specification it determines to be in the best interest of the State and that best describes the goods, products, or services to be purchased. Specifications may be in the form of a design or performance specification, or a combination thereof. If the Department determines that a design, performance, or combination specification is not in the best interest of the State, it may use a brand name or equal specifications.

**Where a brand name or equal specification is used, use of brand name is for the purpose of describing the base standard of quality, performance and characteristics desired only and is not intended to limit**

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**or restrict competition. Substantially equivalent supplies or services to those designated will be considered for award.**

ODOT may also use a qualified products list of the federal government or may develop a qualified products list applicable to ODOT. When developing a qualified products list, ODOT shall solicit a sufficient number of suppliers to ensure maximum coverage with providers of the goods, products, or services. Any supplier, not solicited, may request inclusion on the qualified products list. Potential suppliers will be required to furnish exact samples of the goods, products, or services to be provided for testing and examination by ODOT. **Only those goods, products, or services that conform to the ODOT's requirements will be considered for inclusion on a qualified products list.**

- D. UNIT PRICE AND BASIS OF AWARD:** Unless otherwise specified in the RFQ/bid solicitation, the unit price must be entered for each item being quoted/solicited. The unit price shall govern in the event of a discrepancy between the unit price and any extended or total price calculation.

For solicitations involving multiple items, the award shall be made on the basis of the total cost of all items combined, unless the RFQ/bid solicitation explicitly states that awards may be made on an individual line-item basis or by group. Vendors must ensure that unit prices are accurately provided for all items; the use of ditto marks, arrows, or other markings in lieu of entering actual unit prices may result in the offer being deemed non-responsive. Lot prices entered in the unit price area shall be considered as the unit price unless clearly labeled otherwise.

No changes to pricing shall be permitted after the quote or bid submission deadline. Vendors are responsible for reviewing and verifying all pricing prior to submission. In the event of a contract award, the Vendor shall be required to deliver the goods or services at the prices submitted. Vendors shall not enter a unit price of more than two (2) digits to the right of the decimal point. Any digits beyond the second decimal place will be disregarded and not used for rounding purposes in the evaluation or payment thereof.

- E. QUOTE/BID RESPONSE FIRM:** Once opened, all RFQs/bid responses are firm and cannot be altered. Once a contract is awarded, the Vendor shall deliver at the prices and terms quoted or provided. ODOT shall receive the benefit of any decrease in price during the guaranteed price period. Unless otherwise stated, all solicitations shall remain valid for a period of sixty (60) calendar days after the RFQ/bid solicitation closing date.
- F. REJECTION OF ANY/ALL RFQ/BID RESPONSE:** The Director of ODOT reserves the right to accept, or reject, any or all RFQ/bid response in whole or in part and may determine that any irregularities or deviations from the specifications do not result in the quote/bid response being non-responsive, provided however, that the Director of ODOT determines this does not affect the amount of the quote/bid response or result in a competitive advantage to the Vendor.
- G. DEVIATIONS:** Statements or modifications that deviate from the RFQ/bid response's terms, conditions, specifications and requirements (such as altering delivery, changing F.O.B., price list changes, etc.) may render the quote/bid response non-responsive if the Director determines that the deviation or modification affects the amount of the quote/bid response or results in an unfair competitive advantage for the Vendor.
- H. DISQUALIFICATION OF VENDOR:** Any of the following reasons may be considered as being sufficient for the disqualification of a Vendor and the rejection of its quote/bid response:
1. More than one RFQ or bid response for the same work from a parent and subsidiary company, from two or more related subsidiary companies, or an individual, firm, or corporation under the same or different name.
  2. Evidence of collusion among Vendors.
  3. Quote or bid response which are in ODOT's opinion materially unbalanced.
  4. Evidence that the Vendor has sublet or sub-vended any portion of the work, supplies, services, labor, or materials without prior written approval from the Department.
  5. Evidence that the Vendor is not an authorized dealer/distributor of the manufacturer.

**The quote/bid response supplied by a disqualified Vendor shall be rejected, and the disqualification determination will be used to evaluate the responsibility of the Vendor in future bid solicitations.**

- I. TIE PROCESS:** If two or more quotes/bid responses offer the same total evaluated cost and are determined to be responsive and responsible, the Department will break the tie as follows: during the evaluation process, the Vendors that submitted tie responses will be contacted and given a deadline of two (2) business days to submit a written revised unit

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price for the affected item(s) or a revised total cost, as applicable. If a tie still exists after submission of revised pricing, the Department may repeat this process or consider additional factors, including past or current performance, in order to determine an award. The Department will not allow a tie quote/bid response situation to unnecessarily delay the award process.

- J. CREATION OF THE CONTRACT:** A contract is created between the Vendor and ODOT when ODOT accepts the quote/bid response and an authorized person acknowledges the acceptance in writing. Vendor shall acknowledge the acceptance and contract award by signing the acknowledgment within seven business days of receipt. The contract shall become operational only when either a purchase order has been issued or the State of Ohio payment card is presented to the awarded Vendor. The contract shall contain all the terms and conditions of this RFQ/bid solicitation as well as the accepted responses in the vendor's quote/bid response, except that no responses may change or alter the terms and conditions of this RFQ/bid solicitation. The contract will be construed in accordance with the plain meaning of its language and neither for nor against the drafting party.

### III. REGULATORY CONTRACT REQUIREMENTS

- A. ANTITRUST.** ODOT and the Contractor recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by the State. The Contractor therefore assigns to ODOT all state and federal antitrust claims and causes of action that the Contractor has or acquires relating to the goods and services acquired under this Contract.
- B. APPROPRIATION OF FUNDS.** Pursuant to Article II, Section 22 of the Ohio Constitution, ODOT's funds are contingent upon the availability of lawful appropriations. If the General Assembly or any third party who is providing funding fails at any time to continue funding for the payments or any other obligations due by ODOT under this Contract, ODOT will be released from its obligations on the date funding expires. If appropriations are approved, ODOT may continue this Contract past the current biennium by issuing written notice of continuation to the Contractor. Any obligations of ODOT are subject to Section 126.07 of the Ohio Revised Code. The current General Assembly cannot commit a future General Assembly to a future expenditure.
- C. CAMPAIGN CONTRIBUTIONS.** Unless this Contract was solicited by competitive bid pursuant to Section 125.07 of the Ohio Revised Code, Contractor hereby certifies that all applicable parties are in full compliance with Section 3517.13 of the Ohio Revised Code.
- D. COMPLIANCE WITH LAW.** The Contractor must comply throughout the duration of the Contract with all applicable federal, state, local laws and Executive Orders while performing under this Contract.
- E. CONFLICT OF INTEREST/ETHICS.** The Contractor represents, warrants and certifies that it and its employees engaged in the administration or performance of this Contract are knowledgeable of and understand the Ohio Ethics and Conflict of Interest laws including but not limited to Chapter 102 and Sections 2921.42 and 2921.43 of the Ohio Revised Code. Contractor further represents, warrants, and certifies that neither Contractor nor any of its employees will do any act that is inconsistent with such laws or otherwise presents a conflict of interest.

All vendors who are actively doing business with or seeking to do business with the State and/or with ODOT are expected to perform their business activities in a professional manner and avoid any "perceptions of impropriety." Vendors will be responsible to review and become familiar with the ethics laws of the state of Ohio. Any vendor who violates Ohio's ethics laws or any executive order or ODOT policy will be subject to legal penalties up to and including debarment.

ODOT utilizes a variety of methods for establishing contracts for goods, products, and services which include competitive sealed bidding, competitive sealed proposals, direct purchases, reverse auction, multiple award contracts and request for quotes. Processes for implementing these methods have been developed to ensure fair and equal treatment of all vendors participating in the purchasing activity. Any vendor that attempts to influence the evaluation and/or award of a contract either directly or through an outside agent or representative will be disqualified and will not be able to participate in the purchasing activity. In addition, a vendor who attempts to influence an evaluation or award will be subject to penalties set forth by law up to and including debarment from doing business with ODOT and/or the state of Ohio.

Suspected violations of ODOT purchasing statutes, rules, policies, or guidelines, or of Ohio's ethics laws, executive orders by any employee of the State or a vendor are to be reported to the Agency Procurement Officer(s) or APO. The APO will advise the Chief Legal Counsel who may take appropriate action. If necessary or appropriate, the matter may be referred to the Inspector General, the Ohio Attorney General and/or the Ohio Ethics Commission for resolution.

- F. TRADE.** The Contractor warrants that the Contractor is not subject to an unresolved finding for recovery pursuant to

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Section 9.24 of the Ohio Revised Code. If the warranty is false on the date the parties signed this Contract, the Contract is void *ab initio*, and the Contractor shall immediately repay any funds paid under this Contract.

- G. DEBARMENT.** The Contractor represents and warrants that neither it, nor any of its subcontractors, are debarred from consideration for contract awards by any governmental agency. If this representation and warranty is found to be false, this Contract is void *ab initio*, and the Contractor shall immediately repay any funds paid under this Contract.
- H. DRUG FREE WORKPLACE.** The Contractor agrees to comply with all applicable state and federal laws regarding drug-free workplace and shall make a good faith effort to ensure that all Contractor employees, while working on ODOT property or performing work on behalf of ODOT, will not purchase, transfer, use, be under the influence of, or possess illegal drugs, non-medical cannabis (recreational marijuana), or alcohol, or abuse prescription drugs or medical marijuana in any way.
- I. EQUAL EMPLOYMENT OPPORTUNITY.** The Contractor will comply with all state and federal laws regarding equal employment opportunity and fair labor and employment practices, including Section 125.111 of the Ohio Revised Code and all related Executive Orders.

Before a contract can be awarded or renewed, an Affirmative Action Plan must be submitted to and approved by the State of Ohio.

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

Further, no State agency, board, commission, State educational institution, or pension fund will make any purchase from or investment in any Russian institution or company and are prohibited from permitting State data to be sent, taken, accessed, tested, maintained, backed-up, stored, or made available remotely in a location governed or controlled by the Russian Federation, Russian companies, or Russian institutions. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid to Contractor for purchases or investments in a Russian institution or company in violation of this paragraph. The provisions of this paragraph will expire when the applicable Executive Order is no longer effective.

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

- K. GOVERNING LAW.** This Contract shall be governed by the laws of the State of Ohio, and the venue for any disputes will be exclusively with the appropriate court in Franklin County, Ohio.
- L. INDEPENDENT CONTRACTOR ACKNOWLEDGEMENT.** It is fully understood and agreed that Contractor is an independent contractor and is not an agent, servant, or employee of the State. Contractor declares that it is engaged as an independent business and has complied with all applicable federal, state, and local laws regarding business permits and licenses of any kind, including, but not limited to, any insurance coverage, workers' compensation, or unemployment compensation that is required in the normal course of business and will assume all responsibility for any federal, state, municipal or other tax liabilities. Additionally, Contractor understands that as an independent contractor, it is not a public employee and is not entitled to contributions from the State to any public employee retirement system.

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

Contractor's failure to complete and submit the Independent Contractor/Worker Acknowledgement form at the time Contractor executes this Contract shall serve as Contractor's certification that Contractor is a "business

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entity” as that term is defined in Section 145.037 of the Ohio Revised Code.

- M. REGISTRATION WITH THE SECRETARY OF STATE.** The contractor certifies that it is one of the following:
1. A domestic corporation or domestic limited liability company that is properly registered with the Ohio Secretary of State; or
  2. A foreign corporation or foreign limited liability company, not incorporated under the laws of the State of Ohio, but is registered with the Ohio Secretary of State pursuant to Chapter 1703 of the Ohio Revised Code or Chapter 1706 of the Ohio Revised Code, as applicable; or
  3. Exempt from the foreign corporation registration requirements of the Ohio Secretary of State as provided by Section 1703.02 of the Ohio Revised Code or exempt from the foreign limited liability company registration requirements as provided by Section 1706.512 of the Ohio Revised Code.
- N. TAXES.** Pursuant to Section 5739.02 of the Ohio Revised Code, ODOT is exempt from sales tax. Pursuant to Section 5741.02(C) of the Ohio Revised Code, the State is exempt from use tax.
- O. TRADE.** Pursuant to Section 9.76(B) of the Ohio Revised Code, Contractor warrants that Contractor is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the Contract period.

The State of Ohio does not acquire goods or services that cannot be imported lawfully into the United States or transact business with any entity or individual subject to financial sanctions imposed by the United States. The Contractor certifies that it, its subcontractors, and any agent of the Contractor or its subcontractors, will acquire any goods or services in accordance with all trade control laws, regulations or orders of the United States, including the prohibited source regulations set forth in subpart 25.7, Prohibited Sources, of the Federal Acquisition Regulation and any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control. A list of those entities and individuals subject to sanctions can be found at <https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists>. These sanctions generally preclude most transactions involving Cuba, Iran, and Sudan, and most imports from Burma or North Korea.

- P. USE OF MBE AND EDGE VENDORS.** Section 125.081 of the Ohio Revised Code requires State agencies to set-aside purchases for Minority Business Enterprises (MBE). Therefore, the State encourages the Contractor to purchase goods and services from Ohio certified MBE and EDGE vendors.
- Q. LEGAL REPRESENTATION AND RIGHTS.** The Ohio Attorney General is the chief law officer for the State of Ohio, its agencies, boards and commissions, and only the Ohio Attorney General has the authority to appoint outside legal counsel to represent ODOT. Contractor agrees that any provisions in this Contract or any documents incorporated by reference that provide or allow for outside legal representation to defend or settle claims on behalf of the State or provide for a third party to have sole control of a defense or settlement of a claim do not meet the requirements of state law and are considered stricken. Contractor also agrees that, unless specifically agreed to in writing by ODOT, any provisions that require or provide for a waiver of any legal rights, remedies, or litigation defenses (i.e., waiver of a jury trial) do not meet the requirements of state law and are considered stricken.
- R. STATUTE OF LIMITATIONS.** Statutes of limitations generally do not apply to actions brought by the State of Ohio and any such provisions in this Contract or in any documents incorporated by reference are considered stricken.
- S. COMPLIANCE WITH E-VERIFY WORKFORCE INTEGRITY ACT.** All contractors and subcontractors engaged in a nonresidential construction project as defined in Section 4151.01 of the Ohio Revised Code shall at all times comply with the provisions of the State of Ohio's E-Verify Workforce Integrity Act and shall verify the identity and legal working status of each employee hired to perform work on such project through the E-Verify program.
- T. ACCESSIBILITY REQUIREMENTS.** If applicable, the Contractor warrants it will comply with federal and state disabilities laws and regulations and also warrants that the Deliverables provided under this Contract conform to the applicable accessibility requirements of WCAG 2.1 Level AA or the most current version (the "Accessibility Standards"), Section 508 of the Rehabilitation Act of 1973, and the American with Disabilities act. The Contractor must promptly respond to and resolve any complaint regarding accessibility of its products and services. If at any time, the Deliverables provided under this Contract do not fully conform to the Accessibility Standards, the Contractor must immediately notify the State in writing of the nonconformance and provide the State a plan to achieve conformance to the Accessibility Standards, including an intended timeline for conformance. The Contractor further agrees to indemnify and hold harmless the State from any claims or damages arising out of Contractor's failure to comply with the requirements of this section. Failure to comply with these requirements will constitute a material breach of this Contract for which the State may terminate this Contract.

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### IV. CONTRACT CONSTRUCTION

- A. TERM OF CONTRACT.** The effective date of the Contract is the effective date stated in the Contract or the date the Contract is fully executed, whichever is later. The Contract will remain in effect until the earliest of: (1) the ending date stated in the Contract; (2) the Contract is fully performed by both parties; (3) the Contract is canceled or terminated; or (4) the Contract expires at the end of a biennium unless continued by ODOT. Notwithstanding the foregoing, the expiration or early termination of this Contract will not limit the Contractor's continuing obligations with respect to Deliverables that the State paid for or ordered before the expiration or termination, or limit ODOT's rights in such, including any warranty services, licensed material, paid subscriptions, the support or maintenance thereof, or other services.

This Contract may be renewed upon satisfactory performance of activities hereunder, appropriation of funds by the Ohio General Assembly, and at the sole discretion of ODOT. ODOT will issue a notice to the Contractor if ODOT decides to renew this Contract. The Contractor shall not obligate resources in anticipation of a renewal until notice is provided.

**B. CONTRACT AMENDMENTS / WAIVER.**

- 1. AMENDMENTS.** No change to any provision of this Contract will be effective unless it is in writing and signed by the parties to the Contract. However, ODOT may document non-material changes in writing and provide notice to the Contractor. Unless specifically provided otherwise in this Contract or agreed to in writing by ODOT, no terms or conditions included on Contractor's quote/bid response or ordering document will be valid or enforceable against ODOT and are specifically excluded from this Contract. Further, no "click-through," "shrink-wrap," "browse-wrap," or other terms that have not been specifically negotiated by the Contractor and ODOT, whether before, on, or after the date of this Contract, will be effective to add or modify the terms of this Contract, regardless of any party's "acceptance" of those terms by electronic means. No ODOT employee has the authority to modify, amend, or supplement this Contract through electronic means.

- 2. WAIVER.** The failure of either party at any time to demand strict performance by the other party of any of the terms of this Contract will not be a waiver of those terms or to any other terms of this Contract. Waivers must be in writing to be effective, and either party may at any later time demand strict performance.

- C. ASSIGNMENT / DELEGATION.** The Contractor must not assign any of its rights nor delegate any of its duties under this Contract without written consent of ODOT. Any assignment or delegation not consented to may be deemed void by ODOT.

- D. BINDING EFFECT.** Subject to the limitations on assignment provided elsewhere in this Contract, this Contract will be binding upon and inure to the benefit of the respective successors and assigns of ODOT and the Contractor.

- E. LANGUAGE CONSTRUCTION.** This Contract will be construed in accordance with the plain meaning of its language and neither for nor against the drafting party.

- F. DAYS.** When this Contract refers to days, it means calendar days, unless it expressly provides otherwise.

- G. HEADINGS.** The headings in this Contract are for convenience only and will not affect the interpretation of any of the Contract terms and conditions.

- H. INJUNCTIVE RELIEF.** Nothing in this Contract is intended to limit the State's right to injunctive relief if such is necessary to protect its interests or to keep it whole.

- I. NOTICES.** For any notice under this Contract to be effective, the notice must be made in writing and delivered to the appropriate contact provided in the Contract.

- J. ORDER OF PRIORITY.** If there is any inconsistency or conflict between these Standard Terms and Conditions and any provision incorporated by reference or included by the Contractor, these Standard Terms and Conditions will prevail.

- K. PUBLICITY.** The Contractor shall not do the following without prior, written consent from ODOT:

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

- L. SEVERABILITY.** If any provision of the Contract or the application of any provision is held by a court to be contrary

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to law, the remaining provisions of the Contract will remain in full force and effect.

- M. SUBCONTRACTING.** ODOT recognizes that it may be necessary for the Contractor to use a subcontractor to perform a portion of the work under the Contract. In those circumstances, the Contractor shall submit a list identifying the Contractor's subcontractors. The Contractor may not enter into subcontracts related to the Contract after award without written approval from ODOT. If any change occurs during the term of the Contract, that requires a change to identified subcontractors, the Contractor shall amend its list of subcontractors and request written approval from ODOT. ODOT reserves the right to reject any subcontractor submitted by the Contractor.

All subcontracts will be at the sole expense of the Contractor, and the Contractor will be solely responsible for payment of its subcontractors. The Contractor assumes responsibility for all sub-contracting and third-party manufacturer work performed or product delivered under the Contract. All agreements with subcontractors must incorporate this Contract by reference and include the following provisions: (1) the subcontractor agrees to be bound by all applicable terms and conditions of this Contract; and (2) the terms of this Contract prevail over any conflicting terms of the agreement with the subcontractor. The Contractor will be the sole point of contact with regard to all contractual matters.

- N. SURVIVORSHIP.** All sections herein relating to payment, confidentiality, license and ownership, indemnification, maintenance, publicity, warranties and limitations on damages shall survive the termination of this Contract. In addition, to the extent necessary to carry out the purpose of this Contract, all other terms, conditions, representations or warranties contained in this Contract will survive the expiration or termination of this Contract.
- O. COUNTERPARTS.** This Contract may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

### V. ORDER AND PAYMENT PROVISIONS

- A. CERTIFICATION OF FUNDS/PURCHASE ORDER REQUIREMENTS.** None of the duties or obligations in this Contract are binding on the State, and the Contractor will not begin performance on this Contract, until all of the following conditions are met:

1. All statutory provisions under the Ohio Revised Code have been met.
2. All necessary funds are made available by ODOT.
3. If required, the Controlling Board of Ohio has approved the purchase in accordance with Section 127.16 of the Ohio Revised Code.
4. If applicable, an official State of Ohio Purchase Order (P.O.) has been issued by ODOT, which is certification that the above requirements have been met.

- B. CONTRACT ORDERS.** ODOT will order goods, products, or services under this Contract from the Contractor and the Contractor may receive orders by telephone, electronically, in person, payment card (if applicable) or purchase order from authorized employees of ODOT. ODOT will not be responsible for orders placed by unauthorized employees. The Contractor must ensure that any entity placing an order under this Contract has the authority to do so. If Contractor accepts an order from an entity that does not have the authority to make a purchase under this Contract, Contractor will be in breach of this Contract, and the order will not be valid under this Contract.

If Contractor's quote or ordering document contains or incorporates by reference any terms or conditions other than a description of the goods or scope of services and the prices for those goods and/or services, those terms or conditions are excluded from this Contract and are of no effect.

- C. INVOICE REQUIREMENTS.** The Contractor or dealer, authorized to submit invoices, must submit an invoice to the office designated in the purchase order. The Contractor will only be compensated for the Deliverables accepted by the State. To be a proper invoice, the invoice must include the following:

1. The purchase order number authorizing the delivery of supplies or services;
2. State of Ohio Contract Number (if applicable);
3. Agency Name;
4. Agency Billing Address;
5. Delivery location of supplies or services;
6. Contractor Name;
7. Contractor Address;
8. Contractor's Unique Invoice Number;
9. Dates that services were provided or that supplies were delivered;
10. Itemization of goods, products, or services provided, including cost;
11. For leases, the invoice must also include the payment number (e.g., 1 of 36);

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12. For Time and Materials Contracts, the invoice must reflect labor hours actually worked and, if applicable, supplies used; and
  13. Clear statement of total payment expected.
- D. DEFECTIVE INVOICES.** In the event the Department is in receipt of defective or improper invoices, the Department shall postpone payment pursuant to Section 126.30 of the Ohio Revised Code. Invoices shall be returned to the Vendor noting areas for correction. If such notification of defect is sent, the required payment date shall be thirty (30) calendar days after receipt of the corrected invoice
- E. PAYMENT DUE DATE AND PROCESS.** Unless otherwise stated in this Contract and in accordance with Section 126.30 of the Ohio Revised Code, payments under this Contract will be due on the 30th calendar day after the date of actual receipt of a proper invoice in the office designated to receive the invoice. The date payment is issued by ODOT will be considered the date payment is made. Payment of an invoice by ODOT will not prejudice ODOT's right to object to or question that or any other invoice or matter in relation thereto. ODOT's preferred method of payment is by electronic funds transfer. However, ODOT may also make payment by State of Ohio payment card or by warrant issued by the Office of Budget and Management. At the time of Contract award, Contractor must be able to accept all forms of payment from ODOT.
- F. INTEREST.** Section 126.30 of the Ohio Revised Code may be applicable to this Contract and if so, requires payment of interest on overdue payments for all proper invoices. The interest charge shall be at a rate per calendar month which equals one-twelfth of the rate per annum prescribed by Section 5703.47 of the Ohio Revised Code.
- G. REIMBURSABLE EXPENSES.** ODOT will not pay reimbursable expenses unless specifically identified in the Contract. The Contractor will assume all expenses that it incurs in the performance of this Contract that are not identified as reimbursable.
- H. TRAVEL.** Any travel that the Contractor requires to perform its obligations under this Contract will be at the Contractor's expense. ODOT will pay for any additional travel that it requests only with prior written approval. ODOT will pay for all additional travel expenses that it requests in accordance with Section 126.31 of the Ohio Revised Code and Rule 126-1-02 of the Ohio Administrative Code.

## VI. LIABILITY PROVISIONS

- A. GENERAL REPRESENTATIONS AND WARRANTIES.** The Contractor warrants that:
1. The recommendations, guidance, and performance of the Contractor under this Contract will be in accordance with the industry's professional standards, the requirements of this Contract and without any material defect.
  2. No Deliverable will infringe on the intellectual property rights of any third party.
  3. All warranties are in accordance with the Contractor's standard business practices.
  4. The Deliverables are merchantable and fit for the particular purpose described in this Contract and will perform substantially in accordance with its user manuals, technical materials, and related writings.
  5. The Deliverables comply with all governmental, environmental and safety standards.
  6. The Contractor has the right to enter into this Contract.
  7. The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Contract.
  8. The Contractor will observe and abide by all applicable laws and regulations, including those of the State regarding conduct on any premises under ODOT's control.
  9. The Contractor has good and marketable title to any Deliverable delivered under this Contract for which title passes to ODOT.
  10. The Contractor has the right and ability to grant the license granted in any Deliverable for which title does not pass to ODOT.
  11. The Contractor warrants that the Contractor has not and will not enter into any contracts without written approval of ODOT to perform substantially identical services for ODOT such that the Project duplicates the work done or to be done under the other contracts.
  12. For one year from the delivery date of any products or software, the products or software will be free of material defects and free of viruses, including the media on which it is delivered, if applicable.

The Contractor must notify ODOT in writing immediately upon the discovery of any breach of the warranties given above, or if any work of the Contractor or any Deliverable fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor will correct such failure in a commercially reasonable time or as specified in the Contract. If the Contractor fails to comply, the Contractor will refund the amount paid for the Deliverable. The Contractor will also indemnify ODOT for any direct damages and claims by third parties

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based on breach of these warranties.

Any other express warranties offered by the Contractor shall be a minimum of one year from acceptance or the Contractor's standard warranty whichever is longer.

### **B. INDEMNITY.**

1. **General Indemnity.** The Contractor must indemnify ODOT for all liability and expense arising out of the performance of this Contract, provided that such liability or expense is due to the negligence or other tortious conduct of the Contractor, its employees, agents, or subcontractors. The Contractor will not be responsible for any damages or liability to the extent caused by the negligence or willful misconduct of ODOT, its employees, other contractors, or agents.
2. **Infringement Indemnity.** The Contractor must indemnify, release, protect, and hold ODOT harmless from any third-party claim of infringement of a copyright, patent, trade secret, or similar intellectual property right based on ODOT's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where ODOT has modified or misused the Deliverable, and the claim of infringement is based on the modification or misuse. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor must take one (1) of the following four (4) actions within an acceptable timeframe:
  - a. Modify the Deliverable so that the Deliverable is no longer infringing;
  - b. Replace the Deliverable with an equivalent or better item;
  - c. Acquire the right for the State to use the infringing Deliverable as intended; or
  - d. Remove the infringing Deliverable and refund the fee the State paid for such Deliverable and any other affected Deliverable.
3. **Security Incident Indemnity.** Contractor must indemnify the State for all third-party liability and expense resulting from a Security Incident (defined in the Data Privacy and Security Addendum incorporated herein) arising from Contractor's performance under this Contract and involving Contract Data. Damages resulting from the Security Incident will be considered direct damages under this Contract and include the following: (i) expenses for legally-required notification of impacted individuals; (ii) responding to inquiries from such notifications; (iii) government fines and penalties assessed against the State; (iv) costs to the State for investigations, audits or forensic services as applicable related to the Security Incident; (v) mitigation measures, including 12 months of credit monitoring and identity theft protection for individuals impacted by the Security Incident; (vi) costs to the State to reconstruct data that was lost or to repair any damaged State information technology infrastructure; and (vii) other such expenses incurred by the State as a result of the Security Incident involving Contract Data. Regardless of any limitation on liability of any kind in this Contract, the Contractor will be responsible for acquiring one year's identity theft protection services on behalf of any individual or entity whose personally identifiable information is compromised while it is in the Contractor's possession. Contractor's indemnification obligations under this paragraph apply whether the expenses or costs incurred by the State are performed by State employees or hired contractors. Contractor must also work with the State to directly notify impacted individuals or persons as required by Chapters 1347 and 1349 of the Ohio Revised Code or as otherwise directed by the State.
4. **Indemnity Procedure.** For the Contractor's indemnification obligations in this section, the State agrees to: (i) give the Contractor notice of any claim under this section as soon as reasonably practicable; (ii) give the Contractor the authority to settle or otherwise defend any such claim only upon consultation with and approval by the Ohio Attorney General; and (iii) assist with and cooperate in such defense or settlement as reasonably necessary and at Contractor's expense. The State has the right to participate in the defense or settlement or any claim at its own expense.

- C. **INSURANCE.** Until all obligations under this Contract are satisfied, and without limiting Contractor's indemnification obligations herein, Contractor shall procure and maintain, for the duration of the Contract, the insurance policies set forth below. Contractor shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services hereunder by the Contractor, its agents, representatives, or employees. The Contractor shall also procure and maintain insurance for claims arising out of their services including, but not limited to, loss, damage, theft or other misuse of data, infringement of intellectual property, invasion of privacy and breach of data. All commercial insurance required shall be provided by insurers with a rating of not less than A-VII from A.M. Best or a comparable rating agency.

Coverage shall be at least as broad as:

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1. Commercial General Liability: written on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be outside the policy limit. ODOT, its officers, officials and employees are to be covered as additional insureds on the commercial general liability policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations.
2. Automobile Liability: covering Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with a limit of no less than \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation insurance as required by the State of Ohio, or the state in which the work will be performed, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease. If Contractor is a sole proprietor, partnership or has no statutory requirement for workers' compensation, Contractor must provide a letter stating that it is exempt and agreeing to hold the State harmless from loss or liability for such.
4. For all information technology solutions, whether cloud, on-premises, or hybrid based, Cyber Liability and Intellectual Property Infringement Liability insurance of not less than \$5,000,000 per occurrence and \$5,000,000 in the aggregate for liability for financial loss resulting or arising from acts, errors, and omissions in connection with the Services being provided including but not limited to:
  - a. Breaches of security or privacy
  - b. Data theft, damage, destruction, or corruption, including without limitation, unauthorized access, identity theft, theft of personally identifiable information or confidential corporate information, transmission of a computer virus or other type of malicious code
  - c. Participation in a denial-of-service attack on a third party
  - d. Violation or infringement of any right of privacy, breach of federal, state, or foreign security or privacy laws or regulations
  - e. Intellectual property infringement arising out of software or content (excluding patent and copyright infringement and misappropriation of trade secrets
  - f. Technology errors and omissions
  - g. Business interruption
  - h. Cyber extortion
  - i. Investigation, notification, and related credit monitoring costs from any of the above

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

Pursuant to Ohio Revised Code 2743.02(D), all applicable insurance or other means of recovery shall apply to any claim arising from the Contractor's activities relating to this Contract on a primary basis. The insurance or self-insurance maintained by the State shall not contribute to claims made due to the Contractor's negligence, errors, or omissions. No subrogation demands shall be made against ODOT, except where there is negligence on the part of the State, and any such demands shall be reduced by all collateral recovery sources available to or received by the claimant.

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

**Notice of Cancellation.** Contractor must provide ODOT with written notice of cancellation or material change to any insurance policy required above as soon as possible and must use best efforts to notify ODOT at least 30 days in advance of such cancellation or material change. Material change shall be defined as any change to the insurance limits, terms or conditions that would limit or alter ODOT's available recovery under any of the policies required above. A lapse in any required insurance coverage during this Contract shall be a breach of this Contract.

**Deductibles and Self-Insured Retentions.** Self-insured retentions must be declared to and approved by

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ODOT. ODOT may require the Contractor to provide proof of ability to pay losses and related investigations, claims administration and defense expenses within the retention. The policy language must provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or ODOT. Any and all deductibles and self-insured retentions will be the sole responsibility of the Contractor or subcontractor who procured such insurance and will not apply to the indemnified additional insured parties. ODOT may deduct from any amounts otherwise due to the Contractor to fund the self-insured retentions. Policies must not contain any self-insured retention provision that limits the satisfaction of the self-insured retention to the named insured. The policy must also provide that defense costs, including the allocated loss adjustment expenses, will satisfy the self-insured retention. ODOT reserves the right to obtain a copy of any policies and endorsements for verification.

**Claims Made Policies.** If any of the required policies provide coverage on a claims-made basis:

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

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

**Subcontractors.** Contractor must require and verify that all subcontractors maintain insurance with sufficient limits for the nature of the products or services they are providing, and Contractor shall ensure that ODOT is an additional insured on commercial general liability insurance required from subcontractors. Contractor will indemnify ODOT for damages that exceed a subcontractor's policy limits.

**Special Risks or Circumstances.** ODOT reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**D. LIMITATION OF LIABILITY FOR IT PRODUCTS, SUPPLIES, AND SERVICES.** The parties agree as follows:

1. Neither party will be liable for any indirect, incidental or consequential loss or damage of any kind including but not limited to lost profits, even if the parties have been advised, knew, or should have known of the possibility of damages.
2. Notwithstanding any other limitation provisions and pursuant to Section 9.27 of the Ohio Revised Code, the Contractor is liable for any direct loss to ODOT for bodily injury, death, or damage to property of ODOT caused by the negligence, intentional or willful misconduct, fraudulent act, recklessness, or other tortious conduct of the Contractor or Contractor's employees or agents during its performance under this Contract.
3. Notwithstanding any other limitation provisions, the Contractor is liable for any other direct loss or damage to ODOT caused by the gross negligence, intentional or willful misconduct, fraudulent act, recklessness, or other tortious conduct of the Contractor or Contractor's employees or agents during its performance under this Contract.
4. Any limitation provisions contained in the documents and materials incorporated by reference into this Contract are considered stricken and of no force and effect.
5. All limitations provisions in this Contract are only to the extent such limitations do not impose an unlawful indemnification on ODOT.

**E. PRODUCT RECALL.** In the event that the product delivered has been recalled, seized, or embargoed and/or has been determined to be misbranded, adulterated, or in the case of consumable product, found to be unfit for human consumption by the packer, processor, manufacturer or by any state or federal regulatory agency, the Contractor shall notify ODOT within two business days after notice has been given. The Contractor shall, at the option of ODOT, either reimburse the purchase price or provide an equivalent replacement product at no additional cost. The Contractor shall be responsible for removal and/or replacement of the affected product within a reasonable time as determined by ODOT. At the option of ODOT, the Contractor may be required to reimburse storage and handling fees to be calculated from time of delivery and acceptance to actual removal. The Contractor will bear all costs associated with the removal and proper disposal of the affected product. Failure to reimburse the purchase price or provide equivalent replacement product will be considered

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a default.

### VII. PERFORMANCE AND COMPLIANCE

- A. AUDITS.** The Contractor must keep all financial records related to this Contract in a manner consistent with Generally Accepted Accounting Principles (GAAP) or equivalent accounting principles. Additionally, the Contractor must keep separate business records for this Contract, including records of disbursements and obligations incurred that must be supported by contracts, invoices, vouchers and other data as appropriate.

During the period covered by this Contract and until the expiration of three (3) years after final payment under this Contract, the Contractor agrees to provide ODOT, or any authorized representatives providing financial support to the work undertaken hereunder, with access to and the right to examine any books, documents, papers and records of the Contractor involving transactions related to this Contract.

The Contractor must, for each subcontract in excess of \$25,000.00, require its subcontractors to agree to the same provisions of this Section. The Contractor may not artificially divide contracts with its subcontractors to avoid requiring subcontractors to agree to this provision. This provision does not apply to contracts where federal funds are used, and the federal government requires audits of all subcontracts regardless of the amount of the contract.

The Contractor must provide access to the requested records at the location specified by the State no later than five (5) business days after the request by ODOT, ODOT's designee or any party with audit rights. If an audit reveals any material deviation from the Contract requirements, any misrepresentations, or overcharge to ODOT or any other provider of funds for the Contract, ODOT or other party will be entitled to recover damages as well as the cost of the audit.

- B. F.O.B. DESTINATION/PRE-PAID/ALLOWED.** The Contractor must provide Deliverables under this Contract F.O.B. Destination/Pre-Paid/Allowed. The place of destination will be specified by ODOT on its purchase order or other ordering document. Cost of the freight must be borne and paid by the Contractor unless otherwise stated.

All risk of loss, regardless of the cause, will remain with the Contractor until title to the Deliverable passes to ODOT. Unless otherwise provided in this Contract, ODOT will determine whether the Contractor provided each Deliverable required in this Contract and has fully met all work requirements of this Contract. Title to any Deliverables will pass to ODOT on Acceptance of the Deliverable.

- C. RETURNED GOODS.** When the use of this Contract involves the purchase of goods, the following applies:

1. Returned goods, when due to Contractor error (i.e., over-shipment, defective merchandise, unapproved substitution, etc.), shall be returned to the Contractor at the Contractor's expense. The Contractor shall make arrangements to remove the returned goods from ODOT's premises within seven (7) calendar days after notification. The Contractor shall not apply any restocking or other charges to ODOT. At the option of ODOT, replacement items may be accepted and will be shipped within seven (7) calendar days of notification. Failure of the Contractor to arrange for return of the items within the specified time will result in the items being deemed as abandoned property and ODOT will dispose of accordingly.
2. For orders of custom manufactured goods, the Contractor must provide a production sample of the item to ODOT for acceptance. The production sample must be identical to the item to be provided. ODOT will provide written acceptance of the item prior to the Contractor continuing with production. Once delivery and acceptance have been completed and ODOT determines for any reason that any remaining quantities will not be used, ODOT may request the return of the custom manufactured items. Acceptance of the return of custom manufactured items will be at the option of the Contractor. Failure of the Contractor to provide a production sample and obtain written approval from ODOT will result in the Contractor bearing all responsibility and costs associated with the return of these goods.
3. Returned goods of regular catalog stock merchandise, when due to ODOT error (i.e., over purchase, discontinued use, inventory reduction, etc.) will be accepted by the Contractor if notice is given by the ODOT within six (6) months of delivery and acceptance. All items to be returned must be unused and in their original containers and in suitable condition for resale. Return of regular stock catalog merchandise, when delivery and acceptance exceed six (6) months will be at the option of the Contractor.

- D. CUSTOM DELIVERABLES.** All custom work performed by the Contractor and covered by this Contract, including any software modifications, and documentation, will belong to ODOT with all rights, title, and interest in all intellectual

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property that comes into existence through the Contractor's work under this Contract being assigned to ODOT. Additionally, the Contractor waives any shop rights, author rights, and similar retained interests in any such custom developed materials. The Contractor must provide the State with all assistance reasonably needed to vest such rights of ownership in ODOT. However, the Contractor will retain ownership of all tools, methods, techniques, standards, and other development procedures, as well as generic and preexisting shells, subroutines, and similar material incorporated in any custom Deliverable ("Pre-existing Materials").

The Contractor grants ODOT a worldwide, non-exclusive, royalty-free, perpetual license to use, modify, and otherwise distribute all Pre-existing Materials that are incorporated in any custom-developed Deliverable, including distribution to third parties as required by funding mandates. The Contractor may not include in any custom Deliverable any intellectual property unless such has been created under this Contract or qualifies as Pre-existing Material. If the Contractor wants to incorporate any Pre-existing Materials in a custom Deliverable, the Contractor must disclose that desire to the State and obtain written approval from ODOT for doing so in advance. At the request of the Contractor, ODOT will incorporate any proprietary notice that Contractor may reasonably want for any Pre-existing Materials included in a custom Deliverable in all copies ODOT makes of that Deliverable. Subject to the limitations and obligations of ODOT with respect to Pre-existing Materials, ODOT may make all custom Deliverables available to the general public without any proprietary notices of any kind.

- E. FORCE MAJEURE (EXCUSABLE DELAY).** Neither party will be liable for any delay in its performance that arises from causes beyond its or its subcontractor's control and without its or its subcontractor's negligence or fault. For purposes of this Section, the term "force majeure event" includes without limitation, the following: Acts of God, such as pestilence, lightning, earthquakes, fires, storms, hurricanes, tornadoes, floods, washouts, droughts, severe weather. Additional circumstances and events include epidemics, explosions, restraining of government and people, war, strikes, and other similar events or causes.

If ODOT or the Contractor cannot perform any part of its obligations under this Contract because of force majeure, that party is excused from those obligations to the extent that performance is prevented by the force majeure event and that party took all commercially reasonable steps to mitigate or avoid the effects of the force majeure event. If there is only a delay in performance, such delay may extend only for that time lost because of the force majeure event. If a party is unable to perform those above-referenced obligations, it must also do the following:

1. Promptly notify the other party, in writing, of any material delay in performance due to a specified force majeure event;
2. Provide detailed information about the force majeure event;
3. Provide a proposed revised performance date to make up for performance delays due to the force majeure event. When applicable, the revised schedule must provide for performance time not to exceed the time lost as a result of the force majeure event.

- F. CONTRACT PERFORMANCE MANAGEMENT.** ODOT is responsible for administering and monitoring the Contractor's compliance and performance on this Contract. Therefore, the Contractor must respond to complaints about performance of the obligations in this Contract in a timely manner. If the Contractor fails to perform any one of its obligations under this Contract, it will be in default.

If the Contractor fails to satisfactorily correct the performance or compliance issue within the time designated by ODOT, ODOT may employ all available options and remedies, including termination of the Contract, if necessary, to resolve the Contractor's continued nonperformance or noncompliance.

- G. QUALITY ASSURANCE.** At the option of ODOT, samples may be taken from deliveries made and submitted for laboratory tests. ODOT will bear the cost of testing if samples are in compliance with the Contract. If samples do not conform to the Contract, Contractor will bear the costs of testing and the terms and conditions of the Suspension/Termination provision of this Contract will be applied.

**H. CONTRACT REMEDIES.**

1. **Actual Damages.** The Contractor is liable to ODOT for all actual and direct damages caused by the Contractor's default. ODOT may self-perform or buy substitute Deliverables from a third party for those that were to be provided by the Contractor. ODOT may recover the costs associated with acquiring substitute Deliverables, less any expenses or costs avoided by the Contractor's default.
2. **Liquidated Damages.** If actual and direct damages are uncertain or difficult to determine, ODOT may recover liquidated damages. Unless otherwise specified, liquidated damages will be in the amount of 1% of the value of the

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order, Deliverable, or milestone that is the subject of the default, for every day that the default is not cured by the Contractor.

3. **Right to Withhold or Offset.** ODOT may withhold payment or set off the amount of any liquidated damages, other damages or claims for damages, or any other obligation of the Contractor or its subsidiaries, including any amounts the Contractor owes to ODOT under this Contract, against any payments due to the Contractor under this Contract.

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

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

### 1. Contract or Order Suspension.

- a. **Suspension for Cause.** If the Contractor fails to perform any one of the Contractor's obligations under this Contract or an order, the Contractor will be in default and ODOT may suspend rather than terminate this Contract or an order. In the case of suspension for default, ODOT will be entitled to all remedies available under this Contract.
- b. **Suspension for Convenience.** In the case of a suspension for ODOT convenience, the amount of compensation due to the Contractor for work performed before the suspension will be determined in the same manner as provided in Section I.2.a. for termination for the State's convenience or the Contractor may be entitled to compensation for work performed before the suspension.

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

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

### 2. Contract or Order Termination.

- a. **Termination for Convenience.** ODOT may terminate this Contract, or may terminate an order placed under this Contract, for its convenience after issuing written notice to the Contractor. The Contractor will be entitled to the pro-rated price for any Deliverable or portion of a Deliverable that the Contractor has delivered and ODOT has accepted before the termination. Total payments will not exceed the amount payable to the Contractor as if the Contract or order had been fully performed, and ODOT will not be entitled to any refund of fees already paid by ODOT before the date of termination. This will be the Contractor's exclusive remedy in the case of termination for convenience and is available to the Contractor only after the Contractor has submitted a proper invoice. **For Contracts that are paid in one lump sum on an annual basis such as Software as a Service, the Parties agree that no refund is available in the event of termination.**
- b. **Termination for Cause.** If the Contractor fails to perform any of its obligations under this Contract or an order under this Contract, the Contractor will be in default, and ODOT may terminate this Contract or may terminate an order in accordance with this Section. If this Contract or an order under this Contract is terminated for cause, ODOT will be entitled to a pro rata refund of any prepaid fees for the applicable orders subject to the termination. Termination for cause includes but is not limited to:
  - i. **Termination for Persistent Default.** ODOT may terminate for defaults that are cured but are persistent.

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“Persistent” means three or more defaults. After providing notification to the Contractor of its third default, ODOT may terminate without providing the Contractor with an opportunity to cure. The three defaults are not required to be related to each other in any way.

- ii. **Termination for Endangered Performance.** ODOT may terminate if it determines that the performance is endangered through no fault of its own.
  - iii. **Termination for Financial Instability.** ODOT may terminate if the Contractor fails to timely pay its subcontractors, files a petition in bankruptcy or similar action, or ODOT finds other evidence of the Contractor’s financial instability.
  - iv. **Termination for Delinquency, Violation of Law.** ODOT may terminate if it determines that the Contractor is delinquent in its payment of federal, state or local obligations, including but not limited to taxes, workers’ compensation insurance premiums, unemployment compensation contributions, child support, court costs or any other obligation owed to a State agency or political subdivision. ODOT also may terminate if it determines that the Contractor has violated any law during the performance of this Contract.
  - v. **Termination for Subcontractor Default.** ODOT may terminate for default caused by the Contractor’s subcontractors. Any claims of its subcontractors due to suspension or termination will be the sole responsibility of the Contractor.
  - vi. **Termination for Failure to Retain Certification, License, and Permits.** ODOT may immediately terminate if Contractor fails to obtain and maintain all official permits, approvals, licenses, certifications (Including CRP, MBE, EDGE and Veteran Friendly Business Enterprise certifications), and similar authorizations required by this Contract or by any local, state, or federal law throughout the duration of this Contract.
- J. **TIME IS OF THE ESSENCE.** Time is of the essence in this Contract. The Contractor must deliver Deliverables and meet milestones as required by the Contract or coordinate an acceptable date and time for delivery with ODOT. If the Contractor is not able to or does not provide the Deliverables to ODOT or meet milestones by the date and time set forth in the Contract or agreed upon by the parties, ODOT may obtain any remedy as described herein or any other remedy at law.
- K. **STRICT PERFORMANCE.** The failure of either party, at any time to demand strict performance by the other party of any of the terms of this Contract, will not be construed as a waiver of any such term and either party may at any time demand strict and complete performance by the other party.
- L. **OHIOBUYS.** This Contract may become part of OhioBuys, an electronic procurement system which provides electronic contract and catalog hosting and management services. ODOT accesses this system to place orders for the procurement of goods and services. When the Contract becomes part of OhioBuys, the Contractor agrees to establish, maintain and support its contract and catalog in OhioBuys.

### VIII. DATA AND INFORMATION CONTROL

- A. **CONFIDENTIALITY.** The parties may disclose or learn of information, documents, data, records, or other material that the disclosing party considers confidential (“Confidential Information”) in the performance of this Contract. The receiving party must treat the Confidential Information as such if it is so marked, otherwise defined as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of either party, the public, other parties, or individuals or organizations about whom the disclosing party keeps information. Title to the Confidential Information and all related materials and documentation remains with the disclosing party. The receiving party may only use Confidential Information solely to perform its obligations under this Contract and may not use or disclose any Confidential Information received as a result of this Contract without the written permission of the disclosing party. The Contractor must assume that all State information, documents, data, source codes, software, models, know-how, trade secrets, or other material when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interest of the public, other parties, or individuals or organizations about whom the State keeps information is confidential. In addition, the receiving party may not use or disclose any documents or records excluded by Ohio law from public records disclosure requirements.

The receiving party’s obligation to maintain the confidentiality of the Confidential Information will not apply where the information:

1. Was already in the receiving party’s possession without the obligation of confidence;

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2. Is independently developed by the receiving party with documentary evidence to support the independent development;
3. Is or becomes publicly available without breach of this Contract, except as provided in the next full paragraph;
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 in accordance with a valid order of a court or governmental agency, provided that the receiving party:
  - a. Notifies the disclosing party of such order immediately upon receipt of the order; and
  - b. Makes a reasonable effort to assist the disclosing party in obtaining a protective order, if requested, from the issuing court or agency limiting disclosure and use of the Confidential Information to the portion of the Confidential Information needed to satisfy the original order of production and solely for the purposes intended to be serviced by the order.

Although some sensitive personal information, such as medical records, addresses, telephone numbers, and social security numbers may be publicly available through other sources, the receiving party shall not disclose or use such information in any manner except as expressly authorized in this Contract. Therefore, item 3 above does not apply, and the receiving party must treat such sensitive personal information as Confidential Information whether it is available elsewhere or not. The receiving party must restrict circulation of Confidential Information within its organization and then only to people in the receiving party's organization that have a need to know the Confidential Information to perform under this Contract.

The receiving party must return all Confidential Information provided by the disclosing party, or if return of the Confidential Information is not possible, destroy the Confidential Information upon termination or expiration of this Contract. Upon request, the Contractor must provide certification or written confirmation to the State of such return or destruction of the Confidential Information. Notwithstanding the foregoing, the receiving party may keep a copy of the Confidential Information to comply with contractual, legal, or record keeping obligations, and any such retained Confidential Information is subject to the requirements of this Contract for so long as the receiving party has the Confidential Information in its possession.

The receiving party will not incorporate any portion of any Confidential Information into any work or product, other than a Deliverable, and will have no proprietary interest in any of the Confidential Information. Furthermore, the receiving party may be required to have all of its personnel and subcontractors who have access to any Confidential Information to execute a confidentiality agreement incorporating the obligations in this section.

The receiving party will be liable for the disclosure of any Confidential Information not specifically authorized by this Contract. The parties agree that the disclosure of Confidential Information may cause the disclosing party irreparable damage for which remedies other than injunctive relief may be inadequate, and the receiving party agrees that in the event of a breach of the receiving party's obligations hereunder, the disclosing party shall be entitled to temporary and permanent injunctive relief to enforce this Contract without the necessity of proving actual damages. This provision shall not, however, diminish or alter any right to claim and recover damages.

This Contract, including all terms and conditions, pricing, and attachment or exhibits, is not Confidential Information.

- B. PUBLIC RECORDS AND RETENTION OF DOCUMENTS AND INFORMATION.** The Contractor acknowledges, in accordance with Section 149.43 of the Ohio Revised Code, that this Contract, as well as any information, Deliverables, records, reports, and financial records related to this Contract are presumptively deemed public records. The Contractor understands that these records will be made freely available to the public unless ODOT determines that, pursuant to state or federal law, such materials are confidential or otherwise exempt from disclosure. The Contractor must comply with any direction from ODOT to preserve and/or provide documents and information, in both electronic and paper form, and to suspend any scheduled destruction of such documents and information.
- C. SECURITY AND SAFETY RULES.** When using or possessing State Data or accessing State networks and systems, the Contractor, its employees, subcontractors and agents must comply with all applicable State rules, policies, and regulations regarding State-provided IT resources, data security and integrity. When on any property owned or controlled by ODOT, the Contractor must comply with all security and safety rules, regulations, and policies applicable to people on those premises.

ODOT may require the Contractor, its employees, subcontractors and agents to sign a confidentiality

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agreement and policy acknowledgements and have a background check performed before accessing facilities, data, or systems. The Contractor must immediately replace anyone who refuses to sign a required confidentiality agreement or acknowledgment or have a background check performed.

- D. GENERATIVE ARTIFICIAL INTELLIGENCE:** The Contractor must disclose the use of generative artificial intelligence (AI) to the State when producing work that will be owned by the State or the integration of generative AI in products or services used by the State. The Contractor must work with the State to ensure the use of generative AI is reviewed, approved, and complies with the State IT Policy IT-17, Use of Artificial Intelligence, prior to utilizing the generative AI components. The Contractor is not permitted to utilize Confidential Data in training generative AI models except as specifically approved by the State.
- E. USAGE REPORTS.** At no cost to ODOT and in addition to other reports required by the Contract, the Contractor shall be required to provide monthly, quarterly, bi-annual or annual usage reports as requested by ODOT. The report may include customer name, date of purchase, item description, quantity, dollar value, aggregate sales to date for each customer and other such information. Electronic media is the preferred method for these reports. Failure to provide the requested reports may be deemed as an event of default.
- F. DATA SECURITY AND PRIVACY TERMS:** The Contractor shall be required to execute and comply with the Data Privacy and Security Addendum which describes the Contractor's responsibilities relating to State information security and privacy standards for **all proposed information technology goods, products, or services**, whether cloud, on-premises, or hybrid based. The terms contained in the Data Privacy and Security Addendum are in addition to the Standard Terms and Conditions and are incorporated by reference into the Contract. In the event of a conflict between the Standard Terms and Conditions and the Addendum, the most stringent standard shall prevail. This Data Security and Privacy Addendum can be found at the following link: [Resources and Forms](#) Where applicable, Contractor shall be required to complete Supplement A which is incorporated by reference into the Contract. Supplement A can be found at the following link: [Resources and Forms](#)
- G. INFORMATION TECHNOLOGY SERVICE LEVEL AGREEMENT MINIMUM REQUIREMENTS.**
- 1. GENERAL SERVICE STANDARDS:** The Contractor shall provide a Service that maintains a redundant infrastructure designed to ensure access for all ODOT's enrolled users in case of a failure at any one of the Contractor's locations, with effective contingency planning (including back-up and disaster recovery capabilities) and be supported with sufficient connectivity, bandwidth, and computing resources to handle reasonably anticipated peak demand without material degradation in performance. The Contractor has and will continue to use industry standard techniques through quality assurance procedures to ensure that there are no viruses, malware, or undocumented features in its infrastructure and Services.
  - 2. SERVICE AVAILABILITY:** The Services shall be available in accordance with the Service Availability Schedule below. Unless otherwise noted in the published request of which this document is a part, Contractor shall comply with the Minimum Requirements in the Schedule excluding scheduled downtime for routine maintenance (not to exceed 4 hours a month) and downtime attributable to force majeure. Compliance with this standard will be measured on a calendar month basis. The Availability will be calculated by: (a) dividing: (i) the total number of minutes of up time (i.e., in which there were no Outages) during an applicable calendar month (excluding only downtime occurring during the scheduled maintenance period or attributable to elements of Force Majeure) by (ii) the total number of actual minutes in such month minus minutes of downtime occurring during the scheduled maintenance period or attributable to elements of Force Majeure, and then (b) multiplying that amount by 100. An "Outage" means that substantially all of the portal pages are dysfunctional or unavailable, or there is complete unavailability of the portal.
  - 3. SERVICE SUPPORT:** During the agreement term, the Contractor will provide ODOT with support in compliance with the Service Availability Schedule. Unless otherwise noted in the published request of which this document is a part, Vendor will comply with the Minimum Requirements outlined in that schedule. In addition, telephonic assistance and advice for using all Services shall be provided by Contractor as needed by ODOT. The Contractor will also provide troubleshooting and incident resolution by developing and providing fixes or patches for errors in any software it provides and contract with any third-party providing software that supports the Services for the same. As part of the support the Contractor provides in exchange for the applicable fee, the Contractor also will keep all software current by installing all relevant service packs and patches as well as all updates and new releases and versions of the software as soon as reasonably possible. The Contractor also will keep its own software offering compatible with any updated third-party software that is part of the Services or supports the Services. The way the Contractor provides support will be governed by the Contractor's policies and programs described in the applicable documentation or other materials that the Contractor uses to notify its customers generally of such policies. Regardless of the Contractor's policies and programs, in all cases such support must comply with the requirements of this Agreement and the Contractor must provide the support in a competent, professional, and timely manner.

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4. **SUPPORT PARAMETERS:** ODOT may initiate support requests for issues it encounters with the Software using the methods outlined in the Service Availability Schedule, and the Contractor must maintain lines of communication that support all forms of communication listed. The Contractor must do so by staffing its support function with an adequate number of qualified personnel to handle its traditional volume of calls. Further, the Contractor must maintain at least one support center in North America with adequate English-speaking support personnel. ODOT's technical staff may contact any support center that the Contractor maintains, and they may choose to do so based on convenience, proximity, service hours, languages spoken, or otherwise.
  
5. **SUPPORT INCIDENT CLASSIFICATION:** The Vendor must classify and respond to support calls by the underlying problem's effect on ODOT by classifying the underlying problem as critical, urgent, or routine. The guidelines for determining the severity of a problem and the appropriate classification of and response to it are described below.

The Contractor must designate a problem as "critical" if the Service is functionally inoperable, the problem prevents the Service or a major component or function from being used in production mode or there is significant potential for data integrity problems. This classification assumes there is no existing patch for the problem. The Contractor must classify a problem as "urgent" if the underlying problem significantly degrades the performance of the Service or a major function or component of it or materially restricts ODOT'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 ODOT still can conduct business with the Service and response times are consistent with the needs of ODOT for that type of Service. As with the critical classification, the urgent classification assumes there is no existing patch or acceptable workaround procedure for the problem. Finally, the Contractor may classify a support call as "routine" if the underlying problem is a question on end use or configuration of the Service. It also may be classified as routine when the problem does not materially restrict ODOT'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 ODOT's use of the Service, the problem may be treated as routine.

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

6. **SUPPORT RESPONSE TIMES:** The maximum times for the Contractor to take action on support issues is outlined in the Service Availability Schedule below:

<b>Service Availability Schedule</b>			
	<b>Minimum Requirements</b>	<b>Moderate Requirements</b>	<b>High Requirements</b>
Uptime/Availability	99.90%	99.99%	99.999%
Support Availability	6 am to 6 pm EST	24 x 7 x 365	24 x 7 x 365
Methods of Support Required:	phone, email, Internet/chat	phone, email, Internet/chat	phone, email, Internet/chat
Support Response Times:	Acknowledgement of non-Critical issue: 4 hours	Acknowledgement of non-Critical issue: 4 hours	Acknowledgement of non-Critical issue: 4 hours
	Acknowledgement of Critical Issues: 1 hour	Acknowledgement of Critical Issues: 1 hour	Acknowledgement of Critical Issues: 1 hour
	Resolution of Routine Issues - 5 calendar days	Resolution of Routine Issues - 5 calendar days	Resolution of Routine Issues - 5 calendar days
	Resolution of Urgent Issues - 2 calendar days	Resolution of Urgent Issues - 2 calendar days	Resolution of Urgent Issues - 2 calendar days
	Resolution of Critical Issues - 4 hours	Resolution of Critical Issues - 4 hours	Resolution of Critical Issues - 4 hours

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### IX. FEDERAL REQUIREMENTS

During the performance of this Agreement, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

- a. The Contractor will ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex (including pregnancy, gender identification and sexual orientation), national origin (ancestry), disability, genetic information, age (40 years or older), sexual orientation, or military status (past, present, or future). Such action shall include, but not be limited to, the following: Employment, Upgrading, Demotion, or Transfer; Recruitment or Recruitment Advertising; Layoff or Termination; Rates of Pay or other forms of Compensation; and Selection for Training including Apprenticeship.
- b. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex (including pregnancy, gender identification and sexual orientation), national origin (ancestry), disability, genetic information, age (40 years or older), or military status (past, present, or future). Contractor agrees to fully comply with Title VI of the Civil Rights Act of 1964, 42 USC Sec. 2000. Contractor shall not discriminate on the basis of race, color, national origin, sex (including pregnancy, gender identification and sexual orientation), age, disability, low-income status, in its programs or activities. The Director of Transportation may monitor the Contractor's compliance with Title VI.
- c. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Acts and Regulations relative to Non-discrimination in Federally assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
- d. **Non-discrimination:** The Contractor, regarding the work performed by it during the Agreement, will not discriminate on the grounds of race, color, national origin, sex (including pregnancy, gender identification and sexual orientation), age, or disability in the selection and retention of Sub-Contractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in paragraph 10 below, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- e. **Solicitations for Sub-Contractors, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a sub-Contractor, including procurements of materials, or leases of equipment, each potential sub-Contractor or supplier will be notified by the Contractor of the Contractor's obligations under this Agreement and the Acts and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.
- f. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Ohio Department of Transportation (hereinafter "ODOT") or FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor will so certify to ODOT or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- g. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Nondiscrimination provisions of this Agreement, ODOT will impose such Agreement sanctions as it or FHWA may determine to be appropriate, including, but not limited to:
  1. Withholding payments to the Contractor under the Agreement until the Contractor complies; and/or
  2. Cancelling, terminating, or suspending of the Agreement, in whole or in part.
- h. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through nine in every sub-Contractor, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any sub-

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Contractor or procurement as ODOT or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a Sub-Contractor, or supplier because of such direction, the Contractor may request ODOT to enter into any litigation to protect the interests of ODOT. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

During the performance of this contact, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor," which includes consultants) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

### **PERTINENT NON-DISCRIMINATION AUTHORITIES:**

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21
- b. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-Aid programs and projects)
- c. Federal-Aid Highway Act of 1973 (23 U.S.C. § 324 et seq.) (prohibits discrimination on the basis of sex), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), as amended (prohibits discrimination on the basis of disability) and 49 CFR Part 27
- d. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) (prohibits discrimination on the basis of age)
- e. Airport and Airway Improvement Act of 1982 (49 U.S.C. § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex)
- f. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of Federal-Aid recipients, sub-recipients, and Contractor's, whether such programs or activities are Federally funded or not)
- g. Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§ 12131-12189), as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38 (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities)
- h. The Federal Aviation Administration's Non-Discrimination Statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex)
- i. Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended (prohibits discrimination in the sale, rental, and financing of dwellings on the basis of race, color, religion, sex, national origin, disability, or familial status (presence of child under the age of 18 and pregnant women))
- j. Title IX of the Education Amendments Act of 1972, as amended (20 U.S.C. 1681 et seq.) (prohibits discrimination on the basis of sex in education programs or activities)
- k. Uniformed Services Employment and Reemployment Rights Act (USERRA) (38 U.S.C. 4301-4333) (prohibits discrimination on the basis of present, past or future military service).
- l. Genetic Information Nondiscrimination Act (GINA) (29 CFR Part 1635, 42 U.S.C. 2000ff)