

**REQUEST FOR PROPOSALS
FOR
THE STATE OF OHIO DEPARTMENT OF TAXATION**

**RFP NUMBER: TAX21IT03
DATE ISSUED: May 25, 2021**

The Ohio Department of Taxation (ODT) is requesting proposals for:

2D BARCODE SOLUTION

**Inquiry Period Begins: May 25, 2021
Inquiry Period Ends: June 4, 2021 at 8:00 am (Columbus, OH local time)
Proposals Due: **June 11, 2021 by 5:00 pm****

Submit Proposals via email to:

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And

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THE STATE OF OHIO DEPARTMENT OF TAXATION
2D Barcode RFP TAX21IT03

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SECTION I - REQUESTED SERVICES OVERVIEW

1.1 Purpose:

The Ohio Department of Taxation (ODT) is soliciting competitive sealed proposals for a **2D BARCODE SOLUTION** (the “Project”), to be completed as soon as possible.

1.2 Background:

The Ohio Department of Taxation (ODT) administers individual and business taxes for the State of Ohio. It maintains its principal offices in Columbus, Ohio. Its core functions include: taxpayer registration, returns and remittance processing, taxpayer accounting and billing, non-filer and under-reporter discovery, selection and management of audits, processing assessments, administering taxpayer appeals, revenue accounting, and distribution of tax proceeds to local governments within the State. Major taxes/funds administered by ODT include but are not limited to:

- Commercial Activity Tax (CAT)
- Corporation Franchise Tax
- Employer Withholding Tax (including School District Withholding Tax)
- Individual Income Tax – (including School District Income Tax) (PIT)
- Pass-Through Entity Tax (PTE)
- Sales and Use Tax (SUT)
- Liquor and Excise Taxes

1.3 Project Objectives:

The purpose of this project is to provide a way for taxpayers to print 2D barcodes on PDFs of all current ODT forms which will eliminate the need for ODT employees to manually enter data from the forms that is not adequately scanned and ingested into our systems. Providing 2D barcoding will create greater accuracy in form output, require less manual labor needed for entering data by hand (and a corresponding cost savings), and greater convenience for both taxpayers and the Department.

1.4 Overview of the Project:

*The Project’s scope of the work and requirements are provided in greater detail within **Attachment 1** to this RFP. If there is any inconsistency between this summary and the Supplement’s description of the work, the Supplement will govern.*

SECTION II - GENERAL INSTRUCTIONS

2.1 Inquiries:

Offerors may make inquiries regarding this RFP anytime during the inquiry period listed in the Calendar of Events. To make an inquiry, Offerors must use the following process:

- Access the State’s Procurement Website at <http://procure.ohio.gov/>
- From the Quick Links menu on the right, select “**Bid Opportunities Search**”;
- In the “**Document/Bid Number**” field, enter the RFP number found on the first page of this RFP (the RFP number begins with zero followed by the letter “A”);
- Select “**Request for Proposal**” from the Opportunity Type dropdown;
- Click the “**Search**” button;
- On the Procurement Opportunity Search Results page, click on the hyperlinked **Document/Bid Number**;

- On the Procurement Opportunity Details page, click the “**Submit Inquiry**” button;
- On the document inquiry page, complete the required “**Personal Information**” section by providing:
 - First and last name of prospective Offeror’s representative who is responsible for the inquiry,
 - Representative’s business phone number,
 - Company Name,
 - Representative’s email address;
- Type the inquiry in the space provided including:
 - A reference to the relevant part of this RFP,
 - The heading for the provision under question, and
 - The page number of the RFP where the provision can be found; and
- Enter the Confirmation Number at the bottom of the page
- Click the “**Submit**” button.

An Offeror submitting an inquiry will receive an immediate acknowledgement that ODT has received the inquiry as well as an email acknowledging receipt. The Offeror will not receive a personalized response to the question nor notification when ODT has answered the question. Offerors may view inquiries and responses on the State’s Procurement Website by using the “Bid Opportunities Search” feature described above and by clicking the “View Q & A” button on the document information page.

ODT will respond to all inquiries within three (3) business days of receipt, excluding weekends and State holidays, but will not respond to any inquiries received after 8:00 a.m. on the inquiry end date. ODT does not consider questions asked during the inquiry period through the inquiry process as exceptions to the terms and conditions of this RFP.

2.2 Proposal Submittal:

Each Offeror must submit a technical section and a cost section as part of its total Proposal before the opening time on the Proposal due date. Proposals must be submitted in the following manner:

- Proposals must be submitted via e-mail by no later than **June 11, 2021** by 5:00 p.m. to Michael.OLeary@tax.state.oh.us, Kerrie.Ryan@tax.state.oh.us and Eric.Benson@tax.state.oh.us.
- Emails will clearly refer to 2D Barcode RFP TAX21IT03 in the subject line of the email.
- The Offeror must provide an electronic “searchable” copy of the proposal in Microsoft Office (native format), Microsoft Word (native format), Microsoft Project (native format), Microsoft Excel (native format) and Adobe Acrobat format, as appropriate. Hardcopies will not be accepted.
- Margins must not be less than ¾ of an inch on all sides.
- Font must be 10 point or larger with no more than 6 lines of text per inch.
- All pages must be numbered consecutively using the format “Page [#] of [total number of pages]” (e.g., Page 2 of 20).
- Each Proposal must be organized in both a Microsoft Word document and PDF document, ordered in the same manner as the response items are ordered in the applicable attachments to this RFP.
- ODT requests clear and concise Proposals, but Offerors must answer questions completely and meet all the RFP’s requirements.
- Offeror responses to questions throughout this RFP and related Supplements should use a consistent contrasting color (**blue** is suggested to contrast with the black text of this RFP document) to provide their response to each requirement so that the Offeror response is readily distinguishable to ODT.

Proposers are advised there will be no opportunity to correct mistakes or deficiencies in their submitted materials after the Proposal Due Date. Proposals that are incomplete or otherwise missing required information may not be evaluated. It is the Proposer's responsibility to ensure timely submission of a complete Proposal. Late Proposals will not be scored. Proposals that are not submitted in the format

requested will not be scored. No supplementary or revised materials will be accepted after the Proposal Due Date unless specifically requested by ODT.

All costs incurred in the preparation of the Proposal shall be borne by the Proposer alone, and ODT shall not contribute, in any way, to the cost of the preparation of the Proposal.

Any and all documents developed by the Proposer during the course of this project will be provided to ODT upon request and will become the property of ODT, and the Proposer shall not assert any claims arising under copyright or otherwise inconsistent with the transfer of ownership of such documents. All information submitted in response to this RFP shall be a public record unless a statutory exception exists that would protect the information from release to the public.

ODT reserves the right to:

- Accept or reject any and all Proposals and/or bids if ODT determines that it is in the best interests of ODT to do so.
- Rebid this RFP, requesting new Proposals from qualified vendors.
- Waive or modify minor irregularities in Proposals received.
- Negotiate with Proposer(s), within the requirements of this RFP, to best serve the interests of ODT.
- Require the submission of modifications or additions to Proposals as a condition of further participation in the selection process.
- Not make an award at the end of the evaluation process; this RFP is not to be interpreted or construed to guarantee that one or more Proposers submitting responses will be awarded contracts.
- Adjust the RFP Calendar of Event dates for whatever reason it deems appropriate.
- Contact Proposer to clarify any portion of the Proposer's submittal.
- If, during the review process, ODT determines that it is necessary to make further distinctions between certain Proposers, ODT may request certain selected Proposers to make a presentation to staff and reviewers.

In accordance with federal and state statutes and ODT policy, no person shall be excluded from participation or subject to discrimination in the RFP process on the basis of race, color, age, sex, national origin, military status, religion, or disability. Each Proposal must contain the following ***tabbed sections in the response***:

Technical Proposal Requirements

- Cover Letter
- Subcontractor Letters, if applicable
- Attachment One - Requirements - Response
- Attachment Two – Offeror Certification Form - Response
- Attachment Three – Offeror Profile - Response
- Attachment Four – Affirmation and Disclosure Form
- Attachment Five – Sample Contract
- Supplier Registration
- MBE Certification(s) if applicable
- Supplement Responses
 - Supplement 1 – State Policy, Standards and Service Requirements
 - Supplement 2 – State Information Security and Privacy Requirements, State Data Handling
- Proof of Insurance
- W-9 Form
- Independent Contractor Acknowledgement, if applicable
- Acceptance of General Terms and Conditions
- Assumptions
- Value-Added Services (if applicable)
- **Cost Proposal** - Microsoft Excel Workbook

2.3 Calendar of Events:

The schedule for the RFP process and the Project is given on page one. ODT may change this schedule at any time. If ODT changes the schedule before the Proposal due date, it will do so through an announcement on the State Procurement Website's question and answer area for this RFP. It is each prospective Offeror's responsibility to check the Website question and answer area for this RFP for current information regarding this RFP and its Calendar of Events through award of the Contract.

2.4 Disclosure of Proposal Contents:

ODT will seek to open the Proposals in a manner that avoids disclosing their contents. Additionally, ODT will seek to keep the contents of all Proposals confidential until the Contract is awarded.

2.5 Rejection of Proposals:

ODT may reject any Proposal that proposes to do any work or make any State data available outside the United States or for which the Offeror has not submitted the affirmation and disclosure form representing that it will ensure that all work on the Project will be done within the United States and that all State data will remain in the United States. Additionally, ODT may reject any Proposal that is not in the required format, does not address all the requirements of this RFP, objects to the terms or conditions of this RFP, or that ODT determines is excessive in price or otherwise not in ODT's interest to accept. In addition, ODT may cancel this RFP, reject all the Proposals, and seek to do the Work through a new RFP or other means. Each Proposal must include a response to every request for information in this RFP and all related Supplements (per the response options), whether the request requires a simple "yes" or "no" or requires a detailed explanation. Simply repeating the RFP's requirement and agreeing to comply may be an unacceptable response and may cause the Proposal to be rejected.

2.6 Technical Evaluation:

ODT will evaluate each Proposal that it has determined is timely, complete, and properly formatted. ODT may have the Proposals or portions of them reviewed and evaluated by independent third parties or various State personnel with experience that relates to the Work or to a criterion in the evaluation process. Additionally, ODT may seek reviews from end users of the Work or the advice or evaluations of various State personnel that have subject matter expertise or an interest in the Work. ODT may adopt or reject any recommendations it receives from such reviews and evaluations or give them such weight as ODT believes is appropriate. ODT will document all major decisions and make these a part of the Contract file, along with the evaluation results for each Proposal considered.

2.7 Requirements:

Supplement One provides requirements ODT will use to evaluate the Proposals, including any mandatory requirements. If the Offeror's Proposal meets all the mandatory requirements, the Offeror's Proposal may be included in the next phase of the evaluation, which will consider other requirements described in Supplement One and the table in Section IV, below.

2.8 Minority Business Enterprise (MBE):

ODT is committed to improving the number of minority-owned enterprises that do business with the State of Ohio. The Offeror is encouraged to seek out and set aside work for Ohio certified minority business enterprises (MBEs). The MBE must be certified by the Ohio Department of Administrative Services pursuant to ORC 123.151. For more information regarding MBE and MBE certification requirements please refer to the DAS Equal Opportunity Division Web site at: <http://das.ohio.gov/Divisions/EqualOpportunity/MBEEDGECertification.aspx>

In addition, to search for Ohio MBE-Certified Providers, utilize the following search routine published on the [DAS Equal Opportunity Division website](#):

- Select “MBE Certified Providers” as the EOD Search Area selection;
- On the subsequent screen, at minimum, select the appropriate Procurement Type, e.g., “Information Technology Service” as a search criterion;
- Select “Search”; and
- A list of Ohio MBE Certified Service Providers will be displayed.

2.9 Cost Evaluation:

Once the technical merits of the Proposals are considered, ODT may consider the costs of one or more of the highest-ranking Proposals. It is within ODT’s discretion to wait until after any interviews, presentations, and demonstrations to evaluate costs. Before evaluating the technical merits of the Proposals, ODT may do an initial review of costs to determine if any Proposals should be rejected because of excessive cost. ODT may reconsider the excessiveness of any Proposal’s cost at any time in the evaluation process.

2.10 Reference Checks:

As part of ODT’s evaluation process, ODT may conduct reference checks to verify and validate the Offeror’s and its proposed candidates’ and subcontractors’ past performance. Reference checks that indicate poor or failed performance by the Offeror or a proposed candidate or subcontractor may be cause for rejection of the Offeror’s Proposal. Additionally, ODT may reject an Offeror’s Proposal as non-responsive if the Offeror fails to provide requested reference contact information.

2.11 Contract Negotiations:

It is within ODT’s discretion whether to permit negotiations. An Offeror must not submit a Proposal assuming that there will be an opportunity to negotiate any aspect of the Proposal, and any Proposal that is contingent on ODT negotiating with the Offeror may be rejected. ODT is free to limit negotiations to particular aspects of any Proposal or the RFP, to limit the Offerors with whom ODT negotiates, and to dispense with negotiations entirely. If negotiations are held, they will be scheduled at the convenience of ODT, and the selected Offeror or Offerors must negotiate in good faith.

From the opening of the Proposals to the award of the Contract, everyone evaluating Proposals on behalf of ODT will seek to limit access to information contained in the Proposals solely to those people with a need to know the information. ODT also will seek to keep this information away from other Offerors, and ODT may not tell one Offeror about the contents of another Offeror’s Proposal in order to gain a negotiating advantage. Before the award of the Contract or cancellation of the RFP, any Offeror that seeks to gain access to the contents of another Offeror’s Proposal may be disqualified from further consideration.

SECTION III - AWARD OF THE CONTRACT

3.1 Contract:

Included with this RFP, as Attachment Five, is a sample of the Contract for the RFP. ODT will issue two originals of the Contract to the Contractor proposed for award. The Offeror must sign and return the two originals to the Procurement Representative. ODT also may issue two originals of any Master Contract(s) for Software Licensing (Master Contract(s)) or Master Cloud Services Agreement (Cloud), if applicable to the Contractor. If the licensor under any such Master Contract or Cloud is not the Offeror, the Offeror will be responsible for coordinating execution of the document by the licensor and returning it to ODT with the two originally signed copies of the Contract. The Contract and any Master Contract or Cloud will bind ODT only when ODT's duly authorized representative signs all copies and returns one to the Contractor with an award letter, ODT issues a purchase order, and all other prerequisites identified in the Contract have occurred.

If this RFP results in a Contract award, the Contract will consist of this RFP, including all attachments, Supplements and/or written amendments to this RFP, the Contractor's Proposal, and written, authorized amendments to the Contractor's Proposal. It also will include any materials incorporated by reference in the above documents and any purchase orders and change orders issued under the Contract. The general terms and conditions for the Contract are contained in Section VI of this RFP. If there are conflicting provisions between the documents that make up the Contract, the order of precedence for the documents is as follows:

1. The one-page Contract signature page (Attachment Five) in its final form;
2. The attached, amended and clarified version of Contractor's Response. Contractor's Response includes General Terms and Conditions, and all other Attachments, Supplements and materials included in Contractor's Response as accepted by ODT;
3. The attached Cost Proposal Workbook;
4. The applicable Purchase Order.

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

4.2 Term and Renewal:

The term of the Contract will be from the award date until the Work is completed to the satisfaction of the State and the Contractor is paid or June 30, 2024, whichever is sooner. ODT may renew this Contract for up to four (4) additional two (2) year term(s), subject to and contingent on the discretionary decision of the Ohio General Assembly to appropriate funds for this Contract in each new biennium for a maximum contract term expiring June 30, 2030. Any such renewal of all or part of the Contract also is subject to the satisfactory performance of the Contractor and the needs of ODT.

SECTION IV - EVALUATION CRITERIA

4.1 Technical Evaluation Criteria

Services Provider Requirements	Weight	Does Not Meet	Partially Meets	Meets	Exceeds
The Offeror or proposed subcontractors have successfully integrated a similar solution in at least 3 tax or non-tax sites. Provide the last 3 reference sites from	5	0	2	5	7

within the past 36 months – Attachment Two					
The offeror must provide evidence that they have been in business for at least five years – Attachment Two	2	0	2	5	7
The offeror must have implemented similar architecture and hardware solution on at least two similar sites – Attachment Two	5	0	2	5	7
General Functionality (See also: Attachment 1)	10	0	2	5	9
3.4 Software	3	0	2	5	7
3.5 Development	3	0	2	5	7
3.6 Implementation	5	0	2	5	7
3.7 Production Support	5	0	2	5	9
3.8 Security	5	0	2	5	7
3.9 Performance and Validation	5	0	2	5	7
Training and Knowledge Transfer	2	0	2	5	7

4.2 Evaluation Scoring Formula:

The evaluation team will rate the Proposals that meet the Mandatory Requirements based on the following criteria and respective weights. ODT is committed to making more State contracts, services, benefits and opportunities available to minority business enterprises (MBE). To foster this commitment, ODT included an MBE Set-aside component in the Evaluation Scoring Formula (shown below).

Criteria	Percentage
Technical Proposal	75%
Cost Proposal	20%
MBE Set-aside	5%

ODT staff or reviewers selected by ODT (the committee) will score the proposals submitted in response to this RFP by multiplying the rating received for each of the above technical criteria by its associated weight assigned, and then adding all extended scores. Ratings will be assigned on a scale from zero to 5 (regarding meeting or exceeding objectives or expectations) for each criterion. Cost and MBE Set-Aside capabilities will also be rated from zero to 5 and scores for all three categories shall be further weighted as indicated in the percentages above for a total score for each proposal.

SECTION V - SPECIAL PROVISIONS

5.1 Submittal of Deliverables.

Should ODT require Work elements be submitted as a Deliverable, the Contractor must perform its tasks in a timely and professional manner that produces Deliverables that fully meet the Contract's requirements. The Contractor must provide the Deliverables no later than the due dates the Contract requires. By submitting a Deliverable, the Contractor represents that, it has performed the associated tasks in a manner that meets the Contract's requirements.

The Contractor must provide all Deliverables to ODT Project Representative, who will review (or delegate review of) the materials or documents within a reasonable time after receipt, as specified in ODT approved, base-lined Project Plan.

ODT's form authorizing payment and the payment itself do not indicate that ODT has accepted the Deliverables associated with the payment. ODT's acceptance of the Deliverables that are part of developing the Project is conditioned on a successful performance test upon completion of the Project or Services (if applicable).

5.2 General Systems Implementation Standards:

The Contractor has and will continue to use its best efforts through quality assurance procedures to ensure there are no viruses or malware or undocumented features in its infrastructure and services and that they do not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent any use of or access to them by ODT.

5.3 Inconsistencies between Contract and Deliverables:

If any terms and conditions that may be incorporated in a User, Operations, Training Document or Guide or Contractor created Deliverable, work product, assumption, responsibility or activity are inconsistent or conflict with the Contract, the Contract will prevail.

5.4 The Contractor's Fee Structure:

The Contract award will be for a Not-to-Exceed Fixed cost as agreed to in the Offerors Cost Summary. The Contractor may invoice ODT for each Task as defined in Attachment 1 after ODT has accepted all Deliverables for that Task. The Contractor may invoice ODT for the on-going software licensing, maintenance and support costs annually in advance.

5.5 Reimbursable Expenses:

None.

5.6 Location of Data:

The Contractor must perform all work on the Project and keep all State data within the United States, and ODT may reject any Proposal that proposes to do any work or make State data available outside the United States. ODT also may reject any Proposal for which the Contractor has not submitted the Affirmation and Disclosure Form representing that it will ensure that all work on the Project will be done within the United

States and that all State data will remain in the United States. Additionally, the Contractor must provide written notification for approval if at any time the location of work or data changes.

SECTION VI - GENERAL TERMS AND CONDITIONS

PART ONE: PERFORMANCE AND PAYMENT

6.1 Statement of Work:

The selected Offeror's Proposal and ODT's Request for Proposal (collectively, the "RFP Documents") are a part of this Contract and describe the work (the "Project") the Contractor must do and any materials the Contractor must deliver (the "Deliverables") under this Contract. The Contractor must do the Project in a professional, timely, and efficient manner and must meet all milestones in a proper fashion. The Contractor also must furnish its own support staff necessary for the satisfactory performance of the Project.

The Contractor must consult with the appropriate ODT representatives and others necessary to ensure a thorough understanding of the Project and satisfactory performance. ODT may give instructions to or make requests of the Contractor relating to the Project, and the Contractor must comply with those instructions and fulfill those requests in a timely and professional manner. Those instructions and requests will be for the sole purpose of ensuring satisfactory completion of the Project and will not amend or alter the scope of the Project.

6.2 Term:

Unless this Contract is terminated or expires without renewal, it will remain in effect until the Project is completed to the satisfaction of ODT, including all optional renewal periods for maintenance or continuing commitments, and the Contractor is paid. However, the current General Assembly cannot commit a future General Assembly to an expenditure. Therefore, this Contract will automatically expire at the end of each biennium, the first of which is June 30, 2024. ODT may renew this Contract in the next biennium by issuing written notice to the Contractor of the decision to do so. This expiration and renewal procedure also will apply to the end of any subsequent biennium during which the Project continues, including any optional renewal periods. Termination or expiration of this Contract will not limit the Contractor's continuing obligations with respect to Deliverables that ODT paid for before or after termination or limit ODT's rights in such.

ODT's funds are contingent upon the availability of lawful appropriations by the Ohio General Assembly. If the General Assembly fails to continue funding for the payments and other obligations due as part of this Contract, ODT's obligations under this Contract will terminate as of the date that the funding expires without further obligation of ODT.

The Project has a completion date that is identified in the RFP Documents. The RFP Documents also may have several dates for the delivery of Deliverables or reaching certain milestones in the Project. The Contractor must make those deliveries, meet those milestones, and complete the Project within the times the RFP Documents require. If the Contractor does not meet those dates, the Contractor will be in default, and ODT may terminate this Contract under the termination provision contained below.

ODT also may have certain obligations to meet. Those obligations, if any, are also listed in the RFP Documents. If ODT agrees that the Contractor's failure to meet the delivery, milestone, or completion dates in the RFP Documents is due to ODT's failure to meet its own obligations in a timely fashion, then the Contractor will not be in default, and the delivery, milestone, and completion dates affected by ODT's failure to perform will be extended by the same amount of time as ODT's delay. The Contractor may not rely on this provision unless the Contractor has in good faith exerted reasonable management skill to avoid an extension and has given ODT meaningful written notice of ODT's failure to meet its obligations within five business days of the

Contractor's realization that ODT's delay may impact the Project. The Contractor must deliver any such notice to both the Project Representative and Procurement Representative and title the notice as a "Notice of ODT Delay." The notice must identify any delay in detail, as well as the impact the delay has or will have on the Project. Unless ODT decides, in its sole and exclusive judgment, that an equitable adjustment in the Contractor's Fee is warranted in the case of an extended delay, an extension of the Contractor's time to perform will be the Contractor's exclusive remedy for ODT's delay. Should ODT determine that an equitable adjustment in the Contractor's Fee is warranted, the equitable adjustment will be handled as a Change Order under the Changes Section of this Contract, and the extension of time and equitable adjustment will be the exclusive remedies of the Contractor for ODT's delay.

ODT seeks a complete project, and the Contractor must provide any incidental items omitted in the RFP Documents as part of the Contractor's Not-To-Exceed Fixed costs. The Contractor also must fully identify, describe, and document all systems that are delivered as a part of the Project. Unless expressly excluded elsewhere in the RFP, all hardware, software, supplies, and other required components (such as documentation, conversion, training, and maintenance) necessary for the Project to be complete and useful to ODT are included in the Project and the Not-To-Exceed Fixed costs.

6.3 Compensation:

In consideration of the Contractor's promises and satisfactory performance, ODT will pay the Contractor the amount(s) identified in the RFP Documents (the "Fee"), plus any other expenses identified as reimbursable in the RFP Documents. In no event, however, will payments under this Contract exceed the "not-to-exceed" amounts in the RFP Documents without the prior written approval of ODT and, when required, the Ohio Controlling Board and any other source of funding. The Contractor's right to the Fee is contingent on the complete and satisfactory performance of the Project or, in the case of milestone payments or periodic payments of an hourly, daily, weekly, monthly, or annual rate, all relevant parts of the Project tied to the applicable milestone or period. Payment of the Fee also is contingent on the Contractor delivering a proper invoice and any other documents the RFP Documents require. An invoice must comply with ODT's then current policies regarding invoices and their submission. ODT will notify the Contractor in writing within 15 business days after it receives a defective invoice of any defect and provide the information necessary to correct the defect.

The Contractor must send all invoices under this Contract to the "bill to" address in the RFP Documents or in the applicable purchase order.

ODT will pay the Contractor interest on any late payment, as provided in Section 126.30 of the Ohio Revised Code (the "Revised Code"). If ODT disputes a payment for anything covered by an invoice, within 15 business days after receipt of that invoice, ODT will notify the Contractor, in writing, stating the grounds for the dispute. ODT then may deduct the disputed amount from its payment as a nonexclusive remedy. If the Contractor has committed a material breach, in the sole opinion of ODT, ODT also may withhold payment otherwise due to the Contractor. Both parties will attempt to resolve any claims of material breach or payment disputes through discussions among the Contractor's Implementation Manager (e.g., Contractor's Project Manager), the Contractor's Project executive, ODT's Project Representative, and ODT Contract Management Administrator. ODT will consult with the Contractor as early as reasonably possible about the nature of the claim or dispute and the amount of payment affected. When the Contractor has resolved the matter to ODT's satisfaction, ODT will pay the disputed amount within 30 business days after the matter is resolved. ODT has no obligation to make any disputed payments until the matter is resolved, and the Contractor must continue its performance under this Contract pending resolution of the dispute or claim.

If ODT has already paid the Contractor on an invoice but later disputes the amount covered by the invoice, and if the Contractor fails to correct the problem within 30 calendar days after written notice, the Contractor must reimburse ODT for that amount at the end of the 30 calendar days as a nonexclusive remedy for ODT. On written request from the Contractor, ODT will provide reasonable assistance in determining the nature of

the problem by giving the Contractor reasonable access to ODT's facilities and any information ODT has regarding the problem.

Payment of an invoice by ODT will not prejudice ODT's right to object to or question that or any other invoice or matter in relation thereto. The Contractor's invoice will be subject to reduction for amounts included in any invoice or payment made which are determined by ODT not to constitute allowable costs, on the basis of audits conducted in accordance with the terms of this Contract. At ODT's sole discretion all payments shall be subject to reduction for amounts equal to prior overpayments to the Contractor.

If the RFP Documents provide for any retainage, ODT will withhold from each invoice paid the percentage specified in the RFP Documents as retainage. ODT will pay the retainage only after ODT has accepted the Project, and then only in accordance with the payment schedule specified in the RFP Documents. ODT will withhold all amounts under this section arising from claims or disputes in addition to any retainage specified in the RFP Documents.

ODT may pay any part of the Not-To-Exceed Fixed Transaction, Installation and Maintenance costs identified in the RFP documents as being for a license in Commercial Material from a third party in accordance with the applicable license agreement, if the license agreement addresses payment. For all Key Commercial Software with a license agreement, payment of any license or support fees will be governed exclusively by that license agreement.

6.4 Right of Offset:

ODT may set off the amount of any Ohio tax liability, liquidated damages or other damages or claims for damages, or other obligation of the Contractor or its subsidiaries to ODT, including any amounts the Contractor owes to ODT under this or other contracts, against any payments due from ODT to the Contractor under this or any other contracts with ODT.

6.5 Employment Taxes:

All people furnished by the Contractor (the "Contractor Personnel") are employees or subcontractors of the Contractor, and none are or will be deemed employees or contractors of ODT. No Contractor Personnel will be entitled to participate in, claim benefits under, or become an "eligible employee" for purposes of any employee benefit plan of ODT by reason of any work done under this Contract. The Contractor will pay all federal, state, local, and other applicable payroll taxes and make the required contributions, withholdings, and deductions imposed or assessed under any provision of any law and measured by wages, salaries, or other remuneration paid by or which may be due from the Contractor to the Contractor Personnel. The Contractor will indemnify, defend (with the consent and approval of the Ohio Attorney General), and hold ODT harmless from and against all claims, losses, liability, demands, fines, and expense (including court costs, defense costs, and redeemable attorney fees) arising out of or relating to such taxes, withholdings, deductions, and contributions with respect to the Contractor Personnel. The Contractor's indemnity and defense obligations also apply to any claim or assertion of tax liability made by or on behalf of any Contractor Personnel or governmental agency on the basis that any Contractor Personnel are employees or contractors of ODT, that ODT is the "joint employer" or "co-employer" of any Contractor Personnel, or that any Contractor Personnel are entitled to any employee benefit offered only to eligible regular fulltime or regular part-time employees of ODT.

6.6 Sales, Use, Excise, and Property Taxes:

ODT is exempt from any sales, use, excise, and property tax. To the extent sales, use, excise, or any similar tax is imposed on the Contractor in connection with the Project, such will be the sole and exclusive responsibility of the Contractor. Further, the Contractor will pay such taxes, together with any interest and

penalties not disputed with the appropriate taxing authority, whether they are imposed at the time the services are rendered or a later time.

PART TWO: WORK AND CONTRACT ADMINISTRATION

6.7 Other Contractors:

ODT may hold other contracts for additional or related work for this Project. The Contractor must fully cooperate with all other contractors and State employees and coordinate its work with such other contractors and State employees as may be required for the smooth and efficient operation of all related or additional work. The Contractor may not act in any way that may unreasonably interfere with the work of any other contractors or ODT's employees. Additionally, the Contractor must include the obligations of this provision in all its contracts with its subcontractors that work on this project.

6.8 Subcontracting:

The Contractor may not enter into subcontracts related to the Project after award without written approval from ODT. Nevertheless, the Contractor will not need ODT's written approval to subcontract for the purchase of commercial goods that are required for satisfactory completion of the Project. All subcontracts will be at the sole expense of the Contractor unless expressly stated otherwise in the RFP Documents.

6.9 Insurance:

Contractor shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services hereunder by the Contractor, its agents, representatives, or employees. Contractor shall procure and maintain, for the duration of the contract, insurance for claims arising out of their services and including, but not limited to loss, damage, theft or other misuse of data, infringement of intellectual property, invasion of privacy and breach of data. At ODT's request, Contractor shall furnish ODT of Ohio with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause.

6.10 Key Employees:

It is expressly understood that the Contractor's selection is based in part on the credentials of the personnel proposed in the Contractor's proposal. Any substitution for key personnel during the course of the contract will be deemed a material breach unless the substituted employee's credentials are submitted to ODT and approved by ODT prior to substitution. Contractor shall report any significant changes in the organizational structure and staffing to ODT in a timely manner. Contractor shall make no changes in the assigned project management or implementation team without the express written approval of ODT.

6.11 Suspension and Termination:

ODT may terminate this Contract in full or in part for cause if the Contractor defaults in meeting its obligations under this Contract and fails to cure its default within the time allowed by this Contract, or if a petition in bankruptcy (or similar proceeding) has been filed by or against the Contractor. ODT also may terminate this Contract if the Contractor violates any law or regulation in doing the Project, or if it appears to ODT that the Contractor's performance is substantially endangered through no fault of ODT. In any such case, the termination will be for cause, and ODT's rights and remedies will be those identified below for termination for cause.

On written notice, the Contractor will have 30 calendar 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 calendar days after written notice, or if the breach is not one that is curable, ODT will have the right to terminate this

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

ODT also may terminate this Contract in full or in part for its convenience and without cause or if the Ohio General Assembly fails to appropriate funds for any part of the Project.

The notice of termination, whether for cause or without cause, will be effective as soon as the Contractor receives it. Upon receipt of the notice of termination, the Contractor must immediately cease all work on the project and take all steps necessary to minimize any costs the Contractor will incur related to this Contract. The Contractor also must immediately prepare a report and deliver it to ODT. The report must be all-inclusive and must detail the work completed at the date of termination, the percentage of the Project's completion, any costs incurred in doing the Project to that date, and any Deliverables completed or partially completed but not delivered to ODT at the time of termination. The Contractor also must deliver all the completed and partially completed Deliverables to ODT with its report. However, if ODT determines that delivery in that manner would not be in its interest, then ODT will designate a suitable alternative form of delivery, which the Contractor must honor.

If ODT terminates this Contract for cause, ODT will be entitled to cover for the Work by using another Contractor on such commercially reasonable terms as ODT and the covering contractor may agree. The Contractor will be liable to ODT for all costs related to covering for the Work to the extent that such costs, when combined with payments already made to the Contractor for the Work before termination, exceed the costs that ODT would have incurred under this Contract. The Contractor also will be liable for any other direct damages resulting from its breach of this Contract or other action leading to termination for cause. If the Contractor fails to deliver Deliverables or provide satisfactory services, ODT has the right to withhold any and all payments due to the Contractor without penalty or work stoppage by the Contractor until such failure to perform is cured.

If the termination is for the convenience of ODT, the Contractor will be entitled to the Contract price as prorated by ODT Contract price for deliverables, products or services accepted by ODT and not previously paid for provided in that in no event will total payments exceed the amount payable to the Contractor is the Contract had been fully performed. For items not specifically priced, ODT will use fair market value to determine the price owed. The Contractor will use generally accepted accounting principles or equivalent and sound business practices in determining all costs claimed, agreed to, or determined under this clause.

ODT will have the option of suspending this Contract in full or in part rather than terminating the Project, if ODT believes that doing so would better serve its interests. In the event of a suspension for the convenience of ODT, the Contractor will be entitled to receive payment for the work performed before the suspension. In the case of suspension of the Project for cause rather than termination for cause, the Contractor will not be entitled to any compensation for any work performed. If ODT reinstates the Project after suspension for cause, rather than terminating this Contract after the suspension, the Contractor may be entitled to compensation for work performed before the suspension, less any damage to ODT resulting from the Contractor's breach of this Contract or other fault. Any amount due for work before or after the suspension for cause will be offset by any damage to ODT from the default or other event giving rise to the suspension.

In the case of a suspension for ODT's convenience, ODT will calculate the amount of compensation due to the Contractor for work performed before the suspension in the same manner as provided in this section for termination for ODT's convenience. The Contractor will not be entitled to compensation for any other costs

associated with a suspension for ODT's convenience, and ODT will make no payment under this provision to the Contractor until the Contractor submits a proper invoice. If ODT decides to allow the work to continue rather than terminating this Contract after the suspension, ODT will not be required to make any payment to the Contractor other than those payments specified in this Contract and in accordance with the payment schedule specified in this Contract for properly completed work.

Any notice of suspension, whether with or without cause, will be effective immediately on the Contractor's receipt of the notice. The Contractor will prepare a report concerning the Project just as is required by this Section in the case of termination. After suspension of the Project, the Contractor may not perform any work without the consent of ODT and may resume work only on written notice from ODT to do so. In any case of suspension, ODT retains its right to terminate this Contract rather than to continue the suspension or resume the Project.

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

Any default by the Contractor or one of its subcontractors will be treated as a default by the Contractor and all of its subcontractors. The Contractor will be solely responsible for satisfying any claims of its subcontractors for any suspension or termination and must indemnify ODT for any liability to them. Notwithstanding the foregoing, each subcontractor must hold ODT harmless for any damage caused to them from a suspension or termination. They must look solely to the Contractor for any compensation to which they may be entitled.

6.12 Project Responsibilities:

ODT will be responsible for providing only those things, if any, expressly identified in the RFP Documents. If ODT has agreed to provide facilities or equipment, the Contractor, by signing this Contract, warrants that the Contractor has either inspected the facilities and equipment or has voluntarily waived an inspection and will work with the equipment and facilities on an "as is" basis.

The Contractor must assume the lead in the areas of management, design, and development of the Project. The Contractor must coordinate the successful execution of the Project and direct all Project activities on a day-to-day basis, with the advice and consent of the Project Representative. The Contractor will be responsible for all communications regarding the progress of the Project and will discuss with the Project Representative any issues, recommendations, and decisions related to the Project.

If any part of the Project requires installation on ODT's property, ODT will provide the Contractor with reasonable access to the installation site for the installation and any site preparation that is needed. After the installation is complete, the Contractor must complete an installation letter and secure the signature of the Project Representative certifying that installation is complete and the Project, or applicable portion of it, is operational. The letter must describe the nature, date, and location of the installation, as well as the date the Project Representative certified the installation as complete and operational.

Unless otherwise provided in the RFP Documents, the Contractor is solely responsible for obtaining all official permits, approvals, licenses, certifications, and similar authorizations required by any local, state, or federal agency for the Project and maintaining them throughout the duration of this Contract.

6.13 Changes:

ODT may make reasonable changes within the general scope of the Project. ODT will do so by issuing a written order under this Contract describing the nature of the change ("Change Order"), including any change in cost

of the project. Additionally, if ODT provides directions or makes requests of the Contractor without a change order, and the Contractor reasonably believes the directions or requests are outside the specifications for the Project, the Contractor may request a Change Order from ODT. **ODT will not pay any additional costs or fees arising from directions or requests outside the specifications for the Project that are not included in an executed Change Order.**

6.14 Excusable Delay:

Neither party will be liable for any delay in its performance that arises from causes beyond its control and without its negligence or fault. The delayed party 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. In the event of any such excusable delay, the date of performance or of delivery will be extended for a period equal to the time lost by reason of the excusable delay. The delayed party also must describe the cause of the delay and what steps it is taking to remove the cause. The delayed party may not rely on a claim of excusable delay to avoid liability for a delay if the delayed party has not taken commercially reasonable steps to mitigate or avoid the delay. Things that are controllable by the Contractor's subcontractors will be considered controllable by the Contractor, except for third-party manufacturers supplying commercial items and over whom the Contractor has no legal control.

6.15 Tax Compliance:

Contractor agrees that it is compliant with, and will continue to be compliant with the filing and paying of all of its Ohio taxes, including its income tax and school district employer withholding tax responsibilities. Contractor authorizes ODT to perform an inquiry regarding current tax status and ODT may communicate any issues to Contractor.

Contractor further agrees that it will notify each person supplied under this contract, that as a condition of their engagement:

- They need to be current with, and continue to be current with, all of their Ohio tax filing and payment responsibilities, including but not limited to, their Ohio income tax and school district income tax responsibilities, subject to ODT confirmation;
- They will agree to and adhere to the various ODT policies posted on its website for the protection of taxpayer data and ODT equipment, as well as personal safety and security; and
- If required to complete disclosure training in order to access sensitive or confidential ODT information, Contractor and any personnel supplied under this RFP will complete the required disclosure training at no additional cost to ODT and prior to commencing work on this project.

Contractor agrees that failure to comply with these requirements will constitute a breach of this contract.

6.16 Background Checks:

All Contractor and subcontractor personnel, including any Replacement Personnel, assigned to this project who have access to sensitive or confidential information or to sensitive State systems must have a current fingerprint search and background check performed by the Federal Bureau of Investigation or other Federal investigative authority. The fingerprint search and background checks must be completed before any such Contractor or subcontractor personnel gain access to State facilities, sensitive and/or confidential information or systems. All costs associated with this will be at the Contractor's expense. At its discretion, ODT may reject any Contractor or subcontractor personnel based on the information provided in the completed background check.

The contractor must confirm in their proposal that all contractor and subcontractor personnel assigned to the project will have background checks completed before project start or before reporting to state designated project facilities.

6.17 Ohio MBE Certification:

The MBE must maintain their certification throughout the term of the Contract, including any renewals. Failure to maintain such certification will be considered a breach of the Contract.

6.18 Publicity and Branding:

The Contractor shall not do the following without prior, written consent from ODT:

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

PART THREE: OWNERSHIP AND HANDLING OF INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION

6.19 Confidentiality:

ODT may disclose to the Contractor written material or oral or other information that ODT treats as confidential ("Confidential Information"). Title to the Confidential Information and all related materials and documentation ODT delivers to the Contractor will remain with ODT. 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 interest of the public, other contractors, potential contractors with ODT, or individuals or organizations about whom ODT keeps information. By way of example, information must be treated as confidential if it includes any proprietary documentation, materials, flow charts, codes, software, computer instructions, techniques, models, information, diagrams, know-how, trade secrets, data, business records, or marketing information. By way of further example, the Contractor also must treat as confidential materials such as police and investigative records, files containing personal information about individuals or employees of ODT, such as personnel records, tax records, and so on, court and administrative records related to pending actions, any material to which an attorney-client, physician-patient, or similar privilege may apply, and any documents or records excluded by Ohio law from public records disclosure requirements.

The Contractor may not disclose any Confidential Information to third parties and must use it solely to do the Project. The Contractor must restrict circulation of Confidential Information within its organization and then only to people in the Contractor's organization that have a need to know the Confidential Information to do the Project. The Contractor will be liable for the disclosure of such information, whether the disclosure is intentional, negligent, or accidental, unless otherwise provided below.

The Contractor will not incorporate any portion of any Confidential Information into any work or product, other than a Deliverable, and will have no proprietary interest in any of the Confidential Information. Furthermore, the Contractor must cause all of its Personnel who have access to any Confidential Information to execute a confidentiality agreement incorporating the obligations in this section.

The Contractor's obligation to maintain the confidentiality of the Confidential Information will not apply where such: (1) was already in the Contractor's possession before disclosure by ODT, and such was received by the Contractor without obligation of confidence; (2) is independently developed by the Contractor; (3) except as provided in the next paragraph, is or becomes publicly available without breach of this Contract; (4) is rightfully received by the Contractor from a third party without an obligation of confidence; (5) is disclosed by the Contractor with the written consent of ODT; or (6) is released in accordance with a valid order of a court or governmental agency, provided that the Contractor (a) notifies ODT of such order

immediately upon receipt of the order and (b) makes a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production. The Contractor must return all originals of any Confidential Information and destroy any copies it has made on termination or expiration of this Contract.

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.

The Contractor may disclose Confidential Information to its subcontractors on a need-to-know basis, but the Contractor first must obligate them to the requirements of this section.

6.20 Confidentiality Agreements:

When the Contractor performs services under this RFP that require the Contractor's and its subcontractors' personnel to access facilities, data, or systems that ODT in its sole discretion deems sensitive, ODT may require the Contractor's and its subcontractors' personnel with such access to sign an individual confidential agreement and policy acknowledgements, and have a background check performed before accessing those facilities, data, or systems. The Contractor must immediately replace any of its or its subcontractors' personnel who refuse to sign a required confidentiality agreement or acknowledgment or have a background check performed.

6.21 Ownership of Deliverables:

ODT owns all Deliverables that the Contractor produces under this Contract, including any software modifications, and documentation, with all rights, title, and interest in all intellectual property that come into existence through the Contractor's custom work being assigned to ODT. Additionally, the Contractor waives any author rights and similar retained interests in custom-developed material. The Contractor must provide ODT with all assistance reasonably needed to vest such rights of ownership in ODT. 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 into any custom Deliverable ("Pre-existing Materials"), if the Contractor provides the non-exclusive license described in the next paragraph.

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

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

For Deliverables that include custom materials such as software, scripts, or similar computer instructions developed for ODT, ODT is entitled to the source material. Scripts and similar functionality may not be locked or otherwise protected from access by ODT, unless ODT has any passwords or other tools necessary to access the material. Source material must include annotations or comments according to industry standards. Further, ODT is entitled to any working papers the Contractor has developed during the performance of the Project that would reasonably assist ODT in using the Deliverables that include source materials or that would help ODT protect its interests in the Deliverable or update, modify, or otherwise maintain the Deliverable. This also includes all design and architectural materials, such as schemas.

The Contractor may use Confidential Information only as necessary for Contractor's performance under or pursuant to rights granted in this Agreement and for no other purpose. The Contractor's limited right to use Confidential Information expires upon expiration or termination of this Agreement for any reason. The Contractor's obligations of confidentiality and non-disclosure survive termination or expiration for any reason of this Agreement.

6.22 License in Commercial Material:

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

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

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

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

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

1. Used or copied for use in or with the computer or computers for which it was acquired, including use at any State installation to which such computer or computers may be transferred;
2. Used or copied for use in or with a backup computer for disaster recovery and disaster recovery testing purposes or if any computer for which it was acquired is inoperative;
3. Reproduced for safekeeping (archives) or backup purposes;

4. Modified, adapted, or combined with other computer software, but the modified, combined, or adapted portions of the derivative software incorporating any of the Commercial Software will be subject to same restrictions set forth in this Contract;
5. Disclosed to and reproduced for use on behalf of ODT by support service contractors or their subcontractors, subject to the same restrictions set forth in this Contract; and
6. Used or copied for use in or transferred to a replacement computer.

PART FOUR: REPRESENTATIONS, WARRANTIES, AND LIABILITIES

6.23 General Warranties:

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

Additionally, with respect to the Contractor's activities under this Contract, the Contractor warrants that: (1) the Contractor has the right to enter into this Contract; (2) the Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform the contemplated services; (3) the Contractor will observe and abide by all applicable laws and regulations, including those of ODT regarding conduct on any premises under ODT's control and security for ODT's data, systems, and networks; (4) the Contractor has good and marketable title to any goods delivered under this Contract and in which title passes to ODT; (5) the Contractor has the right and ability to grant the license granted in any Deliverable in which title does not pass to ODT; and (6) the Contractor is not subject to any unresolved findings of the Auditor of State under Revised Code Section 9.24 and will not become subject to an unresolved finding that prevents the extension or renewal of this Contract.

The warranties regarding material defects, merchantability, and fitness are one-year warranties. All other warranties will be continuing warranties. If any portion of the Project fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor must correct such failure with all due speed or must refund the amount of the compensation paid for such portion of the Project. The Contractor also must indemnify ODT for any direct damages and claims by third parties based on a breach of these warranties. This obligation of indemnification will not apply where ODT has modified or misused the Deliverable and the claim is based on the modification or misuse. ODT will give the Contractor notice of any such claim as soon as reasonably practicable. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor must do one of the following things: (1) modify the Deliverable so that it is no longer infringing; (2) replace the Deliverable with an equivalent or better item; (3) acquire the right for ODT to use the infringing Deliverable as it was intended for ODT to use under this Contract; or (4) remove the Deliverable and refund the amount ODT paid for the Deliverable and the amount of any other Deliverable or item that requires the availability of the infringing Deliverable for it to be useful to ODT.

6.24 Software Warranty:

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

the open market; and (e) the software and all maintenance will be provided in a professional, timely, and efficient manner.

For Commercial Software licensed from a third party that is incorporated into a Deliverable, and for which ODT has not approved a separate license agreement governing that Commercial Software's warranties as part of the RFP process, the Contractor represents and warrants that it has done one of the following things: (a) obtained the right from the third-party licensor to commit to the warranties and maintenance obligations in this Section; (b) obtained a binding commitment from the licensor to make those warranties and maintenance obligations directly to ODT; or (c) fully disclosed in the RFP Documents any discrepancies between the requirements of this section and the commitment the third-party licensor has made.

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

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

6.25 Indemnity for Property Damage, Bodily Injury, and Data Breach:

The Contractor must indemnify ODT for all liability and expense resulting from bodily injury to any person (including injury resulting in death), damage to tangible or real property, or disclosure/breach of State Data including personally identifiable information and State sensitive information arising out of the performance of this Contract, provided that such bodily injury, property damage, or disclosure/breach is due to the negligence or other tortious conduct of the Contractor, its employees, agents, or subcontractors. The Contractor will not be responsible for any damages or liability to the extent caused by the negligence or willful misconduct of ODT, its employees, other contractors, or agents.

6.26 Limitation of Liability:

Neither party will be liable for any indirect, incidental, or consequential loss or damage of the other party, 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. Additionally, neither party will be liable to the other for direct or other damages in excess of two times the **Not-To-Exceed Fixed Price** of this Contract. The limitations in this paragraph do not apply to: (i) any obligation of the Contractor to indemnify ODT against claims made against it; (ii) disclosure/breach of State Data including personally identifiable information or State sensitive information, or for (iii) damages to ODT caused by the Contractor's negligence or other tortious conduct.

PART FIVE: ACCEPTANCE AND MAINTENANCE

6.27 Standards of Performance and Acceptance:

There will be a period for performance testing of the completed Project. During the performance period, ODT, with the assistance of the Contractor, will perform acceptance testing. The performance period will last up to 90 calendar days. The performance criteria in the RFP Documents will be supplemented with the relevant user manuals, technical materials, and related writings, to the extent that the specifications in those writings supplement and refine rather than contradict the performance criteria in the RFP Documents. Acceptance of the Project depends on a successful completion of the performance period defined in this section and the RFP Documents. This section applies to the Project, and any part of it, as well as replacements or substitutes for the Project after completion of a successful performance period.

If the Project does not meet the standard of performance during the initial performance period, ODT will give the Contractor details about the problems in a timely manner and in a useful and relevant form. Until the Contractor demonstrably corrects all outstanding problems, the second performance period will not start, and ODT will not accept the Project (or part thereof). The second performance test will continue on a day-by-day basis until the standard of performance is met for a total of 30 consecutive calendar days or until the 90-day performance period has ended without meeting the standard of performance.

If the Project fails to meet the standard of performance after 90 calendar days from the start of the second performance period, the Contractor will be in default and will not have a cure period. In addition to all other remedies ODT may have under this Contract, ODT may request a correction or replacement of the relevant portion of the Project.

The Project may have components that can be tested for acceptance individually. If that is so, there may be acceptance criteria listed on the RFP Documents for each part of the Project that will be independently tested and accepted. However, unless the RFP Documents expressly provide otherwise, the failure of any independently tested component to meet its acceptance criteria will give ODT the right to reject the entire Project. Alternatively, if ODT determines that it is in ODT's interest to reject only the part of the Project that was independently and unsuccessfully tested, it may do so. If ODT chooses this option, ODT will be entitled to a refund or credit toward the Contractor's Fee equal to the cost of acquiring a replacement for the rejected component.

The acceptable level of performance for the Project will be 99.5%, unless otherwise specified in the RFP Documents. The performance level for the Project is computed by dividing the sum of the uptime by the number of working hours during the test time. "Uptime" means the total hours, rounded to the nearest quarter hour, during which all components of the Project are operational and all functions of the Project are available to its users. The number of "working hours" means the total number of working hours for the period during which the Project was scheduled to be available to its users. Uptime and downtime will be measured in hours and quarter hours.

The Project "downtime" is that period when any part of the Project is inoperable due to failure of the Project or a particular Deliverable to operate according to the specifications in the RFP Documents, the user documentation, or the published technical specifications. During a period of downtime, ODT may use operable components of the Project when that will not interfere with repair of inoperable components of the Project. Downtime will start from the time ODT notifies the Project Manager of the inoperable condition of the Project until the Project is returned in proper operating condition.

The Project will not be accepted until the performance period is complete.

Should it be necessary, ODT may delay the start of the performance period, but the delay will not exceed 30 consecutive calendar days after the scheduled date for implementation of the Project. Such a delay will not be considered a suspension of work under the Suspension and Termination section of this Contract.

6.28 Passage of Title:

Title to any Deliverable will pass to ODT only on acceptance of the Deliverable. All risk of loss, regardless of the cause, will remain with the Contractor until title to the Deliverable passes to ODT.

6.29 Software Maintenance:

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

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

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

6.30 Principal Period of Maintenance (General):

This section applies if software or Equipment will be a Deliverable under this Contract.

The Contractor must make maintenance available twelve working hours per weekday, between 7:00 a.m. and 7:00 p.m. (Columbus, Ohio local time). Travel time and expenses related to remedial and preventive maintenance will not be considered billable but will be included in the Contractor's firm, fixed Transaction

and Maintenance costs for the Project during the warranty period and a part of the annual maintenance Fee during later annual maintenance periods.

6.31 Maintenance Access (General):

This section applies if software or Equipment will be a Deliverable under this Contract.

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

6.32 Key Maintenance Personnel (General):

This section applies if software or Equipment will be a Deliverable under this Contract.

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

PART SIX: CONSTRUCTION

6.33 Entire Document:

This Contract is the entire agreement between the parties with respect to its subject matter and supersedes any previous agreements, whether oral or written.

6.34 Binding Effect:

This Contract will be binding upon and inure to the benefit of the respective successors and assigns of ODT and the Contractor.

6.35 Amendments – Waiver:

No change to any provision of this Contract will be effective unless it is in writing and signed by both parties. The failure of either party at any time to demand strict performance by the other party of any of the terms of this Contract will not be a waiver of those terms. Waivers must be in writing to be effective, and either party may at any later time demand strict performance.

6.36 Severability:

If any provision of this Contract is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Contract will remain in full force and effect to the extent that such does not create an absurdity.

6.37 Construction:

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

6.38 Notices:

For any notice under this Contract to be effective, it must be made in writing and sent to the address of the appropriate contact provided elsewhere in the Contract, unless such party has notified the other party, in

accordance with the provisions of this section, of a new mailing address. This notice requirement will not apply to any notices that this Contract expressly authorized to be made orally.

6.39 Continuing Obligations:

The terms of this Contract will survive the termination or expiration of the time for completion of Project and the time for meeting any final payment of compensation, except where such creates an absurdity.

6.40 Time is of the Essence:

Contractor hereby acknowledges that time is of the essence for performance of this Contract unless, otherwise agreed to in writing by the parties.

PART SEVEN: LAW AND COURTS

6.41 Compliance with Law:

The Contractor must comply with all applicable federal, state, and local laws while performing under this Contract.

6.42 Drug-Free Workplace:

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

6.43 Conflicts of Interest and Ethics Compliance Certification:

None of the Contractor's Personnel may voluntarily acquire any personal interest that conflicts with their responsibilities under this Contract. Additionally, the Contractor may not knowingly permit any public official or public employee who has any responsibilities related to this Contract or the Project to acquire an interest in anything or any entity under the Contractor's control, if such an interest would conflict with that official's or employee's duties. The Contractor must disclose to ODT knowledge of any such person who acquires an incompatible or conflicting personal interest related to this Contract. The Contractor also must take steps to ensure that such a person does not participate in any action affecting the work under this Contract. However, this will not apply when ODT has determined, in light of the personal interest disclosed, that person's participation in any such action would not be contrary to the public interest.

6.44 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 also certifies that all applicable parties listed in Ohio Revised Code Section 3517.13 are in full compliance with Ohio Revised Code Section 3517.13.

6.45 Unresolved Finding for Recovery:

If the Contractor was subject to an unresolved finding of the Auditor of State under Revised Code Section 9.24 on the date the parties sign this Contract, the Contract is void. Further, if the Contractor is subject to an unresolved finding of the Auditor of State under Revised Code Section 9.24 on any date on which the parties renew or extend this Contract, the renewal or extension will be void.

6.46 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/>

6.47 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 ODT, the Contractor must comply with all security and safety rules, regulations, and policies applicable to people on those premises.

6.48 Injunctive Relief:

Nothing in this Contract is intended to limit ODT's right to injunctive relief, if such is necessary to protect its interests or to keep it whole.

6.49 Assignment:

The Contractor may not assign this Contract or any of its rights or obligations under this Contract without the prior, written consent of ODT. ODT is not obligated to provide its consent to any proposed assignment.

6.50 Governing Law:

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

6.51 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. § 1703.01-1703.31 to procure and maintain a license, but has not done so. Whoever violates this is guilty of a misdemeanor of the fourth degree. Questions regarding registration should be directed to (614) 466-3910, or visit <http://www.sos.state.oh.us>.

PART EIGHT: CLOUD SERVICES (Only applicable if Cloud Services are purchased)

6.52 Standards:

If Cloud Services are provided, all Service subscriptions must provide a Service that maintains a redundant infrastructure that will ensure access for all of ODT's enrolled users in case of a failure at any one of the Contractor locations, with effective contingency planning (including back-up and disaster recovery capabilities) and 24x7 trouble shooting service for inquiries, outages, issue resolutions, etc. All such Services must be dependable and provide response rates that are as good as or better than industry

standards. They also must meet the Service Level Agreements (“SLAs”) provided in the RFP and be supported with sufficient connectivity and computing resources to handle reasonably anticipated peak demand, and the Contractor must ensure that sufficient bandwidth and computing resources are dedicated to the Services to meet peak demand times without material degradation in performance.

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

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

The above standards are in addition to those contained in the State Architecture Security Privacy and Data Handling Supplement.

6.53 Object Reassignment:

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

6.54 Generated Files:

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

6.55 Additional Contractor Warranties:

In addition to the other warranties contained in this Contract, the Contractor warrants the following:

- The Services will perform materially in accordance with the applicable user guide and the requirements of this Agreement.
- The functionality of the Services will not be materially decreased during a subscription term.
- It will not transmit viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs (“Malicious Code”) to ODT.

6.56 Third-Party Suppliers:

The Contractor must incorporate the costs of any third-party supplies and services in the Contractor's fees identified in the Contract.

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

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

6.57 Upgrades:

ODT has the option anytime during the Agreement's term to upgrade to a new technology or Service offering with the Contractor without incurring any charges for terminating the existing technology or Service offering before the agreed upon term of the Order.

6.58 Acceptance:

The acceptance procedure for setup or installation of any Cloud Services will be a review by ODT to ensure that it meets the performance standards and other requirements in the Contract and that the setup or installation has been done in a professional manner and that the Cloud Services itself meets all requirements. For other Cloud Services not requiring setup or installation, the acceptance procedure will be a review by ODT to ensure the Cloud Services comply with the performance requirements in the Contract. In addition to the requirements of the Contract, if ordering documents such as a statement of work are authorized in the Contract, the review will include any additional requirements in the applicable order form. ODT will have up to 15 days after the setup, installation, or establishment of the Cloud Services to do this. ODT will issue a formal letter of acceptance if setup, installation, or other Service meets the requirements in the Contract. If the setup, installation, or other Service does not meet the requirements of the Contract, ODT will issue a written notice of noncompliance.

If ODT issues a noncompliance letter, the Contractor will have 30 days to correct the problems listed in the letter. If ODT has issued a noncompliance letter, the Cloud Services, installation, or set up will not be accepted until that 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, ODT will issue the acceptance letter within 15 days after all defects have been fixed. If the Contractor fails to correct the defect(s), the applicable Order(s) will terminate without cost or obligation to ODT, and ODT will be entitled to a full refund of any payments made for the Service, setup, and installation.

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

6.59 State Reporting Requirements:

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

6.60 Termination Service:

The Contractor will provide to ODT termination services ("Termination Service") according to the terms of the Disentanglement Plan, in connection with the termination or expiration without renewal of this Contract.

“Termination Service” means, to the extent requested by ODT, the provisioning of such assistance, cooperation, and information as is reasonably necessary to enable a smooth transition of the Services to ODT or its designated third- party provider (“Successor”) in accordance with the Disentanglement Plan.

As part of Termination Service, the Contractor will, in accordance with the Disentanglement Plan, manage the migration, to the extent requested and provide such information as ODT may reasonably request relating to the number and function of each of the Contractor personnel performing the Services, and Contractor will make such information available to the Successor designated by ODT.

6.61 Disentanglement Plan:

Upon ODT’s request, the Contractor will prepare a disentanglement plan with the input from ODT and the Successor, if there is one. The contents of the Disentanglement Plan will be as mutually agreed upon and will include at least the following activities, unless ODT and the Contractor agree otherwise:

- Documentation of existing and planned support activities.
- Identification of the Service and related positions or functions that require transition and a schedule, plan, and procedures for ODT or the Successor assuming or reassuming responsibility.
- Description of actions to be taken by the Contractor, State, and, if applicable, the Successor in performing the disentanglement.
- Description of how the transfer of (i) relevant information regarding the Services, (ii) resources (if any), and (iii) operations will be achieved.
- Description in detail of any dependencies ODT and, if applicable, the Successor must fulfill for the Contractor to perform the Termination Service (including an estimate of the specific staffing and time required).
- Inventory of documentation and work products required to facilitate the transition of responsibilities.
- Identification of significant potential risk factors relating to the transition and in designing plans and contingencies to help mitigate the risk.
- A timeline for the transfer of each component of the Termination Service (including key milestones to track the progress of the transfer).
- A schedule and plan for Contractor’s return to ODT of (i) the systems held by the Contractor and belonging to ODT, and (ii) all documents, records, files, tapes, and disks in Contractor’s possession that belong to ODT or relate to the migrating system(s).

6.62 Disentanglement Management Team:

The Contractor will provide a project manager who will be responsible for Contractor’s overall performance of the Termination Service and who will be the primary point of contact for ODT and any Successor during the transfer. ODT also will appoint a project manager who will be the primary point of contact for Contractor during the disentanglement period.

6.63 Operational Transfer:

The Contractor also will provide ODT and any Successor access to those resources described in the Disentanglement Plan reasonably necessary during the planning and execution of the Termination Service.

6.64 Support Service Support Generally:

During the term of any Order, the Contractor will provide ODT with telephonic assistance and advice for using all Cloud Services covered by the Order. The Contractor also will provide troubleshooting and problem resolution, including on site whenever necessary. The manner in which the Contractor provides support will be governed by the Contractor’s written policies and programs described in the applicable documentation or other materials that the Contractor uses to notify its customers generally of such policies. Regardless of the Contractor’s policies and programs, unless otherwise agreed in the applicable Contract, in all cases such support must comply with the requirements of this Contract and the applicable Contract(s). The Contractor must provide the support in a competent, professional, and timely manner.

6.65 Equipment Support Generally:

For any equipment used to provide the Cloud Services, remedial equipment maintenance by the Contractor will be completed within eight hours after notification by ODT 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 ODT, the Contractor will be in default. Failure of the Contractor to meet or maintain these requirements will provide ODT 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. Nothing contained herein will limit the application of any credits for failure to meet any SLAs in the Contract. The Contractor will provide adequate staff to provide the maintenance required by this Contract.

6.66 Support Parameter:

ODT may initiate support requests for problems it encounters with the Cloud Services by telephone, email, Internet, or fax, and the Contractor must maintain lines of communication that support all four forms of communication.

The Contractor must make support available 24 hours a day, seven days per week (the "Support Window"), and it must do so by staffing its support function with an adequate number of qualified personnel to handle its traditional volume of calls. ODT's technical staff may contact any support center that the Contractor maintains, and they may choose to do so based on convenience, proximity, service hours, languages spoken, or otherwise.

6.67 Incident Classification:

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

The Contractor must designate a problem as "critical" if the Service is functionally inoperable, the problem prevents the Service or a major component or function from being used.

The Contractor must classify a problem as "urgent" if the underlying problem significantly degrades the performance of the Service or a major function or component of it or materially restricts ODT's use of the Service. Classification of a problem as urgent rather than critical assumes that ODT still can conduct business with the Service and response times are consistent with the needs of ODT for that type of Service.

Finally, the Contractor may classify a support call as "routine" if the underlying problem is a question on end use or configuration of the Service. It also may be classified as routine when the problem does not materially restrict ODT's use of the Service.

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

6.68 Incident Response:

The Contractor must respond to critical problems by ensuring that appropriate managerial personnel are made aware of the problem and that they actively track and expedite a resolution.

The Contractor must assign support personnel at the appropriate level to the problem, and those personnel must arrive at ODT's site or other location from where the problem has arisen, if appropriate for proper resolution. At the request of ODT, the Contractor's personnel must maintain hourly contact with ODT's technical staff to keep ODT abreast of efforts being made to solve the problem. The Contractor also must

provide ODT's technical staff with direct access to the Contractor's support personnel, if appropriate, who are assigned to the problem.

The Contractor must respond to urgent problems by assigning support personnel at the appropriate level to the problem, and those personnel must arrive at ODT's site or other location from where the problem has arisen, if appropriate for proper resolution. At the request of ODT, the Contractor's personnel must maintain hourly contact with ODT's technical staff to keep ODT abreast of efforts being made to solve the problem. The Contractor also must provide ODT's technical staff with direct access to the Contractor's support personnel, if appropriate, who are assigned to the problem.

The Contractor must respond to routine problems by assigning support personnel at the appropriate level to the problem. For routine calls that involve end usage and configuration issues rather than bugs or other technical problems, the Contractor's first or second level support personnel must provide ODT's technical staff with telephonic assistance on a non-priority basis.

The Contractor must comply with the FCC's Telecommunications Service Priority Program in setting Service installation and restoration priorities for all Cloud Services ODT has registered for such preferential treatment under that program.

6.69 Response Times:

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

6.70 Escalation Process:

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

6.71 ODT Obligations:

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

6.72 Relationship to SLAs:

The Contractor's support obligations are in addition to the SLAs in the Contract. Furthermore, the SLAs may provide for credits to ODT even though the Contractor is meeting its support obligations hereunder.

6.73 Service Level Guarantee and Credits:

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

ATTACHMENT ONE ODT REQUIREMENTS

General Overview of Requirements

ODT requires a 2D Barcode system consisting of two main parts. The first part is the web-based pdf viewer which must be able to present full .pdf functionality within any given modern browser without the use of plugins or additional software installation for the client. The system must be able to read and follow all rules of style and rules of validation and support javascript components in the form itself. The system must not save or transmit any data entered in a fillable pdf on the server side. ODT prefers a system written in javascript for ease of implementation into any web hosting environment. Finally, the solution must be self-hosted; for security purposes this cannot be hosted with a third-party.

The second part of the solution is a 2D Barcode for .pdf forms. This must take values from fields and put them into a pdf417 and/or QR barcode with static data, and the option to choose a delimiter. The solution must include the libraries in the pdf form itself. No external libraries should be accessed for barcode generation. No solution will be considered which relies on external libraries or libraries within a viewer or application.

Functional Requirements

This section enumerates many high-level functional requirements as determined by ODT for the purposes of this RFP. Requirements may be added or changed during the project as necessary to reflect the functionality of the Contractor's solution and ODT's changing needs. Offerors are encouraged to illustrate the rationale, merits, completeness, innovation, capabilities and limitations of all solution components including technical, software elements, process elements, services, integrations and other operating considerations as part of their narrative responses to this RFP. The Offeror is further encouraged to provide screen captures, diagrams, graphics or other information of relevant elements of their solution to illustrate the degree of compliance with requirements wherever possible. Simply repeating the requirement and agreeing to comply is an unacceptable response and may cause the proposal to be rejected. ODT strongly prefers minimizing customizations that would make the system harder and more expensive to support. If there are opportunities to use delivered functionality versus customization, please highlight those areas.

General

Based on these general overviews, please respond to the following questions:

1. Explain any design required to install the proposed solution.

Response:

2. Explain whether the proposed solution is capable of presenting full .pdf functionality within any given modern browser without the use of plugins or additional software installation for the client.

Response:

3. Describe whether the system is able to read and follow all rules of style and rules of validation and support javascript components in the form itself.

Response:

4. Does the proposed solution save or transmit any data entered in a fillable pdf on the server side?

Response:

5. ODT prefers a system written in javascript for ease of implementation into any web hosting environment. Please describe the development language used for the proposed system.

Response:

6. Is the proposed solution self-hosted?

Response:

7. Is the proposed system capable of taking values from fields and putting them into a pdf417 and/or QR barcode with static data? Does the proposed system provide an option to choose a delimiter?

Response:

8. Does the solution include the libraries in the pdf form itself?

Response:

9. Describe how the user experience will be improved: for both the taxpayer and for ODT.

Response:

10. Is the proposed solution easily scalable? Please describe and provide examples.

Response:

Technical Requirements

This section enumerates many high-level technical requirements as determined by ODT for the purposes of this RFP. Requirements may be added or changed during the project as necessary to reflect the functionality of the Contractor's solution and ODT's changing needs. The Offeror must provide a response for each section with how the proposed solution meets, does not meet, or exceeds the existing or desired functionality. Offerors are

encouraged to illustrate the rationale, merits, completeness, innovation, capabilities and limitations of all solution components including technical, software elements, process elements, services, integrations and other operating considerations as part of their narrative responses to this RFP. The Offeror is further encouraged to provide screen captures, diagrams, graphics or other information of relevant elements of their solution to illustrate the degree of compliance with requirements wherever possible. Simply repeating the requirement and agreeing to comply is an unacceptable response and may cause the proposal to be rejected.

Software

11. List any tools included to customize and/or enhance the use of the proposed solution.

Response:

Development

12. List all environmental requirements for the proposed solution. (i.e. separate sandbox, development, training, testing, QA, and production region needs).

Response:

13. List and describe all value-added services offered that are not included in the response.

Response:

14. Describe the proposed process for the installation and configuration of the proposed solution.

Response:

15. Describe additional functionalities not listed within the core functions of the proposed solution that may be available.

Response:

Implementation

16. ODT requires an extensive and carefully structured approach to implementation of the proposed solution. This includes the organization and execution of cutover activities necessary to transition operations to the new system. The Contractor must provide support throughout the entire implementation period.

Response:

Provide detail regarding the approach for coordinating (where applicable):

- Risk assessment and mitigations,
- Final Data Migration activities,
- Technical preparation and system changeover activities,
- Development of an implementation activities check list,

- Implementation schedule,
- Contingency plan for implementation failure.

Response:

Production Support

17. Describe any support services including hardware and software maintenance – include an explanation of any proposed support services including performance guarantees. Identify all proposed maintenance, including a detailed explanation of response times, backup procedures and how the system will be maintained. Include any sample forms or agreements.

Response:

Security

18. Describe the System Security features of the proposed solution.

Response:

Performance and Validation

19. **Verification:** After completion of the initial system and application software installation and configuration, the Contractor must verify, with ODT’s assistance, that all acquired modules are present and installed; that the system operates in a stable fashion both on-line and off-line, and that the system can be accessed from ODT’s network. The Contractor must conduct walkthroughs and other sessions on system housekeeping, updates, and troubleshooting, as required.

Response:

ATTACHMENT 2

OFFEROR CERTIFICATION FORM

Note: Offeror must provide a response to each of the numbered items in the Offeror Certification Form.

1. The Offeror is not currently subject to an “unresolved” finding for recovery under Revised Code Section 9.24, and the Offeror will notify the Procurement Representative any time it becomes subject to such a finding before the award of a Contract arising out of this RFP.
2. The Offeror certifies that it will not and will not allow others to perform work for the State of Ohio outside the geographic limitations contained in Attachment Two or take data that belongs to the State of Ohio outside the geographic limitations contained in Attachment Two without express written authorization from ODT.
3. The Offeror certifies that its responses to the following statements are true and accurate. The Offeror’s answers apply to the last seven years. Please indicate yes or no in each column.

Yes/No	Description
	The Offeror has had a contract terminated for default or cause.
	The Offeror has been assessed any penalties in excess of \$10,000.00, including liquidated damages, under any of its existing or past contracts with any organization (including any governmental entity).
	The Offeror was the subject of any governmental action limiting the right of the Offeror to do business with that entity or any other governmental entity.
	Trading in the stock of the company has ever been suspended with the date(s) and explanation(s).
	The Offeror, any officer of the Offeror, or any owner of a 20% interest or greater in the Offeror has filed for bankruptcy, reorganization, a debt arrangement, moratorium, or any proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding.
	The Offeror, any officer of the Offeror, or any owner with a 20% interest or greater in the Offeror has been convicted of a felony or is currently under indictment on any felony charge.

If the answer to any item above is affirmative, the Offeror must provide complete details about the matter. While an affirmative answer to any of these items will not automatically disqualify an Offeror from consideration, at the sole discretion of ODT, such an answer and a review of the background details may result in a rejection of the Proposal. ODT will make this decision based on its determination of the seriousness of the matter, the matter’s possible impact on the Offeror’s performance under the Contract, and the best interest of ODT.

4. The Offeror certifies that neither it nor any of its people that may work on or benefit from the Contract through the Offeror has a possible conflict of interest (e.g., employed by the State of Ohio, etc.) other than the conflicts identified immediately below:

Potential Conflicts (by person or entity affected)

(Attach an additional sheet if more space is need.)

ODT may reject a Proposal in which an actual or apparent conflict is disclosed. And ODT may cancel or terminate the Contract for cause if it discovers any actual or apparent conflict of interest that the Offeror did not disclose in its Proposal.

5. The Offeror certifies that all its and its subcontractors' personnel provided for the Work will have a valid I-9 form on file with the Offeror or subcontractor, as appropriate, and will have presented valid employment authorization documents, if they are not United States citizens.
6. The Offeror certifies that it's regular, fulltime employees will perform at least 30% of the Work.
7. The following is a complete list of all subcontractors, if any, that the Offeror will use on the Work, if ODT selects the Offeror to do the Work:

The Offeror certifies that it has obtained and submitted a subcontractor letter, as required by Attachment Three, for each subcontractor it plans to use to do the Work.

8. The Offeror certifies that that any MBE program participants will provide necessary data to ensure program reporting and compliance.
9. If the Offeror qualifies as a Veterans Friendly Business Enterprise as defined by ORC 9.318 and OAC 123:5-1-01 (KK), the Offeror certifies that it is a Veterans Friendly Business Enterprise.

Provide the following information for a contact person who has authority to answer questions regarding the Offeror's Proposal:

Name:	
Title:	
Mailing Address:	
Office Phone Number:	
Cell Phone Number:	
Fax Number:	
Email Address:	

Signature

Name

Title

Company Name

Company D-U-N-S Number

**ATTACHMENT THREE
OFFEROR PROFILE**

OFFEROR MANDATORY REQUIREMENT

MANDATORY REQUIREMENT:

[Mandatory Requirement #1]

This form may be copied for multiple instances.

Company Name:	Contact Name: (Indicate Primary or Alternate) Contact Title:
Company Address:	Contact Phone Number: Contact Email Address:
Project Name:	Beginning Date of Expr: / Ending Date of Expr: Month/Year Month/Year
Describe Related Service Provided:	

**ATTACHMENT THREE
OFFEROR PROFILE**

OFFEROR SCORED REQUIREMENT

SCORED REQUIREMENT 1:

[Scored Requirement #1]

This form may be copied for multiple instances.

Company Name:	Contact Name: (Indicate Primary or Alternate) Contact Title:
Company Address:	Contact Phone Number: Contact Email Address:
Project Name:	Beginning Date of Expr: / Ending Date of Expr: Month/Year Month/Year
Describe Related Service Provided:	

ATTACHMENT FOUR: AFFIRMATION AND DISCLOSURE FORM

AFFIRMATION AND DISCLOSURE FORM

By the signature affixed hereto, the Contractor affirms and understands that 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, nor allow State data to be sent, taken, accessed, tested, maintained, backed-up, stored or made available remotely (located) outside of the United States.

The Contractor shall provide all the name(s) and location(s) where services under this Contract will be performed and where data is located in the spaces provided below or by attachment. Failure to provide this information may result in no award. If the Contractor will not be using subcontractors, indicate "Not Applicable" in the appropriate spaces.

1. Principal location of business of Contractor:

(Address) (City, State, Zip)

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

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

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

2. Location where services will be performed by Contractor:

(Address) (City, State, Zip)

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

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

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

3. Location where state data will be located, by Contractor:

(Address)

(Address, City, State, Zip)

Name/Location(s) where state data will be located by subcontractor(s):

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

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

By: _____
Contractor

Print Name: _____

Title: _____

Date: _____

**ATTACHMENT FIVE
SAMPLE CONTRACT**

**A CONTRACT BETWEEN
THE OHIO DEPARTMENT OF TAXATION**

AND

(CONTRACTOR)

THIS CONTRACT, which results from RFP TAX21IT03 entitled 2D Barcode RFP, is between the Ohio Department of Taxation and _____ (the "Contractor").

The Contract is the result of agreed upon changes to the RFP its attachments, supplements and templates including any written amendments to the RFP, any materials incorporated by reference in the RFP, the Contractor's Proposal, and written, authorized amendments and clarifications to the Contractor's Proposal. It also includes any purchase orders and change orders issued under the Contract.

This Contract consists of:

1. This one-page Contract (Attachment Five) in its final form;
2. The attached, amended and clarified version of Contractor's Response to all attachments, supplements and templates – 2D Barcode RFP TAX21IT03 dated _____ ("Contractor's Response"). Contractor's Response includes Attachment Four - General Terms and Conditions, and all other Attachments, Supplements, Templates and materials included in Contractor's Response;
3. The attached Cost Proposal Workbook dated _____; and
4. The applicable Purchase Order.

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

The term of the Contract will from the award date until the Work is completed to the satisfaction of ODT and the Contractor is paid or June 30, 2024, whichever is sooner. ODT may renew this Contract for up to three (3) additional two-year term(s), subject to and contingent on the discretionary decision of the Ohio General Assembly to appropriate funds for this Contract in each new biennium. Any such renewal of all or part of the Contract also is subject to the satisfactory performance of the Contractor and the needs of ODT.

TO SHOW THEIR AGREEMENT, the parties have executed this Contract as of the dates below.

CONTRACTOR

STATE OF OHIO
OFFICE OF INFORMATION TECHNOLOGY

SAMPLE – DO NOT FILL OUT

By: _____

By: [Matthew Damschroder](#)

Title: _____

Title: [DAS Director](#)

Date: _____

Date: _____