AMENDMENT 6
FOR
RFP NUMBER 0A1043

DATE AMENDMENT ISSUED: August 27, 2009

The State of Ohio, through the Department of Administrative Services, General Services Division, on behalf of Ohio Department of Job and Family Services, is issuing this amendment for the Request for Proposals (RFP) entitled:

Child Support Payment Central Services

INQUIRY PERIOD BEGINS:	**July 20, 2009**
INQUIRY PERIOD ENDS:	**September 4, 2009**
OPENING DATE:	**September 14, 2009**
OPENING TIME:	**1:00 P.M.**
OPENING LOCATION:	**Department of Administrative Services Office of State Purchasing Bid Room 4200 Surface Road Columbus, Ohio 43228**

The attached is an Amendment for the RFP listed above. Please use the replacement page(s) contained in the Amendment to replace the corresponding page(s) previously in the RFP.

Specifications and requirements that have been revised are surrounded by bolded double asterisks and, when applicable, strikethrough.

ATTACHMENT THREE: REQUIREMENTS FOR PROPOSALS

Proposal Format. Each Proposal must include sufficient data to allow the State to verify the total cost for the Work and all of the offeror's claims of meeting the RFP's requirements. Each Proposal must respond to every request for information in this attachment, whether the request requires a simple "yes" or "no" or requires a detailed explanation. Simply repeating the RFP's requirement and agreeing to comply may be an unacceptable response and may cause the Proposal to be rejected.

These instructions describe the required format for a responsive Proposal. The offeror may include any additional information it believes is relevant. An identifiable tab sheet must precede each section of a 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.

Each Proposal must contain the following:

Vendor Information Form ****(OBM-5657** ~~(OBM-3456)~~******
Subcontractor Letters
Offeror Certification Form
Offeror Description
Profile Summary Forms
- Offeror Profile Summary Form
- Personnel Profile Summaries

Time Commitment
Assumptions
Operations Staffing Plan
Transition Services
Proposed Solution for SDU Operations
Performance Bond ****Commitment****
Support Requirements
Proof of Insurance
Payment Address
Legal Notice Address
W-9 Form
Declaration Regarding Terrorist Organizations
Cost Summary (must be separately sealed)

Vendor Information Form. The offeror must submit a signed and completed Vendor Information Form ****(OBM-5657** ~~(OBM-3456)~~****** for itself and for each subcontractor the offeror plans to use under the Contract. The form is available at ****http://obm.ohio.gov/miscpages/forms/default.aspx** ~~http://obm.ohio.gov/forms/OAKS.asp.~~******

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 Certifications. The offeror must complete Attachment 6, Offeror Certification Form.

The offeror must provide a draft Business Continuity Plan that will be used to create a consistent, coherent management plan of action that will be used to guide the Business Continuity activities of the project. The Business Continuity Plan is subject to final approval by the State. The plan should include detail sufficient to give the State an understanding of the offeror's knowledge and approach.

- Disaster Recovery

  This section must include a detailed description to address each Disaster Recovery requirement in Attachment Two. The offeror must specifically address the processes, methods or proposed approach to meet the Disaster Recovery requirements.

  The offeror must provide a draft Disaster Recovery Plan outlining its management plan of action to guide the Disaster Recovery activities of the project.
- Marketing

  This section must include a detailed description to address each Marketing requirement in Attachment Two. The offeror must specifically address the processes, methods or proposed approach to meet the Marketing requirements.
- Document Management

  This section must include a detailed description to address each Document Management requirement in Attachment Two. The offeror must specifically address the processes, methods or proposed approach to meet the Document Management requirements.
- Quality Assurance Plan.

  The section must include a quality assurance plan that describes the procedures and measures that will be utilized as part of its daily, weekly and monthly quality control activities. At a minimum, the plan must provide a description of: how the review(s) will be conducted including frequency and methodology, how corrective action plans will be developed and monitored, and how the results will be provided to the State.

  The offeror must provide a draft Quality Assurance Plan. The Quality Assurance Plan is subject to final approval by the State. The plan should include detail sufficient to give the State an understanding of the offeror's knowledge and approach.
- Desirables

  This section must include a detailed description to address each Desirable requirement in Attachment Two.

****Performance Bond Commitment. The selected offeror must provide a performance bond. The amount of the performance bond must be equal to at least ten percent of the total annual amount of the Contract, and the bond must remain in place through the term of the Contract and may be renewed or continued annually with the approval of the State. Therefore, each offeror must enclose a letter of commitment from a bonding company for an appropriate performance bond with its Proposal.**

The offeror must list the actual cost of securing the performance bond in its Cost Summary, Attachment Ten. The State will pay only the actual cost of the performance bond and may request a certified copy of the invoice from the bonding company for documentation. If the cost of the bond on the Cost Summary and the cost shown on the bonding company's invoice do not match, the State will pay whichever is less.**

~~**Performance Bond.** The Contractor must provide the Procurement Representative with a performance bond in the amount required by the RFP Documents within 30 business days after receipt of a purchase order for this Contract. The bond must be issued by a company authorized by Ohio's Department of Insurance to do business in Ohio and must indemnify the State against all direct damages it suffers from any failure of the Contractor to perform properly.~~

~~Failure of the Contractor to provide the performance bond on or before the date it is required will result in a breach of this Contract without a cure period and termination or suspension (or ultimately both) of this Contract for cause. The performance bond must remain in place through the term of the contract but may~~

~~be renewed or continued annually with the approval of the State. Further, the terms of the bond must reflect the terms of this section, or the State will reject it and treat the failure of conformance as a failure by the Contractor to deliver the bond in a timely fashion.~~

~~Concurrent with the delivery of the performance bond, the Contractor must provide the State with a certified copy of the invoice for the bond from the bonding company. The State will reimburse the Contractor for the lesser of the amount of the performance bond reflected on the bonding company's certified invoice or the cost shown on the Cost Summary of the Contractor's proposal.~~

Support Requirements. The offeror must describe the support it wants from the State other than what the State has offered in this RFP. Specifically, the offeror must address the following:

- Nature and extent of State support required in terms of staff roles, percentage of time available, and so on;
- Assistance from State staff and the experience and qualification levels required; and
- Other support requirements.

The State may not be able or willing to provide the additional support the offeror lists in this part of its Proposal. The offeror therefore must indicate whether its request for additional support is a requirement for its performance. If any part of the list is a requirement, the State may reject the offeror's Proposal, if the State is unable or unwilling to meet the requirements.

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.

W-9 Form. The offeror must complete the attached W-9 form in its entirety. The offeror must submit at least one originally signed W-9. All other copies of a Proposal may contain copies of the W-9. The offeror must indicate on the outside of the binder which Proposal contains the originally signed W-9.

Declaration Regarding Terrorist Organizations. The offeror must complete a Declaration Regarding Material Assistance/Non-assistance to Terrorist Organizations in its entirety. The offeror must submit at least one originally signed copy of this form, which should be included with the offeror's originally signed Proposal. All other copies of the offeror's Proposal may contain copies of this form. The form is available at: http://www.homelandsecurity.ohio.gov.

Cost Summary. This RFP includes a Cost Summary Form provided as an attachment. Offerors may not reformat this form. Each offeror must complete the Cost Summary Form in the exact format provided, since the State may reject any Proposal with a reformatted Cost Summary Form or that is not separately sealed. (See: Part Three: General Instructions, Proposal Submittal.)

The Cost Summary Form must not include exceptions, additional terms and conditions, or assumptions.

The State will not be liable for or pay any Work costs that the offeror does not identify in its Proposal.

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

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

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

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

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

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

****Performance Bond. The Contractor must provide the Procurement Representative with a performance bond in the amount required by the RFP Documents within 30 business days after receipt of a purchase order for this Contract. The bond must be issued by a company authorized by Ohio's Department of Insurance to do business in Ohio and must indemnify the State against all direct damages it suffers from any failure of the Contractor to perform properly.**

Failure of the Contractor to provide the performance bond on or before the date it is required will result in a breach of this Contract without a cure period and termination or suspension (or ultimately both) of this Contract for cause. The performance bond must remain in place through the term of the contract but may be renewed or continued annually with the approval of the State. Further, the terms of the bond must reflect the terms of this section, or the State will reject it and treat the failure of conformance as a failure by the Contractor to deliver the bond in a timely fashion.

Concurrent with the delivery of the performance bond, the Contractor must provide the State with a certified copy of the invoice for the bond from the bonding company. The State will reimburse the Contractor for the lesser of the amount of the performance bond reflected on the bonding company's certified invoice or the cost shown on the Cost Summary of the Contractor's proposal.**

Replacement Personnel. If the RFP Documents contain the names of specific people who will do the Work, 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 Work 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 Work, if doing so is necessary for legal or disciplinary reasons. But 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 Work for any reason other than those specified above, the State may assess liquidated damages in the amount of $1,500.00 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 Work. 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 Team Member on the Work. 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 $1,500.00 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 Work, 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 Team Member in the RFP Documents.

Suspension and Termination. The State may terminate this Contract if the Contractor defaults in meeting its obligations under this Contract and fails to cure its default within the time allowed by this Contract, or if a petition in bankruptcy (or similar proceeding) has been filed by or against the Contractor. The State also may terminate this Contract if the Contractor violates any law or regulation in doing the Work, 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.

Moreover, the State may terminate this Contract for its convenience and without cause or if the Ohio General Assembly fails to appropriate funds for any part of the Work. If a third party is providing funding for the Work, the State also may terminate this Contract should that third party fail to release any funds for the Work. The RFP Documents normally identify any third party source of funds for the Work, 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 activity on the Work 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 Work's completion, any costs incurred in doing the Work 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. But if the State determines that delivery in that manner would not be in its interest, then the State may 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 termination is for the convenience of the State, the Contractor will be entitled to compensation for any Work that the Contractor has performed before the termination. Such compensation will be the Contractor's exclusive remedy in the case of termination for convenience and will be available to the Contractor only once the Contractor has submitted a proper invoice for such, with the invoice reflecting the amount that the State determines it owes to the Contractor. The State will make that determination based on the lesser of the percentage of the Work completed or the hours of work performed in relation to the estimated total hours required to perform all the Work.

The State will have the option of suspending rather than terminating the Work, 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 Work rather than termination for cause, the Contractor will not be entitled to any compensation for any work performed. If the State reinstates the Work 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 Work just as is required by this Section in the case of termination. After suspension of the Work, the Contractor may not perform any Work without the consent of the State and may resume the 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 Work. If the suspension is for the convenience of the State, then termination of the Contract will be a termination for convenience. If the suspension is with cause, the termination will also be for cause.

The State may not suspend the Work 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 Work 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 "Work Representative." The Work Representative will review all reports the Contractor makes in the performance of the Work, will conduct all liaison with the Contractor, and will accept or reject the Deliverables and the completed Work. The

Work Representative may delegate his or her responsibilities for individual aspects of the Work to one or more managers, who may act as the Work Representative for those individual portions of the Work.

The Contractor's Project Manager under this Contract will be the person identified on the RFP Documents as the "Project Manager." The Project Manager will be the Contractor's liaison with the State under this Contract. Additionally, the Project Manager will conduct all Work meetings and prepare and submit to the Work 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 Project Manager without the approval of the State if that person is identified in the RFP Documents by name or as a Key Team Member on the Work.

Work 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 use 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 Work. The Contractor must coordinate the successful execution of the Work and direct all Work activities on a day-to-day basis, with the advice and consent of the Work Representative. The Contractor will be responsible for all communications regarding the progress of the Work and will discuss with the Work Representative any issues, recommendations, and decisions related to the Work.

If any part of the Work 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 Work Representative certifying that installation is complete and the Work, 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 Work 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 Work and maintaining them throughout the duration of this Contract.

Changes. The State may make reasonable changes within the general scope of the Work. 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 Work, 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 Work, 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 Work 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 Work, 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 Work or replacing one part of the Work with the change, the State will get a credit for the work no longer required under the original scope of the Work. 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 Work, 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 Status of the Contractor. The parties are independent of one another, and the Contractor's Personnel may act only in the capacity of representatives of the Contractor and not as representatives of the State. Further, the Contractor's Personnel will not be deemed for any purpose to be employees, representatives, or agents of the State. The Contractor assumes full responsibility for the actions of the Contractor's Personnel while they are performing under this Contract and will be solely responsible for paying the Contractor's Personnel (including withholding, and paying income taxes and social security, workers' compensation, disability benefits and the like). The Contractor may not commit, and is not authorized to commit, the State in any manner. The Contractor's subcontractors will be considered the agents of the Contractor for purposes of this 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, 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 Work. 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 Work. 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.

Ownership of Deliverables. The State owns all Deliverables that the Contractor produces under this Contract, 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 Pre-existing Material. If the Contractor wants to incorporate any Pre-existing Materials into a custom Deliverable, the Contractor must first disclose that desire to 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.

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

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

Except for Commercial Material that is software ("Commercial Software"), if the Commercial Material is copyrighted and published material, then 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.

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; (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 Work 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 Work. 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.

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. Additionally, neither party will be liable to the other for direct or other damages in excess of two times the value of this Contract. 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.

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

period during which the Project was scheduled to be available to its users. Uptime and downtime will be measured in hours and quarter hours.

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

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

Should it be necessary, 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.

PART SIX: CONSTRUCTION

Entire Document. This Contract is the entire agreement between the parties with respect to its subject matter and supersedes any previous statements or 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 Work 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.

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. 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 Work 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. And the Contractor must take steps to ensure that such a person does not participate in any action affecting the work under this Contract. But 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. In accordance with Executive Order 2007-01S, the Contractor, by signature on the Contract, certifies: (1) it has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands the Ohio ethics and conflicts of interest laws, and (3) will take no action inconsistent with those laws and this order. The Contractor understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of the Contract and may result in the loss of other contracts or grants with the State. The Contractor also certifies that all applicable parties listed in Division (I)(3) or (J)(3) of Ohio Revised Code Section 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of Ohio Revised Code Section 3517.13.

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

Declaration of Material Assistance/Non-Assistance to a Terrorist Organization. In accordance with R.C. 2909.33(C), Contractor certifies that it meets one of the following conditions:

(a) Contractor has **not** received, nor will receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars ($100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year; or

(b) (1) Contractor has received, or will receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars ($100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year; and

(2) Contractor has either precertified with the Office of Budget and Management, or has completed the attached Declaration of Material Assistance form certifying that Contractor has not provided material assistance to any organization on the Terrorist Exclusion List, as that term is defined in R.C. 2909.21.

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. Contractor will comply with all laws of Ohio regarding equal employment opportunity and fair labor and employment practices, including but not limited to Section 125.111 of the Code, and all related Executive Orders of the Governor of Ohio.

Before a contract 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 going to the Equal Opportunity Department web site: http://www.das.ohio.gov/Eod/AAEEO.htm.

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.