STATE TERM CONTRACT

THIS CONTRACT ("Contract") is between the State of Ohio ("State"), through its Department of Administrative Services, General Services Division, at 4200 Surface Road, Columbus, Ohio, 43228 and Optical Image Technology, Inc. ("Contractor"), with offices at 100 Oakwood Avenue, Suite 700, State College, PA, 16803.

BACKGROUND

The State recognizes that it is sometimes advantageous to do business with some manufacturers under a State term contract rather than through a competitive bidding or proposal process. In such cases, the State may enter into a contract with the manufacturer provided that the manufacturer offers its products and ancillary services at the same prices that the manufacturer offers those products and services to the US Government under the GSA's Multiple Award Schedule program or SmartBuy program. Or if the manufacturer has no contract under the GSA's Multiple Award Schedule program or SmartBuy program, the State will accept the pricing the manufacturer offers to its distributors. Further, if the manufacturer has no GSA Multiple Award Schedule or SmartBuy contract and no distributors, the State may accept the prices that the manufacturer offers to its most favored customers for each product or service.

The State also recognizes that some manufacturers work primarily through dealers for various reasons, including offering customers better support through dealers that have a local presence in a service area. Because of this, the State may sometimes agree to work directly with a manufacturer's dealers.

However, if the Contractor is not the manufacturer of the products or services under this Contract, the Contractor must submit a letter from the manufacturer that assures the State that the Contractor is an authorized dealer in the manufacturer's products or services. The letter also must assure the State that the Contractor will have sufficient quantities of the offered products for the duration of the Contract to meet the State's needs under the Contract during the initial term and any extensions. Further, the letter must identify each of the manufacturer's product and service that the Contractor will supply under this Contract. The letter also must contain an assurance of the availability through the dealer of repair services and spare parts for products covered by this Contract for five years from the date of purchase. It also must contain an assurance that software maintenance will be available under the terms of this Contract either from the dealer or the manufacturer for six years from the date of acceptance. (This assurance is not necessary for PC and PC-based server software with a perpetual license fee of less than $10,000.00 per copy.) The dealer must submit the letter, signed by an authorized representative of the manufacturer, with the executed copies of this Contract.

This Contract establishes terms and conditions under which State agencies (including any board, instrumentality, commission, or other political body) and Ohio political subdivisions, such as counties, municipalities, and townships, may acquire the Contractor's products or services at the pricing identified below. This Contract, however, only permits such; it is not a requirements contract and does not obligate any State agency or political subdivision to acquire the Contractor's products or services.

TERMS AND CONDITIONS

1 - TERM

1.1 **TERM.** This Contract is effective on the date the State's duly authorized representative executes it, as evidenced by the date appearing with the representative's signature, below. Unless this Contract is terminated or expires without renewal, it will remain in effect until June 30, 2015. Termination or expiration of this Contract will not limit the Contractor's continuing obligations with respect to Deliverables that the State paid for before termination or limit the State's rights in such.

1.2 **CONTRACT RENEWAL.** In the State's sole discretion, it may renew this Contract for a period of one month at the end of each biennium during which this Contract remains in place. Any further renewals will be only by written agreement between the State and the Contractor. Such renewals may be for any number of times for any period not to exceed the time remaining in the State's then-current biennium.

2 - PRICING AND PAYMENT

2.1 **CERTIFICATION OF ACCURACY.** By checking one of the following three items, the Contractor certifies that the Contractor's prices under this Contract are:

The prices at which the Contractor currently offers each product and service to the US Government under the GSA's Multiple Award Schedule program;
The prices at which the Contractor currently offers each product and service to the US Government under the GSA's SmartBuy program; or

X The best prices at which the Contractor has offered each product and service to its most favored customers within one year before the date the Contractor executed this Contract or adds the product or service to this Contract, whichever is later.

If the Contractor is offering prices based on its most favored customer prices, the Contractor represents that it does not have a GSA Multiple Award Schedule or SmartBuy contract.

If the Contractor has submitted a manufacturer's letter to certify that the Contractor is an authorized dealer for the manufacturer, the Contractor represents that the information in the letter is accurate and that a duly authorized representative of the manufacturer signed the letter.

The Contractor further certifies that the above representations will apply and be true with respect to all future pricing information submitted to revise this Contract.

2.2 **PRICE ADJUSTMENTS.** If the Contractor has relied on its GSA Multiple Award Schedule pricing or its GSA SmartBuy pricing, the State will be entitled to any price decreases that the Contractor offers to the GSA for any of its products and services during the term of this Contract. The Contractor must notify the State of any reduction in its GSA Multiple Award Schedule or SmartBuy pricing within 30 days of its occurrence and immediately reduce the price of the affected products or services to the State under this Contract.

If the Contractor has relied on its best customer pricing, the State will be entitled to a price decrease any time the Contractor or any of its dealers or distributors under this Contract sells a product or a service to any of its customers for less than the price agreed to between the State and the Contractor under this Contract. Any time the Contractor or any of its dealers or distributors under Section 3.1 of this Contract sells a product or provides a service to any customer for less than it is then available to the State under this Contract, the Contractor must notify the State of that event within 30 days of its occurrence and immediately reduce the price of the affected products or services to the State under this Contract.

The Contractor also must notify the State within 30 days of any general reduction in the price of any product or service covered by this Contract, even if the general reduction does not place the price of the product or service below the price available to the State under this Contract. The purpose of this notice of a general reduction in price is to allow the State to assess the value the State believes it is receiving under this Contract in light of the general reduction. If the State believes it is appropriate, the State may ask to renegotiate the Contract price for the products and services affected by the general reduction in price. If the Contractor and the State cannot agree on a renegotiated price, then on written notice to the Contractor, the State may immediately remove the affected products and services from this Contract.

2.3 **PRICELIST.** The Contractor's pricelist for the products and services that the Contractor may provide to the State under this Contract is attached as Exhibit I. For convenience, those products and services are called "Deliverables" in this Contract. Any custom materials resulting from the Contractor's services also are called "Deliverables" in this Contract. The Contractor may not provide any other Deliverables under this Contract without a prior written amendment to this Contract that both the State and the Contractor have signed. Furthermore, the Contractor may not charge the State greater prices for these Deliverables than the prices on the Exhibit I. If Exhibit I contains or incorporates by reference any terms or conditions other than a description of the scope of license for software, a description of the Contractor's products and services, and the prices for those products and services, those terms or conditions are excluded from this Contract and are of no effect. Exhibit I is identified as the following pricelist:

DocFinity Price List 2013

The Contractor will not sell to the State any notebook computers with less than a 1.60 GHz internal clock speed. Additionally, the Contractor will not sell to the State any PCs or servers using CPUs with less than a 3.0 GHz internal clock speed. Additionally, the Contractor will not sell to the State any term software licenses. And except in the case of operating systems licensed in conjunction with desktop PCs, notebook computers, PDAs, and similar personal computing devices that the OEM does not distribute without an operating system, the Contractor will not sell or license any Microsoft software to the State. If any of the foregoing items are listed in the Contractor's pricelist, they are deleted for purposes of this Contract.

2.4 **NOTIFICATION OF PRICE INCREASES.** If this Contract permits any price increases, the Contractor must notify the State and any affected State agencies of the increase at least 60 days before the effective date of the price increase. The Contractor must notify affected State agencies at their purchase order "bill to" address contained in the applicable purchase orders. This notification must specify, when applicable, the product serial number, location, current price, increased price, and applicable purchase order number.

2.5 **Payment Due Date**. Payments will be due on the 30th day after the later of:

(a) The date the State actually receives a proper invoice at the office designated in the applicable purchase order to receive it; or
(b) The date the State accepts the Deliverable.

The date the State issues a warrant (the State's equivalent to a check) in payment of an invoice will be considered the date payment is made. Without diminishing the Contractor's right to timely payment, the payment will be overdue only if it is not received by the 30th day after the payment's due date. If the State has not issued payment by then, interest will begin to accrue under Ohio Revised Code (the "Code") § 126.30.

2.6 **Invoice Requirements.** The Contractor must submit an original invoice with three copies to the office designated in the purchase order as the "bill to" address. To be a proper invoice, the invoice must include the following information:

(a) Name and address of the Contractor as designated in this Contract;
(b) The Contractor's federal tax identification number as designated in this Contract;
(c) The Contractor's invoice remittance address as designated in this Contract;
(d) The purchase order number authorizing the delivery of the Deliverables;
(e) A description of the Deliverables, including, as applicable, the time period, serial number, unit price, quantity, and total price of the Deliverables; and
(f) If the invoice is for a lease, the Contractor also must include the payment number (e.g., 1 of 36).

If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of the Contractor's information. If an invoice does not meet this section's requirements, or if the Contractor fails to give proper notice of a price increase (see the next section), the State will send the Contractor written notice. The State will send the notice, along with the improper invoice, to the Contractor's address designated for receipt of purchase orders within 15 days. The notice will contain a description of the defect or impropriety and any additional information the Contractor needs to correct the invoice. If such notification has been sent, the payment due date will be 30 days after the State receives a proper invoice and has accepted the Contractor's Deliverable.

2.7 **Ohio Payment Card.** Participating State agencies issuing orders under this Contract may use the Ohio Payment Card. Such purchases may not exceed $2,500 unless the Office of Budget and Management ("OBM") has authorized the agency to exceed this limit. If OBM increases the dollar limit for payment cards for all State agencies, the State will post notice of that on its Procurement Website. Participating State agencies are required to use the Ohio Payment Card in accordance with OBM's current guidelines for the Ohio Payment Card and the agency's approved plan filed with the OBM. The Contractor may process a payment in the payment card network only upon delivery and acceptance of the applicable Deliverables. For partial deliveries or performance, the Contractor may process a payment for the amount delivered or completed only and not for the entire amount ordered by the ordering agency. Upon completion of the delivery of remaining Deliverables, the Contractor may process a payment request in the payment card network for the remainder of the order. The Contractor should receive payment through its merchant bank within the time agreed upon between the Contractor and its merchant bank. The Contractor should expect normal processing fees from its merchant bank for payment card transactions, which the Contractor may not pass on to the State.

2.8 **Non-Appropriation of Funds.** The State's funds are contingent on the availability of lawful appropriations by the Ohio General Assembly. If the Ohio General Assembly fails to continue funding for any payments due hereunder, the order or orders under this Contract that are affected by the lack of funding will terminate as of the date that the funding expires, and the State will have no further obligation to make any payments with respect to the affected order or orders.

2.9 **OBM Certification.** This Contract is subject to Code § 126.07. Any orders under this Contract are void until the Director of the OBM certifies that there is a balance in the appropriation available to pay for the order.

2.10 **Controlling Board Authorization.** The State's obligations under this Contract are subject to the Ohio Controlling Board continuing to authorize the State's use of its term contracts program. If the Ohio Controlling Board fails to authorize or withdraws its authorization for this program, this Contract will terminate immediately, and the Contractor may not take any more orders under it.

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

2.12 **Taxes.** The State is exempt from all sales, use, excise, and property taxes and will not pay any such taxes. To the extent sales, use, excise, or any similar taxes are imposed on the Contractor in connection with any Deliverable, the Contractor must pay those taxes together with any interest and penalties not successfully disputed with the taxing authority.

2.13 **OFFSET.** The State may set off any amounts the Contractor owes to the State under this or other contracts against any payments due from the State to the Contractor under this or any other contracts with the State.

3 - CONTRACT ADMINISTRATION

3.1 **DEALERS AND DISTRIBUTORS.** The State authorizes the Contractor to name one or more dealers to work with the State on behalf of the Contractor. But if the Contractor decides to use any dealers, the Contractor must submit the name, principal business address, addresses for purchase orders and for payments, telephone number, and its federal tax identification number. The Contractor also must submit a completed W9 form for each dealer it wishes to name under this section. The Contractor's submission must be on its official letterhead, signed by an authorized representative, and addressed to the Deputy State Chief Information Officer, Office of Information Technology.
In doing so, the Contractor warrants that:

(a) The Contractor has provided the dealer with a copy of this Contract, and a duly authorized representative of the dealer has agreed, in writing, to be bound by the terms and conditions in this Contract.
(b) Such agreement specifically provides that it is for the benefit of the State as well as the Contractor.
(c) The Contractor will remain liable under this Contract for the services of any dealer and will remedy any breach of the dealer under this Contract.
(d) Payments under this Contract for the services of any dealer may be made directly to that dealer, and the Contractor will look solely to the dealer for any payments due to the Contractor once the State has paid the dealer.
(e) To the extent that there is any liability to the State arising from doing business with a dealer that has not signed the agreement required under this section with the Contractor, the Contractor will indemnify the State for such liability.

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

The State strongly encourages the participation of small and disadvantaged businesses in its contracting programs and has created a certification program to Encourage Diversity Growth and Equity (EDGE) in State contracting. State agencies are instructed to include in their procurements such participation, including through the use of State Term Schedule contracts that are either held by EDGE businesses or that offer the opportunity to work with EDGE dealers or distributors.

3.2 **AUDITS.** During the term of this Contract and for three years after termination, on reasonable notice and during customary business hours, the State may audit the Contractor's records and other materials that relate to the Deliverables and to the pricing representations that the Contractor has made to acquire this Contract. This audit right also will apply to the State's duly authorized representatives and any organization providing funding for any Deliverable.

Unless it is impracticable to do so, all records related to this Contract must be kept in a single location, either at the Contractor's principle place of business or the facilities where the Contractor substantially performed under this Contract. If this is not practical, the Contractor must assume the cost of collecting, organizing, and relocating the records, along with any technology needed for accessing the records, to its office nearest Columbus, Ohio whenever the State or any entity with audit rights requests access to the records. The Contractor must do so within 15 days of receiving the State's written notice of its intent to audit the Contractor's records and must notify the State as soon as the records are ready for audit.

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

3.3 **INSURANCE.** The Contractor must 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 work will be done outside Ohio, the laws of the appropriate states where work will be done. The Contractor also must maintain employer's liability insurance with at least a $1,000,000.00 limit.

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

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

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

a. Commercial Automobile Liability insurance with a combined single limit of $500,000.

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

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

3.4 **CONTRACT COMPLIANCE.** Any State agency that uses this Contract will be responsible for the administration of this Contract with respect to the orders that it places and may monitor the Contractor's performance and compliance with this Contract. If an agency becomes aware of any noncompliance with the terms of this Contract or the specifications of an order, the agency may document the noncompliance and give the Contractor written notice of the noncompliance for immediate correction. If the Contractor fails to cure the noncompliance, the agency may notify the State through the Department of Administrative Services, Office of State Purchasing, by executing a Complaint to Vendor form to help resolve the issue. Should the State determine that the form identifies an uncured breach of this Contract, the State may terminate this Contract and seek such other remedies as may be available to it.

3.5 **POLITICAL SUBDIVISIONS.** Ohio political subdivisions, such as Ohio cities, counties, and townships ("Political Subdivisions"), may rely on this Contract. Whenever a Political Subdivision relies on this Contract to issue a purchase order, the Political Subdivision will step into the shoes of the State under this Contract for purposes of its order, and, as to the Political Subdivision's order, this Contract will be between the Contractor and the Political Subdivision. The Contractor must look solely to the Political Subdivision for performance, including but not limited to payment, and must hold the State harmless with regard to such orders and the Political Subdivision's performance. But the State will have the right to terminate this Contract and seek such remedies on termination as this Contract provides should the Contractor fail to honor its obligations under an order from a Political Subdivision. Nothing in this Contract requires the Contractor to accept an order from a Political Subdivision, if the Contractor reasonably believes that the Political Subdivision is or will be unable to perform its obligations in relation to that order.

3.6 **RECALLS.** If a Deliverable is recalled, seized, or embargoed, or if the Contractor, a manufacturer, packer, processor, or regulatory body finds that a Deliverable has been misbranded, adulterated, or is unsafe, the Contractor must notify the State, through the Department of Administrative Services, Office of State Purchasing, as well as all agencies that have ordered the Deliverable, within ten business days after the Contractor learns of any of the above events. At the option of the State, the Contractor must either reimburse the State for the purchase price of each affected Deliverable or provide an equal or better replacement for each Deliverable at no additional cost to the State. The Contractor also must remove and replace all affected Deliverables within a reasonable time, as determined by the State. Further, at the option of the State, the Contractor may be required to reimburse the State for storage costs and handling fees, which the State may calculate from the time of delivery of each affected Deliverable to the Deliverable's actual removal. Furthermore, the Contractor must bear all costs associated with the removal and proper disposal of the affected Deliverables. The State will treat any failure to refund the purchase price or provide a suitable replacement within a reasonable time, not to exceed 30 days, as a default.

3.7 **TERMINATION.** The State may terminate this Contract or any order under this Contract if the Contractor defaults in meeting its obligations and fails to timely cure its default. The State also may terminate this Contract or any order under it if a petition in bankruptcy is filed by or against the Contractor and not dismissed within 60 days. And the State may terminate this Contract or any order under it if the Contractor violates any law or regulation while performing under this Contract or if it appears to the State that the Contractor's performance is substantially endangered through no fault of the State. In all of the foregoing cases, the termination will be for cause.

On written notice, the Contractor will have 30 days to cure any breach of its obligations under this Contract, provided the breach is curable. If the Contractor fails to cure the breach within 30 days after written notice or if the breach is not one that is curable, the State will have the right to terminate this Contract, the applicable orders, or both immediately upon written notice to the Contractor. Some provisions of this Contract may provide for a shorter cure period than 30 days or for no cure period at all. Those provisions will prevail over this one. If a particular section does not state what the cure period will be, this provision will govern.

The State also may terminate this Contract in the case of breaches that are cured within 30 days but are persistent. "Persistent" in this context means that the State has notified the Contractor in writing of the Contractor's failure to meet any of its obligations two times. After the second such notice, the State may terminate this Contract without a cure period if the Contractor again fails to meet any obligation. The three defaults do not have to relate to the same obligation or type of failure.

The State also may terminate this Contract or any order under this Contract for its convenience and without cause. And the State may terminate this Contract or any order under it if the Ohio General Assembly fails to appropriate funds for any order under this Contract. Further, if a third party is providing funding for an order, the State also may terminate this Contract or any order under it should that third party fail to release any funds related to this Contract or an order under it.

Any notice of termination will be effective as soon as the Contractor receives it. On receipt of the notice of termination, the Contractor will immediately cease all work on any Deliverables affected by the termination and take all steps necessary to minimize any costs the Contractor will incur related to the affected orders. The Contractor also must immediately prepare a report and deliver it to the State. The report must detail all open orders at the time of termination.

If the State terminates this Contract or any order for cause, it will be entitled to cover for the affected orders by using another vendor or vendors on such commercially reasonable terms and conditions as it and the covering vendors may agree. The Contractor will be liable to the State for all costs related to covering for the affected orders to the extent that such costs exceed the costs that the State would have incurred under this Contract for those orders. The Contractor also will be liable for any other direct damages resulting from its breach of this Contract or other event leading to termination for cause.

If the termination is for the convenience of the State, the Contractor will be entitled to compensation for any Deliverable that the Contractor has delivered 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 the State determines that it owes the Contractor.

3.8 **EXCUSABLE DELAY.** Neither party will be liable for any delay in its performance under this Contract that arises from causes beyond its reasonable control and without its negligence or fault. The delayed party must notify the other promptly of any material delay in performance and must specify in writing the proposed revised performance date as soon as practicable after notice of delay. For any such excusable delay, the date of performance or delivery will be extended for a period equal to the time lost by reason of the excusable delay. The delayed party also must describe the cause of the delay and what steps it then is taking or will take to remove the cause. The delayed party may not rely on a claim of excusable delay to avoid liability for a delay if the party has not taken commercially reasonable steps to mitigate or avoid the delay.

3.9 **INDEPENDENT STATUS.** The parties will be acting as independent entities. The partners, employees, officers, directors, and agents of one party may only act in the capacity of representatives of that party and not as employees, officers, directors, or agents of the other party and will not be deemed as such for any purpose. Each party assumes full responsibility for the actions of its partners, employees, officers, directors, and agents while performing under this Contract and will be solely responsible for paying those people. Additionally, each party will be solely responsible for withholding and paying social security and income taxes, making workers' compensation contributions, paying disability benefits, and providing fringe benefits, if any, for its partners, employees, officers, directors, and agents, and neither party may legally bind the other party in any manner.

3.10 **LOCATION OF SERVICES AND DATA.** As part of this Contract, the Contractor must disclose the following:

(a) All locations where any services will be performed;
(b) All locations where any State data applicable to the Contract will be maintained or made available; and
(c) The principal place of business for the Contractor and all its subcontractors.

The Contractor may not change any location where any services are performed to a location outside the country of the original location or change any location where the data is maintained or made available to any other location outside the country of the original location without prior written approval of the State, which the State will not be obligated to provide.

4 - Delivery and Acceptance

4.1 **Acceptance.** The acceptance procedure for Deliverables will be an informal review by the agency acquiring the Deliverables to ensure that each Deliverable meets the warranties in this Contract. The State will have up to 30 days after installation to do this. The State will not issue a formal letter of acceptance, and passage of 30 days will imply acceptance, though the State will issue a notice of noncompliance if a Deliverables does not meet the warranties in this Contract.

If the State issues a noncompliance letter, the Contractor will have 30 days to correct the problems listed in the letter. If the Contractor fails to do so, the Contractor will be in default without a cure period. If the State has issued a noncompliance letter, the Deliverable will not be accepted until the State issues a letter of acceptance indicating that each problem noted in the noncompliance letter has been cured. If the problems have been fixed during the 30-day period, the State will issue the acceptance letter within 15 days after all defects have been fixed.

4.2 **Title.** Title to any Deliverable will pass to the State only on acceptance of the Deliverable, and all risk of loss will remain with the Contractor until title to the Deliverable passes to the State.

4.3 **Deliveries.** The Contractor must make all deliveries F.O.B. destination.

5 - Intellectual Property

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

Any Commercial Material that the Contractor intends to deliver as a Deliverable must have the scope of the license granted in such material disclosed in an Exhibit to this Contract, if that scope of license is different than the scope of license contained in this section for Commercial Materials.

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

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

For Commercial Software, the State will have the following, perpetual rights, subject to the next paragraph. The State may:

(1) Use and copy the Commercial Software 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) Use or copy the Commercial Software for use with a backup computer for disaster recovery and disaster recovery testing purposes or if any computer for which it was acquired is inoperative;
(3) Reproduce the Commercial Software for archival, image management, and backup purposes;
(4) Modify, adapt, and combine the Commercial Software with other computer software, provided that the modified, combined, and adapted portions of the derivative software incorporating any of the Commercial Software will be subject to same restrictions on use;
(5) Disclose to and reproduce the Commercial Software for use on behalf of the State by support service contractors or their subcontractors, subject to the same restrictions on use; and
(6) Use or copy the Commercial Software for use with a replacement computer.

In the case of any other scope of license (e.g., MIPs, tier, concurrent users, enterprise, site, or otherwise), the foregoing will apply except as expressly modified by the applicable license description, which must be incorporated as part of Exhibit I. If the Contractor provides greater license rights in an item included in Exhibit I to its general customer base for the Software's list price, those additional license rights also will be provided to the State without additional cost or obligation. No license description may reduce the rights in items 1 through 6 above; it may only define the extent of use, if the use is other than a CPU license.

The State will treat any Commercial Software as Confidential Information, in accordance with the requirements of the Confidential Information section of this Contract, if the Commercial Software is clearly and conspicuously labeled as confidential or secret.

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

The Contractor grants the State a worldwide, non-exclusive, royalty-free, perpetual license to use, modify, sell, and otherwise distribute all Pre-existing Materials that are incorporated in any custom-developed Deliverable. The Contractor may not include in any custom Deliverable any intellectual property unless such has been created under this Contract or qualifies as Pre-existing Material. If the Contractor wants to incorporate any Pre-existing materials in a custom Deliverable, the Contractor must disclose that desire to the State and obtain written approval from the State for doing so in advance. On the request of the Contractor, the State will incorporate any proprietary notice that Contractor may reasonably want for any Pre-existing Materials included in a custom Deliverable in all copies the State makes of that Deliverable.

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

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

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

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

(1) Was already in the possession of the Receiving Party without an obligation of confidence;
(2) Is independently developed by the Receiving Party, provided documentary evidence exists to support the independent development;
(3) Except as provided in the next paragraph, is or becomes publicly available without a breach of this Contract;
(4) Is rightfully received by the Receiving Party from a third party without an obligation of confidence;
(5) Is disclosed by the Receiving Party with the written consent of the Disclosing Party; or
(6) Is released under a valid order of a court or governmental agency, provided that the Receiving Party:

    (a) Notifies the Disclosing Party of the order immediately upon receipt of it; and
    (b) Makes a reasonable effort to obtain a protective order from the issuing court or agency limiting the disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production.

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

Except for Confidential Information that the Contractor delivers to the State and that is part of a Deliverable or necessary for the proper use or maintenance of a Deliverable, the Receiving Party must return all originals of any Confidential Information and destroy any copies it has made on termination or expiration of this Contract.

The disclosure of the Confidential Information of the Disclosing Party in a manner inconsistent with the terms of this provision may cause the Disclosing Party irreparable damage for which remedies other than

injunctive relief may be inadequate, and each Receiving Party agrees that in the event of a breach of the Receiving Party's obligations hereunder, the Disclosing Party will be entitled to temporary and permanent injunctive relief to enforce the provisions of this Contract without the necessity of proving actual damages. However, provision does not diminish or alter any right to claim and recover damages.

5.4 **USE OF NAME.** The Contractor may not publicize that it is doing business with the State or use this Contract or the Contractor's relationship with the State as a marketing or sales tool, unless the State agrees otherwise in writing. The State has no obligation to agree to any such advertising, publicity, sales, or marketing activities.

6 – TRANSACTION REPORTING

6.1 **Contractor's SALES REPORT.** The Contractor must report the quarterly dollar value (in US currency rounded to the nearest whole dollar) of the sales under this Contract each calendar quarter (i.e., January-March, April-June, July-September and October-December). The dollar value of the sales reported must equal the price paid by all State agencies and Political Subdivisions for Deliverables under this Contract during the reporting period.

The Contractor must report the quarterly dollar value of sales to the State via the Internet using the Web form at the Department of Administrative Services, OIT vendor portal, https://cm.ohio.gov. If no sales occur, the Contractor must show zero sales on the report. The report must be submitted 30 days after the completion of the reporting period.

The Contractor also must submit a closeout report within 120 days after the expiration of this Contract. The Contract expires on the physical completion of the last, outstanding task or delivery order of the Contract. The closeout report must cover all sales not shown in the final quarterly report and reconcile all errors and credits. If the Contractor reported all Contract sales and reconciled all errors and credits on the final quarterly report, then the Contractor should show zero sales in the closeout report.

If the Contractor fails to submit any sales report in a timely manner or falsifies any sales report, the State may terminate this Contract for cause.

6.2 **Contractor's REVENUE SHARE.** The Contractor must pay the State a share of the sales transacted under this Contract. The Contractor must remit the revenue share in US dollars within 30 days after the end of the quarterly reporting period. The revenue share that the Contractor must pay equals .0075 of the total quarterly sales reported. The revenue share is included in the prices reflected on Exhibit I and reflected in the total amount charged to ordering activities, and the Contractor may not add a surcharge to orders under this Contract to cover the cost of the revenue share.

The Contractor must remit any amount due as the result of a quarterly or closeout report at the time the quarterly or closeout report is submitted to the Department of Administrative Services, Office of State Purchasing. The Contractor also must pay the revenue share by check. To ensure the payment is credited properly, the Contractor must identify the check as a "Revenue Share" and include the applicable State Term Contract Number, total report amount, and reporting period covered.

The Contractor must make each check payable to "Treasurer, State of Ohio", and forward it to the following address:

Department of Administrative Services
GSD Business Office
4200 Surface Road
Columbus, OH 43228

If the full amount of the revenue share is not paid within 30 days after the end of the applicable reporting period, the non-payment will constitute a contract debt to the State. The State may setoff any unpaid revenue share from any amount owed to the Contractor under this Contract and employ all other remedies available to it under Ohio law for the non-payment of the revenue share. Additionally, if the Contractor fails to pay the revenue share in a timely manner, the failure will be a breach of this Contract, and the State may terminate this Contract for cause and seek damages for the breach.

7 - WARRANTIES AND LIABILITIES

7.1 **WARRANTIES.** The Contractor warrants that the recommendations, guidance, and performance of the Contractor and all Deliverables under this Contract will:

(a) Be in accordance with the sound professional standards and the requirements of this Contract and without any material defects;
(b) Not infringe on the intellectual property rights of any third party;
(c) Be the work solely of the Contractor, unless otherwise provided in this Contract; and
(d) Be merchantable and fit for the particular purpose for which the Deliverables were acquired.

Additionally, with respect to the Contractor's activities under this Contract, the Contractor warrants that:

(a) The Contractor has the right to enter into this Contract;
(b) The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Contract;
(c) The Contractor will observe and abide by all applicable laws and regulations, including those of the State regarding conduct on any premises under the State's control;
(d) The Contractor has good and marketable title to any products delivered under this Contract and in which title passes to the State; and
(e) The Contractor has the right and ability to grant the license provided in any Deliverable in which title does not pass to the State.

If any work of the Contractor or any Deliverable fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor must correct such failure with all due speed, not to exceed 30 days, or refund the amount of the compensation paid for the Deliverable. The Contractor also must indemnify the State for any direct damages and any claims by third parties based on any breach of these warranties.

7.2 **SOFTWARE WARRANTY.** If Exhibit I includes work to develop custom software as a Deliverable, then on delivery and for one year after the date of acceptance of any Deliverable that includes custom software, the Contractor warrants 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;
(b) The software will be free of material defects;
(c) The Contractor will deliver and maintain relevant and complete software documentation, commentary, and source code;
(d) The source code language used to code the software is readily available in the commercial market, widely used and accepted for the type of programming involved, and support programming in the language is reasonably available in the open market; and
(e) The software and all maintenance will be provided in a professional, timely, and efficient manner.

For Commercial Software developed by the Contractor or licensed from a third party, the Contractor represents and warrants that it either has the right or has obtained a binding commitment from the third party licensor to make the following warranties and commit to the following maintenance obligations. During the warranty period described in the next paragraph, the Contractor must:

(a) Maintain or cause the third-party licensor to maintain the Commercial Software so that it operates in the manner described in its documentation;
(b) Supply technical bulletins and updated user guides;
(c) Supply the State with all 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 software and remedy any material programming error that is attributable to the Contractor or the third-party licensor; and
(e) 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 for which it was designed.

For Commercial Software designed for mainframe platforms and for Commercial Software designed for PC or PC-based servers and costing more than $10,000.00 per license or per copy, the warranty period will be the longer of one year after acceptance or the licensor's standard warranty period. For Commercial Software designed for PC or PC-based servers and costing less than $10,000.00 per license or per copy, the warranty period will be the longer of three months after acceptance or the licensor's standard warranty period. For PC and PC-based servers, the warranty will not include updates, improvements, enhancements, or modifications to the Commercial Software and documentation, if such are not provided as part of the licensor's standard warranty or license fee.

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 must provide the users of the software with meaningful instructions on how to take full advantage of all of the capabilities designed for end users. It also means installation and system administration documentation for a system administrator to allow proper control, configuration, and management of the software. Source code means the uncompiled operating instructions. The Contractor must provide the source code in the language in which it was written and must include such commentary or annotations as would 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.

7.3 **EQUIPMENT WARRANTY.** If any computer hardware or other type of electrical equipment ("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 the warranty period described in the next paragraph that the Equipment will perform substantially in

accordance with its user manuals, technical materials, and related writings published by the manufacturer with respect to such Equipment, and that such Equipment will achieve any function described in such writings. The foregoing warranty will not apply to Equipment that the State modifies or damages after title passes to it. The warranty period for all Equipment will be the longer of one year after the State accepts the Equipment or the Contractor's standard warranty period.

If any Equipment does not meet the above warranties during the applicable warranty period, the Contractor must fix the nonconforming Equipment so it performs substantially in accordance with its user manuals, technical materials, and related publications, replace the Equipment, or grant the State a refund equal to the amount it paid for the Equipment. The Contractor must either fix or replace the Equipment or refund the purchase price to the State with all due speed, not to exceed seven days in the case of a fix or a replacement or 30 days in the case of a refund. The Contractor will be responsible for all shipping costs associate with fixing, replacing, or returning any defective equipment.

7.4 **INDEMNITY.** The Contractor must indemnify the State against all liability or expense resulting from bodily injury to any person (including injury resulting in death) or damage to property arising out of its performance under this Contract, provided such bodily injury or property damage is due to the negligence or other tortious conduct of the Contractor, its employees, agents, or subcontractors. The Contractor also must indemnify the State against any claim of infringement of a copyright, patent, trade secret, or other intellectual property rights based on the State's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where the State has modified the Deliverable and the claim of infringement is based on the modification. The State will give the Contractor notice of any such claim as soon as reasonably practicable. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor will do one of the following four things:

(a) Modify the Deliverable so that it is no longer infringing;
(b) Replace the Deliverable with an equivalent or better item;
(c) Acquire the right for the State to use the Deliverable as it was intended for the State to use under this Contract; or
(d) Remove the Deliverable and refund the fee the State paid for the Deliverable and the fee for any other Deliverable that required the availability of the infringing Deliverable for it to be useful to the State.

7.5 **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS CONTRACT OR ANYTHING INCORPORATED BY REFERENCE INTO THIS CONTRACT, THE PARTIES AGREE AS FOLLOWS:

(a) NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAVE BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

(b) THE CONTRACTOR WILL BE LIABLE FOR ALL DIRECT DAMAGES DUE TO THE FAULT OR NEGLIGENCE OF THE CONTRACTOR OR ITS BREACH OF ANY PROVISION OF THIS CONTRACT.

8 - MAINTENANCE

8.1 **SOFTWARE MAINTENANCE.** If this Contract involves any custom 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 time, provided the State notifies the Contractor, either orally or in writing, of a problem with the software and provides sufficient information to identify the problem. The Contractor's response to a programming error will depend upon the severity of the problem. In the case of 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 administrations to employ workarounds to fully use the software, the Contractor must respond to requests for resolution within four business hours and begin working on a proper solution within one business day, dedicating the resources of one qualified programmer full-time to fixing the problem. In the case of any defects with more significant consequences, including those that render key functions of the software inoperable or significantly slow data processing, the Contractor must respond within two business hours of notification and, if requested, provide on-site assistance and dedicate all available resources to resolving the problem.

For Commercial Software other than PC or PC-based server software costing less than $10,000.00 per copy or license, the Contractor must provide maintenance during the warranty period at no cost to the State. At a minimum, that maintenance must be the standard maintenance program that the licensor, whether the Contractor or a third party, normally provides to its client base. That maintenance program must include all new releases, updates, patches, and fixes to the Commercial Software. It also must include a commitment to keep the software current with the operating environment in which it is designed to function and a commitment to promptly correct all material defects in the software.

Additionally, the Contractor will make (or obtain a commitment from the third-party licensor to make) maintenance available for the software for at least five years after the warranty period. The Contractor will limit or obtain a

commitment from the third-party licensor, if applicable, to limit increases in the annual fee for maintenance to no more than five percent annually. If the licensor, whether it is the Contractor or a third-party, is unable to provide maintenance during that period, then the licensor must do one of the following things: (a) give the State a *pro rata* refund of the license fee based on a five-year useful life; or (b) release the source code for the software to the State for use by the State solely for the purpose of maintaining any copies of the software for which the State has a proper license. The State will treat the source code as Confidential Information under the Confidentiality Section of this Contract. In the case of third-party Commercial Software, the Contractor warrants that it has legally bound the third-party licensor to the obligations of this Contract or that the Contractor has the right to make these commitments directly to the State.

For Commercial Software designed for PC or PC-based server platforms and costing less than $10,000.00 per copy or license, the Contractor must provide the same maintenance and user assistance during the warranty period at no additional cost to the State as the Contractor or the third-party licensor makes generally available at no additional charge to its other customers.

8.2 **SOFTWARE UPGRADES.** After an initial acquisition of a license in Commercial Software, the State may want to acquire a broader license than the original. Or the State may later want to migrate to another platform for the Commercial Software. When the Contractor or third-party licensor makes the broader license generally available to its customer base or makes the version of the Commercial Software that runs on the new platform to which the State wants to migrate, then the State will have a right to upgrade any of its licenses to that broader license or to acquire the version of the Software that is appropriate for the new platform that the State intends to use. In these cases, the Contractor will provide the broader license or other version of the Commercial Software in exchange for a license fee that is based on the lesser of the following:

(a) The Contractor's (or third party licensor's) standard upgrade or migration fee;
(b) The upgrade or migration fee in Exhibit I; or
(c) The difference between the license fee originally paid and the then-current license fee for the license or version of the Commercial Software that the State seeks to acquire.

The foregoing will not apply to Commercial Software for PCs and PC-based server software with a license fee of less than $10,000.00, unless the Contractor or third-party licensor makes upgrade packages available for the Commercial Software to other customers. If PC or PC-based server software upgrades are available, the State will be entitled to the most favorable license fee on which such are made available to other most favored customers or dealers, as appropriate.

8.3 **EQUIPMENT MAINTENANCE.** If this Contract involves computer or telecommunications hardware or other mechanical or electrical equipment ("Equipment") as a Deliverable, then, during the warranty period and during any period covered by annual maintenance, the Contractor must provide 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 also 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. The Contractor must use its best efforts to perform all fault isolation and problem determination attributed to the Equipment. The following services are outside the scope of this Contract:

(a) 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;
(b) Repair and replacement work or increase in maintenance time as a result of damage or loss resulting from accident, casualty, neglect, misuse, or abuse, if such is the State's fault (and beyond normal wear and tear), damage resulting from improper packing or failure to follow prescribed shipping instruction (If such is done by the State), failure of electrical power, air conditioning or humidity control, use of supplies not approved by the original manufacturer of the Equipment as describe in the Equipment's documentation, or causes other than ordinary use of Equipment;

(c) Furnishing platens, supplies, or accessories, making specification changes, or adding or removing approved accessories, attachments, or other devices except as permitted in the Equipment's user documentation;
(d) Maintenance or increased maintenance time resulting from any improper use, maintenance, or connection to other equipment (not done by the Contractor) that results in damage to the Equipment;
(e) Repairs needed to restore the Equipment to good operating condition if the Equipment has been damaged by anyone other than the Contractor's authorized service personnel repairing, modifying, or performing maintenance on the Equipment.

8.4 **EQUIPMENT MAINTENANCE STANDARDS.** Except in the case of excusable delay, remedial Equipment maintenance by the Contractor will be completed within eight business hours after notification by the State that maintenance is required. In the case of preventative maintenance, the Contractor will perform such in accordance with the manufacturer's published schedule and specifications. If maintenance is not completed within eight hours after notification by the State, the Contractor will be in default. Failure of the Contractor to meet or maintain these

requirements will provide the State with the same rights and remedies as specified elsewhere in this Contract for default, except that the Contractor will only have eight hours to remedy a default. The Contractor will provide adequate staff to provide the maintenance required by this Contract.

8.5 **EQUIPMENT MAINTENANCE CONTINUITY.** If the Contractor is unable to provide Equipment maintenance to meet the State's ongoing performance requirements and if, in the State's sole opinion, the Contractor is unlikely to resume providing warranty services that meets the State's ongoing performance requirement, the Contractor will be in default, and the State will be entitled to the remedies in the default section of this Contract. The State will also be entitled to the following items from the Contractor:

(a) All information necessary for the State to perform the maintenance, including but not limited to logic diagrams, maintenance manuals, and system and unit schematics, with all changes noted;
(b) A listing of suppliers capable of supplying necessary spare parts;
(c) Adequate information to permit the State to have spare parts manufactured elsewhere; and
(d) A listing of spare parts and their recommended replacement schedule to enable the State to create a centralized inventory of spare parts.

The State will treat as Confidential Information in accordance with the Confidentiality Section of this Contract any information in items (a) through (d) above that the Contractor rightfully identifies in writing as confidential. And when disclosure to a third-party is necessary for the State to continue the maintenance, the State will require any third-party to whom disclosure is made to agree to hold the Confidential Information in confidence and to make no further disclosure of it. Further, the State agrees that any such Confidential Information will be used solely to perform maintenance for the State and will be returned to the Contractor or destroyed when such use is no longer needed.

8.6 **PRINCIPAL PERIOD OF MAINTENANCE (GENERAL).** Software and Equipment maintenance must be available nine working hours per weekday, between 8:00 a.m. and 5:00 p.m. Eastern Standard Time. Travel time and expenses related to remedial and preventative maintenance will not be billable and must be included in the price of the maintenance.

8.7 **MAINTENANCE ACCESS (GENERAL).** For all Software and Equipment maintenance under this Contract, the State will provide the Contractor with reasonable access to the Deliverable to perform maintenance. All maintenance that requires a Deliverable to be inoperable must be performed outside the State's customary working hours, except when the Deliverable is already inoperable. Preventative or scheduled maintenance must be performed at mutually agreeable times, within the parameters of the manufacturer's published schedule.

9 - ASSIGNMENT AND SUBCONTRACTING

9.1 **ASSIGNMENT.** The Contractor may not assign this Contract without the written consent of the State, which the State will not be obligated to provide.

9.2 **SUBCONTRACTING.** The State recognizes that it may be necessary for the Contractor to use subcontractors to perform portions of the work under this Contract. In those circumstances, before the Contractor engages any such subcontractor, the Contractor must submit a list identifying its subcontractors or joint venture partners performing portions of the work under the Contract. If any changes to that list occur during the term of the Contract, the Contractor must immediately provide the State an updated list of subcontractors or joint venture business partners. In addition, all subcontractors and joint venture business partners must agree in writing to be bound by all of the terms and conditions of this Contract and any specifications of any order under this Contract for which they perform work. The State may reject any subcontractor submitted by the Contractor.

10 – CONSTRUCTION

10.1 **HEADINGS.** The headings used in this Contract are for convenience only and may not be used in interpreting this Contract.

10.2 **ENTIRE DOCUMENT.** This Contract, which includes the Contractor's pricelist attached as Exhibit I and all documents referred to in this Contract, constitutes the entire agreement between the parties with respect to the subject matter and supersedes any previous agreements, whether oral or written.

10.3 **BINDING EFFECT.** This Contract will be binding on and benefit the respective successors and assigns of the State and the Contractor.

10.4 **AMENDMENTS – WAIVER.** No amendment or modification 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 or conditions of this Contract may not be construed as a waiver of any those terms or conditions, and either party may at any time demand strict and complete performance by the other party.

10.5 **SEVERABILITY.** If a court of competent jurisdiction finds any provision of this Contract to be unenforceable, the remaining provisions of this Contract will remain in full force and affect.

10.6 **CONSTRUCTION.** This Contract must be construed in accordance with the plain meaning of its language and neither for nor against the drafting party.

10.7 **NOTICES.** For any notice under this Contract to be effective, the noticing party must make it in writing and sent it to the address of the other party first appearing above, unless that party has notified the other party, in writing and in accordance with the provisions of this section, of a new mailing address for the receipt of notices. This notice requirement will not apply to any notices that this Contract expressly authorizes to be made orally.

10.8 **CONTINUING OBLIGATIONS.** Any terms, conditions, representations, or warranties contained in this Contract that must survive termination or expiration of this Contract to be fully effective will survive the termination or expiration of the Contract. Additionally, termination or expiration of this Contract will not affect the State's right to continue to use any Deliverable for which it has paid, including licensed material. And no termination or expiration of the Contract will affect the State's right to receive maintenance, warranty work, or other services for which the State has paid.

10.9 **PRIORITY.** If there is any inconsistency or conflict between this document and any provision of anything incorporated by reference, this document will prevail.

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

11 - LAW AND COURTS

11.1 **EQUAL EMPLOYMENT OPPORTUNITY,** The Contractor will comply with all state and federal laws regarding equal employment opportunity and fair labor and employment practices, including Ohio Revised Code Section 125.111 and all related Executive Orders.

Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be submitted to the Department of Administrative Services Equal Opportunity Division to comply with the affirmative action requirements. Affirmative Action Verification Forms and approved Affirmative Action Plans can be found by going to the Ohio Business Gateway at: http://business.ohio.gov/efiling/

11.2 **DRUG FREE WORKPLACE.** The Contractor must comply with all Ohio laws regarding maintaining a drug-free workplace and make a good faith effort to ensure that all its employees do not possess and are not under influence of illegal drugs or alcohol or abuse prescription drugs while working on State property.

11.3 **OHIO ETHICS LAW AND LIMITS ON POLITICAL CONTRIBUTIONS.** The Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of the Ohio ethics laws. The Contractor hereby certifies that all applicable parties listed in Ohio Revised Code Section 3517.13 are in full compliance with Ohio Revised Code Section 3517.13.

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

11.5 **LAW AND VENUE.** This Contract is governed by and will be construed under Ohio law, and venue for all disputes will lie exclusively with the appropriate court in Franklin County, Ohio.

11.6 **UNRESOLVED FINDINGS.** The Contractor represents that it is not subject to an unresolved finding for recovery under Code § 9.24. If this warranty proves false when the parties sign this Contract, the Contract will be void. Additionally, if this representation proves false on the date of any renewal or extension of the Contract, the renewal or extension will be void.

11.7 **ANTITRUST.** The State and the Contractor recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by the State. The Contractor therefore assigns to the State all state and federal antitrust claims and causes of action that the Contractor has or acquires relating to the goods and services acquired under this Contract.

11.8 **Governing the Expenditure of Public Funds on Offshore Services (EO 2011-12K).** The Contractor affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance

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

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

11.9 **REGISTRATION WITH THE SECRETARY OF STATE.** By providing a Charter Number and signature within the Certification Offer Letter, the Contractor attests that the Contractor is:

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

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

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

TO SHOW THEIR AGREEMENT, the parties have executed this Contract on the date(s) identified below, and this Contract will be effective as of the date it is signed on behalf of the State.

CONTRACTOR

BY: _____

DATE: 9/20/2013

STATE OF OHIO,
DEPARTMENT OF ADMINISTRATIVE SERVICES
OFFICE OF STATE PURCHASING

BY: Robert Blair
ROBERT BLAIR, DIRECTOR,
DEPARTMENT OF ADMINISTRATIVE SERVICES

DATE: 10-9-13

Exhibit I

[Click to access pdf price list.]

OPTICAL IMAGE PRICELIST

Product Name	Manufacturer	Manufacturer Part No	Vendor Part No	Description	Unit of Measure	State Price
	OIT	**DCM-100**	**DCM-100**	**DocFinity Core Module**	1	$ 28,000.00
	OIT	Incl in DCM-100	Incl in DCM-100	Indexing		
	OIT	Incl in DCM-100	Incl in DCM-100	Scanning		
	OIT	Incl in DCM-100	Incl in DCM-100	Viewing		
	OIT	Incl in DCM-100	Incl in DCM-100	Searching		
	OIT	Incl in DCM-100	Incl in DCM-100	Administration		
	OIT	Incl in DCM-100	Incl in DCM-100	Import		
	OIT	Incl in DCM-100	Incl in DCM-100	Print Server		
	OIT	Incl in DCM-100	Incl in DCM-100	Versioning		
	OIT	Incl in DCM-100	Incl in DCM-100	Office Integration		
	OIT	Incl in DCM-100	Incl in DCM-100	APIs		
	OIT	**DEM-101**	**DEM-101**	**DocFinity Exporter**	1	$ 7,000.00
	OIT	**DXM-102**	**DXM-102**	**DocFinity Connect**	1	$ 3,500.00
	OIT	**DFI-103**	**DFI-103**	**Fax Integration**	1	$ 3,500.00
	OIT	**DPT-104**	**DPT-104**	**Print to DocFinity**	1	$ 3,500.00
	OIT	**DWF-105**	**DWF-105**	**BPM Workflow**	1	$ 17,500.00
	OIT	**DLD-106**	**DLD-106**	**COLD**	1	$ 17,500.00
	OIT	**DES-107**	**DES-107**	**Enterprise Search**	1	$ 21,000.00
	OIT	**DEF-108**	**DEF-108**	**eForms**	1	$ 14,000.00
	OIT	**DRM-109**	**DRM-109**	**Records Management**	1	$ 17,500.00
	OIT	**DDB-110**	**DDB-110**	**Dashboards**	1	$ 14,000.00
	OIT	**DU-111**	**DU-111**	**DocFinity User Pricing**		
	OIT			**1 through 25**	1	$ 595.00
	OIT			**26 through 50**	1	$ 525.00
	OIT			**51 through 100**	1	$ 455.00
	OIT			**101 through 250**	1	$ 350.00
	OIT			**251 through 750**	1	$ 175.00
	OIT			**751 through 1000**	1	$ 105.00
	OIT			**1000 and beyond**	1	$ 70.00

OPTICAL IMAGE TECHNOLOGY, INC. (OIT)

DOCFINITY

MASTER SOFTWARE LICENSE AND SUPPORT AGREEMENT

< _____CUSTOMER NAME_____ >

_____ ___, 2012

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SOFTWARE LICENSING MASTER AGREEMENT

THIS AGREEMENT is made effective this ___ day of _____, 201_ between OPTICAL IMAGE TECHNOLOGY, INC. (OIT), a Pennsylvania corporation, with its principal place of business at 100 Oakwood Avenue, State College, Pennsylvania, USA 16803, and **Ohio Department of Administrative Services** (CUSTOMER), Public Body with an office at 30 East Broad Street, 4200 Surface Road, Columbus, Ohio 43228_____. OIT and CUSTOMER are the "parties" to this Agreement.

WHEREAS CUSTOMER desires to obtain non-exclusive, perpetual licenses to use the Software Products specified in Schedule A: Products Licensed Per Agreement, hereinafter "Schedule A"; and

WHEREAS CUSTOMER desires to receive software maintenance and technical support directly from OIT related to CUSTOMER's use of the Software Products; and

WHEREAS OIT wishes to provide such non-exclusive, , perpetual licenses to permit CUSTOMER's use of the Software Products pursuant to the terms and conditions of this Agreement; and

WHEREAS OIT wishes to provide software maintenance and support services to CUSTOMER regarding the use of the Software Products pursuant to the terms and conditions of this Agreement,

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained and intending to be legally bound hereby, the Parties hereto agree as follows:

1. Definitions

a. **Product:** The term "Product" shall mean collectively the Licensed Software as described in Schedule A and Licensed Documentation (as hereinafter defined).
b. **Licensed Software:** The term "Licensed Software" shall mean the software identified on Schedule A in object code form, in the form and content existing as of the date of this Agreement.
c. **Licensed Documentation:** The term "Licensed Documentation" shall mean all documentation, other than the Licensed Software, related to the Licensed Software.
d. **Concurrent User:** The term "Concurrent User" shall mean any workstation connected to the single licensed instance of Product database tables where the Product stores the index information, and is accessed through the Product Native Windows Client software or through the Product's web browser access capabilities. Any Product Native Windows Client window or Web Browser item active shall be considered a logged-in Concurrent User. The number of Concurrent Users licensed represents the total number of system users that can log into and use the system at any given time. System access is restricted to the total number of Concurrent Users licensed.

2. License

a. **Licensed Rights:** OIT hereby grants CUSTOMER, pursuant to the terms and conditions of this Master Agreement, a perpetual, non-exclusive, license to use the Licensed Software subject to the Concurrent User Access provision contained in the following paragraph 2(b), and in accordance with the following Licensed Rights: (1) CUSTOMER shall be licensed to implement the Licensed Software for one, live production system to run against one instance of database tables with Concurrent User Access; (2) CUSTOMER may copy the Licensed Software for one instance of a development and testing environment running against one instance of development and testing database tables with Concurrent User Access; and (3) CUSTOMER may copy the Licensed Software for one instance of back-up and disaster recovery environment/purposes, running against one instance of back-up and disaster recovery database tables with Concurrent User Access.

b. **Concurrent User Access:** CUSTOMER agrees to license the Product on a Concurrent User access and use basis, for which access is restricted to the number/actual count of Concurrent Users licensed to access the single instance of Product database tables. Per this Master Agreement CUSTOMER is hereby licensing, and hereby granted, the license for _____ (__) Concurrent Users. At CUSTOMER's option, CUSTOMER may purchase additional Concurrent User licenses based on increased needs for CUSTOMER to allow for more system use in accordance with Schedule A.

   a. CUSTOMER agrees to use the Licensed Software only in accordance with this agreement

and shall not transfer title or any other interest in the Product, except as otherwise provided herein under Article 16, (c). Notwithstanding anything to the contrary in this Section, Contractor agrees that it will permit the transfer of fully paid licenses in the event the State merges or consolidates state entities.

d. CUSTOMER agrees to use the Product(s) only in the course of CUSTOMER's own business enterprises. CUSTOMER may provide its clients or independent contractors with access to information and data stored by CUSTOMER in the OIT repository.
e. CUSTOMER specifically agrees that each of the terms and conditions of this, Section 2, License are material, and the demonstrable failure of the CUSTOMER to comply with these terms and conditions shall constitute sufficient cause for OIT to terminate this Master Agreement, subject to any provision of survival for any clause, paragraph, term and/or condition stated herein.

3. Software License Fees

a. In consideration of the Perpetual Software License granted by OIT to CUSTOMER for the designated Product detailed in Schedule A, CUSTOMER shall pay OIT a one-time license fee payment of **$** _____.
b. **Payment Terms:** The one-time payment of the License Fees shall be remitted per the installment payment schedule detailed in Schedule A.
In the event CUSTOMER engages OIT for professional services under separate agreement between the parties, or via an addendum to this Master Agreement, CUSTOMER shall be billed per the rates detailed in Schedule B: OIT Professional Services Rates, hereinafter "Schedule B". CUSTOMER shall only be responsible for payment of such professional services when such professional services have been agreed to in writing by the parties prior to the provision of such services by OIT. Any professional services provided by OIT to CUSTOMER shall be on a "work-for-hire" basis.
Failure of CUSTOMER to remit any portion of specified fees, when a payment is due, shall constitute sufficient cause for OIT to terminate this Master Agreement, unless any such amount or fee is the subject of a good faith dispute. Any resulting termination is subject to any provision of survival for any clause, paragraph, term and/or condition stated herein.
c. Any travel, lodging, meal or other expenses shall be billed separately in accordance with Schedule B and its designated Terms And Conditions and the Office of Management and Budget. Any and all such expenses must be approved by CUSTOMER in writing prior to the incurrence of any such expense by OIT. Expenses not receiving prior written approval by CUSTOMER shall not be reimbursed by CUSTOMER. All amounts not paid within forty-five (45) days from the date of the invoice shall bear interest at the rate of one and one-half (1 1/2%) percent per month, from the date due until paid, unless such amount(s) or expenses are the subject of a good faith dispute.

4. Delivery, Installation, Testing, and Acceptance

a. **Delivery:** OIT shall deliver the Product to CUSTOMER within sixty (60) business days of the effective date of this Master Agreement, or sooner based on CUSTOMER project start requirements.
b. **Installation:** Any installation, training, and on site support services time incurred by OIT shall be billed in accordance with the fee schedule specified in Schedule B.
c. **Acceptance:** CUSTOMER expressly agrees, to the best of CUSTOMER's ability, that CUSTOMER will verify to OIT acceptance of the deliverables within 60 days from delivery. All deliverable features and functionality are required to function and operate as specified and set forth in the Licensed Documentation. Any changes to the features, functionality, operation and "look" of the Licensed Software that CUSTOMER desires shall be contracted under separate agreement as custom programming work, as "work-for-hire".
d. **Contracted Custom Programming:** Enhancements and modifications required by CUSTOMER that are deemed by the parties to be CUSTOMER specific, and CUSTOMER desires to contract OIT for professional services to develop such enhancements and modifications, then, such enhancements and modifications shall be addressed and formally contracted under a future separate written "work-for-hire" agreement by the parties.
e. **Failure of Acceptance Testing and Remedy:** If any of the deliverables are not operating as set forth in The Licensed Documentation, then CUSTOMER shall supply OIT notice of such in writing. Upon receipt

of such notice OIT shall have 60 days to remedy the situation. If at the end of 60 days OIT has not provided remedy satisfactory to CUSTOMER, then CUSTOMER shall have the right to continue working with OIT toward remedy, satisfactory to CUSTOMER, or receive a full refund of money paid for the Licensed Software (Software Licensing Fees),and at that time must return all Licensed Software and Documentation to OIT at OIT's cost of shipping and handling.

5. Modification

CUSTOMER shall have the right to modify the Product(s) through the services of its employees. CUSTOMER's right to modify the Product(s) is unconditional. Any and all modifications executed and/or accomplished to the Product(s) by CUSTOMER, through services of CUSTOMER's employees and/or any other work for hire relationship shall cause ownership of said modifications to vest solely with CUSTOMER.

CUSTOMER is under no obligation to specify and/or divulge the execution and/or accomplishment of successful modifications to the Product(s), or any portion thereof, to OIT.

OIT is under no obligation regarding maintaining the compatibility of CUSTOMER accomplished modifications in the process of OIT engineering, enhancing, and developing new version(s) of the Product(s) when such CUSTOMER accomplished modifications are accomplished in a manner outside of the documented OIT API. When CUSTOMER employs OIT documented API capabilities to accomplish modifications then OIT is obligated with respect to ensuring the compatibility of OIT API accomplished CUSTOMER modifications. In the event OIT makes a change to the OIT API and such change results in CUSTOMER accomplished OIT API based modifications no longer working, then, the parties agree to work in a reasonable manner regarding OIT providing a level of guidance and consultation for CUSTOMER to remedy any non-functioning OIT API based modification.

6. OIT Professional Services

a. OIT Professional Services include services such as: consulting based on OIT software application and use, OIT software installation, custom programming of OIT software, interfacing/integrating OIT software with third party or CUSTOMER-owned software applications. Such services shall be contracted under separate written agreement strictly on a "work-for-hire" basis. OIT offers very detailed DocFinity Training Programs and costs for DocFinity Software Product based training and actual courses required for CUSTOMER shall be contracted separately for this Agreement.
b. The current rates for OIT Professional Services are specified in Schedule B, Part A.
c. Should the parties contract for rendering of OIT Professional Services a daily per diem expense shall be billed separately in accordance with Section 3(b) of this Master Agreement and the Office of Management and Budget.

7. OIT Software Maintenance and Support Services

a Annual software maintenance and support is included at no additional charge for the first ninety (90) days following the date of installation of an OIT Product. Ongoing software support, commencing with the ninety-first (91st) day following installation is optional, but it is recommended. Technical Support is available Monday through Friday (excluding holidays) between 7:00AM through 7:00PM, Eastern Time. Emergency support is available at all other times for critical problems that, in CUSTOMER's reasonable opinion, must be addressed prior to the next scheduled commencement of regular Technical Support hours. Emergency support services are billable services that are not included in the annual software maintenance and support fees, and such services are billed at the Professional Services Fee rates detailed in Schedule B. All support communication channels are monitored around the clock. From 7AM to 7PM, Eastern Time, OIT staff is on duty. From 7PM to 7AM, Eastern Time, OIT support staff is on call.
b. In consideration of the Annual Software Support Fee, OIT offers CUSTOMER the following maintenance and ongoing services:
OIT's Technical Support Programs and Software Maintenance Programs are applicable for OIT Product(s). OIT shall support and maintain the OIT Product(s). OIT assumes no responsibility for support or maintenance of CUSTOMER's hardware, network/infrastructure, and/or third party software products. OIT help related to debugging hardware, network/infrastructure and/or third party software product issues are billable Professional Services per the rates detailed in Schedule B.
In exchange for Annual Software Support and Maintenance fees OIT shall provide the following services: (1) technical web submission/e-mail/phone support; (2) updated releases and versions of the Licensed Software complete with updated release notes and documentation; (3) access to the OIT FTP Site; (4)

direct access/web based support; (5) program fix service; (6) OIT's beta user/tester program; (7) access to the DocFinity Knowledge Base and customer discussion forums. Annual OIT Software Support and Maintenance programs do not cover OIT Professional Services.

c. Annual Software Support and Maintenance is optional. CUSTOMER may, at its option, retain OIT for any needed support and maintenance services and/or programs on an as-needed basis. Declining or discontinuing OIT's Annual Software Support and Maintenance programs do not terminate the License.

d. Schedule C (OIT Troubleshooting Response Handling), attached hereto and made part hereof, provides details and defines OIT Software problems, issues, defects and OIT corresponding severity levels, response times, and resolution path and goals. CUSTOMER acknowledges Product is one layer of CUSTOMER's Corporate EDMS System. The parties expressly agree to use best efforts and good faith in determining if Corporate EDMS System problems, issues, and/or defects are Product specific (OIT responsibility) or environmental/network/device/configuration change specific (CUSTOMER responsibility). The parties expressly agree that system problems, issues, and/or defects shall ultimately be addressed upon resolution and closure of such system problems, issues, and/or defects when the parties are then able to fully understand the causes thereof. In addition, the parties expressly agree that system problems, issues, and/or defects shall be addressed by OIT pursuant to Schedule C.

8. Maintenance and Software Support Fee Calculation

To illustrate OIT Annual Maintenance and Software Support Fees under this Agreement:

From the date of installation of the Licensed Software under this Agreement through the ninetieth (90th) day subsequent to said installation there is no OIT Annual Maintenance and Software Support Fee payable.

Effective with the ninety-first (91st) day subsequent to installation and running through the close of year four (4) of this Agreement OIT Annual Maintenance and Software Support shall be charged annually at the rate of fifteen percent (15%) of the license fee paid..**15x $ _____ = $ _____ for 12 months coverage.**

On the sixtieth (60th) day subsequent to installation OIT shall forward an pro-rated invoice that covers CUSTOMER for maintenance and support charges for the balance of that current year. All subsequent years of annual maintenance and support charges shall be invoiced on the standard calendar year program.

Example of pro-rated maintenance and support charges for day 91 through end of calendar year.:.**15x $ _____ = $ _____ for 12 months coverage.**

If day 91 were to fall on November 01, 2013 then CUSTOMER would need to pay for maintenance and support coverage for the two (2) remaining months in year 2013.

$ _____/12x2 = $ _____ for maintenance and support coverage running November 01, 2013 through December 31, 2013. This amount would be invoiced by OIT approximately on the sixtieth (60Th) day subsequent to installation and would be due payable by CUSTOMER on the 91st day subsequent to installation.

All subsequent years of maintenance and support coverage shall be invoiced in January of each calendar year for the full 12 month coverage amount.

9. Annual Maintenance and Software Support Service and Programs

The OIT Annual Maintenance and Software Support Services and Programs include the following:

a. **Technical Web Submission/E-mail/Phone Support:** This program offers help-desk-type software support services for commonly asked questions and troubleshooting. The technical -web -submission process is the primary tool used for first time reporting of issues and problems and inquiries. When received these submissions are indexed immediately to the OIT support database and tracking system.

b. **Updated Releases, and Versions, Of The Licensed Software Versions complete w/ updated release notes and documentation:** This program entitles CUSTOMER to enhanced releases and versions of the Product(s). CUSTOMER shall receive new releases or versions and corresponding documentation made available to any other similar Licensee of the Product(s). This includes any version, release, revision, modification, refinement, fix, work around, or improvement that is incorporated into the Licensed Software and that generally adds or changes functionality or improves performance. OIT represents and warrants that all new releases and new versions delivered to CUSTOMER pursuant to the Maintenance Agreement shall perform at least according to the same quality standards that are contained in the Licensed Software at the time initially licensed by CUSTOMER and that such new releases and new versions shall not decrease or change functionality or adversely affect performance of the Licensed Software. In the event of a decrease or change in functionality, whereby a new release adversely affects performance, OIT and CUSTOMER shall assign an appropriate Severity/Priority Level to such issues in accordance with Schedule C.

c. **Access To The OIT FTP Site:** This program includes the means for transferring files back and forth for testing, trouble shooting and for distribution of enhanced interim releases.

d. **Direct Remote Access/Web-based Support:** OIT provides CUSTOMER with support via web based tools that require CUSTOMER to only enter a web session established by OIT for support purposes. This program expedites OIT's support staff access to the OIT system directories to view any problems being experienced, to make corrections of any installation errors/file placements within directories, to edit/change .INI settings, to install new/enhanced/updated software versions, and to conduct administrator/user training.

e. **Program Fix Service:** If a Licensed Program, as furnished and without CUSTOMER modification, fails to function in accordance with the published specifications set forth in The Licensed Documentation due to an error in the Licensed Programs, and it has been reasonably determined that the failure is not due to

incorrect or defective data entry or operator performance, OIT will make a prompt and reasonable attempt to provide a program patch to correct such error or malfunction. The terms "prompt and reasonable" shall apply to OIT's initial response to a reported problem or issue, or request for support. OIT shall initially respond, to CUSTOMER's initial report or request for support, within four hours of report or request when initially received between the hours of 7AM and 7PM Eastern Time. Four hours shall be the maximum time interval between initial report/request and initial response/message back from OIT. OIT shall have the right to verify the existence of any error reported, and error verification shall be conducted through OIT's Technical Support Offices. CUSTOMER agrees that there will be instances of an error and the fix provided by OIT, at OIT's expense (including shipping/delivery), will require an upgrade of OIT files.

f. **BETA User/Test Program:** This program provides software products as they become available for testing. This program includes certain limitations and restrictions on ancillary services such as support.

g. **DocFinity Knowledge Base and Customer Discussion Forum:** This program provides access to the DocFinity Knowledge Base which is an on line library of technical tips, tricks, articles, and documents pointed at helping customers with resolving problems associated with application of product and associated peripheral issues in general. The Customer Discussion Forum provides an easy and convenient method for communicating with and seeking help/information from other DocFinity licensees and users.

10. Warranties

a. OIT makes no Warranties except as expressly provided herein.

b. OIT warrants that the media on which a Product is furnished to be free from defects in materials and workmanship for ninety (90) days from the date of delivery to CUSTOMER. OIT warrants that the Licensed Software, as delivered by OIT, is an accurate version and will reasonably conform to the material specifications as described in The Licensed Documentation. OIT warrants the provision of expedient and professional service and support when problems and errors with the software occur in a manner consistent with industry standards. CUSTOMER acknowledges that OIT's performance with regard to software maintenance and support is governed by the terms and conditions set forth in this Master Agreement.

c. OIT warrants, and accepts liability in the event that such should occur, that the source code of the Products contain no specific code, mechanisms, or features intended to shut down or terminate, either automatically or remotely, the Products. Though software error, user error, or hardware/network problems could cause the Products to not function or to shut down, there is no programmed "time bomb" feature within the source code of the Products.

11. Proprietary Rights; Indemnity

a. .OIT shall indemnify, defend and hold harmless Customer, its officers, directors, employees, agents and affiliates from and against any claims resulting from or arising out of (a) any allegation that any trademark, trade name, service mark, logo, or other information (or any portion thereof) provided by OIT for use with the Service, or OIT's performance of its obligations under this Agreement, including the conversion of the technology for delivery of the Service, infringes upon or misappropriates any copyright, patent, trademark, trade secret or any other right of any third party, (b) negligence or willful misconduct or breach of the Agreement or any Site Agreement by OIT, or (c) the conduct of OIT's business or any other action taken, provided that Customer's shall promptly notify OIT in writing and in reasonable detail of any claim and OIT shall have the right, to the extent allowed by law, to assume the defense thereof using counsel reasonably acceptable to Customer's. Customer's shall have the right to participate, at its own expense, with respect to any such claim. In connection with such claim, the Parties shall cooperate with each other and provide each other with access to relevant books and records in their possession. No such claim shall be settled or compromised by OIT without the prior written consent of Customer's if such settlement or compromise in any manner indicates that Customer's contributed to or was responsible for the cause of any such claim. Notwithstanding the foregoing, unless otherwise provided by law, OIT shall have no liability for any claim based upon the unauthorized modification, combination, operation or use of any portion of the Service with equipment, data, software, or programming not supplied by OIT.

b. In the event that the Product licensed hereunder, or any portion thereof, is held to constitute an infringement and its use is enjoined, OIT shall have the obligation to, at its expense, (1) modify the infringing Product without impairing in any material respect the functionality of performance, so that it is

non-infringing, (2) procure for CUSTOMER the right to continue to use the infringing Product, or (3) replace the Product with equally suitable, non-infringing Product. If none of the foregoing alternatives are available to OIT, CUSTOMER shall receive repayment of monies paid for the infringing Product's software licensing fees and for professional services fees and any other monies paid associated with the installation, training, and custom programming of the infringing Product.

12. Limitation of Liability See Section 7.5 of the State Term Schedule.

13. Confidential Information

Customer and OIT agree to hold in the strictest confidence and not use or disclose to any person, firm or corporation, without the written authorization of the other party, except as required by law, any "Confidential Information" (as defined below). Each party and their respective employees, officers, directors, shareholders and agents agree not to use any of the Confidential Information for the purpose of competing with the other party either directly or indirectly or to assist third persons or entities to compete with the other party.

For purposes of this agreement, "Confidential Information" means all information, documents and materials provided by one party to the other party before or during the term of this Agreement relating to or in connection with the Project, including, without limitation, technical data, specifications, communication protocols, trade information, customer or client lists and records, business and marketing plans, schematics, reports and technical and marketing data; provided, however, that neither party shall be under any obligation to maintain in confidence any portion of the information it has received which; (a) is now, or which becomes hereafter, through no act or failure to act on the part of the recipient party, generally known or available to the public, (b) is known by the recipient party at the time of the disclosure of such information, provided that the source of such information was not known by the receiving party to be prohibited from disclosing such information by a contractual, legal or fiduciary obligation or (c) is hereafter furnished to the recipient party by a source other than the other party, provided that such source is not known by the receiving party to be prohibited from disclosing such information by a contractual, legal or fiduciary obligation.

Neither party shall disclose the Confidential Information of the other party to its employees except on a need-to-know basis, and the recipient party shall be responsible for the unauthorized disclosures of Confidential Information by its employees.

No express or implied rights or license is granted by any disclosure of Confidential Information to the recipient party in connection with this Agreement.

14. Effective Date

a. This Agreement and the license granted hereunder takes effect upon the date when the last party executes this Agreement.
b. **Right of Termination.** A party has the right to terminate this Agreement if the other party breaches a material provision of this Agreement. Either party has the right to terminate this Agreement at any time while an event or condition giving rise to the right of termination exists. To terminate this Agreement, the party seeking termination must give the other party notice that describes the event or condition of termination in reasonable detail. From the date of its receipt of that notice, the other party will have thirty (30) days to cure the breach to the reasonable satisfaction of the party desiring termination. If the event or condition giving rise to the right of termination is not cured within that period, this Agreement will be deemed terminated at the end of that period unless both parties mutually agree to extend the remedy period.
c. **Procedure.** Within 10 days after termination of the license, CUSTOMER shall return to OIT, the Product and all copies thereof, delete or destroy all copies of the Product, and certify, in writing, by an officer of the CUSTOMER that the Product has been returned, all copies deleted or destroyed, and its use discontinued.

15. Proprietary Rights of OIT

a. OIT represents and warrants that it is the owner of the software licensed hereunder and that, at the time of signature of this Agreement, there is no challenge to the ownership rights of OIT in the software licensed hereunder.

b. CUSTOMER agrees that the Product contains proprietary information, including trade secrets, know-how, and confidential information that is the exclusive property of OIT. During the period while this Agreement is in effect and up to and through 3 years after its termination, CUSTOMER and its employees and agents shall maintain the confidentiality of this information and not sell, license, publish, display, distribute disclose or otherwise make available this information to any third party nor use such information except as authorized by this Agreement. CUSTOMER shall not disclose any such proprietary information concerning the Product, including any flow charts, logic diagrams, user manuals, and screens to persons not an employee of CUSTOMER without the prior written consent of OIT, which may require such third party to execute a non-disclosure agreement.

16. Intellectual Property

a. **Title:** CUSTOMER and OIT agree that OIT owns all proprietary rights, including patent, copyright, trade secret, trademark and other proprietary rights in and to the Product and any OIT standard corrections, bug fixes, enhancements, updates or other modifications, including CUSTOMER specific modifications. OIT expressly agrees that CUSTOMER shall retain any and all of its property rights in any CUSTOMER specific modifications or enhancements to the Product that are identified within the source code of the Product as specific CUSTOMER Custom Features. CUSTOMER expressly agrees that its property rights to said specific CUSTOMER Custom Features do not entitle CUSTOMER to proprietary rights, or portions thereof, which are owned by OIT or other OIT customers.

b. **Transfers:** Under no circumstances shall CUSTOMER sell, license, publish, display, or distribute the Product or any copy thereof, in whole or in part, without OIT's prior-written consent and such prior written consent shall not be unreasonably withheld.

c. **Assignment:** Neither party shall assign this Agreement without first obtaining the written consent of the other, which consent may not be unreasonably withheld except that either party may assign all or any part of its rights and interest under this Agreement to its parent, subsidiaries or affiliates, without prior written consent from the other party. Nothing herein shall limit the right of either party to have any of its obligations performed by its subsidiaries, affiliated companies or parent companies, provided that in all such cases the party to this Agreement shall remain directly responsible for any such obligation. Reorganization, merger, or consolidation is not deemed to be an assignment. There shall be no charge to Licensee or the assignee for any assignment hereunder.

d. **Successor:** This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

17. Additions, Changes, Modifications and Amendments

CUSTOMER may, from time to time during the term of this Agreement, have needs to increase existing Product licensing, or purchase new/additional OIT Product that is not being licensed initially under this Agreement. Furthermore, CUSTOMER and OIT may, from time to time during the term of this Agreement, make changes, modifications and amendments to this Agreement. Such additions, changes, modifications and amendments shall only be made by mutual agreement in writing. Such additions, changes, modifications and amendments once agreed shall be made and incorporated into this Agreement via an Addendum. Any additions, changes, modifications, and amendments, unless specifically defined otherwise via the Addendum process, shall be subject to the terms and conditions of this Agreement.

18. Governing Law

The validity, performance and construction of this Agreement are governed by the laws of the State of Ohio_____.

19. Notices

The notices between the parties shall be deemed given when mailed by first class, certified mail with return receipt required addressed to the address below or to any other address as the party may designate.

If to OIT

Contract Administration
Optical Image Technology, Inc.
100 Oakwood Avenue, Suite 700
State College, PA 16803
Facsimile Number: (814) 238-0011

If to CUSTOMER

_____
_____
_____
_____

Facsimile Number: _____

With A Copy to:

_____
_____
_____
_____

20. Force Majeure See Section 3.8 of the State Term Schedule.

21. Waiver See Section 10.4 of the State Term Schedule.

22. Severability See Section 10.5 of the State Term Schedule.

23. Entire Agreement See Section 10.2 of the State Term Schedule.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have hereunto set their hands and seals the day and year first above written.

WITNESS: OPTICAL IMAGE TECHNOLOGY, INC.

_____ BY: _____

NAME: _____

TITLE: _____

DATE: _____

WITNESS: < CUSTOMER NAME >

_____ BY: _____

NAME: _____

TITLE: _____

DATE: _____

BILLING INFORMATION
ATTENTION: _____

ADDRESS: _____

_____

_____

PHONE: _____

FAX: _____

EMAIL: _____

PURCHASE ORDER REQUIRED (Y/N):___

SCHEDULE A: OIT SOFTWARE PRODUCT(S) LICENSED

DocFinity Software Licensing:

__ – DocFinity _____ $

__ – DocFinity _____ $

__ – DocFinity _____ $

____ – DocFinity _____ $

OIT Software Licensing Fees **$** _____

*OIT Professional Services Fees are not included in the above referenced OIT Software License Fees.
*

Terms and Conditions of Payment for OIT Software Licensing Fees

Payment for the Net OIT Software Licensing Fees Due, in the total amount of **$** _____, shall be made in two (2) equal installments as follows:

Installment payment #1, in the amount of **$**_____, will be due upon Agreement receipt of a valid purchase order and Customer's receipt of the software. Installment payment #2, in the amount of **$** _____, is due Net 30 days upon OIT completion of delivery and installation of Products.

SCHEDULE B: OIT PROFESSIONAL SERVICES RATES

Part A:

OIT Professional Services Rates

Daily per person (8 hr.) Rate for On-Site Installation, Customization, Consultation
$ 1,500.00

Weekly per person (40 hr.) Rate for On-Site Installation, Customization, Consultation
$ 7,500.00

Standard OIT Professional Services Rates do not include travel and/or other additional expenses incurred which must be paid at OBM rates.

For costs of training courses please refer to the DocFinity Training Program Course Offering Guide.

Terms and Conditions Of Payment For OIT Services See Article 2 of the State Term Schedule.

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Part B:

Travel Expenses

Travel expenses shall be billed by OIT to CUSTOMER, based on CUSTOMER's PRE-APPROVAL, at actual cost for flight and rental car. OIT will incur no billable Travel Expense unless CUSTOMER has agreed and approved such costs in advance. In the event OIT travels via company car then OIT shall bill CUSTOMER at the current IRS accepted rate.

Lodging Expenses

Lodging expenses shall be billed by OIT to CUSTOMER, based on CUSTOMER's PRE-APPROVAL, at actual cost per person. OIT will incur no billable Lodging Expense unless CUSTOMER has agreed and approved such costs in advance. CUSTOMER shall pre-approve the hotel/motel used by OIT staff when traveling to work On-Site at CUSTOMER.

Daily Per Diem

A daily per diem charge to cover costs of meals, phone, and business based communications shall be billed by OIT to CUSTOMER on a daily charge basis of $50.00 per day, per person.

All travel, lodging, and daily per diem expenses will be compliant with OBM guidelines.

Terms and Condition for Billable Expenses See Article 2 of the State Term Schedule.

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SCHEDULE C: OIT TROUBLE SHOOTING RESPONSE HANDLING

OIT Software Severity/Priority Levels	OIT Response Requirements	Resolution Path/Goals
1 – Severe The system or major application is down or seriously impacted, users cannot log in, and there is no reasonable workaround currently available.	OIT responds within 1 hour to the initial web submission by CUSTOMER.	OIT begins continuous work on the problem, and a customer resource must be available at any time to assist with problem determination. OIT and CUSTOMER work together to determine if the problem is Product defect or environmental/network/hardware/configuration change based. OIT will exhaust all resources to expediently determine problem inclusive of use of remote support tools and deploying staff to CUSTOMER's site. When system being down has been determined to be Product defect based, then OIT will provide best effort for workaround or installation of a previous functioning version of Product so that system is back up and running within 48 hours. At that point OIT and CUSTOMER will re-class the issue as a High Priority issue and then follow the appropriate High Priority criteria detailed below.
2 - High The system or application is moderately affected due to Product defect and not Product design. There is no workaround currently available or the workaround is cumbersome to use.	OIT responds within 4 business hours.	OIT will provide best effort for workaround or fix within 10 business days, once the problem is reproducible. OIT may incorporate the resulting fix in a future release of the Product, if agreed to by OIT.
3 - Medium The system or application issue is not critical. The system has not failed. The issue has been identified as Product defect and not Product design. The Product defect does not hinder normal operation, or the situation may be temporarily circumvented using an available workaround. This is a feature failure with an existing and convenient workaround.	OIT responds within 24 business hours.	OIT will provide best effort for workaround or fix within 30 business days, once the problem is reproducible. OIT may incorporate the resulting fix in a future release of the Product, if agreed to by OIT.
4 – Low Non-critical issues, general questions, enhancement requests, or the functionality does not match documented specifications.	OIT responds within 48 business hours.	Resolution of problem may appear in future release of software, if agreed to by OIT. If enhancement request is deemed to require custom programming then OIT will engage CUSTOMER in a process of specification resulting in a custom programming specification document that defines the need, what CUSTOMER responsibilities are, what OIT will provide as a solution and how, and an estimate on the time and cost required.

Exhibit III

STANDARD AFFIRMATION AND DISCLOSURE FORM

EXECUTIVE ORDER 2011-12K

Governing the Expenditure of Public Funds on Offshore Services

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

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

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

1. Principal location of business of Contractor:

   100 Oakwood Avenue, Suite 700 (Address) — **State College, PA 16803** (City, State, Zip)

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

   na (Name) — _____ (Address, City, State, Zip)

   na (Name) — _____ (Address, City, State, Zip)

2. Location where services will be performed by Contractor:

   100 Oakwood Avenue, Suite 700 (Address) — **State College, PA 16803** (City, State, Zip)

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

   na (Name) — _____ (Address, City, State, Zip)

   na (Name) — _____ (Address, City, State, Zip)

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

   100 Oakwood Avenue, Suite 700 (Address) — **State College, PA 16803** (Address, City, State, Zip)

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

   na (Name) — _____ (Address, City, State, Zip)

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

Contractor also affirms, understands and agrees that Contractor and its subcontractors are under a duty to disclose to the State any change or shift in location of services performed by Contractor or its subcontractors before, during and after execution of any Contract with the State. Contractor agrees it shall so notify the State immediately of any such change or shift in location of its services. The State has the right to immediately terminate the contract, unless a duly signed waiver from the State has been attained by the Contractor to perform the services outside the United States.

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

By: _____
Contractor

Print Name: Ronald Prichard

Title: President

Date: June 25, 2013