

May 3, 2007

Dear Prospective Bidder:

You are invited to respond to a Request for Proposal (RFP) to the Ohio Board of Regents for the following:

RFP NUMBER 06-01  
Ohio College Access Portal (OhioCAP)  
DATE DUE: May 18, 2007  
TIME DUE: 12:00 PM Eastern Time

Proposal submissions MUST meet all general and specific terms and contain the following:

1. Cover Letter
2. Detailed response to RFP Statement of Work
3. Proposal Response Form

Proposals will be opened at 12:00 p.m. at which time the contents of each proposal will be verified. Specific instructions for RFP preparation and submission are in the attached Request for Proposal.

Your interest in providing services to the Regents is appreciated and we look forward to your response.

Sincerely,

Jonathan Tafel,  
Vice Chancellor for Academic Preparation and  
Educational Linkages

**TABLE OF CONTENTS**

SECTION 1. PROPOSAL SUBMISSION INSTRUCTIONS ..... 3

SECTION 2. CONTRACT TERMS AND CONDITIONS ..... 8

SECTION 3. REQUIRED PROPOSER INFORMATION..... 9

SECTION 4. STATEMENT OF WORK ..... 12

SECTION 5. EVALUATION CRITERIA ..... 23

SECTION 6. PROPOSAL RESPONSE FORM ..... 28

APPENDIX A. CONTRACT ..... 29

## **SECTION 1. PROPOSAL SUBMISSION INSTRUCTIONS**

**1.1 Cover Letter.** The proposer must include a cover letter in the form of a standard business letter that provides an executive summary of the solution the proposer plans to provide, and an individual authorized to legally bind the proposer must sign the letter. The letter also must include the following:

- a. A statement regarding the proposer's legal structure (e.g., an Ohio corporation), federal tax identification number, D-U-N-S number, and principal place of business;
- b. A list of the people who prepared the proposer's Proposal, including their titles;
- c. The name, phone number, fax number, email address, and mailing address of a contact person who has authority to answer questions regarding the Proposal;
- d. A list of all subcontractors, if any, that the proposer will use on the Project, if the Regents selects the proposer to do the work;
- e. For each proposed subcontractor, the proposer must attach a letter from the subcontractor, signed by someone authorized to legally bind the subcontractor, with the following included in the letter:
  1. The subcontractor's legal status, federal tax identification number, D-U-N-S number, and principal place of business address;
  2. The name, phone number, fax number, email address, and mailing address of a person who is authorized to legally bind the subcontractor to contractual obligations;
  3. A description of the work the subcontractor will do and the personnel they will provide;
  4. A commitment to do the work if the proposer is selected;
  5. A statement that the subcontractor has read and understood the RFP and will comply with the requirements of the RFP;
  6. A statement that the subcontractor will maintain any permits, licenses, and certifications required to perform its portion of the work;
- f. A statement that the proposer's proposed solution for the Project meets all the requirements of this RFP;
- g. A statement that the proposer has not taken any exception to the terms and conditions in this RFP;
- h. A statement that the proposer does not assume there will be an opportunity to negotiate any aspect of its Proposal;

- i. A statement that the proposer will comply with all federal and Ohio laws, rules, and regulations;
- j. A statement that the proposer is proposing a Contract Administrator who is a regular, fulltime employee of the proposer;
- k. A statement that the proposer's fulltime regular employees will perform at least 30% of the work on the Project;
- l. A statement that the proposer will not substitute, at Project start-up, personnel for those evaluated by the Regents, except when a candidate's unavailability is no fault of the proposer (e.g. Candidate is no longer employed by the Contractor, is deceased, etc.); and
- m. A statement that the proposer is not now subject to an "unresolved" finding for recovery under Revised Code Section 9.24 and that the proposer will notify the Regents anytime it becomes subject to such a finding before the award of a Contract arising out of this RFP.

**All proposers must submit a response that contains an affirmative statement using the language in paragraphs a through m above.**

- 1.2 Price:** The pricing format in Section 4. *Statement of Work* must be used to submit all information concerning costs for the proposed student information portal and related services, if any, and other relevant factors. Responders must provide separate pricing for each area listed. If a line is left blank, it will be considered a no-bid for that item.
- 1.3 Proposer Response to RFP:** Proposers(s) must address each item in Section 4. *Statement of Work*.
- 1.4 RFP Copies:** Bidder(s) shall submit the original and four (4) copies of complete RFP contents, including the Proposal Response Form (Section 6), in a sealed container. Proposers are also required to include an electronic version of the response, in a Portable Document File (PDF) format, contained on CD. In the event of a disagreement between the paper and electronic proposal, the paper proposal will control.
- 1.5 RFP Submission:** Proposals will be submitted to:

Dr. Jonathan Tafel  
Vice Chancellor for Academic Preparation and Educational  
Linkages  
30 East Broad Street, 36<sup>th</sup> Floor  
Columbus, Ohio 43215

The following information must be marked clearly on the sealed containers lower left corner as follows:

**RFP # 06-01**  
**Ohio College Access Portal (OhioCAP)**  
**Date Due: May 18, 2007**

- 1.6 Required Signatures:** The Proposal Response Form must be signed in ink by the proposer and/or agent legally authorized to bind the proposer to the proposal. The signature must be notarized.
- 1.7 Fax proposals:** Will not be accepted.
- 1.8 Proposal contents:** The proposal should contain only requested materials and information relevant to the OhioCAP. All proposals will become property of the Regents and will not be returned.
- 1.9 Proposer Costs:** The Regents are not liable for any costs incurred by proposers in preparation and presentation of the RFP.
- 1.10 Effective Period of Proposals:** Proposals submitted must remain in effect for a period of ninety (90) days after the closing date.
- 1.11 Minor Informalities:** The Regents reserve the right to waive minor informalities in proposals.
- 1.12 Proprietary/Confidential Information:** Subsequent to award, the complete contents of all proposals are placed in public domain and are available for inspection. **Any recognized proprietary information included in the bid that is protected by law will be withheld if clearly and properly marked by the vendor as proprietary/confidential information.**
- 1.13 Proposal Selection:** The Regents are not bound to accept the lowest priced proposal if not in their best interest. The selected proposal will be the most advantageous offer for the state determined by the evaluation process.
- 1.14 RFP Awards:** The Regents reserve the right to accept or reject any and all proposals, to make a partial award, or to make a multiple vendor award. The acceptance or rejection of any or all proposals and the making of an award or a partial award will be at the sole discretion of the Regents. The Regents reserve the right to request additional information.
- 1.15 Inquiries and Registration:** Prospective proposers are asked to register and signify their intent to respond within five business days of the release of this RFP by sending an e-mail message to [OhioCAP@regents.state.oh.us](mailto:OhioCAP@regents.state.oh.us). The message should contain the name of the proposer's organization as well as the name and e-mail address of a contact at that organization.

Prospective proposers may make written inquiries concerning this RFP to obtain clarification of requirements. Technical or RFP submission

questions should be submitted through e-mail to [OhioCAP@regents.state.oh.us](mailto:OhioCAP@regents.state.oh.us). Inquiries will be accepted only until 5:00 p.m. Eastern Time, May 11, 2007. Answers to submitted questions will be sent via e-mail to all registered proposers.

**1.16 Addenda:** Verbal and e-mail communications are for clarification purposes only. Written addendum will be issued for any changes in the proposal.

**1.17 Schedule of Events:** The following tentative timetable shall apply:

|              |  |
|--------------|--|
| May 3, 2007  | Issue RFP  |
| May 11, 2007 | End of inquiry period                                |
| May 18, 2007 | Proposals due not later than 12:00 p.m. Eastern Time |
| May 18, 2007 | Bid Opening 12:00 p.m.                               |
| May 22, 2007 | Web conferences with selected proposers              |
| May 25, 2007 | Execution of contract by vendor                      |

**1.18 Rejection of RFPs:** The Regents reserve the right to reject any or all proposals and to waive informalities and minor irregularities in proposals received and to accept any portion of a proposal or all items proposed if deemed in the best interest of the Regents. All proposals are subject to rejection for the following reasons:

- Proposals received after the closing
- Proposals not properly sealed
- Proposals with the bidder's affidavit not signed
- Proposals without a cover letter meeting the requirements of Section 1.1.
- Proposals with alterations not initialed by the authorized official
- Proposals not meeting all the terms and conditions
- Proposals not meeting technical specifications

**1.19 Modification or Withdrawal of Proposals:** Proposals may be modified or withdrawn, by the proposer, prior to the established due date and time.

**1.20 Pre-Award Presentations:** As part of the proposal evaluation process, the Regents may require presentations from the highest ranked respondent(s).

**1.21 Pre-Award Negotiations:** Prior to award, the Regents may elect to conduct negotiations with the highest ranked respondent(s) for purposes of:

- Resolving minor differences and informalities,
- Clarifying necessary details and responsibilities,
- Emphasizing important issues and points,
- Receiving assurances from respondents,
- Exploring ways to improve the final contract.

**1.22 Acceptance of RFP Terms:** A response to this RFP submitted by the proposer shall constitute a binding offer. Acknowledgement of this condition shall be indicated by the autograph signature of the proposer or an officer of the proposer legally authorized to execute contractual obligations. The proposer shall identify clearly and thoroughly any variation between its offer and the terms of this RFP. Failure to do so shall be deemed a waiver of any rights to subsequently modify the terms of performance.

**1.23 Acceptance of RFP Content:** The contents of the RFP of the successful proposer will become a contractual obligation if acquisition action ensues. Failure of the successful proposer to accept these obligations in a contract, purchase documents, delivery order or similar acquisition instrument may result in cancellation of the award and such vendor may be removed from future solicitations.

**1.24 Parent Company:** If a proposer is owned or controlled by a parent company, the parent company's name, main office address, and tax identification number shall be provided in the proposal.

**1.25 Taxes:** All proposals must be submitted exclusive of any tax, including federal or state taxes.

## **SECTION 2. CONTRACT TERMS AND CONDITIONS**

See Appendix A, for the agreement to be executed between the Regents and the successful proposer.

**IMPORTANT: The draft agreement should be examined closely prior to submitting a proposal. Only minor changes to the agreement will be considered. The Regents intend to move quickly to select a proposer. The successful proposer may be asked to sign the contract as soon as one week after submission of a response to this RFP.**

**SECTION 3. REQUIRED PROPOSER INFORMATION**

**3.1 Client References:** Respondents shall provide the names, phone numbers, and contacts for three clients for which similar projects have been completed within the last three years.

***Organization 1***

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Point of Contact

---

Mailing Address

---

Phone Number

---

Email Address

---

Description of Project

---

Term of Project

---

***Organization 2***

---

Point of Contact

---

Mailing Address

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Phone Number

---

Email Address

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Description of Project

---

Term of Project

---

**Organization 3**

---

Point of Contact

---

Mailing Address

---

Phone Number

---

Email Address

---

Description of Project

---

Term of Project

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- 3.2. Resumes:** Proposals shall include resumes of all key personnel anticipated to be assigned to the project, including a resume for the project manager indicating his/her experience unique to these types of projects. Details on experience with previous educational institutions or similar governmental clients should be included. Personnel anticipated to be assigned to the project shall be available for interview if required.
- 3.3. Conflict of Interest:** In the event there is a potential or actual conflict of interest, the vendor(s) shall provide full disclosure to the Regents. The Regents shall determine if the conflict, whether potential or actual, is material.

**3.5 Business Information:**

If contact individual for this proposal is different from the signature affixed to this offer so state:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**3.6.** Check ( ) if your firm is a subsidiary or affiliate of another company. If either, identify such by name and explain the relationship(s) between said companies.

Subsidiary \_\_\_\_\_ Affiliate \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**3.7.** State how long your firm (not parent company) has been in business.

## **SECTION 4. STATEMENT OF WORK**

Request for Proposals  
For  
*Ohio College Access Portal (OhioCAP)*

### **BACKGROUND**

**4.1 Agency Mission:** The mission of the Ohio Board of Regents is to:

- Advise the governor and the legislature on higher education policy, considering the needs of the people and the state and the role of public and private institutions in fulfilling these needs;
- Approve community college charters and recommends the establishment of state four-year institutions of higher education and new programs at existing institutions;
- Recommend spending on capital projects with a demonstrated need for campuses and the state;
- Recommend a distribution of appropriated funds to institutions, programs and student scholarships; and
- Build a sense of shared responsibility among all stakeholders to advocate support for and a deeper understanding of the value of higher education in Ohio.

**4.2 Project Vision:**

To create a single P-16 web site where students and parents can find the information they need to plan for and attend college in Ohio and information about the P-12 preparation necessary to ensure their success. Because the persistence rate from high school to college is lower in Ohio than the national average, the need for access to information to assist parents and their children in college planning from pre-school through high school graduation is very important. Ohio has an under-educated adult population which also poses a significant challenge. It is equally important that this older population have information about how to return to and obtain or complete a college degree.

Currently, this information, where it exists, is scattered across many web sites. Often these web sites contain general information about higher education options at institutions across the country, rather than specific information about higher education in Ohio. A one-stop portal is needed for the state's students, their parents and for the adult workforce that will provide easy access to information about all components of the educational processes related to attending, preparing for and succeeding at Ohio's colleges and universities.

In addition to information about planning, applying and paying for college, the OhioCAP is envisioned as a flexible system that—through a single sign-on—will accommodate the integration of services and content from other web sites while maintaining a consistent user experience.

#### **4.3 Vendor Expectations:**

The Regents invites submission of proposals from individual vendors or groups of vendors that can offer the software (**“technology platform”**) for the Ohio College Access Portal (OhioCAP) as well as the required **design and implementation services**.

Vendors may **optionally** offer services for the ongoing support and development of the portal as well as content for the portal or hosting of the proposed solution.

The vendor is **required** to have performed or be performing similar functions for another group or consortium of higher education organizations.

#### **4.4 Solution Expectations:** With the technology platform and services selected through this RFP, the Regents intend to create a web portal with the following capabilities:

- Web pages with information about attending college in Ohio
- Access to databases of related information, e.g. degree programs or scholarships
- Allow students to create portfolios with which they can track their preparedness for college, accumulate information for their college application, and retain links to OhioCAP resources
- Enable students to access tests that help them assess their academic readiness for college and to access related remedial courseware
- Permit students to share portfolio information with parents and advisors who wish to track their progress in preparing for college
- Integrate information from other web sites or web applications, e.g. a loan application form on another site, so that it appears to be an integral part of the OhioCAP site

#### **4.5 DESCRIPTION OF REQUIREMENTS**

##### **4.5.1 Mandatory requirements:** Only proposals that meet the following mandatory requirements will be considered for further evaluation:

- Evidence of past work for higher education – Vendor shall provide a URL for a current, valid, functional website which demonstrates that they have created or are creating a similar

portal for another group of higher education organizations. One or more of these groups of higher education organizations must be included in the proposers list of references.

**4.5.2 Technology Platform requirements:** Proposals must offer software capable of meeting the following requirements. Proposals must identify the name of the product(s) to be used in achieving each functional operation, and a description of how the function would be achieved:

- Centralized site – The proposed solution must create a centralized site with a URL chosen and registered by the Ohio Board of Regents: <http://www.ohiocap.org>.
- Single sign-on – Users must need to sign-on only once to access the site.
- Portfolios and accounts – The OhioCAP system must offer users the means of storing information about themselves as well as their preferences.
- Portfolio content – Portfolio users must be able to store information about themselves in a set of fields to be determined by the Regents.
- Sharing portfolio data – Students or adult portfolio users must be able to let others, e.g. parents, high school advisors, and postsecondary institution staff, view the contents of their portfolios. The portfolios must—as appropriate—allow for different views of the data for different audiences.
- Use of portfolio data – The OhioCAP must make it possible to exchange portfolio contents with other applications.
- Database-driven pages – The proposed solution must be capable of storing Regents-selected content, e.g. information on colleges, in a database and presenting the user with a search function for this content as well as dynamically generated pages based on those searches, stored user preferences, or browsing of database content.
- Integration with other systems and services – The OhioCAP must be capable of importing information from other ancillary services.
- Extensions through web services – The OhioCAP must also be capable of supporting integration with other external web systems through web services and of presenting this external information as an integral part of the site.

- Data management – A data management function module must be available 24/7, to enable colleges and universities to continuously update and/or modify data and information displayed about it on the system.
- System migration – The system must support the migration of the data and information developed and submitted by the Regents and its constituents to some other system(s) in the event of the termination of the contract.
- Content maintenance – The system must offer the capability for Regents designated users to update individual web pages or database contents.

**4.5.3 Security Requirements:** A security plan must be provided. This plan must include but not be limited to the following requirements:

- Describe security controls that the system will execute. Include only controls that will be implemented or are planned, rather than listing the controls that are available in the software.
- Describe any second/third party security software to be utilized in protecting the system.
- Describe how the system uniquely identifies and authenticates access to the system (e.g., user ID/password, token, biometrics).
- Describe any token controls used for the system and how they are implemented:
  - Are special hardware readers required?
  - Are users required to use a unique Personal Identification Number?
  - Does the token use a password generator to create a one-time password?
  - Is a challenge-response protocol used to create a one-time password?
  - Does the system allow for user to self-reset his or her password, such as through the use of a “secret” question and answer? If so, please describe the method
- Describe how the access control mechanism supports individual accountability and audit trails (e.g., passwords are associated with a user identifier that is assigned to a single individual).

- Describe the self-protection techniques for the user authentication mechanism (e.g., passwords are transmitted and stored with one-way encryption to prevent anyone [including the System Administrator] from reading the clear-text passwords, passwords are automatically generated, passwords are checked against a dictionary of disallowed passwords, passwords are encrypted while in transmission). Indicate if host-based authentication is used. (This is an access control approach that grants access based on the identity of the host originating the request, instead of the individual user requesting access.)
- List and provide the security-related documentation included for the application.
- Security training methods regarding the system's functionality must be included in this documentation. Training documentation must address the specific security controls of the system.
- Describe hardware and/or software features that are designed to permit only authorized access to or within the application, to restrict users to authorized transactions and functions, and/or to detect unauthorized activities (e.g., access control lists).
- Describe the application's capability to establish an Access Control List or register of the users and the types of access they are permitted. Indicate whether a manual Access Control List is maintained. Indicate if the security software allows application owners to restrict the access rights of other application users, the general support system administrator, or operators to the application programs, data, or files. Indicate if encryption is used to prevent unauthorized access to sensitive files as part of the system or application access control procedures.
- Describe how application users are restricted from accessing the operating system, other applications, or other system resources not needed in the performance of their duties.
- Describe controls to detect unauthorized transaction attempts by authorized and/or unauthorized users.
- Describe logical access controls that regulate how users may delegate access permissions or make copies of files or information accessible to other users. Indicate after what period of user inactivity the system automatically blanks associated display screens and/or after what period of user inactivity the system automatically disconnects inactive users

or requires the user to enter a unique password before reconnecting to the system or application.

- Describe any restrictions (if any) to prevent users from accessing the system or applications outside of normal work hours or on weekends.
- Describe any mechanisms to monitor consecutive failed access attempts (e.g. incorrect password). Explain what actions will be taken when a certain threshold of failed attempts is reached.
- Describe the audit trail mechanisms in place for the system. A list of items to consider is provided below: Does the audit trail support accountability by providing a trace of user actions? Can the audit trail support after-the-fact investigations of how, when, and why normal operations ceased? Are audit trails designed and implemented to record appropriate information that can assist in intrusion detection? Does the audit trail include sufficient information to establish what events occurred and who (or what) caused them? In general, an event record should specify: type of event; when the event occurred; user ID associated with the event; and program or command used to initiate the event.
- Describe the policies and procedures for ensuring the privacy of student information, including methods to assure that student data will not be used in ways not provided for in this RFP.
- Vendor should provide security certificates for the site to help ensure privacy.
- Vendor must provide details related to systems for data backups and restoration, including the feasibility for data backups using Ohio Board of Regents facilities or resources.

**4.5.4 Design Service Requirements:** The vendor, or their partner, is expected to support the migration of the existing OhioCAP content (<http://www.ohiocap.org>) to the proposed system as well as the redesign of that content if needed. Vendors must supply a design plan describing how they would work with Regents' staff to migrate this content and create the new site. This plan shall address but not be limited to the following issues:

- Browser compatibility – Website must run on modern W3C compliant browsers.

These include but are not limited to IE6 or higher for Windows, IE5 or higher for Macintosh, Netscape 7 or higher, Mozilla

Firefox, Galeon, Opera 7 or higher, Konqueror, Apple Safari, etc. The website (including plug-ins) must be built with industry standard languages / constructs and allow for maintenance using readily available tools. Details of these tools, languages, and constructs must be provided in the proposal.

- Ease of Use – The site must be designed to be user friendly for traditional and non-traditional prospective students, including for students whose first language is not English.
- Accessibility – OhioCAP must be accessible to persons with disabilities, and fully compliant with the technical standards and functional performance criteria of Ohio’s Revised Code or other relevant federal statutes.
- Strategies to be employed to help promote the site and its features to the intended audiences, including meta-tagging for improved results and other search engine optimization strategies
- Requirements for the time and assistance of Regents’ staff who will need to work with the vendor, including the skills required from this staff

The responses to requirements in sections 4.5.2, 4.5.3 and 4.5.4 must include examples of prior experience with similar projects and samples of previous work and/or references to operational web sites that demonstrate the functionality described in this narrative.

**4.5.5 System Implementation Requirements:**

- The system must be capable of running on an Intel-based server with a Linux operating system.
- If the system requires an external DBMS, it must be support the use of Oracle’s DBMS.
- The proposal must describe how the proposed solution will be implemented. It must include
  - a general description of the principal system components, including hardware, software, and communications resources, and any major required components external to the system, e.g. a DBMS.
  - a work plan that identifies the deliverable for each functionality requested.

- Processes to be employed to assure that the system and its functions adequately meet the needs of the Ohio Board of Regents and its constituents, including procedures for adapting existing products, reports, or modules.
- An architectural diagram of the application including defining interfaces to other systems.
- Discussion of the vendor's past and current association with known standards setting bodies and experience in implementing new technologies.
- A listing of all standard reports generated by the system. This listing must include all data items tracked and stored. Reports must include meaningful in-depth analysis of web-site traffic including event sequences, navigational path data and active browser viewing analysis for key pages.
- An implementation schedule that describes the proposed solution to implement the following project milestones:
  - Test Environment established
  - Software loaded and tested
  - Training/User Acceptance Testing
  - Security Audit
  - Migration of content to system
  - Public access within the 2007-08 school-year
- A list of any additional resources (such as hardware, software, or personnel) to be provided by the Ohio Board of Regents related to the deliverables and accomplishment of milestones.
- A test and acceptance methodology, including but not limited to testing of software functionality, usability within the target audiences, and accessibility. Regents may accept any and all of this test methodology in the performance of the acceptance of the system.
- Clear and articulated processes for:
  - resolving complaints or concerns of the Regents or its constituents.

- reviewing and implementing fixes, upgrades, and system enhancements during the initial implementation.

The description of the processes must include standards for response times and implementation of requested changes and enhancements, and the actions or disincentives that would result if those standards are not met. The description must also include details related to when prorated payments or rebates would be applied in the case of extended system down time, and their amounts.

- Details related to expectations of and provisions for maintenance, updates, and/or modifications of the system by the Ohio Board of Regents and/or its constituents.
- A list of all subcontractors to be involved in the project, information regarding each, and their responsibilities.

**4.5.6 Maintenance:** The vendor is expected to provide maintenance and support for the system and provide software upgrades at no additional cost to Regents for the initial 6 month period after acceptance of the System. Proposals must fully describe how support services will be provided, including commitment to timely response and resolution of problems or issues, multiple methods for communicating problems or questions, and the qualifications and expertise of support service staff. The response should include hours of support and optional after hours support costs, if applicable.

**4.5.7 Optional Hosting Services:** The vendor may optionally propose to host the system. Any such proposals must address the following issues:

- The location of the computer facilities at which the system would be hosted and the capabilities of those sites which are designed to ensure continued operation of the system in the event of loss of power, hardware failure or disruption of telecommunications facilities.
- Security features of the hosting site
- Schedule for the backup of the site.
- The bandwidth and type of telecommunications connection between the hosting facility and the Internet.

- Provide a detailed logical topology map of the connection(s) that a user would traverse while accessing the system, and show the kinds of protection in place, including details such as hardware/software, and firewall/proxy.
- An outline of procedures or feasibility for future transfer to a self-hosted solution.
- Historical data on the uptime and availability of the vendor's other hosted systems.

**4.5.8 Optional Content:** The vendor may optionally propose to offer additional content for OhioCAP. This is content that helps students or their parents make better informed decisions about planning for and attending college in Ohio. Example content modules could include but are not restricted to the following:

- A career advising module that helps students choose a college based on an assessment of their interests, an examination of information about careers aligned with their interests, and the ability to find colleges at which they can take the degree necessary for their desired career.
- A tutorial and practice module that helps prospective students improve their basic educational skills in preparation for taking major standardized qualification tests such as the OGT, ACT, PSAT, SAT, GMAT and GRE. Sample tests for both the ACT and SAT. Diagnostic tutorials and tests to enhance each student's educational skills and test taking abilities.
- A financial planning function module that enables prospective students to calculate the anticipated cost of postsecondary institution attendance and expected family contributions and provide financial aid options for which the prospective student may be eligible.
- A complete scholarship database, including institutional aid awards as well as private aid awards.
- A database of information on higher education institutions with information about student aid, college and university catalogs and on-line applications that will help facilitate the selection of institutions corresponding to the student's preferences and skills.

#### 4.6. PRICE PROPOSAL

Regents are seeking a modular price for the system. The format below must be used to describe the prices for the system. A separate price must be given for the Technology Platform, Design and Implementation Services and Maintenance Services. If the vendor wishes to propose additional optional services, these must be listed separately from the cost of the required technology platform, design and implementation services.

**IMPORTANT: Proposers are not required to offer any of the optional services, and optional services will not be part of the evaluation process. The costs of optional services and should be listed separately and accompanied by the cost of the optional service. If Regents contract with a vendor who has supplied optional services, Regents may choose to add those optional services after the portal is fully developed. The contract may be amended to include those services at an appropriate time.**

#### PRICE PROPOSAL WORKSHEET

| <b>Project Category</b>                  | <b>Price</b> |
|--|--------------|
| Technology Platform ("Software")         |              |
| One-time cost                            |              |
| Design & Implementation                  |              |
| One-time Design and Implementation Costs |              |
| Maintenance                              |              |
| Year 1                                   |              |
| Year 2                                   |              |
| Year 3                                   |              |
| <b>Total Price: \$</b>                   |              |
| <b>Optional Services</b>                 |              |
| <b>**Support and Development</b>         |              |
| <b>**Content</b>                         |              |
| <b>**Hosting</b>                         |              |

Note: (15% Retainage required for final project completion to our satisfaction)

**\*\* Proposers may propose any combination of optional hosting, content or design services.**

## **SECTION 5. EVALUATION CRITERIA**

**5.1 Overview:** A comprehensive, fair, and impartial evaluation of proposals received in response to this RFP will be conducted. An evaluation team representing the Regents and its constituents will evaluate the merit of proposals received in accordance with criteria outlined in this section. Any proposer who does not meet the requirements, or is unable to demonstrate sufficient experience and qualifications may be disqualified. The Regents reserve the right to reject any and/or all proposals.

The evaluation will be conducted in the following areas:

### **Area I**

- Evaluation of Technical Proposals for Mandatory Requirements – Section 4.5.1
- Identification of proposers that meet the mandatory requirements
- Proposers that do not receive a pass rating in Area I will not be considered for further evaluation

### **Area II**

- Evaluation of Technical Proposals for additional requirements in Section 4, sub-sections 4.5.2 to 4.5.6, of the RFP – **600 maximum points**
- Identification of proposers that meet the requirements of Area II
- Proposers that do not receive at least an overall **360** point score (60% of available points) in Area II will not be considered for further evaluation
- Web conference presentations with Proposers with overall **360** point score in Area II, if needed

### **Area III**

- Evaluation of Price Proposals – **400 maximum points**

**5.2 Administrative Review of Proposals:** Each proposal will be reviewed to determine if it is complete and whether it complies with the requirements and instructions to Proposers listed in this RFP. Each proposal that is incomplete or does not meet the administrative requirements may be declared non-responsive and may be rejected with no further evaluation.

**5.3 Overall Evaluation of Technical Proposal:** An evaluation committee comprised of Regents staff and constituents will assess the merit of the Technical Proposal. The Regents staff will review the responses to the RFP for Form, Content, and Compliance with the criteria listed herein. Each proposal will be evaluated to determine if it complies with the requirements set forth in this RFP. Incompleteness or significant inconsistencies or inaccuracies in the Technical Proposal will result in a reduction of the evaluation rating. The Regents reserves the right to:

- (a) waive variances or reject any or all proposals and
- (b) request clarifications from proposers.

**5.4 Evaluation of Technical Proposal**

**5.4.1 Evaluation Area I – Mandatory Requirements:** In Area I, Technical Proposals will be evaluated by consensus using the adjectival method for the mandatory requirements in RFP. Acceptable responses are those proposals demonstrating acceptable compliance to the mandatory requirement(s). If at any time during the Evaluation Process (including after the initial review), a proposer’s proposal is determined to have failed to meet one or more Mandatory requirement, such proposal may be disqualified and removed from further evaluation.

**5.4.2 Evaluation Area II – Requirements:** The Regents Evaluation Committee will conduct further evaluation of the responses that have met the Mandatory Requirements. The highest point technical score a proposer can be awarded is **600** points as listed in the categories below. A proposer’s ability to provide the services requested in this RFP will be evaluated, based on the **quality** of the proposer’s response to criteria within each of the following categories:

| <b><u>Criteria</u></b>                        | <b><u>Points</u></b> |
|---|----------------------|
| Technology Platform and Security Requirements | 300                  |
| Design and Implementation Requirements        | 200                  |
| Other   | 100                  |
| Warranty                                      |                      |
| License                                       |                      |
| References                                    |                      |
| Total Technical                               | 600                  |

The evaluation committee will score the responses on a consensus basis to give each scored proposal an overall technical score.

**5.4.3 Clarification Process:** Written communications and clarifications are not required, may not occur, and are not intended to substitute for a well-written Proposal. All proposers' responses to written communications and clarifications must be submitted in writing. Regents prefer the responses to be submitted via e-mail. At the conclusion of the clarification process, proposer will be required to provide a hard copy cover letter signed by a representative authorized to bind the proposer, certifying that their written responses:

- 1) are binding on the proposer;
- 2) are incorporated into and become part of responsive proposer's proposal; and
- 3) can be relied upon by the evaluation committee and the Regents.

Do you have a process for responding to questions raised by the vendors? I recommend adding a process where by the questions may be submitted via email for a short time period – 5 days and the questions –w/out attribution to the author plus the answers will be responded to and all responders will receive the questions and the answers.

**5.4.4 Web Presentations (Optional):** After the preliminary technical evaluation, Proposers with an overall technical score of least **360** points (*60% of maximum points*) may be requested to make a web conference presentation regarding their Proposals on May 22, at a time to be determined by the Regents.

The purpose of such presentations will be to allow qualifying Responsive proposers to explain and demonstrate their proposed solution and equipment, and key points of their Proposal. Additionally, proposers may be asked questions in order to provide a better understanding of how the responsive proposer's proposed solution will meet the requirements of the RFP. It is critical that proposers bring staff familiar with the detailed contents and solutions presented within responsive proposer's proposal in order to maximize the productivity of the oral presentation sessions. Presentations are not required, may not occur, and are not substitutes for a well-written proposal. Any such presentations and/or interviews will not increase a proposer's technical score. The technical score may be reduced by the evaluation committee based on information gained in the oral presentation of the proposer's proposed solution.

**5.5 Evaluation of Price Proposal - Area III:** Pricing proposals will be eligible for a **maximum of 400 points**. The price proposal schedules will be analyzed to arrive at an overall score. (Note that modularity of price

proposals as required in section 4.6 is essential to an objective comparison of the different proposals. If a proposal is insufficiently itemized, the Regents reserves the right to request an itemization or to reject the proposal out-of-hand.)

**5.6 Overall Proposal Evaluation:** Prorated technical proposal scores and price proposal scores of all proposals not disqualified during the evaluation process will be combined to determine the apparent successful proposer(s).

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

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

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

**5.8 Selection of Successful Proposer and Contract Award:** A qualifying proposer, who, in the consensus of the Evaluation Committee and the Regents represents the “Best Value” to the Regents, will be chosen to provide this service for Regents. The Regents reserve the right not to disclose whether it is conducting concurrent discussion with the apparently successful proposer and the next highest ranked proposer. Regents reserves the right not to identify whether a proposer is an apparent successful proposer or the next qualifying proposer.

**5.9 Controlling Board**

Award of the contract to develop the OhioCAP will be contingent upon approval by the State of Ohio Controlling Board.

**SECTION 6. PROPOSAL RESPONSE FORM**

**DATE** \_\_\_\_\_

**Proposal of :** \_\_\_\_\_, (herein after called **Proposer**), a **Corporation/Partnership/an Individual doing business as** \_\_\_\_\_.

**TO: The Ohio Board Regents (hereinafter called the Owner).**

To whom it may concern:

The proposer, in compliance with your Request for Proposals for the OhioCAP, having examined the RFP and Statement of Work with related documents and being familiar with all of the conditions surrounding the work, hereby agree to perform the work required by the project in accordance with the contract documents, within the time agreed upon, and at the price stated hereafter. These prices are to cover all expenses incurred in performing the work required by the contract documents, of which this proposal is a part.

Proposer acknowledges receipt of the following addenda in the event subsequently issued.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Submitted by:**

\_\_\_\_\_

**Firm** \_\_\_\_\_ **FEI/SSN** \_\_\_\_\_

\_\_\_\_\_

**Signature** \_\_\_\_\_ **Typed Name & Title** \_\_\_\_\_

\_\_\_\_\_

**Address** \_\_\_\_\_ **City, State, Zip Code** \_\_\_\_\_

\_\_\_\_\_

**Telephone** \_\_\_\_\_ **FAX Number** \_\_\_\_\_

**APPENDIX A. CONTRACT**

**CONTRACT BY AND BETWEEN THE  
STATE OF OHIO, OHIO BOARD OF REGENTS AND**

---

**THIS CONTRACT** is between the Ohio Board of Regents (hereinafter referred to as "Regents") a governmental body established by the Ohio General Assembly pursuant to Ohio Revised Code §3333.02, located at 30 East Broad Street, 36<sup>th</sup> Floor, Columbus, OH 43215, and \_\_\_\_\_ (the "Contractor"), located at \_\_\_\_\_.

WHEREAS, Regents serves as the coordinating body for higher education in the State of Ohio; and

WHEREAS, Regent desires to secure the services of a CONTRACTOR to assist Regents with the development of the Ohio College Access Portal ("OhioCAP"); and

WHEREAS, Regents is authorized to enter into contracts with consultants to discharge the board's duties pursuant to Ohio Revised Code §3333.044; and

WHEREAS, CONTRACTOR is authorized to transact business in the State of Ohio, is engaged in the business of consulting, and is prepared to provide these services to Regents in accordance with the terms set forth hereinafter; and

WHEREAS, the services required by Regents are essential to the mission and duties of the Ohio Board of Regents.

**NOW THEREFORE**, in consideration of the mutual covenants and promises set forth herein and for other good and valuable consideration, Regents and CONTRACTOR (individually, a "Party"; collectively the "Parties") hereby agree as follows:

**Article I: Statement of Work.** Exhibit I, which is attached hereto and made fully a part of this Contract as if fully written herein describes the work (the "Project") the Contractor will complete and any materials the Contractor will deliver (the "Deliverables") under this Contract. CONTRACTOR shall primarily work with *Dr. Bob Bowers, Executive Assistant to the Chancellor*, for the Ohio Board of Regents who shall be the Project Representative for this Contract.

**Article II: Term.** The Contract begins on the date upon which all parties have executed this Contract. Unless this Contract is terminated or expires without renewal, it will remain in effect until the Project is completed to the satisfaction of Regents and the Contractor is paid.

The current General Assembly cannot commit a future General Assembly to an expenditure. Therefore, this Contract will automatically expire at the end of the current biennium, which is June 30, 2007. Regents may renew this Contract in the next biennium by issuing written notice to the Contractor of the decision. This expiration and renewal procedure will also apply to the end of any subsequent biennium during which the Project continues.

**Article III: Compensation.** In consideration of the Contractor's promises and satisfactory performance, Regents will pay the Contractor the amount(s) identified in Exhibit I (the "Fee"), plus any other expenses identified as proper and necessary reimbursements in Exhibit I.

In no event will payments under this Contract exceed the amount specified in Exhibit I without the prior, written approval of Regents and, when required, the Ohio Controlling Board and any other source of funding.

The Contractor's right to the Fee is contingent on the complete and satisfactory performance of the Project, or, in the case of milestone payments or periodic payments of an hourly, daily, weekly, monthly or annual rate, all relevant parts of the Project tied to the applicable milestone or period to which the payment is tied.

Payment of the Fee is also contingent on the Contractor delivering a proper invoice and any other documents required by Exhibit I. An invoice must comply with Regents' current policies regarding invoices and their submission. (Attached hereto as Exhibit II.) Regents will notify the Contractor in writing within 15 days after it receives a defective invoice of any defect and provide the information necessary to correct the defect.

CONTRACTOR shall submit a completed W-9 form, if needed, to Regents prior to performing any work hereunder. Regents shall not be obligated to compensate CONTRACTOR for any work performed hereunder if CONTRACTOR has not provided Regents with a completed W-9 form.

**Article IV: Reimbursable Expenses.** Regents will pay all reimbursable expenses identified in Exhibit I, if any, in accordance with section 126.31 of the Ohio Revised Code (the "Code"). The Contractor will assume all expenses that it incurs in the performance of this Contract that are not identified in Exhibit I.

**Article V: Certification of Funds.** None of the rights, duties or obligations in this Contract will be binding on Regents, and the Contractor will not begin its performance, until all the following conditions have been met: (a) all statutory provisions under the Code, including section 126.07, have been met; (b) all necessary funds are made available the appropriate state agencies; (c) if required, approval of this Contract is given by the Controlling Board of Ohio; and (d) in the event that Regents are relying on federal or third-party funds for this Contract, Regents provide the Contractor with written notice that such funds have been made available.

**Article VI: Employment Taxes.** Each party will be solely responsible for reporting, withholding and/or paying all employment related taxes, payments and/or withholdings for its own personnel, including, but not limited to federal, state and local income taxes, social security, unemployment or disability deductions, withholdings and/or payments (together with any interest and penalties not disputed with the appropriate taxing authority).

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

**Article VIII: Assignment, Transfer and Subcontracting.** Only the Contractor will perform the Project, and the Contractor will not enter into subcontracts for the Project without written approval from Regents. The contract shall not be assigned or transferred, in whole or in part, without the prior written approval of the Regents. The Contractor will not need Regents' written approval to subcontract for the purchase of commercial goods that are required for satisfactory completion of the Project. All subcontracts will be at the sole expense of the Contractor unless expressly stated otherwise in Exhibit I.

**Article IX: Equal Employment Opportunity.** While undertaking all work required to complete the Project, the Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age or Vietnam-era veteran status ("Protected Status").

The Contractor agrees to post notices with the provisions of this section in conspicuous places available to employees and applicants and to state in all solicitations and advertisements for employees that it is an equal opportunity employer.

**Article X: Insurance.** The Contractor will provide the following insurance coverage at its own expense throughout the term of this Contract:

- (a) Workers' compensation insurance, as required by Ohio law, and, if some of the Project will be done outside Ohio, the laws of the appropriate state(s) where work on the Project will be done. The Contractor will also maintain employer's liability insurance with at least a \$1,000,000.00 limit.
- (b) Personal injury, bodily injury, and property damage liability insurance, including automobile coverage, with personal injury and bodily injury of not less than \$1,000,000.00 combined single limit, and property damage of at least \$500,000.00 for any one occurrence.

The Contractor will also furnish a certificate of insurance to Regents for the required coverage evidencing insurance from an insurance carrier, or carriers, authorized to do business in Ohio. The certificate must be in a form that describes the contents of the policies and the quality of the insurance carriers and is satisfactory to Regents. The Contractor shall agree to:

- (a) Provide 30 day's advance notice in writing to Regents before cancellation.
- (b) Have an endorsement providing that the insurance is primary insurance and over any coverage held by Regents.
- (c) List Regents as an additional insured.

**Article XI: Termination for Cause.** Regents may terminate this Contract if the Contractor defaults in meeting its obligations under this Contract and fails to cure its default within the time allowed by this Contract, or if a petition in bankruptcy (or similar proceeding) has been filed by or against the Contractor.

Regents may also terminate this Contract in the event that the Contractor violates any law or regulation in completing the required hereunder or if it appears to Regents that the Contractor's performance is substantially endangered through no fault of Regents.

In any such case, the termination will be for cause, and Regent's rights and remedies will be those identified below for termination for cause.

**Article XII: Cure Period.** Upon written notice tendered by Regents, the Contractor will have 30 days cure any breach of its obligations under this Contract, provided the breach is curable. If the Contractor fails to cure the breach within 30 days after receiving such written notice or if the breach is not one that is curable, Regents will have the right to terminate this Contract.

Regents may choose to terminate this Contract in the case of breaches that are cured within 30 days but are persistent. "Persistent" in this context means that Regents has notified the Contractor in writing of the Contractor's failure to meet any of its obligations three times. After the third notice, Regents may terminate this Contract without a cure period if the Contractor again fails to meet any obligation. The three notices need not relate to the same obligation or type of failure. Some provisions of this Contract may provide for a shorter cure period than 30 days or for no cure period at all. Those specific cure provisions will prevail over this clause. If a particular section does not state what the cure period will be, this provision will govern.

**Article XIII: Termination for Convenience of Regents.** Regents may also terminate this Contract for its convenience and without cause or if the Ohio General Assembly fails to appropriate funds for any part of the Project. If a third party is providing funding for the Project, Regents may also terminate this Contract should that third party fail to release any Project funds. Exhibit I identifies any third party source of funds for the Project.

If the termination is for the convenience of Regents, the Contractor will be entitled to compensation for any work on the Project that the Contractor has performed before the termination. Such compensation will be the Contractor's exclusive remedy in the case of termination for convenience and will be

available to the Contractor only once the Contractor has submitted a proper invoice for such, with the invoice reflecting the amount determined by Regents to be owing to the Contractor. Regents will make that determination based on the lesser of the percentage of the Project completed or the hours of work performed in relation to the estimated total hours required to perform the entire Project.

**Article XIV: Notice of Termination.** The notice of termination, whether for cause or without cause, will be effective as soon as the Contractor receives it. Upon receipt of the notice of termination, the Contractor will immediately cease all work on the Project and take all steps necessary to minimize any costs the Contractor will incur related to this Contract. The Contractor will also immediately prepare a report and deliver it to Regents. The report must detail the work completed at the date of termination, the percentage of the Project's completion, any costs incurred in the doing the Project to that date, and any Deliverables completed or partially completed but not delivered to Regents at the time of termination.

The Contractor will also deliver all the completed and partially completed Deliverables to Regents with its report. But, if delivery in that manner would not be in Regents' interest, then the Contractor will propose a suitable alternative form of delivery.

**Article XV: Cover.** If Regents terminates this Contract for cause, it will be entitled to cover for the Project by using another Contractor on such commercially reasonable terms as it and the covering contractor may agree. The Contractor will be liable to Regents for all costs related to covering for the Project to the extent that such costs, when combined with payments already made to the Contractor for the Project before termination, exceed the costs that the State would have incurred under this Contract. The Contractor will also be liable for any other direct damages resulting from its breach of this Contract or other action leading to termination for cause.

**Article XVI: Excusable Delay.** Neither party will be liable for any delay in its performance that arises from causes beyond its control and without its negligence or fault. The delayed party will notify the other promptly of any material delay in performance and will specify in writing the proposed revised performance date as soon as practicable after notice of delay. In the event of any such excusable delay, the date of performance or of delivery will be extended for a period equal to the time lost by reason of the excusable delay. The delayed party must also describe the cause of the delay and what steps it is taking to remove the cause.

The delayed party may not rely on a claim of excusable delay to avoid liability for a delay if the delayed party has not take commercially reasonable steps to mitigate or avoid the delay. Work that is controllable by the Contractor's subcontractors will be considered controllable by the Contractor, except for third-party manufacturers supplying commercial items and over whom Contractor has no legal control.

**Article XVII: Independent Status of the Contractor.** The parties will be acting as independent contractors. The partners, employees, officers, and

agents ("Personnel") of one party, in the performance of this Contract, will act only in the capacity of representatives of that party and not as Personnel of the other party and will not be deemed for any purpose to be Personnel of the other. Each party assumes full responsibility for the actions of its Personnel while they are performing services pursuant to this Contract and will be solely responsible for paying its Personnel (including withholding of and/or paying income taxes and social security, workers' compensation, disability benefits and the like). Neither party will commit, nor be authorized to commit, the other party in any manner. The Contractor's subcontractors will be considered the agents of the Contractor for purposes of this Contract.

**Article XVIII: Ownership of Deliverables.**

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

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

C. Subject to the limitations and obligations of the Regents with respect to Pre-existing Materials, the Regents may make all custom Deliverables available to the general public without any proprietary notices of any kind.

**Article XIX: License in Commercial Material.**

A. As used in this section, "Commercial Material" means anything that the Contractor or a third party has developed at private expense, is

commercially available in the marketplace, subject to intellectual property rights, and readily copied through duplication on magnetic media, paper, or other media. Examples include written reports, books, pictures, videos, movies, computer programs, and computer source code and documentation.

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

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

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

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

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

- (1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any State installation to which such computer or computers may be transferred;
- (2) Used or copied for use in or with a backup computer for disaster recovery and disaster recovery testing purposes or if any computer for which it was acquired is inoperative;
- (3) Reproduced for safekeeping (archives) or backup purposes;
- (4) Modified, adapted, or combined with other computer software, but the modified, combined, or adapted portions of the derivative software incorporating any of the Commercial Software will be subject to same restrictions set forth in this Contract;

- (5) Disclosed to and reproduced for use on behalf of the Regents by support service contractors or their subcontractors, subject to the same restrictions set forth in this Contract; and
- (6) Used or copied for use in or transferred to a replacement computer.

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

**Article XX:General Warranties**

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

B. Additionally, with respect to the Contractor's activities under this Contract, the Contractor warrants that: (1) the Contractor has the right to enter into this Contract; (2) the Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform the contemplated services; (3) the Contractor will observe and abide by all applicable laws and regulations, including those of the Regents regarding conduct on any premises under the Regents' control; (4) the Contractor has good and marketable title to any goods delivered under this Contract and in which title passes to the Regents; (5) all hardware, software, firmware, and similar devices and materials provided under this Contract will be designed to operate without regard to the turning of a century and process dates in a manner that takes into account dates occurring before and after the turning of a century; (6) the Contractor has the right and ability to grant the license granted in any Deliverable in which title does not pass to the Regents; and (7) the Contractor is not subject to any unresolved findings of the Auditor of State under Revised Code §9.24 and will not become subject to an unresolved finding that prevents the extension or renewal of this Contract.

C. The warranties regarding material defects, merchantability, and fitness are one-year warranties. All other warranties will be continuing warranties. If any portion of the Project fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor must correct such failure with all due speed or must refund the amount of the compensation paid for such portion of the Project. The Contractor also must indemnify the Regents for any direct damages and claims by third parties based on a breach of these warranties. This obligation of indemnification will not apply where the Regents has modified or misused the Deliverable and the claim is based on the

modification or misuse. The Regents will give the Contractor notice of any such claim as soon as reasonably practicable. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor must do one of the following things: (1) modify the Deliverable so that it is no longer infringing; (2) replace the Deliverable with an equivalent or better item; (3) acquire the right for the Regents to use the infringing Deliverable as it was intended for the Regents to use under this Contract; or (4) remove the Deliverable and refund the amount the Regents paid for the Deliverable and the amount of any other Deliverable or item that requires the availability of the infringing Deliverable for it to be useful to the Regents.

**Article XXI: Software Warranty.**

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

B. For Commercial Software licensed from a third party that is incorporated into a Deliverable, the Contractor represents and warrants that it has done one of the following things: (a) obtained the right from the third-party licensor to commit to the warranties and maintenance obligations in this Section; (b) obtained a binding commitment from the licensor to make those warranties and maintenance obligations directly to the Regents; or (c) fully disclosed in the RFP Documents any discrepancies between the requirements of this section and the commitment the third-party licensor has made.

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

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

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

**Article XXII: Equipment Warranty.**

A. If any electrical equipment, mechanical device, computer hardware, telecommunications hardware, or other type of physical machinery ("Equipment") will be a part of any Deliverable, the following warranties apply. The Contractor warrants that the Equipment fully complies with all government environmental and safety standards applicable to the Equipment. The Contractor also warrants for one year from the acceptance date of the Equipment that the Equipment will perform substantially in accordance with specifications described in the RFP Documents, the user manuals, technical materials, and related writings published by the manufacturer for the Equipment. The foregoing warranties will not apply to Equipment that is modified or damaged after title passes to the Regents.

B. The Contractor must notify the Regents in writing immediately upon the discovery of any breach of the warranties given above.

C. The Contractor must do the following if any Equipment does not meet the above warranties:

- (1) Cause the Equipment to perform as required, or, if that is not commercially practicable, then;
- (2) Grant the Regents a refund equal to the amount the Regents paid for the Equipment or, if such has not been individually priced, the manufacturer's suggested retail price for the Equipment.

D. Except where the Contractor's breach of a warranty makes it not possible for the Regents to do so, the Regents will return the affected Equipment to the Contractor in the case of a refund under the previous paragraph.

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

**Article XXIV: Software Maintenance.**

A, If this Contract involves software as a Deliverable, then, during the warranty period, the Contractor must correct any material programming errors that are attributable to the Contractor within a reasonable period of time. But the Regents must notify the Contractor, either orally or in writing, of a problem with the software and provide sufficient information for the Contractor to identify the problem.

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

C. For software classified as Commercial Software in the Ownership of Deliverables section and for which the Regents has not signed a separate license agreement, the Contractor must acquire for the Regents the right to maintenance for one year. That maintenance must be the third-party licensor's standard maintenance program, but at a minimum, that maintenance program must include all, updates, patches, and fixes to the software. It also must include a commitment to keep the software current with the operating environment in which it is designed to function (and, if applicable, the subject matter covered by the software) and to correct material defects in the software in a timely fashion. Additionally, the Contractor must obtain a commitment from the licensor to make maintenance available for the product for at least four years after the first year of maintenance. The Contractor also must obtain a commitment from the licensor to limit increases in the annual Fee for maintenance to no more than 7% annually. If the licensor is unable to provide maintenance during that five-year period, then the licensor must be committed to doing one of the following two things: (a) give the Regents a *pro rata* refund of the license fee based on a five-year useful life; or (b) release the source code for the software (except third party software) to the Regents for use by the Regents solely for the purpose of maintaining the copy(ies) of the software for which the Regents has a proper license. For purposes of receiving the source code, the Regents agrees to treat it as confidential and to be obligated to the requirements under the Confidentiality section of this Contract with respect to

the source code. That is, with respect to the source code that the Regents gets under this section, the Regents will do all the things that the Confidentiality section requires the Contractor to do in handling the Regents' Confidential Information.

**Article XXV: Equipment Maintenance.**

A. If this Contract involves Equipment as a Deliverable, then, upon Equipment delivery and for 12 months after acceptance, the Contractor must provide Equipment maintenance to keep the Equipment in or restore the Equipment to good working order. This maintenance must include preventative and remedial maintenance, installation of safety changes, and installation of engineering changes based upon the specific needs of the individual item of Equipment. This maintenance must include the repair, replacement, or exchange deemed necessary to keep the Equipment in good working order. For purposes of this Contract, Equipment restored to good working order means Equipment that performs in accordance with the manufacturer's published specifications and the RFP Documents.

B. The Contractor must exert commercially reasonable efforts to perform all fault isolation and problem determination attributed to the Equipment covered under this Contract.

C. The following services are outside the scope of this Contract:

1. . Maintenance to bring the Equipment into compliance with any law, rule, or regulation if such law, rule, or regulation was not in effect on the acceptance date.
2. . Repair and replacement work or increase in maintenance time as a result of damage or loss resulting from casualty or the Regents' misuse of the Equipment, damage resulting from improper packing or failure to follow prescribed shipping instructions (if such is done by the Regents), failure of electrical power, air conditioning or humidity control, use of supplies not approved by the original manufacturer of the Equipment as described or included in the Contractor's Proposal, or causes other than ordinary use of the Equipment.
- 3.. Furnishing platens, supplies, or accessories, making specification changes, or adding or removing approved accessories, attachments, or other devices.
4. Maintenance or any increase in maintenance time resulting from any maintenance or inappropriate connection to other equipment (not done by the Contractor) that results in damage to the Equipment.
5. Activities required to restore the Equipment to good operating condition if the problem has resulted from someone other than

Contractor's authorized service personnel repairing, modifying, or performing any maintenance service on the Equipment.

**Article XXVI: Equipment Maintenance Standards.** This section applies if software or Equipment will be a Deliverable under this Contract.

A. The Contractor must complete all remedial Equipment maintenance within eight business hours after notification by the Regents that maintenance is required. In the case of preventative maintenance, the Contractor must perform such in accordance with the manufacturer's published schedule and specifications. If maintenance is not completed or substitute equipment provided within eight hours after notification by the Regents, the Contractor will be in default.

B. All maintenance also must meet any standards contained in the RFP Documents. Failure of the Contractor to meet or maintain these requirements will provide the Regents with the same rights and remedies specified elsewhere in the RFP Documents for default, except that the Contractor will only have eight hours to remedy the default.

C. The Contractor must provide adequate staff to provide the maintenance required by this Contract.

**Article XXVII: Equipment Maintenance Continuity.** This section applies if Equipment will be a Deliverable under this Contract.

A. If the Contractor is unable to provide maintenance services to meet the Regents' ongoing performance requirements for Equipment delivered under this Contract, and if, in the Regents' sole opinion, the Contractor is unlikely to resume providing warranty services that meet the Regents' ongoing performance requirement, the Contractor will be in default. The Regents then will be entitled to the remedies in the default section of this Contract. Regents will be entitled to the following items from the Contractor: (a) all information necessary for the Regents to perform the maintenance, including logic diagrams, maintenance manuals and system and unit schematics, as modified by the Contractor; and (b) a listing of suppliers capable of supplying necessary spare parts.

B. Any information in items (a) and (b) above that is rightfully identified by the Contractor as confidential information will be maintained in confidence by the Regents, except where disclosure to a third party is necessary for the Regents to continue the maintenance. Any third party to whom disclosure is made must agree to hold such proprietary information in confidence and to make no further disclosure of it. Further, any such confidential information will be used solely to perform the Contractor's maintenance obligations hereunder and will be returned to the Contractor upon completion of such use.

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

The Contractor must make maintenance available nine working hours per weekday, [between 8:00 a.m. and 5:00 p.m.] travel time and expenses related to remedial and preventive maintenance will not be considered billable but will be included in the Contractor's firm, fixed Fee for the Project during the warranty period and a part of the annual maintenance Fee during later annual maintenance periods.

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

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

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

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

**Article XXXI: EXCLUSION OF WARRANTIES.** THE CONTRACTOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, OTHER THAN THOSE EXPRESS WARRANTIES CONTAINED IN THIS CONTRACT. THE CONTRACTOR ALSO MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EXCEPT AS FOLLOWS: IF THE CONTRACTOR HAS BEEN ENGAGED UNDER THE SCOPE OF WORK IN EXHIBIT I TO DESIGN A PRODUCT TO MEET A PARTICULAR NEED FOR REGENTS, THEN THE CONTRACTOR WARRANTS THAT THE CONTRACTOR'S WORK WILL MEET THE STATED PURPOSE FOR THAT WORK.

**Article XXXII: Indemnity for Property Damage and Bodily Injury.** The Contractor will indemnify Regents for all liability or expense resulting from bodily injury to any person (including injury resulting in death) or damage to property arising out of the performance of this Contract, providing such bodily injury or property damage is due to the fault of the Contractor, its employees, agents or subcontractors and occurs without negligence on the part of Regents or any of its employees.

**Article XXXIII: LIMITATION OF LIABILITY.** EXCEPT AS EXPRESSLY PROVIDED IN THIS CONTRACT, NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES,

INCLUDING LOSS OF PROFITS, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

**Article XXXIV: Acceptance.** There will be no formal acceptance procedure unless Exhibit I expressly provides otherwise. If Exhibit I does not provide otherwise, the acceptance procedure will be an informal review by the Project Representative to ensure that each Deliverable and the Project as a whole comply with the requirements of this Contract. The Project Representative will have up to 30 calendar days to do this. No formal letter of acceptance will be issued, and passage of the 30 calendar days will imply acceptance, though Regents will issue a letter of noncompliance if a Deliverable or the Project as a whole does not meet the requirements of this Contract. If the Project Representative issues a letter of noncompliance, then the Contractor will have 30 calendar days to correct the problems listed in the noncompliance letter. If the Contractor fails to do so, the Contractor will be in default without a cure period. If the Project Representative has issued a noncompliance letter, the Deliverables or the Project as a whole will not be accepted until the Project Representative issues a letter of acceptance indicating that each problem noted in the noncompliance letter has been cured. If the problems have been fixed during the 30 day period, the Project Representative will issue the acceptance letter within 15 calendar days. If the Project fails to meet the standard of performance after 90 consecutive calendar days from the start of the performance period, the Contractor will be in default and will not have a cure period. In addition to all other remedies Regents may have under this Contract, Regents will have the right to request correction or replacement of the relevant portion of the Project.

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

**Article XXXVI: Ohio Ethics Laws.** The Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of the Ohio ethics law, section 102.04 of the Code.

**Article XXXVII: General:** This Contract consists of this RFP, including all attachments, written amendments to this RFP, the Contractor's Proposal, and written, authorized amendments to the Contractor's Proposal. It also includes any materials incorporated by reference in the above documents and any purchase orders issued under the Contract. If there are conflicting provisions among the documents that make up the contract, the order of precedence for the documents is as follows:

1. The RFP, as amended;
2. The documents and materials incorporated by reference in the RFP;

3. The Contractor's Proposal, as amended, clarified, and accepted by the State; and
4. The documents and materials incorporated by reference in the Contractor's Proposal.

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

This Contract is the entire agreement between the parties with respect to the subject matter and supersedes any previous statements or agreements, whether oral or written. This Contract will be binding upon and inure to the benefit of the respective successors and assigns of Regents and the Contractor. No amendment or modification of any provision of this Contract will be effective unless it is in writing and signed by both parties.

The failure of either party at any time to demand strict performance by the other party of any of the terms of this Contract will not be construed as a waiver or relinquishment of any such term and either party may at any later time demand strict and complete performance by the other party of such a term.

If any provision of this Contract is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Contract will remain in full force and effect to the extent that such does not create an absurdity. This Contract will be construed in accordance with the plain meaning of its language and neither for nor against the drafting party. The headings used herein are for the sole sake of convenience and will not be used to interpret any section.

**Article XXXVIII: Notice.** For any notice under this Contract to be effective it must be made in writing and sent to the address of the appropriate party first appearing above, unless such party has notified the other party, in accordance with the provisions of this section, of a new mailing address. This notice requirement will not apply to any notices that this Contract expressly authorized to be made orally. The terms of this Contract will survive the termination or expiration of the time for completion of Project and the time for meeting any final payment of compensation, except where such creates an absurdity. The Contractor agrees to comply with all applicable federal, state and local laws in the conduct of the work hereunder. The Contractor may not assign this Contract or any of its rights or obligations under this Contract without the prior, written consent of Regents.

**Article XXXIX: Record-keeping Requirements.** Contractor shall keep all financial records in a manner consistent with generally accepted accounting procedures. Documentation to support each action shall be filed in a manner allowing it to be readily located.

Contractor shall keep separate business records for this Project, including records of disbursements made and obligation incurred in the

performance of this Contract which records shall be supported by contracts, invoices, vouchers, and other data as appropriate.

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

**Article XLI: Declaration Regarding Material Assistance/Non-Assistance to Terrorist Organizations.** Pursuant to Ohio Revised Code Section 2909.33, unless Contractor has been precertified, Contractor must complete a Declaration Regarding Material Assistance/non-assistance to Terrorist Organizations in its entirety in order to enter into this Agreement. If the Declaration is not completed as required by that Section or if Contractor finds out later that the Declaration is false, this Agreement is void *ab initio* and Contractor shall immediately repay to the State any funds paid under this Agreement.

**Article XLII: Unresolved Finding for Recovery:** Contractor warrants that it is not subject to an unresolved finding for recovery under Ohio Revised Code 9.24. If the warranty was false on the date the parties signed this Contract, the contract is void *ab initio*.

**Article XLIII: Elections Law:** The Contractor further acknowledges that it has read the requirements of Revised Code Section 3517.13 regarding limitations on political contributions as a basis for eligibility to participate in government contracts and certifies that it and the listed individuals and business associates are in compliance with Section 3517.13 and will remain in compliance for the duration of the contract and for one year following the conclusion of the contract.

**IN WITNESS WHEREOF**, the parties have executed this Contract as of the dates appearing below.

CONTRACTOR

THE OHIO BOARD OF REGENTS

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

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

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

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

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

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

**EXHIBIT I**

**Scope of Work**

- **Deliverables**
- **The Contractor's Fee**
- **Reimbursable Expenses**
- **Not to Exceed Amount**
- **Bill to Address**
  - **Payment Address**

**IN WITNESS WHEREOF**, the parties have executed this Exhibit I as of the dates appearing below.

CONTRACTOR

STATE OF OHIO, OHIO BOARD  
OF REGENTS

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

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

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

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

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

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