REQUEST FOR PROPOSALS

RFP NUMBER: 0A1224

The State of Ohio, through the Department of Administrative Services, Office of Procurement Services Enterprise Information Technology Contracting, for the Ohio Department of Job and Family Services is requesting proposals for:

JFS - Ohio Child Support Payment Kiosk

DATE ISSUED: April 12, 2019
INQUIRY PERIOD BEGINS: April 12, 2019
INQUIRY PERIOD ENDS: April 26, 2019
OPENING DATE: May 3, 2019
OPENING TIME: 1:00PM
OPENING LOCATION: Ohio Department of Administrative Services Office of Procurement Services, Bid Room 4200 Surface Road Columbus, Ohio 43228

This RFP consists of five parts and 9 attachments, totaling 90 consecutively numbered pages. Please verify that you have a complete copy.

In lieu of taking exceptions to RFP requirements, including but not limited to terms and conditions, scope of work statements, service levels requirements, etc., or providing assumptions that may be unacceptable to the State, offerors are strongly encouraged to use the inquiry process in Part Three of the RFP.
PART ONE: EXECUTIVE SUMMARY

Purpose. This is a Request for Competitive Sealed Proposals (“RFP”) under Sections 125.071 and 125.18 of the Ohio Revised Code (the “Revised Code”) and Section 123:5-1-8 of the Ohio Administrative Code (the “Administrative Code”). The Ohio Department of Job and Family Services has asked the Department of Administrative Services to solicit competitive sealed proposals (“Proposals”) for Ohio Child Support Payment Kiosk (the “Work”), and this RFP is the result of that request.

If a suitable offeror solution is made in response to the Work, the State, through the Department of Administrative Services (DAS), on behalf of the Ohio Department of Job and Family Services, (the “State”), may enter into a contract (the “Contract”) to have the selected offeror (the “Contractor”) perform all or part of the Work.

This RFP provides details on what is required to submit a Proposal for the Work, how the State will evaluate the Proposals, and what will be required of each Contractor in performing the Work.

This RFP also gives the estimated dates for the various events in the submission process, selection process, and performance of the Work. While these dates are subject to change, prospective offerors must be prepared to meet them as they currently stand.

Once awarded, the base 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, 2019, whichever is sooner. The State may renew this Contract for up to four (4) additional State optional two-year terms, subject to and contingent on the discretionary decision of the Ohio General Assembly to appropriate funds for this Contract in each new biennium. The maximum contracted term inclusive of the base period and State optional renewals is June 30, 2027. Any such renewal of all or part of the Contract also is subject to the satisfactory performance of the Contractor and the needs of the State.

The State may reject any Proposal if the offeror fails to meet a deadline in the submission or evaluation phases of the selection process or objects to the dates for performance of the Work or the terms and conditions in this RFP.

Background. The Ohio Department of Job and Family Services (ODJFS) is responsible for developing and implementing the state’s public assistance, workforce development, unemployment compensation, child and adult protective services, adoption, child care and child support programs. The mission of the agency is to improve the well-being of Ohio’s workforce and families by promoting economic self-sufficiency and ensuring the safety of Ohio’s most vulnerable citizens. ODJFS strives to be the nation’s leading workforce development and family and health support system. ODJFS values accountability, innovation, teamwork, integrity and compassion.

The Ohio child support program is state supervised and county administered. The designated single state child support agency is the Ohio Department of Job and Family Services (ODJFS). The Office of Child Support (OCS) within ODJFS is responsible for the collection and disbursement of child support funds through the State Disbursement Unit (SDU). Although payments could be sent by the obligor directly to the SDU, a large percentage of child support collections are paid in person in one of 88 county agencies located through Ohio (see Appendix 1 for locations). For the last twelve (12) months (January 2018-December 2018), county agencies received over $65 million from child support obligors, which was processed by county agency personnel. Of this amount, they received over $53 million in cash from walk-in obligors (see Appendix 2 for detail). ODJFS seeks a solution that will reduce county agency costs by introducing payment kiosks in the county child support agencies. This will allow agency management to free up staff solely dedicated to accepting and processing child support payments, to accomplish other child support functions and responsibilities.

As of late December 2018, Ohio has 2,371,581 unique participants including child support obligors, obligees, and the children associated to their cases. The Kiosks will be available to all child support obligors who have a support order which totals 631,648 obligors.
Objectives.

Overview of the Project's Scope of Work. The scope of the RFP is organized and provided in Supplement 1 of this RFP.

In an effort to improve customer service and increase the efficiency of receiving in-person child support payments, the Office of Child Support (OCS) is seeking a payment service provider that will offer end users with the capability to pay child support payments by way of cash, check, debit or credit card through Contractor Owned and supported free-standing payment kiosks in county government locations.

Calendar of Events. The schedule for the RFP process and the Work is given below. The State may change this schedule at any time. If the State 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. The Website announcement will be followed by an amendment to this RFP, also available through the State’s Procurement Website. After the Proposal due date and before the award of the Contract, the State will make schedule changes through the RFP amendment process. Additionally, the State will make changes in the Work schedule after the Contract award through the change order provisions in the General Terms and Conditions Attachment to 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.

**Dates:**

<table>
<thead>
<tr>
<th>Event</th>
<th>Date/Time</th>
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<tbody>
<tr>
<td>RFP Issued</td>
<td>April 12, 2019</td>
</tr>
<tr>
<td>Inquiry Period Begins</td>
<td>April 12, 2019</td>
</tr>
<tr>
<td>Inquiry Period Ends</td>
<td>April 26, 2019 at 8:00 a.m.</td>
</tr>
<tr>
<td>Proposal Due Date</td>
<td>May 3, 2019 at 1:00 p.m.</td>
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**Estimated Dates:**

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
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<tbody>
<tr>
<td>Award Date</td>
<td>May 2019</td>
</tr>
<tr>
<td>Work Begins</td>
<td>May 2019</td>
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There are references in this RFP to the Proposal due date. Unless it is clearly provided to the contrary in this RFP, any such reference means the date and time (Columbus, Ohio local time) that the Proposals are due and not just the date.
PART TWO: STRUCTURE OF THIS RFP

Organization. This RFP is organized into five parts and has nine (9) attachments. The parts and attachments are listed below. There also may be one or more supplements to this RFP listed below.

Parts:

Part 1 Executive Summary
Part 2 Structure of this RFP
Part 3 General Instructions
Part 4 Evaluation of Proposals
Part 5 Award of the Contract

Attachments:

Attachment One Evaluation Criteria
Attachment Two Work Requirements and Special Provisions
Attachment Three Requirements for Proposals
Attachment Four General Terms and Conditions
Attachment Five Sample Contract
Attachment Six Offeror Certification Form
Attachment Seven Offeror Profile Summary
Attachment Eight Standard Affirmation and Disclosure Form (EO 2011-2012K)
Attachment Nine Master Cloud Services Agreement
Attachment Ten Transaction Fee Schedule Summary Worksheet

Supplements:

Supplement 1 Child Support Payment Kiosk Requirements and Scope of Work
Supplement 2 Addendum JFS-DAS Security Supplement 2 Addendum

Appendices:

Appendix 1 CSEA Office Locations
Appendix 2 Walk-in Payment Volume
Appendix 3 Kiosk Configuration Guide
Appendix 5 Case Inquiry Information – Field’s Definition
Appendix 6 Case Payment Response – Field’s Definition
PART THREE: GENERAL INSTRUCTIONS

The following sections provide details on how to get more information about this RFP and how to respond to it. All responses must be complete and in the prescribed format.

Contacts. The following person will represent the State during the RFP process, Procurement Representative:

Adrienna Smith, IT Acquisition Analyst
Department of Administrative Services
Enterprise IT Contracting
30 E. Broad St., 39th Floor
Columbus, Ohio 43215

During the performance of the Work, a State representative (the “Work Representative”) will represent the State and be the primary contact for the Work. The State will designate the Work Representative after the Contract award.

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 this procurement via State’s Procurement Website at www.procure.ohio.gov on the right, select “Bid Opportunities Search”;
- In the “Document/Bid Number” field, enter the RFP number of this RFP (the RFP number begins with zero followed by the letter “A”);
- Select “Request for Proposals” from the Opportunity Type dropdown;
- Click the “Search” button;
- On the Opportunity Search Results page, click on the hyperlinked Bid Number;
- On the 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 the prospective offeror’s representative (the Offeror Representative) who is responsible for the inquiry,
  - Name of the prospective offeror,
  - The Offeror Representative’s business phone number, and
  - The Offeror 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;
- Enter the Confirmation Number at the bottom of the page
- Click the “Submit” button.

An offeror submitting an inquiry will receive an email acknowledging receipt. The offeror will not receive a personalized response to the question nor notification when the State 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.

The State usually responds to all inquiries within three business days of receipt, excluding weekends and State holidays. But the State will not respond to any inquiries received after 8:00 a.m. on the inquiry end date.

The State does not consider questions asked during the inquiry period through the inquiry process as exceptions to the terms and conditions of this RFP.

Amendments to the RFP. If the State revises this RFP before the Proposals are due, it will announce any amendments on the State Procurement Website.
Offerors may view amendments by using the "Bid Opportunities Search" function of the State's Procurement Website (described in the Inquiries Section above) and then clicking on the amendment number to display the amendment.

When an amendment to this RFP is necessary, the State may extend the Proposal due date through an announcement on the State Procurement Website. The State may issue amendment announcements any time before 5:00 p.m. on the day before Proposals are due, and it is each prospective offeror’s responsibility to check for announcements and other current information regarding this RFP.

After the Proposal due date, the State will distribute amendments only to those offerors whose Proposals are under active consideration. When the State amends the RFP after the due date for Proposals, the State will permit offerors to withdraw their Proposals within five business days after the amendment is issued. This withdrawal option will allow any offeror to remove its Proposal from active consideration should the offeror feel that the amendment changes the nature of the transaction so much that the offeror’s Proposal is no longer in its interest. Alternatively, the State may allow offerors that have Proposals under active consideration to modify their Proposals in response to the amendment.

If the State allows offerors to modify their Proposals in response to an amendment, the State may limit the nature and scope of the modifications. Unless otherwise provided in the State’s notice, offerors must make any modifications or withdrawals in writing and submit them to the State within five business days after the amendment is issued at the address and in the same manner required for the submission of the original Proposals. If this RFP provides for a negotiation phase, this submission procedure will not apply to changes negotiated during that phase. The State may reject any modification that is broader in scope than the State has authorized in the announcement of the amendment and treat it as a withdrawal of the offeror's Proposal.

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. The offeror must submit the technical section as a separate package from the cost section of its Proposal, and each section must be submitted in its own separate, opaque package. The package with the technical section of the Proposal must be sealed and contain one (1) originally signed technical section and five (5) copies of the technical section, and the package with the cost section also must be sealed and contain one (1) originally signed cost section of the Proposal and two (2) complete copies of the cost section.

All offerors must clearly mark the outside of each package with one (and only one) of the following:

1. 0A1224 Ohio Child Support Payment Kiosk – Technical Proposal
2. 0A1224 Ohio Child Support Payment Kiosk – Transaction Fee Schedule Summary Worksheet
   (Attachment Nine)

All offerors are subject to the security, privacy and data handling requirements of Supplement 2, regardless of the offeror’s proposed solution.

Included in each sealed package, the offeror also must provide an electronic copy of everything contained within the package on a CD in native Microsoft Office, Microsoft Project, or Adobe Acrobat format, as appropriate. If there is a discrepancy between the hard copy and the electronic copy of the Proposal, the hard copy will control, and the State will base its evaluation of the offeror’s Proposal on the hard copy.

Proposals are due and must be received by the Department of Administrative Services bid desk no later than 1:00 p.m. Columbus, Ohio local time on the Proposal due date. Proposals submitted by email, fax, or other electronic means are not acceptable, and the State may reject them. Offerors must submit their Proposals to:

Ohio Department of Administrative Services
Enterprise IT Contracting
Attn: Bid Desk 0A12224
4200 Surface Road
Columbus, Ohio 43228

Bid Desk Main Phone Number: 614-466-5090

The State may reject any Proposals or unsolicited modifications it receives after the deadline. An offeror that mails its Proposal must allow for adequate mailing time to ensure its timely receipt. Offerors also must allow for potential delays due to increased security. The Bid Desk accepts packages between the hours of 7:30 A.M. to 5:00 P.M. Monday through Friday, excluding State Holidays. No deliveries will be accepted before or after these hours without prior arrangements. Offerors must allow sufficient time since the State may reject late Proposals regardless of the cause for the delay.

Each offeror must carefully review the requirements of this RFP and the contents of its Proposal. Once opened, Proposals cannot be altered or withdrawn, except as allowed by this RFP.

By submitting a Proposal, the offeror acknowledges it has read this RFP, understands it, and agrees to be bound by its requirements and terms and conditions. The State is not responsible for the accuracy of any information regarding this RFP that was gathered through a source other than the inquiry process described in the RFP.

Revised Code Section 9.24 prohibits the State from awarding a contract to any entity against whom the Auditor of State has issued a finding for recovery (a "Finding"), if the Finding is unresolved at the time of the award. This also applies to renewals of contracts. By submitting a Proposal, the offeror warrants it is not subject to an unresolved Finding under Section 9.24 at the time of its submission. Additionally, the offeror warrants it will notify the Department of Administrative Services in writing immediately upon becoming subject to such an unresolved Finding after submitting its Proposal and before the award of a Contract under this RFP. Should the State select the offeror's Proposal for award of a Contract, this warranty of immediate written notice will apply during the term of the Contract, including any renewals or extensions. Further, the State may treat any unresolved Finding against the Contractor that prevents a renewal of the Contract as a breach, in accordance with the provisions of Attachment Four, General Terms and Conditions.

The State may reject any Proposal if the offeror takes exception to the terms and conditions of this RFP, includes unacceptable assumptions or conditions in its Proposal, fails to comply with the procedure for participating in the RFP process, or fails to meet any requirement of this RFP. In its sole discretion, the State also may reject any Proposal it believes is not in its interest to accept and may decide not to award a contract to any or all of the offerors responding to this RFP.

Offerors may not prepare or modify their Proposals on State premises.

All Proposals and other material offerors submit will become the property of the State and may be returned only at the State's option. Offerors should not include any confidential information in a Proposal or other material submitted as part of the evaluation process. All Proposals will be open to the public after the State has awarded the Contract.

The State will retain all Proposals, or a copy of them, as part of the Contract file for at least three years. After the three-year retention period, the State may return, destroy, or otherwise dispose of the Proposals and any copies of them.

**Waiver of Defects.** The State may waive any defects in any Proposal or in the submission process followed by an offeror, but the State will only do so if it believes that it is in the State's interest and will not cause any material unfairness to other offerors.

**Multiple or Alternate Proposals.** The State will not accept multiple Proposals from a single offeror or any alternative solutions or options to the requirements of this RFP. Additionally, any offeror that disregards a requirement in this RFP simply by proposing an alternative to it may have its Proposal rejected by the State. Further, any offeror that submits multiple Proposals for each of these options may have all of its Proposals rejected.
Changes to Proposals. The State will allow modifications or withdrawals of Proposals only if the State receives them before the Proposal due date. No modifications or withdrawals will be permitted after the due date, except as authorized by this RFP.

Proposal Instructions. Each Proposal must be organized in an indexed binder ordered in the same manner as the response items are ordered in the applicable attachments to this RFP. The requirements for a Proposal's contents and formatting are contained in the attachments to this RFP. The State wants clear and concise Proposals, but offerors must answer questions completely and meet all the RFP's requirements.

The State is not liable for any costs an offeror incurs in responding to this RFP or from participating in the evaluation process or negotiations process (if any), regardless of whether the State awards the Contract through this process, decides not to go forward with the Work, cancels this RFP for any reason, or contracts for the Work through some other process or through another RFP.

PART FOUR: EVALUATION OF PROPOSALS

Disclosure of Proposal Contents. The State will seek to open the Proposals in a manner that avoids disclosing their contents. Additionally, the State will seek to keep the contents of all Proposals confidential until the Contract is awarded. But the State will prepare a registry of Proposals that contains the name of each offeror. The public may inspect that registry after the State opens the Proposals.

Rejection of Proposals. The State 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 the State determines is excessive in price or otherwise not in the State's interest to accept. In addition, the State may cancel this RFP, reject all the Proposals, and/or seek to do the Work through a new RFP or other means.

Evaluation of Proposals Generally. The evaluation process may consist of up to six distinct phases:

1. Initial review;
2. Technical evaluation;
3. Evaluation of costs;
4. Requests for more information
5. Determination of responsibility; and

The State may decide whether phases four and six are necessary, and the State may rearrange the order in which it proceeds with the phases. The State also may add or remove sub-phases to any phase at any time, if the State believes doing so will improve the evaluation process.

Clarifications and Corrections. During the evaluation process, in the State’s sole discretion, it may request clarifications from any offeror under active consideration and may give any offeror the opportunity to correct defects in its Proposal, if the State believes doing so would not result in an unfair advantage for the offeror, and it is in the State’s interest. The State may reject any clarification that is non-responsive or broader in scope than what the State requested. If the State does so, or if the offeror fails to respond to the request for clarification, the State then may request a corrected clarification, consider the offeror’s Proposal without the clarification, or disqualify the offeror’s Proposal.

Corrections and clarifications must be completed off State premises.

Initial Review. The State will review all Proposals for format and completeness. The State normally rejects incomplete or incorrectly formatted Proposals, though it may waive any defects or allow an offeror to submit a correction, if the State believes doing so would not result in an unfair advantage for the offeror and it is in the State’s interest. Late proposals will not be opened or considered. After the initial review, the State will forward all timely, complete, and properly formatted Proposals to an evaluation team, which the Procurement Representative will lead.
Technical Evaluation. The State will evaluate each Proposal that it has determined is timely, complete, and properly formatted. The evaluation will be scored according to the requirements identified in this RFP, including the requirements in Attachment One. Other Attachments to this RFP may further refine these requirements, and the State has a right to break these requirements into components and weight any components of a requirement according to their perceived importance.

The State also 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, the State 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. The State may adopt or reject any recommendations it receives from such reviews and evaluations or give them such weight as the State believes is appropriate.

During the technical evaluation, the State will calculate a point total for each Proposal that it evaluates. At the sole discretion of the State, it may reject any Proposal receiving a significant number of zeros for sections in the technical portions of the evaluation. The State may select those offerors submitting the highest rated Proposals for the next phase. The number of Proposals that advance to the next phase will be within the State’s discretion, but regardless of the number of Proposals selected, they always will be the highest rated Proposals from this phase.

At any time during this phase, in the State's sole discretion, it may ask an offeror to correct, revise, or clarify any portions of its Proposal.

The State will document the evaluation results for each Proposal considered.

Requirements. Supplement One provides requirements the State 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 a table in Attachment One.

In the case of any requirements for a team of people the offeror is proposing, the offeror must submit a team to do the Work that collectively meets all the team requirements. But the experience of multiple candidates may not be combined to meet a single requirement. Further, previous experience of the candidate submitted for a Work Manager position may not be used to meet any other team member requirements. Each candidate proposed for the Work team must meet at least one of the requirements.

This RFP asks for responses and submissions from offerors, most of which represent components of the requirements in Attachment One. While each requirement represents only a part of the total basis for a decision to award the Contract to an offeror, a failure by an offeror to make a required submission or meet a mandatory requirement normally will result in a rejection of that offeror’s Proposal. The value assigned above to each requirement is only a value used to determine which Proposal is the most advantageous to the State in relation to the other Proposals that the State received. It is not a basis for determining the importance of meeting that requirement.

If the State does not receive any Proposal that meets all the mandatory requirements, the State may cancel this RFP. Alternatively, if the State believes it is in its interest, the State may continue to consider the highest-ranking Proposals despite their failure to meet all the mandatory requirements. In doing this, the State may consider one or more of the highest-ranking Proposals. But the State may not consider any lower-ranking Proposals unless all Proposals ranked above it are also considered, except as provided below.

In any case where no Proposal meets all the mandatory requirements, it may be that an upper ranking Proposal contains a failure to meet a mandatory requirement that the State believes is critical to the success of the RFP’s objectives. When this is so, the State may reject that Proposal and consider lower ranking Proposals. Before doing so, the State may notify the offeror of the situation and allow the offeror an opportunity to cure its failure to meet that mandatory requirement.
If the offeror cures its failure to meet a mandatory requirement that the State has deemed critical to the success of the RFP’s objectives, the State may continue to consider the offeror’s Proposal. But if the offeror is unwilling or unable to cure the failure, its Proposal may be rejected. The State then may continue to consider the other remaining Proposals, including, if the State so chooses, Proposals that ranked lower than the rejected Proposal.

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

The State may select one or more of the Proposals for further consideration in the next phase of the evaluation process based on the price performance formula contained in Attachment One. The Proposal(s) selected for consideration in the next phase always will be the highest-ranking Proposal(s) based on this analysis. That is, the State may not move a lower-ranking Proposal to the next phase unless all Proposals that rank above it also are moved to the next phase, excluding any Proposals that the State disqualifies because of excessive cost or other irregularities.

If the State finds that it should give one or more of the highest-ranking Proposals further consideration, the State may move the selected Proposals to the next phase. The State alternatively may choose to bypass any or all subsequent phases and make an award based solely on its scoring of the preceding phases, subject only to its review of the highest-ranking offeror’s responsibility, as described below.

**Requests for More Information.** The State may require some offerors to interview, make a presentation about their Proposals, or demonstrate their products or services. If the presentations, demonstrations, or interviews are held as part of the technical evaluation phase, all offerors that have Proposals under evaluation may participate. Alternatively, if the presentations, demonstrations, or interviews are held after the technical evaluation, the State normally will limit them to one or more of the highest-ranking offerors. The State normally will limit such presentations, demonstrations, and interviews to areas in which it seeks further information from the highest-ranking offeror or offerors. Typically, these discussions provide an offeror with an opportunity to do one or more of the following:

- Clarify its Proposal and ensure a mutual understanding of the Proposal’s content;
- Showcase its approach to the Work; and
- Demonstrate the professionalism, qualifications, skills, and work knowledge of its proposed candidates.

The State will schedule the presentations, demonstrations, and interviews at its convenience and discretion. The State will determine the scope and format of any such presentations, demonstrations, and interviews and may record them. Additionally, if the State moves more than one offeror to this phase, the scope and format of these presentations, demonstrations, and interviews may vary from one offeror to the next, depending on the particular issues or concerns the State may have with each offeror’s Proposal.

The State normally will not rank interviews, demonstrations, and presentations. Rather, if the State conducts the interviews, demonstrations, or presentations as part of the technical evaluation, the State may use the information it gathers during this process in evaluating the technical merits of the Proposals. If the State holds the demonstrations, presentations, or interviews only for one or more of the top-ranking offerors after the evaluation phase, the State may decide to revise its existing Proposal evaluations based on the results of this process.

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

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

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

Reference Checks. As part of the State’s determination of an offeror’s responsibility, the State 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, the State may reject an offeror’s Proposal as non-responsive if the offeror fails to provide requested reference contact information.

The State may consider the quality of an offeror’s and its candidates’ and subcontractors’ references as part of the technical evaluation phase, as well as in the State’s determination of the offeror’s responsibility. The State also may consider the information it receives from the references in weighing any requirement contained in the technical evaluation phase, if that information is relevant to the requirement. In checking an offeror’s or any of its proposed candidates’ or subcontractors’ references, the State will seek information that relates to the offeror’s previous contract performance. This may include performance with other governmental entities, as well as any other information the State deems important for the successful operation and management of the Work and a positive working relationship between the State and the offeror. In doing this, the State may check references other than those provided in the offeror’s Proposal. The State also may use information from other sources, such as third-party reporting agencies and independent research.

Financial Ability. Part of the State’s determination of an offeror’s responsibility may include the offeror’s financial ability to perform the Contract. This RFP may expressly require the submission of audited financial statements from all offerors in their Proposals, but if this RFP does not make this an express requirement, the State still may insist that an offeror submit audited financial statements for up to the past three years, if the State is concerned that an offeror may not have the financial ability to carry out the Contract. Also, the State may consider financial information other than the information that this RFP requires as part of the offeror’s Proposal, such as credit reports from third-party reporting agencies.

Contract Negotiations. The final phase of the evaluation process may be contract negotiations. It is entirely within the discretion of the State 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 the State negotiating with the offeror may be rejected. The State is free to limit negotiations to particular aspects of any Proposal or the RFP, to limit the offerors with whom the State negotiates, and to dispense with negotiations entirely. If negotiations are held, they will be scheduled at the convenience of the State, and the selected offeror or offerors must negotiate in good faith and without unreasonable delay.

The State may limit negotiations to specific aspects of the RFP or the offeror’s Proposal. Should the evaluation result in a top-ranked Proposal, the State may limit negotiations to only that offeror and not hold negotiations with any lower-ranking offeror. If negotiations are unsuccessful with the top-ranked offeror, the State then may go
down the line of remaining offerors, according to rank, and negotiate with the next highest-ranking offeror. Lower ranking offerors do not have a right to participate in negotiations conducted in such a manner.

If the State decides to negotiate simultaneously with more than one offeror, or decides that negotiations with the top-ranked offeror are not satisfactory and therefore negotiates with one or more of the lower-ranking offerors, the State then will determine if an adjustment in the ranking of the offerors with which it held negotiations is appropriate based on the negotiations. The Contract award, if any, then will be based on the final ranking of offerors, as adjusted.

Auction techniques that reveal one offeror's price to another or disclose any other material information derived from competing Proposals are prohibited. Any oral modification of a Proposal will be reduced to writing by the offeror as described below.

Following negotiations, the State may set a date and time for the offeror(s) with which the State conducted negotiations to submit a best and final Proposal. If negotiations were limited and all changes were reduced to signed writings during negotiations, the State need not require a best and final Proposal.

If best and final Proposals are required, they may be submitted only once, unless the State determines that it is in the State's interest to conduct additional negotiations. In such cases, the State may require another submission of best and final Proposals. Otherwise, discussion of or changes in the best and final Proposals will not be allowed. If an offeror does not submit a best and final Proposal, the State will treat that offeror's previous Proposal as its best and final Proposal.

From the opening of the Proposals to the award of the Contract, everyone evaluating Proposals on behalf of the State will seek to limit access to information contained in the Proposals solely to those people with a need to know the information. The State also will seek to keep this information away from other offerors, and the State 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.

Negotiated changes will be reduced to writing and become a part of the Contract file, which will be available for public inspection after award of the Contract or cancellation of the RFP, provided the State does not plan to reissue the RFP. If the State plans to reissue the RFP, the Contract file will not be available until the subsequent RFP process is completed. Unless the State agrees otherwise in writing, the offeror must draft and sign the written changes and submit them to the State within five business days. If the State accepts the changes, the State will give the offeror written notice of the State's acceptance, and the negotiated changes to the successful offer will become a part of the Contract.

Failure to Negotiate. If an offeror fails to provide the necessary information for negotiations in a timely manner, or fails to negotiate in good faith, the State may terminate negotiations with that offeror, remove the offeror's Proposal from further consideration, and seek such other remedies as may be available in law or in equity.
PART FIVE: AWARD OF THE CONTRACT

**Contract Award.** The State plans to award the Contract based on the schedule in the RFP, if the State decides the Work is in its best interest and has not changed the award date.

Included with this RFP, as Attachment Five, is a sample of the Contract for the RFP. The State 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. The Contract will bind the State only when the State’s duly authorized representative signs all copies and returns one signed copy to the Contractor with an award letter, the State issues a purchase order, and all other prerequisites identified in the Contract have occurred.

The Contractor must begin work within 15 business days after the State issues a purchase order, or on a mutually agreed start date, under the Contract. If the State awards a Contract pursuant to this RFP, and the Contractor is unable or unwilling to perform the Work, the State may cancel the Contract, effective immediately on notice to the Contractor. The State then may return to the evaluation process under this RFP and resume the process without giving further consideration to the originally selected Proposal. Additionally, the State may seek such other remedies as may be available to the State in law or in equity for the selected Contractor’s failure to perform under the Contract.

**Contract.** If this RFP results in a Contract award, the Contract will consist of:

1. The one-page Contract (Attachment Five) in its final form;
2. The attached amended and clarified version of Contractor’s Proposal “Ohio Child Support Payment Kiosk” dated ________________, 2019 (“Contractor’s Response”). Contractor’s Response includes Attachment Four: General Terms and Conditions and all other Attachments, Supplements and materials included in Contractor’s Response; and
3. The attached Transaction Fee Schedule Summary Worksheet dated ________________, 2019

The Contract is the result of and includes agreed upon changes to the RFP its attachments and supplements 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.

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.
## ATTACHMENT ONE: EVALUATION CRITERIA

### Mandatory Requirements

The first table lists the mandatory requirement for this RFP. If the offeror’s Proposal meets the mandatory requirement, the offeror’s Proposal may be included in the next part of the technical evaluation phase as described in the next table.

<table>
<thead>
<tr>
<th>Mandatory Requirements</th>
<th>Reject</th>
<th>Accept</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Supplement 1 Ohio Child Support Payment Kiosk</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Offeror or proposed Subcontractor(s) must demonstrate having experience in providing payment services through a large kiosk network (minimum 30,000 transactions per month)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Scored Criteria

In the technical evaluation phase, the State will rate the technical merits of the Proposals based on the following requirements and the weight assigned to each requirement. Offerors should be advised that the weights listed will be equally distributed across the detailed sub-requirements that comprise each of the scored criteria sections listed.

<table>
<thead>
<tr>
<th>Scored Criteria</th>
<th>Weight</th>
<th>Does Not Meet</th>
<th>Meets</th>
<th>Exceeds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offeror or proposed Subcontractor(s) must provide three (3) examples of successfully partnering with clients receiving similar payment services through a large kiosk network (minimum 30,000 transactions per month)</td>
<td>50</td>
<td>0</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>Offeror or proposed Subcontractor(s) must demonstrate a successful implemented and maintained a secure kiosk-based payment system processing approximately six million dollars ($6,000,000) per month</td>
<td>100</td>
<td>0</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>Offeror or proposed Subcontractor(s) must perform the Service in compliance with the State’s interactive self-service kiosks requirements as required by Supplement 1 Section 2.1, 2.2 (in its entirety).</td>
<td>100</td>
<td>0</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>Offeror or proposed Subcontractor(s) must perform the Service in compliance with the State’s access to promotional materials requirements as required by Supplement 1 Section 2.4 (in its entirety).</td>
<td>25</td>
<td>0</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>Offeror or proposed Subcontractor(s) must perform the Service in compliance with the State’s reporting requirements as required by Supplement 1 Section 2.5 (in its entirety).</td>
<td>50</td>
<td>0</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>Offeror or proposed Subcontractor(s) must provide assurance they understand and can provide for the Technical Requirements outlined in Supplement 1 section 3.0 (in its entirety).</td>
<td>75</td>
<td>0</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>Offeror or proposed Subcontractor(s) must perform the Service in compliance with the State’s access to payment requirements as required by Supplement 1 Section 4.0 (in its entirety).</td>
<td>150</td>
<td>0</td>
<td>5</td>
<td>7</td>
</tr>
</tbody>
</table>
Offeror or proposed Subcontractor(s) must perform the Service in compliance with the State’s Operational Support / Help Desk Requirements as required by Supplement 1 Section 8.0 (in its entirety).

The State of Ohio, Department of Administrative Services will apply the Veterans Friendly Business Enterprise preference as required by ORC 9.318 and OAC 123:5-1-16.

**Evaluation Scoring Formula.** The evaluation team will rate the Proposals that meet the Mandatory Requirements based on the following criteria and respective weights.

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technical Proposal</td>
<td>60%</td>
</tr>
<tr>
<td>Cost Summary</td>
<td>40%</td>
</tr>
</tbody>
</table>

To ensure the scoring ratio is maintained, the State will use the following formulas to adjust the points awarded to each offeror.

The offeror with the highest point total for the Supplement 1 Technical Proposal will receive 600 points. The remaining offerors will receive a percentage of the maximum points available based upon the following formulas:

\[
\text{Technical Proposal Points} = \frac{\text{Offeror's Technical Proposal Points}}{\text{Highest Number of Technical Proposal Points Obtained}} \times 600
\]

The offeror with the lowest proposed Transaction Total Fixed Price will receive 400 points. The remaining offerors will receive a percentage of the maximum cost points available based upon the following formula:

\[
\text{Cost Summary Points} = \frac{\text{Lowest Transaction Total Fixed Price}}{\text{Offeror's Transaction Total Fixed Price}} \times 400
\]
ATTACHMENT TWO: SPECIAL PROVISIONS

Submittal of Deliverables. The Contractor must perform the Work 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. At the time of delivery of a written Deliverable, the Contractor must submit an original and one copy of each Deliverable, plus an electronic copy. The Contractor must provide the electronic copy in a file format acceptable to the State.

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 the State Authorized Representative, who will review (or delegate review of) the materials or documents within a reasonable time after receipt, as specified in the State-approved, baselined Project Plan.

If the State determines that a Deliverable is not in compliance, the State Authorized Representative will note the reason for non-compliance and send notification to the Contractor Account Manager. At no expense to the State, the Contractor then must bring the Deliverable into conformance and re-submit it to the Project Representative within ten business days.

If the State agrees the Deliverable is compliant, the State Authorized Representative will sign a Deliverable Submittal Form and return a copy to the Contractor. In addition, if the State Authorized Representative or designee determines that the State should make a payment associated with the Deliverable, the State Authorized Representative will indicate that the payment should be made on the Deliverable Submittal Form.

The State form authorizing payment and the payment itself do not indicate that the State has accepted the Deliverables associated with the payment. The State’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).

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

Inconsistencies between Contract and Deliverables. If any terms and conditions incorporated in a Deliverable or other work product are inconsistent with or conflicts with the Contract, the Contract shall prevail.

The Contractor’s Fee Structure. The Contract award will be for a Fixed Transaction Price as agreed in the offerors Cost Summary Microsoft Word® Worksheet (in native format) (Attachment Nine) payable in accordance with an approved statement of work. The Contractor will not be paid directly from the State. All compensation will be acquired through transaction fees charged to the child support payor using the Kiosk. All compensation will be acquired through the Transaction Cost agreed within the Microsoft Word Worksheet (Attachment Nine).

MBE Set-aside and Reporting. As part of our objectives on this Project, the State is committed to improving the number of minority-owned enterprises that do business with the State of Ohio. A "minority-owned enterprise" is an individual, partnership, corporation or joint venture of any kind that is owned and controlled by U. S. Citizens and residents of Ohio, who are and have held themselves out as members of the following socially and economically disadvantaged groups: Blacks, American Indians, Hispanics and Asians.

While it is not a condition of award of the SOW, the offeror must use its best efforts to seek 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:


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 Contractors will be displayed.

Veteran-Friendly Business Enterprise (VBE) Program. The State of Ohio’s Veteran-Friendly Business Enterprise (VBE) Procurement program provides preference or bonus points to certified companies that compete to contract with the state to supply the goods or services it needs, including eligible construction services.

In order to be eligible for certification, the applicant business must satisfy one of the following criteria:

- At least ten percent of its employees are veterans or on active service;
- At least fifty-one percent of the applicant business is owned by veterans or persons on active service;
- If the applicant business is a corporation fifty-one percent of which is not owned by veterans or persons on active service, at least fifty-one percent of the board of directors are veterans or persons on active service; or
- The business is certified by the United States Department of Veterans Affairs as a Service-Disabled Veteran-Owned Small Business or a Veteran-Owned Small Business and the owner(s) of the business meets the definition of veteran as defined in Rule 123:5-1-01(II) of the Ohio Administrative Code.

Information regarding how to obtain this Business Certification can be located at the following link:


Reimbursable Expenses. None.

Bill to Address. The State will provide the bill to address(s) after contract award. The bill to address may vary depending upon the work or services delivered.

Location of Data. The Contractor must perform all work on the Project and keep all State data within the United States, and the State may reject any Proposal that proposes to do any work or make State data available outside the United States. The State also may reject any Proposal for which the Contractor has not submitted the affirmation and disclosure form EXECUTIVE ORDER 2011-12K 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.

Location of Services, Data, Results and Contractors Performing the Work. Services are to be performed at a combination of sites which may include the up to 88 county child support enforcement agencies (CSEAs) and may include other facilities within the United States. All services, work products, deliverables and data must remain within the United States. Offshore access to any element of the Solution, Service, State specific deliverables, work products, technical details, systems, infrastructure or other data is not permissible under any circumstances.

Prohibition on Damaging State Resources or Infrastructure or Removal of State Data or Information. Under no circumstances will a Contractor design or perform any Work on any element of State infrastructure, whether owned or contracted by the State via a third party, as to render it unusable, impact the availability of the
ATTACHMENT THREE: REQUIREMENTS FOR PROPOSALS

Proposal Format. These instructions describe the required format for a responsive Proposal. The offeror may include any additional information it believes is relevant. The offeror’s proposal submission must be submitted using the Microsoft Word® version of the RFP to provide an in-line response to the RFP. An identifiable tab sheet must precede each section of the Proposal, and each Proposal must follow the format outlined below. All pages, except pre-printed technical inserts, must be sequentially numbered. Any material deviation from the format outlined below may result in a rejection of the non-conforming Proposal.

Offeror responses should use a consistent contrasting color (blue is suggested to contrast with the black text of this document) to provide their response to each requirement so that the offeror response is readily distinguishable to the State. Below is an example of the required format for responding to the RFP requirements. To aid offerors in the creation of the most favorable depiction of their responses, alternative formats are acceptable that use typefaces, styles or shaded backgrounds, so long as the use of these formats is consistent throughout the offeror’s response and readily distinguishable from the baseline RFP. Alterations to the State provided baseline RFP language is strictly prohibited. The State will electronically compare offeror responses to the baseline RFP and deviations or alterations to the State’s RFP requirements may result in a rejection of the offeror’s Proposal.

To ensure that each Proposal addresses the required sections of the RFP, offerors must address each RFP requirement by section and sub-section heading and provide the offeror’s proposed solution or response to the requirement by section and subsection in-line using the provided Microsoft Word version of this RFP.

Instructions: The offeror is to describe the customers (i.e., companies, agencies, entities, etc.) served in the Widget domain and the nature of the services provided, as well as the duration of the service.

Offeror Response: The Acme Corporation has been in business for over 20 years, Acme is a leading supplier of Widget and Widget based services with clients in a variety of sectors including public (23 states) and private (125 of the Fortune 400).

Additionally, offerors must include the entire content of Attachment Four as a single section in their proposal. Offerors must include a statement at the beginning of the section indicating that the offeror has read, understands and agrees to the General Terms and conditions contained in Attachment Four.

Each Proposal must include a response to every request for information in this attachment and Supplements 1 and 2. When a detailed response is required, simply repeating the RFP’s requirement and agreeing to comply may be an unacceptable response and may cause the Proposal to be rejected.

Offerors are required to page limit their responses to each Supplement to be no longer than three times the State provided page count in Supplements 1 and 2 respectively. As offeror responses are to respond in an inline format, and by way of example, if Supplement 1 is approximately 40 pages, the offeror’s inline response, inclusive of State requirements shall not exceed 120 pages in total. Offerors should choose a similarly sized typeface (generally 10 point for text and 8 point for tables) as are included in the State’s requirements and not utilize smaller than 8 point fonts to work under this page limit restriction.
Offerors are advised to limit offeror marketing statements and positioning to the area(s) of the Proposal applicable to those statement(s) and not include duplicative or otherwise repetitive statements throughout its response. This page limit shall not apply to: State mandatory forms, representations and affirmations, response form(s) and other structured forms required under this RFP.

Each Proposal must contain the following **tabbed sections in the in-line response:**

**Technical Proposal**
1. Cover Letter
2. Supplier Registration
3. Subcontractor Letters
4. Offeror Certification Form
5. Offeror Profile (as it relates to the proposed work)
6. Proposed Solution - Response to Supplement
8. Proof of Insurance
9. Payment Address
10. Legal Notice Address
11. W-9 Form
12. Independent Contractor Acknowledgement
13. Standard Affirmation and Disclosure Form
14. Master Cloud Services Agreement (if applicable)
15. Affirmative Action Program Verification Form
16. Attachment Four: General Terms and Conditions Acceptance

**Cost Proposal**

17. Attachment Nine: Transaction Fee Schedule Summary Worksheet Microsoft Word (Must be separately sealed, in native Word format – not PDF.)

**Cover Letter.** The cover letter must be in the form of a standard business letter, must reference the supplement being responded to and must be signed by an individual authorized to legally bind the offeror. The cover letter must include a brief executive summary of the solution the offeror plans to provide. The letter must also have the following:

a. A statement regarding the offeror’s legal structure (e.g., an Ohio corporation), Federal tax identification number, and principal place of business;
b. A list of the people who prepared the Proposal, including their titles;
c. A confirmation of which supplement they are responding to; and
d. A statement certifying the Contractor is a business entity and will not submit the Independent Contractor/Worker Acknowledgement to the ordering agency.

**Supplier Registration.** The State of Ohio is changing the way new suppliers register to do business with the state. To provide new suppliers an enhanced registration experience, a new Website dedicated to new and existing suppliers is now available. To register to do business in Ohio and to access supplier forms, click here [http://www.supplier.obm.ohio.gov/](http://www.supplier.obm.ohio.gov/). Offerors must verify that they are registered with the Office of Shared Services to do business in Ohio.

**Subcontractor Letters.** For each proposed subcontractor, the offeror must attach a letter from the subcontractor, signed by someone authorized to legally bind the subcontractor, with the following included in the letter:
1. The subcontractor’s legal status, federal tax identification number, D-U-N-S number, and principal place of business address;
2. The name, phone number, fax number, email address, and mailing address of a person who is authorized to legally bind the subcontractor to contractual obligations;
3. A description of the work the subcontractor will do;
4. A commitment to do the work if the offeror is selected; and
5. A statement that the subcontractor has read and understood the RFP and will comply with the requirements of the RFP.

Offeror Certification Form. The offeror must complete Attachment Six, Offeror Certification Form.

Offeror Profile. Each Supplement Response must include a description of the offeror capability, capacity, and experience in support of the requirements of each Supplement response. The description should include the date the offeror was established, its leadership, number of employees, number of employees the offeror will engage in tasks directly related to the Project, and any other background information or relevant experience that will help the State gauge the ability of the offeror to fulfill the obligations of the Contract.

The offeror must use the Offeror Profile Summary Form(s) (Attachment Seven) and fill it out completely to provide the required information. All offerors must demonstrate experience to meet each of the applicable mandatory requirement(s) evaluation criteria by including the offeror mandatory requirement form provided in this RFP. Each offeror must meet the applicable mandatory requirement(s) in the RFP. If an offeror does not meet the applicable mandatory requirement(s), the State may reject the offeror's Proposal as non-responsive.

The various sections of the Offeror Profile Summary Forms are described below:

Mandatory Experience and Qualifications. The offeror must complete this section to demonstrate that it has the experience needed to meet the RFP’s mandatory requirements. For each reference, the offeror must provide the following information:

- **Contact Information.** The offeror must provide a client contact name, title, phone number, email address, company name, and mailing address. The offeror also must include the same information for an alternate client contact, in case the State cannot reach the primary contact. Failure to provide this information or providing information that is inaccurate or out of date may result in the State not including the reference in the evaluation process or rejecting the offeror’s Proposal. The contact information given must be for a person within the client’s organization and not a co-worker or a contact within the offeror’s organization, subsidiaries, partnerships, etc.
- **Project Name.** The offeror must provide the name of the project where it or its proposed subcontractor obtained the mandatory experience.
- **Dates of Experience.** The offeror must complete this area with a beginning month and year and an ending month and year to show the length of time the offeror or proposed subcontractor actually performed the work, not just the length of time the offeror or proposed subcontractor was engaged by the reference.
- **Description of the Related Service Provided.** The State will not assume that, since the experience requirement is provided at the top of the page, all descriptions on that page relate to that requirement. The offeror must reiterate the experience being described, including the capacity in which the work was performed and the role of the offeror on the Project. It is the offeror’s responsibility to customize the description to clearly substantiate the qualification.
- **Description of how the related service shows the offeror’s experience, capability, and capacity to develop the Deliverables and to achieve the milestones within the scope of work of this RFP.**
  - The offeror must list each project experience separately and completely every time it is referenced, regardless of whether it is on the same or different pages of the form.

Proposed Solution. The offeror must describe in detail how its proposed solution meets the Work and requirements described in this RFP. The offeror may not simply state that the proposed services will meet or exceed the specified requirements. Instead, the offeror must provide a written narrative that shows that the
offeror understands the requirements of this RFP and how the offeror’s proposed services meets those requirements.

All Supplements are being provided as Microsoft Word and Excel documents through the State’s procurement website as a convenience for responding to the RFP. The Supplement’s content must not be modified. If the content is modified, reformatted or omitted, the offeror’s response may be disqualified. As part of their response, Offerors are to provide native Microsoft Word and Excel based documents that comprise the requirements of a Supplement, inclusive of their response as well as Excel based versions of the embedded Requirements Matrices in Excel format as provided. For the avoidance of doubt, Requirements Matrices must be provided both inline (in Microsoft Word).

For all Supplements, offerors must include a statement at the beginning of the section indicating that the offeror has read, understands and agrees to the Requirements, General Scope of Work, Statement of Work Solicitation Process, and Special Provisions contained in each Supplement.

Acceptance of Supplement 2 – State Architecture and Computing Standards, Security and Privacy, State IT Computing Policy and State Data Handling Requirements. Offerors must include the entire content of Supplement 2 and the Supplement 2 Addendum as a single section in their proposal. The offerors must include a statement at the beginning of the section indicating that the offeror has read, understands and agrees to the Requirements contained in Supplement 2.

Proof of Insurance. The offeror must provide the certificate of insurance required by Attachment Four. The policy may be written on an occurrence or claims made basis.

Payment Address. The offeror must give the address to which the State should send payments under the Contract.

Legal Notice Address. The offeror must give the name, title, and address to which the State should send legal notices under the Contract.


Independent Contractor Acknowledgement Form. Unless the offeror is a “business entity” as that term is defined in ORC. 145.037 (“an entity with five or more employees that is a corporation, association, firm, limited liability company, partnership, sole proprietorship, or other entity engaged in business”), the offeror must complete and submit an originally signed Independent Contractor Acknowledgement form in its entirety. All other copies of a Proposal may contain copies of the Independent Contractor Acknowledgement form. The offeror must indicate on the outside of the binder which Proposal contains the originally signed Independent Contractor Acknowledgement form. A current version of the Independent Contractor Acknowledgement form is available at: https://www.opers.org/forms-archive/PEDACKN.pdf

Standard Affirmation and Disclosure Form (EO 2011-12K). The offeror must complete and sign the Affirmation and Disclosure Form (Attachment) as part of its Proposal. Executive Order 2011-12K is available at: http://www.governor.ohio.gov/Portals/0/pdf/executiveOrders/EO%202011-12K.pdf


Approved Affirmative Action Plans can be found by going to the Equal Opportunity Department’s Web site, at:

Copies of approved Affirmative Action plans must be supplied by the offeror as part of its Proposal or inclusion of an attestation to the fact that the offeror has completed the process and is pending approval by the EOD office.

**Acceptance of Attachment Four – General Terms and Conditions.** Offerors must include the entire content of Attachment Four as a single section in their proposal. The offerors must include a statement at the beginning of the section indicating that the offeror has read, understands and agrees to the General Terms and conditions contained in Attachment Four.

**Cost Summary (Must be separately sealed).** This RFP includes Transaction Fee Schedule Summary Worksheet in Microsoft Word® as Attachment Nine. Offerors may not reformat the State’s Cost Summary Worksheet. Each offeror must complete the applicable Cost Summary Worksheet in the exact format provided, since the State may reject any Proposal with a reformatted Cost Summary Worksheet or that is not separately sealed. (See: Part Three: General Instructions, Proposal Submittal.)

The Transaction Fee Schedule Summary Worksheet must not include exceptions, additional terms and conditions, or assumptions. The offeror’s total cost for each transaction must be represented as the Not-To-Exceed Fixed Price.

**The State will not be liable for or pay any Project costs that the offeror does not identify in its Proposal.**
PART ONE: PERFORMANCE AND PAYMENT

Statement of Work. The selected offeror’s Proposal and the State’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 provide the Deliverables 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 State representatives and others necessary to ensure a thorough understanding of the Project and satisfactory performance. The State 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.

Term. Unless this Contract is terminated or expires without renewal, it will remain in effect until the Project is completed to the satisfaction of the State, 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, 2019. The State 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 the State paid for before or after termination or limit the State’s rights in such.

The State’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, the State’s obligations under this Contract will terminate as of the date that the funding expires without further obligation of the State.

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 the State may terminate this Contract under the termination provision contained below.

The State also may have certain obligations to meet. Those obligations, if any, are also listed in the RFP Documents. If the State agrees that the Contractor’s failure to meet the delivery, milestone, or completion dates in the RFP Documents is due to the State’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 the State’s failure to perform will be extended by the same amount of time as the State’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 the State meaningful written notice of the State’s failure to meet its obligations within five business days of the Contractor’s realization that the State’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 State Delay.” The notice must identify any delay in detail, as well as the impact the delay has or will have on the Project. Unless the State 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 the State’s delay. Should the State 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 the State’s delay.
The State 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 price. 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 the State are included in the Project and the not-to-exceed fixed price.

**Right of Offset.** The State 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 the State, including any amounts the Contractor owes to the State under this or other contracts, against any payments due from the State to the Contractor under this or any other contracts with the State.

**Certification of Funds.** None of the rights, duties, or obligations in this Contract will be binding on the State, and the Contractor will not begin its performance until all the following conditions have been met:

(a) All statutory provisions under the Revised Code, including Section 126.07, have been met;
(b) All necessary funds are made available by the appropriate State entities;
(c) If required, the Controlling Board of Ohio approves this Contract; and
(d) If the State is relying on federal or third-party funds for this Contract, the State gives the Contractor written notice that such funds are available.

**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 the State. 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 the State 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 the State 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 the State, that the State 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 the State.

**Sales, Use, Excise, and Property Taxes.** The State 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

Related Contracts. The Contractor warrants that the Contractor has not and will not enter into any contracts without written approval of the State to perform substantially identical services for the State, such that the Project duplicates the work done or to be done under the other contracts.

Other Contractors. The State may hold other contracts for additional or related work, including among others independent verification and validation (IV&V) 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 the State's employees. Further, the Contractor must fully cooperate with any IV&V contractor assigned to this Project. Such cooperation includes expeditiously providing the IV&V contractor with full and complete access to all project work product, records, materials, personnel, meetings, and correspondence as the IV&V contractor may request. If the State assigns an IV&V contractor to the Project, the State will obligate the IV&V contractor to a confidentiality provision similar to the Confidentiality Section contained in this Contract. Additionally, the Contractor must include the obligations of this provision in all its contracts with its subcontractors that work on this project.

Subcontracting. The Contractor may not enter into subcontracts related to the Project after award without written approval from the State. Nevertheless, the Contractor will not need the State'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.

The State's approval of the use of subcontractors does not mean that the State will pay for them. The Contractor will be solely responsible for payment of its subcontractor and any claims of subcontractors for any failure of the Contractor or any of its other subcontractors to meet the performance schedule or performance specifications for the Project in a timely and professional manner. The Contractor must hold the State harmless for and must indemnify the State against any such claims.

The Contractor assumes responsibility for all Deliverables whether it, a subcontractor, or third-party manufacturer produces 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. Further, the Contractor will be fully responsible for any default by a subcontractor, just as if the Contractor itself had defaulted.

If the Contractor uses any subcontractors, each subcontractor must have a written agreement with the Contractor. That written agreement must incorporate this Contract by reference. The agreement also must pass through to the subcontractor all provisions of this Contract that would be fully effective only if they bind both the subcontractor and the Contractor. Among such provisions are the limitations on the Contractor's remedies, the insurance requirements, record keeping obligations, and audit rights. Some sections of this Contract may limit the need to pass through their requirements to subcontracts to avoid placing onerous obligations on minor subcontractors. This exception is applicable only to sections that expressly provide an exclusion for small-dollar subcontracts. Should the Contractor fail to pass through any provisions of this Contract to one of its subcontractors and the failure damages the State in any way, the Contractor must indemnify the State for the damage.

Record Keeping. The Contractor must keep all financial records in accordance with generally accepted accounting principles or equivalent consistently applied. The Contractor also must file documentation to support each action under this Contract in a manner allowing the documentation to be readily located. Additionally, the Contractor must keep all Project-related records and documents at its principal place of business or at its office where the work was performed.

Audits. During the term of this Contract and for three years after the payment of the Contractor's Fee, on reasonable notice, and during customary business hours, the State may audit the Contractor's records and other materials that relate to the Project. This audit right also applies to the State's duly authorized representatives and any person or organization providing financial support for the Project. State audit rights will apply to those Contractor materials that are required to verify the accuracy of a Contractor invoice to the State inclusive of:
Contractor personnel timesheets; Contractor purchased or provided equipment for benefit of the State that will remain in the State's possession; State deliverable acceptance documentation; any required State written approvals as required herein; final Work products and deliverables; any partial or incomplete Work products or deliverables that should the Contractor submit for partial compensation from the State as a result of termination of this contract.

Right to Terminate as a Result of Audit Findings. In the event the State determines that the results of any examination of the Contractor is unsatisfactory per the requirements of the Contract and not remedied within a 90-day period following written notice from the State, the State may terminate this Agreement, in part or in full.

If the Contractor fails to satisfy the requirements of the State with regard to security of information, or if an examination reveals information that would result in a continuing contractual relationship that causes the State to be in violation of any law, the State may terminate this Contract immediately without notice.

If the Contractor fails to satisfy the requirements of the State with regard to matters not related to items contained in the preceding two (2) paragraphs, the State will provide Contractor with notice and an opportunity to cure the failure within forty-five (45) days. If the failure is not cured by Contractor within such forty-five (45) day period, the State may terminate this Contract without further notice.

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 work 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 professional 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.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): written on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than $1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be outside the policy limit.
2. Automobile Liability: covering Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with a limit no less than $1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation insurance as required by the State of Ohio, or the state in which the work will be performed, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than $1,000,000 per accident for bodily injury or disease. If Contractor is a sole proprietor, partnership or has no statutory requirement for workers' compensation, Contractor must provide a letter stating that it is exempt and agreeing to hold Entity harmless from loss or liability for such.
4. Technology Professional Liability (Errors and Omissions) Insurance appropriate to the Contractor's profession, with limits not less than $2,000,000 per occurrence or claim, $2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall cover all applicable Contractor personnel or subcontractors who perform professional services related to this agreement.

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

The insurance policies are to contain, or be endorsed to contain, the following provisions:
Additional Insured Status
Except for Workers’ Compensation and Professional Liability insurance, the State of Ohio, its officers, officials and employees are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. Coverage can be provided in the form of an endorsement to the Contractor’s insurance.

Primary Coverage
For any claims related to this contract, the Contractor’s insurance coverage shall be primary insurance. Any insurance or self-insurance maintained by the State of Ohio, its officers, officials and employees shall be excess of the Contractor’s insurance and shall not contribute with it.

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

Notice of Cancellation
Contractor shall provide State of Ohio with 30 days written notice of cancellation or material change to any insurance policy required above, except for non-payment cancellation. Material change shall be defined as any change to the insurance limits, terms or conditions that would limit or alter the State’s available recovery under any of the policies required above. A lapse in any required insurance coverage during this Agreement shall be a breach of this Agreement.

Waiver of Subrogation
Contractor hereby grants to State of Ohio a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State of Ohio by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the State of Ohio has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions
Deductibles and self-insured retentions must be declared to and approved by the State. The State may require the Contractor to provide proof of ability to pay losses and related investigations, claims administration and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the deductible or self-insured retention may be satisfied by either the named insured or the State.

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

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

Subcontractors
Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that State of Ohio is an additional insured on insurance required from subcontractors.

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

Replacement Personnel. If the RFP Documents contain the names of specific people (e.g., Key Project Personnel) who will work on the Project, then the quality and professional credentials of those people were material factors in the State's decision to enter into this Contract. Therefore, the Contractor must use all commercially reasonable efforts to ensure the continued availability of those people. Also, the Contractor may not remove those people from the Project without the prior written consent of the State, except as provided below.

The Contractor may remove a person listed in the RFP Documents from the Project, if doing so is necessary for legal or disciplinary reasons. However, the Contractor must make a reasonable effort to give the State 30 calendar days' prior, written notice of the removal.

If the Contractor removes a person listed in the RFP Documents from the Project for any reason other than those specified above, the State may assess liquidated damages in the amount of $1,800.00 for every day between the date on which the individual was removed and the date that this Contract is terminated or the individual's qualified replacement, selected in accordance with the process identified in this section, starts performing on the Project. The State also may provide the Contractor with written notice of its default under this section, which the Contractor must cure within 30 days. Should the Contractor fail to cure its default within the 30 day cure period, this Contract will terminate immediately for cause, and the State will be entitled to damages in accordance with the Suspension and Termination Section of this Contract due to the termination. Should the State assess liquidated damages or otherwise be entitled to damages under this provision, it may offset these damages from any Fees due under this Contract.

The Contractor must have qualified replacement people available to replace any people listed in the RFP Documents by name or identified as a key individual on the Project. When the removal of a listed person is permitted under this Section, or if a person becomes unavailable, the Contractor must submit the resumes for two replacement people to the State for each person removed or who otherwise becomes unavailable. The Contractor must submit the two resumes, along with such other information as the State may reasonably request, within five business days after the decision to remove a person is made or the unavailability of a listed person becomes known to the Contractor.

The State will select one of the two proposed replacements or will reject both of them within ten business days after the Contractor has submitted the proposed replacements to the State. The State may reject the proposed replacements for any legal reason. Should the State reject both replacement candidates due to their failure to meet the minimum qualifications identified in the RFP Documents, or should the Contractor fail to provide the notice required under this Section or fail to provide two qualified replacement candidates for each removed or unavailable person, the Contractor will be in default and the cure period for default specified elsewhere in this Contract will not apply. In any such case, the State will have the following options:

(a) The State may assess liquidated damages in the amount of $1,800.00 for every day between the date on which the Contractor failed to provide the applicable notice, failed to provide the two replacement candidates, or the date the State rejected all candidates for cause and the date on which the Contractor affects a cure or the Contract expires without renewal or is terminated.

(b) The State may terminate this Contract immediately for cause and without any cure period.
Should the State exercise its option under item (a) above, it nevertheless will be entitled anytime thereafter to exercise its option under item (b) above. Additionally, should the State terminate this Contract under this provision, it will be entitled to damages in accordance with the Suspension and Termination Section of this Contract due to the termination. Should the State assess liquidated damages or otherwise be entitled to damages under this provision, it may offset these damages from any Fees due under this Contract.

The State may determine that the proposed replacement candidates meet the minimum qualifications of this Contract and still substantially reduce the value the State perceived it would receive through the effort of the original individual(s) the Contractor proposed and on whose credentials the State decided to enter into this Contract. Therefore, the State will have the right to reject any candidate that the State determines may provide it with diminished value.

Should the State reject both proposed candidates for any legal reason other than their failure to meet the minimum qualifications identified in the RFP Documents, the State may terminate this Contract for its convenience.

The State has an interest in providing a healthy and safe environment for its employees and guests at its facilities. The State also has an interest in ensuring that its operations are carried out in an efficient, professional, legal, and secure manner. Therefore, the State will have the right to require the Contractor to remove any individual involved in the Project, if the State determines that any such individual has or may interfere with the State's interests identified above. In such a case, the request for removal will be treated as a case in which an individual providing services under this Contract has become unavailable, and the Contractor must follow the procedures identified above for replacing unavailable people. This provision also applies to people that the Contractor's subcontractors engage, if they are listed by name or as a key person in the RFP Documents.

**Suspension and Termination.** The State 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. The State also may terminate this Contract if the Contractor violates any law or regulation in doing the Project, or if it appears to the State that the Contractor's performance is substantially endangered through no fault of the State. In any such case, the termination will be for cause, and the State'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, the State will have the right to terminate this Contract immediately on notice to the Contractor. The State 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 the State has notified the Contractor in writing of the Contractor's failure to meet any of its obligations three times. After the third notice, the State 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.

The State 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. If a third party is providing funding for the Project, the State also may terminate this Contract should that third party fail to release any Project funds. The RFP Documents normally identify any third-party source of funds for the Project, but an absence of such in the RFP Documents will not diminish the State's rights under this section.

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 the State. 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 the State at the time of termination. The Contractor also must deliver all the completed and partially completed Deliverables to the State with its report. However, if the State determines that delivery in that manner would not be in its interest, then the State will designate a suitable alternative form of delivery, which the Contractor must honor.

If the State terminates this Contract for cause, the State will be entitled to cover for the Work by using another Contractor on such commercially reasonable terms as the State and the covering contractor may agree. The Contractor will be liable to the State 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 the State 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, the State 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 the State, the Contractor will be entitled to the Contract price as pro-rated by the State Contract price for deliverables, products or services accepted by the State 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, the State 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.

The State will have the option of suspending this Contract in full or in part rather than terminating the Project, if the State believes that doing so would better serve its interests. In the event of a suspension for the convenience of the State, 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 the State 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 the State 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 the State from the default or other event giving rise to the suspension.

In the case of a suspension for the State's convenience, the State 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 the State's convenience. The Contractor will not be entitled to compensation for any other costs associated with a suspension for the State's convenience, and the State will make no payment under this provision to the Contractor until the Contractor submits a proper invoice. If the State decides to allow the work to continue rather than terminating this Contract after the suspension, the State 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 the State and may resume work only on written notice from the State to do so. In any case of suspension, the State retains its right to terminate this Contract rather than to continue the suspension or resume the Project.

The State may not suspend the Project for its convenience more than twice during the term of this Contract, and any suspension for the State'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 the State'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 the State for any liability to them. Notwithstanding the foregoing,
each subcontractor must hold the State 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.

**Representatives.** The State's representative under this Contract will be the person identified in the RFP Documents or in a subsequent notice to the Contractor as the “Project Representative.” The Project Representative will review all reports the Contractor makes in the performance of the Project, will conduct all liaison with the Contractor, and will accept or reject the Deliverables and the completed Project. The Project Representative may delegate his responsibilities for individual aspects of the Project to one or more managers, who may act as the Project Representative for those individual portions of the Project.

The Contractor’s Implementation Manager under this Contract will be the person identified on the RFP Documents as the “Implementation Manager.” The Implementation Manager will be the Contractor’s liaison with the State under this Contract. The Implementation Manager also will conduct all Project meetings and prepare and submit to the Project Representative all reports, plans, and other materials that the RFP Documents require from the Contractor.

Either party, upon written notice to the other party, may designate another representative. However, the Contractor may not replace the Implementation Manager without the approval of the State if that person is identified in the RFP Documents by name or as a key individual on the Project.

**Project Responsibilities.** The State will be responsible for providing only those things, if any, expressly identified in the RFP Documents. If the State 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 the State's property, the State 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.

**Changes.** The State may make reasonable changes within the general scope of the Project. The State will do so by issuing a written order under this Contract describing the nature of the change (“Change Order”). Additionally, if the State 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 the State. The parties will handle such changes as follows: The Contractor will provide pricing to the State. The State will execute a Change Order once it and the Contractor have agreed on the description of and specifications for the change, as well as any equitable adjustments that need to be made in the Contractor’s Fee or the performance schedule for the work. Then within five business days after receiving the Change Order, the Contractor must sign it to signify agreement with it.

If a change causes an increase in the cost of, or the time required for, the performance of the Project, the Contractor must notify the State in writing and request an equitable adjustment in its Fee, the delivery schedule, or both before the Contractor signs the Change Order. If the Contractor claims an adjustment under this section in connection with a change to the Project not described in a written Change Order, the Contractor must notify the
State in writing of the claim within five business days after the Contractor is notified of the change and before work on the change begins. Otherwise, the Contractor will have waived the claim. In no event will the State be responsible for any increase in the Fee or revision in any delivery schedule unless the State expressly ordered the relevant change in writing and the Contractor has complied with the requirements of this section. Provided the State has complied with the procedure for Change Orders in this section, nothing in this clause will excuse the Contractor from proceeding with performance of the Project, as changed.

Where an equitable adjustment to the Contractor's Fee is appropriate, the State and the Contractor may agree upon such an adjustment. If the State and the Contractor are unable to agree, either party may submit the dispute to the senior management of the Contractor and the senior management of the State's Department of Administrative Services for resolution. If within 30 calendar days following referral to senior management, the claim or dispute has not been resolved, the Contractor must submit its actual costs for materials needed for the change (or estimated amount if the precise amount of materials cannot be determined) and an estimate of the hours of labor required to do the work under the Change Order. The Contractor must break down the hours of labor by employee position, and provide the actual hourly pay rate for each employee involved in the change. The total amount of the equitable adjustment for the Change Order then will be made based on the actual cost of materials (or estimated materials) and actual rate for each person doing the labor (based on the estimated hours of work required to do the change). Labor rates will be increased by 25% to cover benefits and taxes. The equitable adjustment for the Change Order then will be set based on this amount, plus 15% to cover overhead and profit. This amount will be the not-to-exceed amount of the Change Order. If the change involves removing a requirement from the Project or replacing one part of the Project with the change, the State will get a credit for the work no longer required under the original scope of the Project. The credit will be calculated in the same manner as the Contractor's Fee for the change, and the not-to-exceed amount will be reduced by this credit.

The Contractor is responsible for coordinating changes with its subcontractors and adjusting their compensation and performance schedule. The State will not pay any subcontractor for the Change Order. If a subcontractor will perform any work under a Change Order, that work must be included in the Contractor's not-to-exceed amount and calculated in the same manner as the Contractor's equitable adjustment for the portion of the work the Contractor will perform. The Contractor will not receive an overhead percentage for any work a subcontractor will do under a Change Order.

If the RFP Documents provide for the retainage of a portion of the Contractor's Fee, all equitable adjustments for Change Orders also will be subject to the same retainage, which the State will pay only on completion and acceptance of the Project, as provided in the RFP Documents.

**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.

**Independent Contractor Acknowledgement.** It is fully understood and agreed that Contractor is an independent contractor and is not an agent, servant, or employee of the State of Ohio or the Ohio Department of Administrative Services. Contractor declares that it is engaged as an independent business and has complied with all applicable federal, state, and local laws regarding business permits and licenses of any kind, including but not limited to any insurance coverage, workers’ compensation, or unemployment compensation that is required in the normal course of business and will assume all responsibility for any federal, state, municipal or other tax liabilities. Additionally, Contractor understands that as an independent contractor, it is not a public employee and is not entitled to contributions from DAS to any public employee retirement system.
Contractor acknowledges and agrees any individual providing personal services under this agreement is not a public employee for purposes of Chapter 145 of the Ohio Revised Code. Unless Contractor is a “business entity” as that term is defined in ORC. 145.037 (“an entity with five or more employees that is a corporation, association, firm, limited liability company, partnership, sole proprietorship, or other entity engaged in business”) Contractor shall have any individual performing services under this agreement complete and submit to the ordering agency the Independent Contractor/Worker Acknowledgement found at the following link:

https://www.opers.org/formsarchive/PEDACKN.pdf

Contractor’s failure to complete and submit the Independent/Worker Acknowledgement prior to commencement of the work, service or deliverable, provided under this agreement, shall serve as Contractor’s certification that contractor is a “Business entity” as the term is defined in ORC Section 145.037.

Ohio MBE Certification. The MBE must maintain their certification throughout the term of the Contract arising from Supplement 1, including any renewals. Failure to maintain such certification will be considered a breach of the Contract.

Publicity. The Contractor may not advertise or publicize that it is doing business with the State or use this Contract or the Contractor’s relationship with the State as a marketing or sales tool, unless the State agrees otherwise in writing.

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

Confidentiality. The State may disclose to the Contractor written material or oral or other information that the State treats as confidential (“Confidential Information”). Title to the Confidential Information and all related materials and documentation the State delivers to the Contractor will remain with the State. The Contractor must treat such Confidential Information as secret, if it is so marked, otherwise identified as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interest of the public, other contractors, potential contractors with the State, other contractors, potential contractors with the State, or individuals or organizations about whom the State 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 the State, 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 the State, 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 the State; or (6) is released in accordance with a valid order of a court or governmental agency, provided that the Contractor (a) notifies the State 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.

Confidentiality Agreements. When the Contractor performs services under this Contract that require the Contractor’s and its subcontractors’ personnel to access facilities, data, or systems that the State in its sole discretion deems sensitive, the State may require the Contractor’s and its subcontractors’ personnel with such access to sign an individual confidentiality agreement and policy acknowledgements, and have a background check performed before accessing those facilities, data, or systems. Each State agency, board, and commission may require a different confidentiality agreement or acknowledgement, and the Contractor’s and its subcontractors’ personnel may be required to sign a different confidentiality agreement or acknowledgement for each agency. 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.

Ownership of Deliverables. The State owns all Deliverables that the Contractor produces under this Contract, including any software modifications, and documentation, with all rights, title, and interest in all intellectual property that come into existence through the Contractor’s custom work being assigned to the State. Additionally, the Contractor waives any author rights and similar retained interests in custom-developed material. The Contractor must provide the State with all assistance reasonably needed to vest such rights of ownership in the State. 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 the State a worldwide, non-exclusive, royalty-free, perpetual license to use, modify, and distribute all Pre-existing Materials that are incorporated into any custom-developed Deliverable rather than grant the State ownership of the Pre-existing Materials. The State 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 Preexisting Material. If the Contractor wants to incorporate any Pre-existing Materials into a custom Deliverable, the Contractor must first disclose that desire to the State in writing and seek the State's approval for doing so in advance. The State will not be obligated to provide that approval, unless the Contractor disclosed its intention to do so in the RFP Documents. On the Contractor’s request, the State 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 the State with respect to Pre-existing Materials, the State may make all custom Deliverables available to the general public without any proprietary notices of any kind.

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

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. It does not include Key Commercial Software that will be governed by Attachment Ten, Master Contract, but does include other Commercial Software.

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 the State will have the rights permitted under the federal copyright laws for each copy of the Commercial Material delivered to it by the Contractor.

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

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

For Commercial Software, the State will have the rights in items (1) through (6) of this section with respect to the software. The State 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 the State 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.

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

Key Commercial Software will be covered by a separate Master Cloud Service Agreement, in the form of
PART FOUR: REPRESENTATIONS, WARRANTIES, AND LIABILITIES

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 the State regarding conduct on any premises under the State's control and security for the State'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 the State; (5) the Contractor has the right and ability to grant the license granted in any Deliverable in which title does not pass to the State; 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 the State for any direct damages and claims by third parties based on a breach of these warranties. This obligation of indemnification will not apply where the State has modified or misused the Deliverable and the claim is based on the modification or misuse. The State will give the Contractor notice of any such claim as soon as reasonably practicable. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor must do one of the following things: (1) modify the Deliverable so that it is no longer infringing; (2) replace the Deliverable with an equivalent or better item; (3) acquire the right for the State to use the infringing Deliverable as it was intended for the State to use under this Contract; or (4) remove the Deliverable and refund the amount the State paid for the Deliverable and the amount of any other Deliverable or item that requires the availability of the infringing Deliverable for it to be useful to the State.

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 the State 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 the State; 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 the State 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.

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

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

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

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

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

**GENERAL EXCLUSION OF WARRANTIES.** THE CONTRACTOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, OTHER THAN THOSE EXPRESS WARRANTIES CONTAINED IN THIS CONTRACT.

**Indemnity for Property Damage and Bodily Injury.** The Contractor must indemnify the State for all liability and expense resulting from bodily injury to any person (including injury resulting in death) and damage to tangible or real property arising out of the performance of this Contract, provided that such bodily injury or property damage is due to the negligence or other tortious conduct of the Contractor, its employees, agents, or subcontractors. The Contractor will not be responsible for any damages or liability to the extent caused by the negligence or willful misconduct of the State, its employees, other contractors, or agents.
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. The limitations in this paragraph do not apply to any obligation of the Contractor to indemnify the State against claims made against it or for damages to the State caused by the Contractor’s negligence or other tortious conduct. The required Surety Bond for this RFP is $300,000. The Contractor must present this bond at the time of award.

PART FIVE: ACCEPTANCE AND MAINTENANCE

Standards of Performance and Acceptance. There will be a period for performance testing of the completed Project. During the performance period, the State, with the assistance of the Contractor, will perform acceptance testing. The performance period will last up to 90 calendar days, during which time the Project must meet the standard of performance required by the RFP Documents for 30 consecutive 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, the State 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 the State 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 the State may have under this Contract, the State 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 the State the right to reject the entire Project. Alternatively, if the State determines that it is in the State's interest to reject only the part of the Project that was independently and unsuccessfully tested, it may do so. If the State chooses this option, the State 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 Project will not be accepted until the performance period is complete.

Should it be necessary, the State 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.

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

Software Maintenance. If this Contract involves software as a Deliverable, then, during the warranty period, as well as any optional maintenance periods that the State exercises, the Contractor must correct any material programming errors that are attributable to the Contractor within a reasonable period of time. However, the State 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 the State has not signed a separate license agreement, the Contractor must acquire for the State 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 the State a pro rata refund of the license fee based on a five-year useful life; or (b) release the source code for the software (except third party software) to the State for use by the State solely for the purpose of maintaining the copy(ies) of the software for which the State has a proper license. For purposes of receiving the source code, the State agrees to treat it as confidential and to be obligated to the requirements under the Confidentiality section of this Contract with respect to the source code. That is, with respect to the source code that the State gets under this section, the State will do all the things that the Confidentiality section requires the Contractor to do in handling the State's Confidential Information.

**Equipment Maintenance.** If this Contract involves Equipment as a Deliverable, then, upon Equipment delivery and for 12 months after acceptance, the Contractor must provide Equipment maintenance to keep the Equipment in or restore the Equipment to good working order. If the State exercises its right to any optional maintenance periods, the Contractor's obligations hereunder will extend to those periods as well. This maintenance must include preventative and remedial maintenance, installation of safety changes, and installation of engineering changes based upon the specific needs of the individual item of Equipment. This maintenance must include the repair, replacement, or exchange deemed necessary to keep the Equipment in good working condition. For purposes of this Contract, Equipment restored to good working condition means Equipment that performs in accordance with the manufacturer's published specifications and the RFP Documents.

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

The following services are outside the scope of this Contract:

a. Maintenance to bring the Equipment into compliance with any law, rule, or regulation if such law, rule, or regulation was not in effect on the acceptance date.

b. Repair and replacement work or increase in maintenance time as a result of damage or loss resulting from casualty or the State's misuse of the Equipment, damage resulting from improper packing or failure to follow prescribed shipping instructions (if such is done by the State), failure of electrical power, air conditioning or humidity control, use of supplies not approved by the original manufacturer of the Equipment as described or included in the Contractor's Proposal, or causes other than ordinary use of the Equipment.

c. Furnishing supplies or accessories, making specification changes, or adding or removing approved accessories, attachments, or other devices.
d. Maintenance or any increase in maintenance time resulting from any maintenance or inappropriate connection to other equipment (not done by the Contractor) that results in damage to the Equipment.

e. Activities required to restore the Equipment to good operating condition if the problem has resulted from someone other than Contractor's authorized service personnel repairing, modifying, or performing any maintenance service on the Equipment.

**Equipment Maintenance Standards.** This section applies if Equipment will be a Deliverable under this Contract.

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

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

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

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

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

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

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

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

The Contractor must keep the Project in good operating condition during the warranty period and any annual maintenance period during which the State contracts for continued maintenance. The State will provide the Contractor with reasonable access to the Project to perform maintenance. All maintenance that requires the Project to be inoperable must be performed outside the State's customary working hours, except when the Project is already inoperable. Preventive or scheduled maintenance will be performed at mutually agreeable times, within the parameters of the manufacturer's published schedule.
Key Maintenance Personnel (General). This section applies if software or Equipment will be a Deliverable under this Contract.

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

PART SIX: CONSTRUCTION

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.

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

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.

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.

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

Headings. The headings used herein are for the sole sake of convenience and may not be used to interpret any section.

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.

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.

Time. Unless otherwise expressly provided, any reference in this document to a number of days for an action or event to occur means calendar days, and any reference to a time of the day, such as 5:00 p.m., is a reference to the local time in Columbus, Ohio.

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

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

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.

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 the State 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 the State 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.

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.

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.

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/.

Use of MBE and EDGE Vendors. The State encourages Contractor to purchase goods and services from Minority Business Enterprises (MBE) and Encouraging Diversity, Growth, and Equity (EDGE) vendors.

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

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

The Service Provider agrees to complete the attached Executive Order 2011-12K Affirmation and Disclosure Form, which is incorporated and becomes a part of this Agreement.
**Injunctive Relief.** Nothing in this Contract is intended to limit the State's right to injunctive relief, if such is necessary to protect its interests or to keep it whole.

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

**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.

**Registration with the Secretary of State.** By providing a Charter Number and signature within the Certification Offer Letter, the Contractor attests that the Contractor is:

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

**Boycotting.** Pursuant to R.C. 9.76(B), Contractor warrants that Contractor is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the contract period.
ATTACHMENT FIVE
SAMPLE CONTRACT

A CONTRACT BETWEEN THE
OHIO DEPARTMENT OF ADMINISTRATIVE SERVICES
ON BEHALF OF THE
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
AND
____________________________________________
(CONTRACTOR)

THIS CONTRACT, which results from RFP 0A1224, Ohio Child Support Payment Kiosks, is between the State of Ohio, through the Department of Administrative Services on behalf of the Ohio Department of Job and Family Services and ________________ (the "Contractor").

This Contract consists of:

1. This one-page signature page;
2. The attached amended and clarified version of Contractor’s Proposal "____________________________________" dated ____________ ("Contractor’s Response"). Contractor’s Response includes Attachment Four: General Terms and Conditions and all other Attachments, Supplements and materials included in Contractor’s Response; and
3. The attached Fee Schedule Summary Workbook dated ____________________.

Change orders and amendments issued after the Contract is signed may expressly change the provisions of the Contract. If so, the change orders and amendments will apply in accordance with their respective terms.

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, 2019, whichever is sooner. The State may renew this Contract for up to 4 additional 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 possible maximum contract term expiring June 30, 2027. Any such renewal of all or part of the Contract also is subject to the satisfactory performance of the Contractor and the needs of the Department of Administrative Services.

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

CONTRACTOR

SAMPLE – DO NOT FILL OUT

By: _____________________________
Title: _____________________________
Date: _____________________________

STATE OF OHIO
DEPARTMENT OF ADMINISTRATIVE SERVICES

By: DAS Director
Title: Director
Date: _____________________________
ATTACHMENT SIX
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 the State.

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.

<table>
<thead>
<tr>
<th>Yes/No</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The offeror has had a contract terminated for default or cause.</td>
</tr>
<tr>
<td></td>
<td>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).</td>
</tr>
<tr>
<td></td>
<td>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.</td>
</tr>
<tr>
<td></td>
<td>Trading in the stock of the company has ever been suspended with the date(s) and explanation(s).</td>
</tr>
<tr>
<td></td>
<td>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.</td>
</tr>
<tr>
<td></td>
<td>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.</td>
</tr>
</tbody>
</table>

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 the State, such an answer and a review of the background details may result in a rejection of the Proposal. The State 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 the State.

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:

<table>
<thead>
<tr>
<th>Potential Conflicts (by person or entity affected)</th>
</tr>
</thead>
</table>

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

The State may reject a Proposal in which an actual or apparent conflict is disclosed. And the State 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 its regular, fulltime employees will perform at least 40% of the Work.

7. The following is a complete list of all subcontractors, if any, that the offeror will use on the Work, if the State selects the offeror to do the Work:

<table>
<thead>
<tr>
<th>List of Subcontractors</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

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 any MBE program participants will provide necessary data to ensure program reporting and compliance.

9. If the offeror qualifies as a Veteran Friendly Business Enterprise as defined by ORC 9.318 and OAC 123:5-1-01(KK), the certification must also contain the following sentence:

“[Insert Company name] affirms that they are certified as a Veteran Friendly Business Enterprise as defined by Ohio Revised Code 9.318 and Ohio Administrative Code 123:5-1-01(KK).”

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

<table>
<thead>
<tr>
<th>Contractor Contact Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name:</td>
</tr>
<tr>
<td>Title:</td>
</tr>
<tr>
<td>Mailing Address:</td>
</tr>
<tr>
<td>Office Phone Number:</td>
</tr>
<tr>
<td>Cell Phone Number:</td>
</tr>
<tr>
<td>Fax Number:</td>
</tr>
<tr>
<td>Email Address:</td>
</tr>
</tbody>
</table>

Signature: __________________________________________________________

Name: ______________________________________________________________

Title: ______________________________________________________________

Company Name: ______________________________________________________

Company D-U-N-S Number: ____________________________________________
**ATTACHMENT SEVEN OFFEROR PROFILE**

**OFFEROR MANDATORY REQUIREMENTS**

**MANDATORY REQUIREMENT**: Offeror or Subcontractor(s) must demonstrate having experience in providing payment services through a large kiosk network (minimum 30,000 transactions per month)

<table>
<thead>
<tr>
<th>Agency/Entity Name:</th>
<th>Contact Name:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(Indicate Primary or Alternate)</td>
</tr>
<tr>
<td></td>
<td>Contact Title:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Agency/Entity Address:</th>
<th>Contact Phone Number:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Contact Email Address:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Project Name:</th>
<th>Beginning Date of Expr: / Ending Date of Expr:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Month/Year / Month/Year</td>
</tr>
</tbody>
</table>

**Describe Related Service Provided:**

Describe how the Related Service shows the offeror’s experience, capability, and capacity to meet the requirements and achieve the milestones for this Project:

**Number of Transactions Monthly:**

***Copy this form as needed***
ATTACHMENT SEVEN OFFEROR PROFILE

OFFEROR REQUIREMENTS

REQUIREMENT: Offeror or proposed Subcontractor(s) must provide three (3) examples of successfully partnering with clients receiving similar payment services through a large kiosk network.

<table>
<thead>
<tr>
<th>Agency/Entity Name:</th>
<th>Contact Name:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(Indicate Primary or Alternate)</td>
</tr>
<tr>
<td></td>
<td>Contact Title:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Agency/Entity Address:</th>
<th>Contact Phone Number:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Contact Email Address:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Project Name:</th>
<th>Beginning Date of Expr: / Ending Date of Expr:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Month/Year Month/Year</td>
</tr>
</tbody>
</table>

Describe Related Service Provided:

Describe how the Related Service shows the offeror’s experience, capability, and capacity to meet the requirements and achieve the milestones for this Project:

Number of Transactions Monthly:

***Copy this form as needed***
ATTACHMENT SEVEN OFFEROR PROFILE

OFFEROR REQUIREMENTS

REQUIREMENT: Offeror or Subcontractor(s) must demonstrate a successful implemented and maintained a secure kiosk-based payment system for at least 300,000 registered users.

<table>
<thead>
<tr>
<th>Agency/Entity Name:</th>
<th>Contact Name: (Indicate Primary or Alternate)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Contact Title:</td>
</tr>
<tr>
<td>Agency/Entity Address:</td>
<td>Contact Phone Number:</td>
</tr>
<tr>
<td></td>
<td>Contact Email Address:</td>
</tr>
<tr>
<td>Project Name:</td>
<td>Beginning Date of Expr: / Ending Date of Expr:</td>
</tr>
<tr>
<td></td>
<td>Month/Year Month/Year</td>
</tr>
</tbody>
</table>

Describe Related Service Provided:

Describe how the Related Service shows the offeror’s experience, capability, and capacity to meet the requirements and achieve the milestones for this Project:

Number of Registered Users:

***Copy this form as needed***
ATTACHMENT EIGHT
Standard 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:

<table>
<thead>
<tr>
<th>(Address)</th>
<th>(City, State, Zip)</th>
</tr>
</thead>
</table>
   
   Name/Principal location of business of subcontractor(s):

<table>
<thead>
<tr>
<th>(Name)</th>
<th>(Address, City, State, Zip)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Name)</td>
<td>(Address, City, State, Zip)</td>
</tr>
</tbody>
</table>

2. Location where services will be performed by Contractor:

<table>
<thead>
<tr>
<th>(Address)</th>
<th>(City, State, Zip)</th>
</tr>
</thead>
</table>
   
   Name/Location where services will be performed by subcontractor(s):

<table>
<thead>
<tr>
<th>(Name)</th>
<th>(Address, City, State, Zip)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Name)</td>
<td>(Address, City, State, Zip)</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>(Address)</th>
<th>(Address, City, State, Zip)</th>
</tr>
</thead>
</table>
   
   Name/Location(s) where state data will be located by subcontractor(s):

<table>
<thead>
<tr>
<th>(Name)</th>
<th>(Address, City, State, Zip)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Name)</td>
<td>(Address, City, State, Zip)</td>
</tr>
</tbody>
</table>
Contractor also affirms, understands and agrees that Contractor and its subcontractors are under a duty to disclose to the State any change or shift in location of services performed by Contractor or its subcontractors before, during and after execution of any Contract with the State. Contractor agrees it shall so notify the State immediately of any such change or shift in location of its services. The State has the right to immediately terminate the contract, unless a duly signed waiver from the State has been attained by the Contractor to perform the services outside the United States.

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

By: ____________________________________
Contractor

Print Name: ________________________________

Title: ________________________________

Date: ________________________________

<table>
<thead>
<tr>
<th>(Name)</th>
<th>(Address, City, State, Zip)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Name)</td>
<td>(Address, City, State, Zip)</td>
</tr>
<tr>
<td>(Name)</td>
<td>(Address, City, State, Zip)</td>
</tr>
</tbody>
</table>
ATTACHMENT NINE

<Contractor>
Master Cloud Services Agreement

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

1. General Information

1.1. Organization

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

1.2. Subscribers

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

1.3. Cooperative Purchasing Members

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

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

1.5. Agreement – Renewal

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

1.6. Service Attachment(s) – Renewal

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

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

The Subscribers have 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 Subscriber’s Order (“Early Termination Charge”), if any such charge is provided for in the applicable Service Attachment.

1.7. Relationship of the Parties and Subscribers

The Contractor is an independent contractor and is not an agent, servant, or employee of the State. The Contractor is engaged as an independent business and has complied with all applicable federal, state, and local laws regarding business permits and licenses of any kind, including but not limited to any insurance coverage, workers’ compensation, or unemployment compensation that is required in the normal course of business and will assume all responsibility for any federal, state, municipal, or other tax liabilities. Additionally, as an independent contractor, The Contractor is not a public employee and is not entitled to contributions from the State to any public employee retirement system or any other benefit of public employment.

Further, any individual providing personal Services under this Agreement is not a public employee for purposes of Chapter 145 of the Ohio Revised Code. And unless the Contractor is a “business entity” as that term is defined in ORC 145.037 (“an entity with five or more employees that is a corporation, association, firm, limited liability company, partnership, sole proprietorship, or other entity engaged in business”) the Contractor must have any individual
performing work under this Agreement complete and submit to the ordering agency the Independent Contractor/Worker Acknowledgement form found at the following link:

https://www.opers.org/forms-archive/PEDACKN.pdf#zoom=80

The Contractor’s failure to complete and submit the Independent/Worker Acknowledgement form before providing any Service or otherwise doing any work hereunder will serve as the Contractor’s certification that the Contractor is a “Business entity” as the term is defined in ORC Section 145.037.

1.8. Dealers and Distributors

The State authorizes the Contractor to name one or more dealers to work with the State on behalf of the Contractor. But if the Contractor decides to use any dealers, the Contractor must submit the name, principal business address, addresses for Orders and for payments, telephone number, and its federal tax identification number. The Contractor also must submit a completed W9 form for each dealer it wishes to name under this section. The Contractor’s submission must be on its official letterhead, signed by an authorized representative, and sent to the address listed in The Notices section of this Agreement.

In doing the above, the Contractor warrants that:

i. The Contractor has provided the dealer with a copy of this Agreement, and a duly authorized representative of the dealer has agreed, in writing, to be bound by the terms and conditions in this Agreement.

ii. Such agreement specifically provides that it is for the benefit of the State as well as the Contractor.

iii. The Contractor will remain liable under this Agreement for the Services of its dealers and will remedy any breach of any of its dealers under this Agreement.

iv. Payments under this Agreement for the Services of any dealer may be made directly to that dealer, and the Contractor will look solely to the dealer for any payments due to the Contractor once the State has paid the dealer.

v. To the extent that there is any liability to the State arising from doing business with a dealer that has not signed the Agreement required under this section with the Contractor, the Contractor will indemnify the State for such liability.

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

Section 125.081 of the Ohio Revised Code requires the State to set-aside purchases for MBE and Executive Order 2008-13S encourages use of EDGE businesses. Therefore, the State encourages the Contractor to purchase goods and services from Ohio certified Minority Business Enterprises (MBE) and Encouraging Diversity, Growth and Equity (EDGE) vendors and to use such for its dealers and distributors under this Agreement.
1.9. Audits and Reports

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

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

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

The State also may require various reports from the Contractor related to the Services. Such reports include those identified in the Cost Recovery section of this Agreement and those identified in any Service Attachment. Further, the State will be entitled to any other reports that the Contractor makes generally available to its other customers without additional charge. The State’s rights under this section will apply to all Services provided to all Subscribers under this Agreement, but a Subscriber’s rights to reports will apply solely to Services it orders or receives under this Agreement.

1.10. Subscribers’ Reliance on Agreement

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

1.11. Third-Party Suppliers

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

The Contractor’s use of other suppliers does not mean that the State 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 Agreement in the required manner. The Contractor will hold the State harmless and indemnify the State against any such claims.

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

1.12. Non-Exclusivity

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

1.13. Competitive Pricing and Services

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

1.14. Conflict Resolution

If one Party believes the other Party has violated or is not complying with the terms of this Agreement or if any other dispute arises under this Agreement, the Party raising the matter may provide to the other Party written notice referencing this section and specifying the nature of the dispute (the “Dispute Notification”). The Parties then will seek to resolve the dispute in accordance with the procedures in this Section.

All disputes will be submitted first to the authorized State Representative (or designee) and the Contractor’s Account Manager (or equivalent) for resolution. For 15 days from receipt of the Dispute Notification (“Dispute Date”), the authorized State Representative and Contractor’s Account Manager will meet in person or by telephone as often as is reasonably necessary to discuss and attempt to resolve the dispute in good faith.

If after the 15 days identified above, the authorized State Representative and the Contractor’s Account Manager are unable to resolve the dispute, the Parties will then submit the dispute to the State’s IT Contract Manager (or designee) and to the Contractor’s Sales Director (or equivalent) for resolution. For the next 15 days, the State’s IT Contract Manager and Contractor’s Sales Director will meet in person or by telephone as often as is reasonably necessary to discuss and attempt to resolve the dispute in good faith.

If following the 15 days in the previous section, the State’s IT Contract Manager and the Contractor’s Sales Director are unable to resolve the dispute, the Parties will then submit the dispute to the State’s Chief Information Officer (“CIO”) or a designee and to the Contractor’s Vice President of Sales (or equivalent executive) for resolution. For the next 15 days, the State’s CIO and Contractor’s Vice President will meet in person or by telephone as often as is reasonably necessary to discuss and attempt to resolve the dispute in good faith. If the State’s CIO and Contractor’s Vice President are unable to resolve the dispute within that time, the Parties will nevertheless continue to retain their rights to initiate formal proceedings hereunder.
The specific format for such discussions will be left to the discretion of the representatives of the State and Contractor responsible for attempting to resolve the dispute, but each Party will involve the business, technical, and legal resources reasonably necessary to attempt in good faith to resolve the dispute at the earliest possible time and without undue delay.

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

Nothing in this section is intended to limit the rights provided under termination section of this Agreement or be a prerequisite to exercising those rights.

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

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

- If in favor of the Contractor, the affected Subscribers will submit appropriate payment within 30 days of receiving notification of the resolution at the office designated to receive the invoice.

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

2. General Requirements for Cloud Services

2.1. Standards

All Service subscriptions must provide a Service that maintains a redundant infrastructure that will ensure access for all the State’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 applicable Service Attachment 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.

The Services must also operate at the moderate level baseline as defined in the National Institute of Standards and Technology (“NIST”) 800-53 Rev. 4 moderate baseline requirements, be consistent with Federal Information Security Management Act (“FISMA”) requirements and offer a customizable and extendable capability based on open-standards APIs that enable
integration with third party applications. Additionally, they must provide the State’s systems administrators with 24x7 visibility into the services through a real-time, web-based “dashboard” capability that enables them to monitor, in real or near real time, the Services’ performance against the established SLAs and promised operational parameters.

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

User access to the Services must be capable of being integrated with a Subscriber’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 the applicable Subscriber’s Active Directory or other LDAP service.

The Contractor must obtain an annual audit report that complies with the AICPA’s SOC 1 standards, and one that complies with the AICPA’s SOC 2 standards. The reports must cover all operations pertaining to the Services covered by this Agreement. The reports will be at the sole expense of the Contractor, and a copy of each must be provided to the State within 30 days of its completion each year.

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

2.2. Object Reassignment

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

2.3. Generated Files

“Generated Files” are files storing information, instructions, or data that a Subscriber creates or modifies using the Contractor’s Services and in which the data or other information was provided or created by a Subscriber. Such Generated Files are also included in the definition of “Subscriber’s Data” in a later section of this Agreement. Examples of such files could include, among others, text files generated with a word processor, data tables created with a database engine, and image files created with a graphics application. Applications consisting of instruction sets created with a programming language that the Contractor provided to a Subscriber also would be considered Generated Files. As between the Subscriber and the
Contractor, the Subscriber will own all Generated Files that the Subscriber 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 the Subscriber a nonexclusive, royalty-free right to reproduce and distribute to third parties any portions of the intellectual property embedded in any Generated Files that the Subscriber creates while using the Services in the way the Services are designed to be used. In the Subscriber’s distribution of the Generated Files, the Subscriber 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.

2.4. Contractor Warranties

The Contractor warrants the following:

1. It has validly entered into this Agreement and has the legal power to do so.
2. The Services will perform materially in accordance with the applicable user guide and the requirements of this Agreement.
3. Subject to any limitations specified in the applicable Service Attachment, the functionality of the Services will not be materially decreased during a subscription term.
4. It will not transmit viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs (“Malicious Code”) to a Subscriber.

For any breach of a warranty above, the State’s and individual Subscribers’ remedies will be as provided in the section of this Agreement dealing with termination.

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

2.5. State and Subscribers Responsibilities

The State and each Subscriber will be responsible for their respective compliance with this Agreement. Additionally, each Subscriber will:

1. Be responsible for the accuracy, quality, and legality of its data and of the means by which the data was acquired.
2. Use commercially reasonable efforts to prevent unauthorized access to or use of the Services to which it subscribes and notify the Contractor promptly of any unauthorized access or use of which it becomes aware.
3. Use the Services only in accordance with the applicable user guide, to the extent it is not inconsistent with this Agreement, applicable laws, or government regulations.

A Subscriber may not:

1. Intentionally make the Services available to anyone other than its employees and contractors acting on its behalf.
2. Sell, resell, rent or lease the Services,
3. Use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights.
iv. Intentionally use the Services to store or transmit Malicious Code,
v. Intentionally interfere with or disrupt the integrity or performance of the Services or third-party data contained therein.
vi. Attempt to gain unauthorized access to the Services or their related systems or networks.

3. Insurance, Indemnification, Limitation of Liability

3.1. Insurance

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 work 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.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:
1. Commercial General Liability (CGL): written on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than $1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be outside the policy limit.
2. Automobile Liability: covering Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with a limit no less than $1,000,000 per accident for bodily injury and property damage.
3. Workers’ Compensation insurance as required by the State of Ohio, or the state in which the work will be performed, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than $1,000,000 per accident for bodily injury or disease. If Contractor is a sole proprietor, partnership or has no statutory requirement for workers’ compensation, Contractor must provide a letter stating that it is exempt and agreeing to hold Entity harmless from loss or liability for such.
4. Technology Professional Liability (Errors and Omissions) Insurance appropriate to the Contractor's profession, with limits not less than $2,000,000 per occurrence or claim, $2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall cover all applicable Contractor personnel or subcontractors who perform professional services related to this agreement.
5. Cyber liability (first and third party) with limits not less than $5,000,000 per claim, $10,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Pre-Qualified Contractor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The coverage shall provide for breach response costs as well as regulatory fines and penalties and credit monitoring expenses with limits sufficient to respond to these obligations.
The Insurance obligations under this agreement shall be the minimum Insurance coverage requirements and/or limits shown in this agreement. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the State of Ohio. No representation is made that the minimum Insurance requirements of this agreement are sufficient to cover the obligations of the Contractor under this agreement.

The insurance policies are to contain, or be endorsed to contain, the following provisions:

**Additional Insured Status**
Except for Workers’ Compensation and Professional Liability insurance, the State of Ohio, its officers, officials and employees are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. Coverage can be provided in the form of an endorsement to the Contractor’s insurance.

**Primary Coverage**
For any claims related to this contract, the Contractor’s insurance coverage shall be primary insurance. Any insurance or self-insurance maintained by the State of Ohio, its officers, officials and employees shall be excess of the Contractor’s insurance and shall not contribute with it.

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

**Notice of Cancellation**
Contractor shall provide State of Ohio with 30 days written notice of cancellation or material change to any insurance policy required above, except for non-payment cancellation. Material change shall be defined as any change to the insurance limits, terms or conditions that would limit or alter the State’s available recovery under any of the policies required above. A lapse in any required insurance coverage during this Agreement shall be a breach of this Agreement.

**Waiver of Subrogation**
Contractor hereby grants to State of Ohio a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State of Ohio by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the State of Ohio has received a waiver of subrogation endorsement from the insurer.

**Deductibles and Self-Insured Retentions**
Deductibles and self-insured retentions must be declared to and approved by the State. The State may require the Contractor to provide proof of ability to pay losses and related investigations, claims administration and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the deductible or self-insured retention may be satisfied by either the named insured or the State.

**Claims Made Policies**
If any of the required policies provide coverage on a claims-made basis:
4. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
5. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

6. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work. The Discovery Period must be active during the Extended Reporting Period.

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

Subcontractors
Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that State of Ohio is an additional insured on insurance required from subcontractors.

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

3.2. Indemnification for Infringement

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

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

i. Modify the offending Service so that it is no longer infringing but provides substantially the same functionality as before the modification.

ii. Replace the offending Service with an equivalent or better, non-infringing offering.

iii. Acquire the right for the Subscribers to use the infringing Service as it was intended to be used under this Agreement.
iv. Terminate the infringing Service and refund the amount the Subscribers paid for the Service and the amount of any other Service that requires the availability of the infringing Service for it to be useful to the Subscribers.

3.3. Limitation of Liability - State

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

3.4. Limitation of Liability - Contractor

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

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

4. Confidentiality and Handling of Data

4.1. Confidentiality

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

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

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

i. was already in the possession of the Receiving Party without an obligation of confidence;
ii. is independently developed by the Receiving Party, provided documentary evidence exists to support the independent development;

iii. except as provided in the next paragraph, is or becomes publicly available without a breach of this Agreement;

iv. is rightfully received by the Receiving Party from a third party without an obligation of confidence;

v. is disclosed by the Receiving Party with the written consent of the Disclosing Party; or

vi. is released under a valid order of a court or governmental agency, provided that the Receiving Party:

   a. Notifies the Disclosing Party of the order immediately upon receipt of it, unless it is legally prohibited from doing so; and

   b. Makes a reasonable effort to obtain a protective order from the issuing court or agency limiting the disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production.

Information that may be available publicly through other sources about people that is personal in nature, such as medical records, addresses, phone numbers, social security numbers, and similar things, is nevertheless sensitive in nature and may not be disclosed or used in any manner except as expressly authorized in this Agreement. Therefore, item (iii) 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 Receiving Party must return all originals of any Confidential Information and destroy any copies it has made on termination or expiration of this Agreement.

The disclosure of the Confidential Information of the Disclosing Party in a manner inconsistent with the terms of this provision may cause the Disclosing Party irreparable damage for which remedies other than injunctive relief may be inadequate, and each Receiving Party agrees that in the event of a breach of the Receiving Party’s obligations hereunder, the Disclosing Party will be entitled to seek temporary and permanent injunctive relief to enforce the provisions of this Agreement without the necessity of proving actual damages. However, this provision does not diminish or alter any right to claim and recover damages.

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

4.2. Public Records Requests.

Should the Contractor receive any public records request with respect to any Subscriber’s Data, the Contractor will immediately notify any affected Subscriber and fully cooperate with the affected the Subscriber directs.

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

i. Apply appropriate risk management techniques to ensure security for all sensitive data, including but not limited to any data identified as Confidential Information elsewhere in this Agreement.

ii. Ensure that its internal security policies, plans, and procedures address the basic security elements of confidentiality, integrity, and availability.

iii. Maintain plans and policies that include methods to protect against security and integrity threats and vulnerabilities, as well as detect and respond to those threats and vulnerabilities.

iv. Maintain appropriate identification and authentication processes for information systems and services associated with Subscriber’s Data.

v. Maintain appropriate access control and authorization policies, plans, and procedures to protect system assets and other information resources associated with Subscriber’s Data.

vi. Implement and manage security audit logging on information systems, including computers and network devices.

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

Unless a Subscriber instructs the Contractor otherwise in writing, the Contractor must assume all Subscriber’s Data is both confidential and critical for Subscriber operations, and the Contractor’s security policies, plans, and procedure for the handling, storage, backup, access, and, if appropriate, destruction of that data must be commensurate to this level of sensitivity. As part of the Contractor’s protection and control of access to and use of data, the Contractor must employ appropriate intrusion and attack prevention and detection capabilities. Those capabilities must track unauthorized access and attempts to access Subscriber’s Data, as well as attacks on the Contractor’s infrastructure associated with Subscriber’s Data. Further, the Contractor must monitor and appropriately address information from its system tools used to prevent and detect unauthorized access to and attacks on the infrastructure associated with Subscriber’s Data.

The Contractor must use appropriate measures to secure a Subscriber’s Data before transferring control of any systems or media containing that Subscriber’s Data. The method of securing the data must be appropriate to the situation and may include erasure, destruction, or encryption of the data before transfer of control. The transfer of any such system or media
must be reasonably necessary for the performance of the Contractor’s obligations under this Agreement.

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

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

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

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

In case of an actual security breach that may have compromised Subscriber's Data, including but not limited to loss or theft of devices or media, the Contractor must notify the Subscriber in writing of the breach within 24 hours of the Contractor becoming aware of the breach, and fully cooperate with the Subscriber to mitigate the consequences of such a breach. This includes any use or disclosure of the Subscriber’s Data that is inconsistent with the terms of this Agreement and of which the Contractor becomes aware, including but not limited to, any discovery of a use or disclosure that is not consistent with this Agreement by an employee, agent, or subcontractor of the Contractor.
The Contractor must give affected Subscribers full access to the details of the breach and assist each Subscriber in making any notifications to potentially affected people and organizations that the affected Subscribers deem are necessary or appropriate. The Contractor must document all such incidents, including its response to them, and make that documentation available to the affected Subscribers on request. In addition to any other liability under this Agreement related to the Contractor’s improper disclosure of Subscriber’s Data, and regardless of any limitation on liability of any kind in this Agreement, the Contractor will be responsible for acquiring one year’s identity theft protection service on behalf of any individual or entity whose personally identifiable information is compromised while it is in the Contractor’s possession. Such identity theft protection must be reasonably acceptable to the State.

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

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

When the Contractor performs any Services under this Agreement that require the Contractor’s and its subcontractors’ personnel to access facilities, data, or systems that the State, in its sole discretion deems sensitive, the State 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. Each State agency, board, and commission may require a different confidentiality agreement or acknowledgement, and the Contractor’s and its subcontractors’ personnel may be required to sign a different confidentiality agreement or acknowledgement for each agency. 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 or whose results from such background check are unacceptable to the applicable Subscriber.

4.4. Subscriber Responsibilities

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

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

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

5.1. Acceptance

The acceptance procedure for setup or installation of a Service will be a review by the Subscriber acquiring the Service to ensure that it meets the performance standards and other requirements in the applicable Service Attachment and that the setup or installation has been done in a professional manner and that the Service itself meets all requirements. For Services not requiring setup or installation, the acceptance procedure will be a review by the Subscriber to ensure the Service complies with the performance requirements in the applicable Service Attachment.

In addition to the requirements of the applicable Service Attachment, if ordering documents such as a statement of work are authorized in that Service Attachment, the review will include any additional requirements in the applicable Order Form. The Subscriber will have up to 15 days after the setup, installation, or establishment of the Service to do this. The Subscriber will not issue a formal letter of acceptance, unless otherwise specified in the applicable Service Attachment, and passage of 15 days will imply acceptance, though the Subscriber will issue written notice of noncompliance if setup, installation, or the Service does not meet the requirements in this Agreement.

If the Subscriber issues a noncompliance letter, the Contractor will have 30 days to correct the problems listed in the letter. If the Subscriber has issued a noncompliance letter, the Service, installation, or set up will not be accepted until that Subscriber issues a letter of acceptance indicating that each problem noted in the noncompliance letter has been cured. If the problems have been fixed during the 30-day period, the Subscriber 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 the Subscriber, and the Subscriber will be entitled to a full refund of any payments made for the Service, setup, and installation.

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

5.2. Service, Termination, or Modification

All Orders for Service, as well as any modification to an Order, must be made through the State’s Ordering System, except for Orders involving only Cooperative Purchasing Members.

Cooperative Purchasing Members do not use the State’s Ordering System and will submit their Orders directly to the Contractor.
The Contractor must act as the sole point of contact for all Services under this Agreement and any related Service Attachments for all Subscribers. The Contractor may not require a Subscriber to contact any of the Contractor's third-party suppliers or otherwise transact business directly with such suppliers for any Services ordered under this Agreement, and in all respects, the Contractor must maintain a seamless, single-point-of-contact business relationship with each Subscriber for the Services ordered under this Agreement.

6. Termination – Agreement, Service Attachments, Orders

6.1. Termination by the State

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

I. The State may terminate this Agreement, the applicable Service Attachment(s), or the affected Order(s) under this Agreement.
II. The State may withhold payment for any affected Service until the Contractor cures the noncompliance or the Parties agree on the corrective action the Contractor must take to cure the noncompliance.
III. The State may file a complaint for damages with a court of competent jurisdiction in Ohio.

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

If the termination of the Agreement or any Service Attachment(s) is for cause, then neither the State nor any Subscribers will be liable for any Early Termination Charge outlined in any affected Service Attachments. And the Contractor will fully cooperate in any disentanglement efforts any affected Subscribers reasonably request at no cost to the requesting Subscribers, even if disentanglement is a separately priced Service in the applicable Service Attachment(s).

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

6.2. Termination of Orders by Subscriber or Contractor

Under this Agreement, specific Orders also may be terminated by either a Subscriber or the Contractor, as follows:

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

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

If a termination of any Service under one or more Orders is for cause or non-appropriation of funds, as described in this Section 6, the Subscriber will not be liable for any Early Termination Charge, if such are otherwise applicable to the Service or Services so terminated. If the termination is for cause, the Contractor will fully cooperate in any disentanglement efforts the Subscriber reasonably requests at no cost to the Subscriber.

6.2.2. By the Contractor

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

If the Subscriber cures the default before the cancellation of Service date, the Order will remain in full force and effect.

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

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

7.1. Fees

All applicable charges are fully documented in the appropriate Service Attachment(s). The Subscriber will not be responsible for any charges not documented in the applicable Service Attachment(s) or be responsible for any charges waived by the Contractor in this Agreement or the applicable Service Attachment(s).

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

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

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

Invoices must be submitted to the office designated in the State's Ordering System as the "bill to address". The invoice must be submitted within 60 days of the Service. If the Subscriber does not receive the invoice within the 60 days of the date of Service, the Subscriber will be entitled to deny payment of the invoice.

A proper invoice must include the following information:

i. Name and address of the Contractor as designated in this Agreement.
ii. Federal Tax Identification Number of the Contractor as designated in this Agreement.
iii. Invoice remittance address as designated in the Agreement.
iv. A sufficient description of the Services to allow the Subscriber to identify the Services and perform an audit of the Services.

7.3。Payment

Payments for Services under this Agreement will be due on the 30th calendar day after the actual receipt of a proper invoice in the office designated to receive the invoice. The Contractor agrees to receive payment from approved vouchers by electronic fund transfer (“EFT”) for Subscribers that rely on them to make payment. The Contractor will cooperate with Subscribers in providing the necessary information to implement EFT. The date the EFT is issued in payment will be considered the date payment is made, or if a Subscriber does not use an EFT process, the date its check or warrant is issued in payment will be considered the date payment is made.

7.4。State Reporting Requirements

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

7.5。Service Level Guarantee and Credits

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

7.6。Cost Recovery

The Contractor must pay a fee to the State to cover the estimated costs the State will incur administering this Agreement and the Services offered under it (“Cost Recovery Fee”).

The Cost Recovery Fee will be 2% of the total dollar amount of Services the Contractor invoices under this Agreement to all Subscribers, including all State-level entities and all Cooperative Purchasing Members. The Cost Recovery Fee is included in the prices reflected on the Service Attachment and the Contractor may not add a surcharge to Orders under this contract to cover
the amount of the Cost Recovery Fee. The State will generate notification to the Contractor via email on the last day of the calendar quarter advising the Contractor to complete a revenue reporting form provided by the State within 30 days after the close of the quarter. The State may compare the form provided by the Contractor to information in the State’s accounting system, the State’s Ordering System, and other records for purposes of verifying the accuracy of the form. The State will generate an invoice to the Contractor for the quarterly Cost Recovery Fee based on reported revenue from the Contractor or the State’s records, whichever is greater.

Examples of the calculation of a Cost Recovery Fee:

1. An example of a contractor with sales only to State Entities and thus no revenue from Co-op Members:

<table>
<thead>
<tr>
<th>FY15</th>
<th>Quarter</th>
<th>Revenue from State Entities</th>
<th>Revenue from Co-op Members</th>
<th>Revenue Share Due</th>
<th>Reported by</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q1</td>
<td>$ 79,193</td>
<td>$ 0</td>
<td>$ 1,584</td>
<td>Name of Contact</td>
<td></td>
</tr>
<tr>
<td>Q2</td>
<td>$ 10,392</td>
<td>$ 0</td>
<td>$ 208</td>
<td>Name of Contact</td>
<td></td>
</tr>
<tr>
<td>Q3</td>
<td>$ 209,105</td>
<td>$ 0</td>
<td>$ 4,182</td>
<td>Name of Contact</td>
<td></td>
</tr>
<tr>
<td>Q4</td>
<td>$ 74,970</td>
<td>$ 0</td>
<td>$ 1,499</td>
<td>Name of Contact</td>
<td></td>
</tr>
</tbody>
</table>

2. An example of a contractor with sales to both State Entities and Co-op Members and thus revenue from both:

<table>
<thead>
<tr>
<th>FY15</th>
<th>Quarter</th>
<th>Revenue from State Entities</th>
<th>Revenue from Co-op Members</th>
<th>Revenue Share Due</th>
<th>Reported by</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q1</td>
<td>$ 79,193</td>
<td>$ 20,963</td>
<td>$ 2,003</td>
<td>Name of Contact</td>
<td></td>
</tr>
<tr>
<td>Q2</td>
<td>$ 10,392</td>
<td>$ 4,197</td>
<td>$ 292</td>
<td>Name of Contact</td>
<td></td>
</tr>
<tr>
<td>Q3</td>
<td>$ 209,105</td>
<td>$ 63,210</td>
<td>$ 5,446</td>
<td>Name of Contact</td>
<td></td>
</tr>
<tr>
<td>Q4</td>
<td>$ 74,970</td>
<td>$ 1,471</td>
<td>$ 1,529</td>
<td>Name of Contact</td>
<td></td>
</tr>
</tbody>
</table>

3. An example of a contractor with sales to neither State Entities nor Co-op Members and thus no revenue to report:

<table>
<thead>
<tr>
<th>FY15</th>
<th>Quarter</th>
<th>Revenue from State Entities</th>
<th>Revenue from Co-op Members</th>
<th>Revenue Share Due</th>
<th>Reported by</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q1</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
<td>Name of Contact</td>
<td></td>
</tr>
<tr>
<td>Q2</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
<td>Name of Contact</td>
<td></td>
</tr>
<tr>
<td>Q3</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
<td>Name of Contact</td>
<td></td>
</tr>
<tr>
<td>Q4</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
<td>Name of Contact</td>
<td></td>
</tr>
</tbody>
</table>

The Contractor must use the State’s Web-based system for reporting revenue generated under this Agreement.
The Contractor must remit the 2% Cost Recovery Fee to the State quarterly by check to the State of Ohio, Department of Administrative Services. The check must be made payable to the Treasurer, State of Ohio, and must be sent to the State at the following address:

Department of Administrative Services
L-3686
Columbus, OH 43260-3686

To ensure that the payment is credited properly, the Contractor must identify the payment as a State of Ohio Cost Recovery Fee and reference this Agreement. The first payment will be calculated against all Services rendered to the existing Subscribers transferred to the Agreement in the month of effective date. Subsequent payments will be calculated against all Subscribers as stated above.

The Contractor’s contact person for Cost Recovery Section will be:

Name:
Address:
Phone:
Email:

8. Support

8.1. Service Support Generally

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

8.2. Equipment Support Generally

For any equipment used to provide the Services, remedial equipment maintenance by the Contractor will be completed within eight business hours after notification by the Subscriber that maintenance is required. In the case of preventative maintenance, the Contractor will perform such in accordance with the manufacturer’s published schedule and specifications. If maintenance is not completed within eight hours after notification by the Subscriber, the Contractor will be in default. Failure of the Contractor to meet or maintain these requirements will provide the Subscriber with the same rights and remedies as specified elsewhere in this
Agreement 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 service level agreements in the applicable Service Attachment. The Contractor will provide adequate staff to provide the maintenance required by this Agreement.

8.3. Adjustments

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

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

8.4. Support Parameters

A Subscriber may initiate support requests for problems it encounters with the Software 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. Further, the Contractor must maintain at least one support center in North America with adequate English-speaking support personnel. The applicable Service Attachment(s) may provide for different support periods. A Subscriber’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.

8.5. Incident Classification

The Contractor must classify and respond to support calls by the underlying problem’s effect on a Subscriber. 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 in production mode or there is significant potential for data integrity problems. This classification assumes there is no existing patch for the problem. The Contractor must classify a problem as “urgent” if the underlying problem significantly degrades the performance of the Service or a major function or component of it or materially restricts a Subscriber’s use of the Service in a production mode. A problem also will be considered urgent if a commonly used feature often generates application errors, causes the Service to freeze, locks up the computer on which the Service is running, or otherwise routinely does not work as intended. Classification of a problem as urgent rather than critical assumes that an affected Subscriber still can conduct business with the Service and response times are consistent with the needs of the Subscriber for that type of Service. As with the critical classification, the urgent classification assumes
there is no existing patch or acceptable workaround procedure for the problem. Finally, the Contractor may classify a support call as “routine” if the underlying problem is a question on end use or configuration of the Service. It also may be classified as routine when the problem does not materially restrict a Subscriber’s use of the Service in its production environment, such as when a feature or combination of features generates minor or rare errors. Also, if any problem that otherwise should be classified as critical or urgent can be solved either by a known workaround or an existing patch that does not materially interfere with a Subscriber’s use of the Service, the problem may be treated as routine.

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

8.6. 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 or development personnel at the appropriate level to the problem, and those personnel must prepare a work plan for the problem’s expeditious resolution. The work plan must assume that the Contractor’s appropriate staff will work without material interruption until the problem is resolved properly. At the request of an affected Subscriber, the Contractor’s personnel must maintain daily contact with the Subscriber’s technical staff to keep the Subscriber abreast of efforts being made to solve the problem. The Contractor also must provide the Subscriber’s technical staff with direct access to the Contractor’s support personnel and product development personnel, if appropriate, who are assigned to the problem.

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

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

8.7. 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 two hours during the Support Window. And the Contractor’s response time for a routine support request must be less than four hours during the Support Window. The applicable Service Attachment may provide for shorter response times, and nothing contained herein will limit the application of any credits for failure to meet any service level agreements in the applicable Service Attachment.

8.8. Escalation Process

Any support call that is not resolved must be escalated to the 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.

8.9. Subscriber Obligations

To facilitate the Contractor meeting its support obligations, Subscribers must provide the Contractor with the information reasonably necessary to determine the proper classification of the underlying problem. They 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, Subscribers 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.

8.10. Relationship to Support Level Agreements (“SLA”)

The Contractor’s support obligations are in addition to the SLAs in the Service Attachment(s). Furthermore, the SLAs may provide for credits to the Subscribers even though the Contractor is meeting its support obligations hereunder.


9.1. Certification of Funds

None of the rights, duties, or obligations in this Agreement will be binding on the State or a Subscriber, and the Contractor will not begin its performance under any Order, until all the following conditions occur for that Order:

i. All statutory provisions under the ORC, including Section 126.07, have been met.
ii. All necessary funds are made available by the appropriate State agencies.
iii. If required, approval of this Agreement or the applicable Order is given by the Controlling Board of Ohio.
iv. If the Subscriber is relying on federal or third-party funds for its Order, the Subscriber gives the Contractor written notice that such funds have been made available.

Additional or alternate legal requirements may apply to a political subdivision that is a Subscriber for an Order to be binding on it.
9.2. Excusable Delay

Neither Party will be liable for any delay in its performance arising from causes beyond its control and without its negligence or fault. The delayed Party will notify the other promptly of any material delay in performance and will specify in writing the proposed revised performance date or dates as soon as practicable after notice of delay. The proposed date or dates must be reasonable and cannot exceed the actual delay caused by the events beyond the control of the Party. In the case of such an excusable delay, the dates of performance or delivery affected by the delay will be extended for a period equal to the time lost by reason of the excusable delay. The delayed Party must also describe the cause of the delay and what steps it is taking to remove the cause.

The delayed Party may not rely on a claim of excusable delay to avoid liability for a delay if the delayed Party has not taken commercially reasonable steps to mitigate or avoid the delay. Things that are controllable by the Contractor's suppliers will be considered controllable by the Contractor.

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

9.3. Employment Taxes

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

9.4. Sales, Use, Excise, and Property Taxes

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

9.5. Equal Employment Opportunity

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

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

http://business.ohio.gov/efiling/
The State encourages the Contractor to purchase goods and services from Minority Business Enterprises (“MBEs”) and Encouraging Diversity, Growth and Equity (“EDGE”) contractors.

9.6. 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 its employees, while working on State property or the property of any Subscriber, will not have or be under the influence of illegal drugs or alcohol or abuse prescription drugs in any way.

9.7. Conflicts of Interest

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

9.8. Assignment

The Contractor may not assign this Agreement or any of its rights or obligations under this Agreement without the prior, written consent of the State.

9.9. Governing Law

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

9.10. Finding for Recovery

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

9.11. Anti-trust

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

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

9.13. Prohibition of the Expenditure of Public Funds for Offshore Services

No State Cabinet, Agency, Board or Commission will enter into any contract to purchase services provided outside the United States or that allows State data to be sent, taken, accessed, tested, maintained, backed-up, stored, or made available remotely outside (located) of the United States. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid for services the Contractor performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided the State in the Contract.

The Contractor must complete the Contractor/Subcontractor Affirmation and Disclosure form affirming the Contractor understands and will meet the requirements of the above prohibition. During the performance of this Contract, the Contractor must not change the location(s) disclosed on the Affirmation and Disclosure Form, unless a duly signed waiver from the State has been attained to perform the services outside the United States.


By signing this document, the Contractor certifies that all applicable parties listed in ORC Section 3517.13 are in full compliance with ORC Section 3517.13.

9.15. Export Compliance

The Services and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Both the Contractor and the State represent that it is not named on any U.S. government denied-party list. Neither Party will permit others to access or use the Services in a US-embargoed country or in violation of any U.S. export law or regulation.

9.16. Safety and Security Rules

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

9.17. Ohio Ethics Law

The Contractor certifies that it is currently in compliance with 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 that section.
9.18. HIPAA Compliance

When the Contractor is handling Subscriber Data that includes health or medical data, the Contractor must comply with data handling and privacy requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and its associated regulations.

9.19. Federal Tax Information

When the Contractor is handling Subscriber Data that includes Federal Tax Information, the Contractor must comply with the safeguards contained in the IRS 1075 Attachment hereto.

9.20. Entire Agreement

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

Only an executable Order attached to a Service Attachment as an exhibit and identified as such in the applicable Service Attachment may be executed by a Subscriber to evidence a transaction under this Agreement. Further, neither the Subscriber nor the Contractor may add or require additional terms as part of any authorized Order. Documents attached to a Service Attachment as exhibits to be executed by a Subscriber typically identify authorized Service options the Subscriber has selected, provide information about a Subscriber, identify installation or configuration requirements or similar statements of work to be done by the Contractor, set schedules for performance, and similar matters.

9.21. Severability

If any provision hereunder is held invalid, illegal, or unenforceable by a court of competent jurisdiction, this Agreement will be revised only to the extent necessary to make that provision legal and enforceable or, if that is not possible, the unaffected portions of this Agreement will remain in full force and effect so long as the Agreement remains consistent with the Parties’ original intent.

9.22. Survival

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

If any Service Attachment should expire or be terminated, the remaining portions of this Agreement will survive.
9.23. No Waiver

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

9.24. Order of Precedence

If a conflict between the terms and conditions of this Master Services Agreement and those in a Service Attachment arises, this Master Services Agreement will prevail, unless the Service Attachment specifically provides otherwise. If a user guide or other documentation is incorporated into the Agreement by reference, this Agreement, including any applicable Service Attachment(s), will prevail over any conflicting terms or conditions in any such incorporated documentation.

9.25. Headings

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


This Agreement is subject to all applicable federal, state, and local laws, rules, orders, and regulations, and each Party must comply with such in performing its obligations hereunder. To the extent any provision of this Agreement conflicts with any such law, rule, order, or regulation, that law, rule, order, or regulation will supersede the conflicting provision of this Agreement.

The Contractor may discontinue, limit, or impose additional requirements to the provision of Service, upon no less than 30 days written notice, if required to meet federal, state or local laws, rules, orders, or regulations. But if any such action materially affects any Subscriber’s use of a Service, the Subscriber may on written notice to the Contractor terminate its use of the Service without an Early Termination Charge and receive a pro rata refund of any amounts paid in advance for the Service.

9.27. Notices

Except as otherwise provided in this Agreement, all notices hereunder must be in writing and may only be sent by registered or certified mail, postage prepaid; facsimile transmission, overnight courier, or email, upon confirmation of receipt.

Alternatively, such notices may be hand delivered if confirmation of receipt is attained at delivery.

The State’s address for notification is:

Department of Administrative Services
Enterprise IT Contracting
30 E Broad Street, 39th Floor
The Contractor’s address for notification is:

<Contractor Address>

With a copy to:

<Contractor Address>

9.28. Travel Expenses

Any travel that the Contractor requires to perform its obligations under this Agreement will be at the Contractor’s expense. The State will pay for any additional travel that it requests only with prior written approval. The State will pay for all additional travel expenses that it requests in accordance with the State’s travel policy in Rule126-1-02 of the Ohio Administrative Code.

9.29. Amendments

No amendment or modification of this Agreement will be effective unless it is in writing and signed by both Parties.

9.30. IRS 1075 Form

The attached Internal Revenue Service issued Publication 1075 form is a part of this Agreement and incorporated herein by reference.

9.31. Boycotting

Pursuant to Ohio Revised Code 9.76 (B) Contractor warrants that Contractor is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the contract period.

9.32. 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:

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

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

TO SHOW THEIR AGREEMENT, the Parties have executed this Agreement on the date(s) identified below.'

<table>
<thead>
<tr>
<th>&lt;Contractor&gt;</th>
<th>STATE OF OHIO, DEPARTMENT OF ADMINISTRATIVE SERVICES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signature</td>
<td>Signature</td>
</tr>
<tr>
<td>Printed Name</td>
<td>Matthew M. Damschroder</td>
</tr>
<tr>
<td>Title</td>
<td>Printed Name DAS Director</td>
</tr>
<tr>
<td>Date</td>
<td>Effective Date</td>
</tr>
</tbody>
</table>
DATA LOCATION FORM

By the signature affixed hereto, the Contractor affirms and understands that if awarded a contract, both the Contractor and any of its subcontractors will perform no Services requested under this Agreement outside of the United States.

The Contractor will provide all the name(s) and location(s) where Services under this Agreement will be performed in the spaces provided below or by attachment. Failure to provide this information 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 the 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 the 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 stored, accessed, tested, maintained or backed-up, by the Contractor:

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

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

   (Name)  (Address, City, State, Zip)
The Contractor also affirms, understands and agrees that the Contractor and its subcontractors are under a duty to disclose to the State any change or shift in location of Services performed by the Contractor or its subcontractors before, during and after execution of any agreement with the State. The Contractor agrees it will so notify the State immediately of any such change or shift in location of its Services. The State has the right to immediately terminate the Agreement, unless a duly signed waiver from the State has been attained by the Contractor to perform the Services outside the United States.

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

By: _________________________________
Contractor

Print Name: ___________________________

Title: ________________________________

Date: ________________________________
IRS 1075 Attachment

To protect risk of loss, breach, or misuse of Federal Tax Information (“FTI”) held by government agencies, the Internal Revenue Service issued Publication 1075 which includes specific language to include in any State contract in which FTI may be disclosed. If FTI is involved, then the IRS Publication 1075 language below applies.

I Performance

In performance of this Agreement, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

(1) All work will be done under the supervision of the Contractor or the Contractor’s employees.
(2) Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Agreement. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Agreement. Disclosure to anyone other than an officer or employee of the Contractor will be prohibited.
(3) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
(4) The Contractor certifies that the data processed during the performance of this Agreement will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
(5) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
(6) All computer systems receiving, processing, storing or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operations, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal Tax Information.
(7) No work involving Federal Tax Information furnished under this Agreement will be subcontracted without prior written approval of the IRS.
(8) The Contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
(9) The agency will have the right to void the Agreement if the Contractor fails to provide the safeguards described above.

II Criminal Sanctions

(1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and
to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as $5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than $1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

(2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Agreement. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as $1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of the officer or employee (United States for Federal employees) in an amount equal to the sum of the greater of $1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC 7213A and 7431.

(3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(4) Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency’s security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency’s files for review. As part of the certification and at least annually afterwards, contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (See Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

III Inspection
The IRS and the Agency shall have the right to send its officers and employees into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work under this Agreement. On the basis of such inspection, specific measures may be required in cases where the Contractor is found to be noncompliant with contract safeguards.
ATTACHMENT TEN

TRANSACTION FEE SCHEDULE SUMMARY WORKSHEET
Ohio Child Support Payment Kiosk

Attachment Nine is included as an electronic form in the Opportunity Description on the State Procurement Website for this RFP. The Cost Proposal is to be submitted in Microsoft Word worksheet in native Word format – not PDF.

KIOSK USER TRANSACTION COST SUMMARY

<table>
<thead>
<tr>
<th>Cost per Check/Cash Transaction</th>
<th>Price / Percentage</th>
<th>Tiered Weight</th>
<th>Tiered Points</th>
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</thead>
<tbody>
<tr>
<td>Tier 1 $1-$499</td>
<td></td>
<td>0.3</td>
<td></td>
</tr>
<tr>
<td>Tier 2 $500-$999</td>
<td></td>
<td>0.2</td>
<td></td>
</tr>
<tr>
<td>Tier 3 $1,000+</td>
<td></td>
<td>0.1</td>
<td></td>
</tr>
</tbody>
</table>

Percentage per Credit Card Transaction

| Tier 1 $1-$499                 |                    | 0.3           |              |
| Tier 2 $500-$999               |                    | 0.2           |              |
| Tier 3 $1,000+                 |                    | 0.1           |              |

Percentage per Debit Card Transaction

| Tier 1 $1-$499                 |                    | 0.3           |              |
| Tier 2 $500-$999               |                    | 0.2           |              |
| Tier 3 $1,000+                 |                    | 0.1           |              |

Total Tiered Points

Percentages offered will be converted into fees based on the highest dollar amount per tier. For evaluation purposes, Tier 3 will be converted at $1,300. Fees will be multiplied by the tiered weight factor to obtain Tiered Points. The total of tiered points per category will be multiplied by the Tiered Weight Factor. Category totals will be added to obtain Grand Total for Scoring purposes.

(Examples to calculate tiered points:
A credit card transaction for kiosk tier 2 will be evaluated based on $999 x Percentage Offered x Tiered Weight Factor. If the Percentage offered is 5% the equation would be $999 x 5% = $49.95 fee x 0.2 weight factor = 9.99 Tiered Points.

A credit card transaction for kiosk tier 3 will be evaluated based on $1,300 x Percentage Offered x Tiered Weight Factor. If the Percentage offered is 5% the equation would be $1,300 x 5% = $65.00 fee x 0.1 weight factor = 6.50 Tiered Points.)
<table>
<thead>
<tr>
<th>Type of Transaction:</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of Transaction:</td>
<td>$</td>
</tr>
<tr>
<td>Type of Transaction:</td>
<td>$</td>
</tr>
</tbody>
</table>

Please include cost per transaction for other services provided not listed above: