

PARTICIPATING ADDENDUM  
to  
Master Price Agreement by and among SciQuest, Inc. and  
the State of Colorado, the National Association of Procurement Officials, and  
the Western States Contracting Alliance

This Participating Addendum is entered into by the State of Ohio (the "Participating Entity") and SciQuest, Inc. ("Contractor", and together with the Participating Entity, the "Addendum Parties"), pursuant to that certain Master Price Agreement for eProcurement Services (Hosted Software-as-a-Service), dated June 30, 2011, by and among Contractor and the State of Colorado and the National Association of State Procurement Officials ("NASPO"), on its own behalf and on behalf of the Western States Contracting Alliance ("WSCA"), WSCA/NASPO Agreement #W33-2010, (together with its exhibits and attachments, the "Master Agreement"). The underlying procurement for these Services was led by the State of Colorado on behalf of NASPO and WSCA and the WSCA/NASPO Members, for use by Participating Entities and those Authorized Purchasers approved by the Chief Procurement Official of a Participating Entity to utilize state contracts. This Participating Addendum is entered into pursuant to and incorporates by reference the terms and conditions of the Master Agreement. This Participating Addendum and the exhibits attached hereto are collectively referred to as the "Addendum".

In consideration of the premises, covenants and mutual promises contained in this Addendum, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Addendum Parties hereby agree as follows.

1. Scope: The scope of this Addendum shall be limited to the scope of the Master Agreement. The purpose of this Addendum is to create a statewide centralized electronic procurement system providing more efficient delivery of state procurement services through the use of technology.
2. Participation: Use of the Master Agreement by an Authorized Purchaser is subject to the approval of the State Chief Procurement Official of the Participating Entity. Issues of interpretation and eligibility for participation are solely within the authority of the Participating Entity's Chief Procurement Official.
3. Modifications to Master Agreement: Modifications to the Master Agreement and additional terms and conditions specific to this Addendum are attached hereto and incorporated herein as **Schedule A**.
4. Primary Contacts: The primary contacts for this Addendum shall be the individuals identified below or such other individuals as may be identified from time to time in a Notice sent by a designating party to the other parties set forth below:

**WSCA/NASPO Contract Administrator**

**Name:** Jack Gallt  
**Address:** AMR Management Services  
201 East Main, Suite 1405  
Lexington, KY 40507  
**Telephone:** (612) 940-1577  
**Fax:** (952) 392-4580  
**E-mail:** [jgallt@amrms.com](mailto:jgallt@amrms.com)

**Contractor**

**Name:** Jennifer Kaelin, Vice President of Finance  
**Address:** 6501 Weston Parkway, Suite 200, Cary, NC 27513  
**Telephone:** (919) 659-2100  
**Fax;** (919) 659-2199  
**E-mail:** jkaelin@sciquest.com

**Participating State**

**Name:** Bruce Reichenbach, IT Procurement Analyst  
**Address:** 4200 Surface Road, Columbus, OH 43228  
**Telephone:** (614) 466-7910  
**Fax:** (614) 485-1057  
**E-mail:** bruce.reichenbach@das.state.oh.us

5. Subcontractors: All assignments, subcontracts, or Subcontractors approved by Contractor or the Participating Entity are subject to all of the provisions hereof. Contractor shall be solely responsible for all aspects of subcontracting arrangements and performance. Authorized Subcontractors under this Addendum are set forth in the Master Agreement.

6. Contract Instructions: All Service Orders issued under this Addendum shall be substantially in the form set forth in Exhibits E (Form of Statement of Work) and F (Form of Order Form) to the Master Agreement. The Authorized Purchaser entering into a Service Order shall be solely responsible therefore and the Participating Entity shall not be responsible for or liable under any Service Order, unless the Participating Entity is the Authorized Purchaser under the Service Order. Each Order Form or Statement of Work issued under this Addendum shall contain the following:

- (a) A statement indicating that the Statement of Work or Order Form is subject to the terms of the Addendum;
- (b) The name, address, contact, and phone number for the Authorized Purchaser;
- (c) The Contractor Applications to which the Authorized Purchaser is subscribing;
- (d) A description of the Services to be provided; and
- (e) The payment amounts and terms for the Subscriptions and Services.

All Service Orders shall be forwarded to Contractor through Contractor's Vice President of Finance at the following address:

Address Contracts to:

**Name:** Jennifer Kaelin, Vice President of Finance  
**Address:** 6501 Weston Parkway, Suite 200, Cary, NC 27513  
**Telephone:** (919) 659-2100  
**Fax;** (919) 659-2199  
**E-mail:** jkaelin@sciquest.com

All payments shall be remitted to Contractor at the following address:

**Name:** Jennifer Kaelin, Vice President of Finance  
**Address:** 6501 Weston Parkway, Suite 200, Cary, NC 27513  
**Telephone:** (919) 659-2100  
**Fax:** (919) 659-2199  
**E-mail:** [jkaelin@sciquest.com](mailto:jkaelin@sciquest.com)

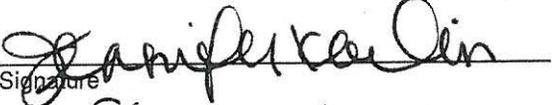
This Addendum and the Master Agreement, set forth the entire agreement between the Addendum Parties with respect to the subject matter hereof and all previous communications, representations or agreements, whether oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein. Terms and conditions inconsistent with, contrary, or in addition to the terms and conditions of this Addendum and the Master Agreement, shall not be added to or incorporated into this Addendum or the Master Agreement by any subsequent contract or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Master Agreement shall prevail and govern in the case of any inconsistent or additional terms within the jurisdiction of the Participating Entity.

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IN WITNESS WHEREOF, the Addendum Parties have executed this Addendum as of the date of execution by both Addendum Parties below.

THE PARTIES HERETO HAVE EXECUTED THIS PARTICIPATING ADDENDUM

\* Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.

<p><b>CONTRACTOR:</b> SciQuest, Inc.</p> <p>Name: <u>Jennifer Kaelin</u></p> <p>Title: <u>VP Finance</u></p> <p>Signature: <u></u></p> <p>Date: <u>February 4, 2013</u></p> <p><b>APPROVED:</b></p> <p>Name: _____</p> <p>Title: <u>WSCA/NASPO Contract Administrator</u></p> <p>Signature: _____</p> <p>Date: _____</p>	<p><b>AUTHORIZED PURCHASER:</b></p> <p>Name: Robert Blair</p> <p>Title: Director</p> <p>Signature: <u></u></p> <p>Date: <u>2/6/13</u></p>
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**SCHEDULE A TO THE PARTICIPATING ADDENDUM (the "CONTRACT")  
BETWEEN THE STATE AND SCIQUEST, INC. ("CONTRACTOR" OR "SERVICE PROVIDER")**

**STATE OF OHIO SPECIAL TERMS AND CONDITIONS**

**1 - TERM**

- 1.1 TERM.** This Contract is effective on the date the State's duly authorized representative executes it, as evidenced by the date appearing with the representative's signature, above. Unless this Contract is terminated or expires without renewal, it will remain in effect for the term set forth in the Order Form executed by the State and Contractor, subject to the appropriation of funds for this Contract in accordance with (1) the terms herein and (ii) Section 2.22 of the Ohio Constitution (Appropriations), which requires that no appropriation shall be made for a longer period than two years. Termination or expiration of this Contract will not limit the Contractor's continuing obligations with respect to Deliverables that the State paid for before termination or limit the State's rights in such.
- 1.2 CONTRACT RENEWAL.** Any Contract-renewal will be only by written agreement between the State and the Contractor. Such renewals shall be—subject to the appropriation of funds for this Contract in accordance with (1) the terms herein and (ii) Section 2.22 of the Ohio Constitution (Appropriations), which requires that no appropriation shall be made for a longer period than two years.

**2 - PRICING AND PAYMENT**

- 2.1 Payment Due Date.** Payments will be due on the 45th day of:

With respect to payment for Contractor Applications and Professional Services deliverables ("Deliverables"), the dates set forth in the applicable Order Form and Statement of Work shall apply, subject to the receipt by the State of an invoice meeting the invoice requirements set forth in this Contract, including Section 2.2 below.

For purposes of clarity, this Contract, including any Order Form or Statement of Work entered into and subject to this Contract, may not be modified without the express written agreement of authorized representatives of both the State and Contractor.

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

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

- (a) Name and address of the Contractor as designated in this Contract;
- (b) The Contractor's federal tax identification number as designated in this Contract;
- (c) The Contractor's invoice remittance address as designated in this Contract;
- (d) The purchase order number authorizing the delivery of the Contractor Applications and Services;
- (e) A description of the Contractor Applications and/or Services, including any applicable milestones or Deliverables in accordance with the terms of the Statement of Work; and
- (f) If the invoice is for a lease, the Contractor also must include the payment number (e.g., 1 of 36).

If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of the Contractor's information. If an invoice does not meet this section's requirements, the State will send the Contractor written notice. The State will send the notice, along with the improper invoice, to the Contractor's address designated for receipt of purchase orders within 15 days. The notice will contain a description of the defect or impropriety and any additional information the Contractor needs to correct the invoice. If such notification has been sent, the payment due date will be 30 days after the State receives a proper invoice and with respect to payment for Professional Services deliverables ("Deliverables"), the dates set forth in the applicable Order Form and Statement of Work shall apply.

- 2.3 NON-APPROPRIATION OF FUNDS.** The State's funds are contingent on the availability of lawful appropriations by the Ohio General Assembly. If the Ohio General Assembly fails to continue funding for any payments due hereunder, the order or orders under this Contract that are affected by the lack of funding will terminate as of the date that the funding expires, and the State will have no further obligation to make any payments with respect to the affected order or orders.
- 2.4 OBM CERTIFICATION.** This Contract is subject to Code § 126.07. Any orders under this Contract are void until the Director of the OBM certifies that there is a balance in the appropriation available to pay for the order.
- 2.5 TRAVEL EXPENSES.** Any travel that the Contractor requires to perform its obligations under this Contract will be at the Contractor's expense, except as set forth in an Order Form or Statement of Work executed by Contractor and the State. The State will pay for any additional travel that it requests only with prior written approval. The State will pay for all additional travel expenses that it requests in accordance with OBM's travel policy in Rule 126-1-02 of the Ohio Administrative Code (the "Administrative Code").
- 2.6 TAXES.** The State is exempt from all sales, use, excise, and property taxes and will not pay any such taxes. To the extent sales, use, excise, or any similar taxes are imposed on the Contractor in connection with any Deliverable, the Contractor must pay those taxes together with any interest and penalties not successfully disputed with the taxing authority.
- 2.7 OFFSET.** The State may set off any amounts the Contractor owes to the State under this Contract against any payments due from the State to the Contractor.

### **3 - CONTRACT ADMINISTRATION**

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

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

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

**3.2 INSURANCE.** The Contractor must provide the following insurance coverage at its own expense throughout the term of this Contract:

- a. Workers' compensation insurance, as required by Ohio law, and if some work will be done outside Ohio, the laws of the appropriate states where work will be done. The Contractor also must maintain employer's liability insurance with at least a \$1,000,000.00 limit.
- b. Commercial General Liability insurance coverage for bodily injury, personal injury, wrongful death, and property damage. The defense cost must be outside of the policy limits. Such policy must designate the State of Ohio as an additional insured, as its interest may appear. The policy also must be endorsed to include a blanket waiver of subrogation. At a minimum, the limits of the insurance must be:

- \$ 2,000,000 General Aggregate
- \$ 2,000,000 Products/Completed Operations Aggregate
- \$ 1,000,000 Per Occurrence Limit
- \$ 1,000,000 Personal and Advertising Injury Limit
- \$ 100,000 Fire Legal Liability
- \$ 5,000 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. Coverage includes hired and non-owned automobiles only.

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

**3.3 POLITICAL SUBDIVISIONS.** Ohio political subdivisions, such as Ohio cities, counties, and townships ("Political Subdivisions"), may rely on this Contract, subject to the execution of an Affiliate Agreement, in accordance with the terms of the Master Agreement. In the event a Political Subdivision enters into an Affiliate Agreement, the Affiliate Agreement will be between the Contractor and the Political Subdivision. The Contractor must look solely to the Political Subdivision for performance, including but not limited to payment, and must hold the State harmless with regard to such orders and the Political Subdivision's performance. Nothing in this Contract requires the Contractor to execute an Affiliate Agreement with a Political Subdivision, if the Contractor reasonably believes that the Political Subdivision is or will be unable to perform its obligations in relation to that Affiliate Agreement.

**3.4 TERMINATION.** The State may terminate this Contract or any order under it if the Ohio General Assembly fails to appropriate funds for any order under this Contract. Further, if a third party is providing funding for an order, the State also may terminate this Contract or any order under it should that third party fail to release any funds related to this Contract or an order under it.

#### 4 - DELIVERY AND ACCEPTANCE

- 4.1 **ACCEPTANCE.** The acceptance procedure for Deliverables will be as set forth in the Statement of Work executed by the State and Contractor. Any Statement of Work shall be subject to the terms of this Contract, including all the warranties in this Contract.
- 4.2 **TITLE.** Title to any Deliverable will pass to the State only on acceptance of the Deliverable, and all risk of loss will remain with the Contractor until title to the Deliverable passes to the State.
- 4.3 **DELIVERIES.** The Contractor must make all deliveries F.O.B. destination.

## 5 – INDEMNITY AND LIMITATION OF LIABILITY

- 5.1 **INDEMNITY.** The Contractor must indemnify the State against all liability or expense resulting from bodily injury to any person (including injury resulting in death) or damage to property arising out of its performance under this Contract, provided such bodily injury or property damage is due to the negligence or other tortious conduct of the Contractor, its employees, agents, or subcontractors. The Contractor also must indemnify the State against any claim of infringement of a copyright, patent, trade secret, or other intellectual property rights based on the State's proper use of any Contractor Application under this Contract. This obligation of indemnification will not apply where the State has modified the Contractor Application and the claim of infringement is based on the modification. The State will give the Contractor notice of any such claim as soon as reasonably practicable. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor will do one of the following four things:
- (a) Modify the Contractor Application so that it is no longer infringing;
  - (b) Replace the Contractor Application with an equivalent or better item;
  - (c) Acquire the right for the State to use the Contractor Application as it was intended for the State to use under this Contract; or
  - (d) Remove the Contractor Application and refund the fee the State paid for the portion of the term for which the Contractor Applications would no longer be available.

Any representation by SciQuest on behalf of the state of Ohio requires the consent of the Ohio Attorney General in accordance with Section 109.02 of the Ohio Revised Code.

- 5.2 **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS CONTRACT OR ANYTHING INCORPORATED BY REFERENCE INTO THIS CONTRACT, THE PARTIES AGREE AS FOLLOWS:
- (a) THE CONTRACTOR WILL BE LIABLE FOR ALL DIRECT DAMAGES DUE TO THE FAULT OR NEGLIGENCE OF THE CONTRACTOR OR ITS BREACH OF ANY PROVISION OF THIS CONTRACT, SUBJECT TO THE TERMS OF THIS CONTRACT AND MASTER AGREEMENT, INCLUDING ANY LIMITATIONS OF LIABILITY SET.FORTH THEREIN.

## 6 - LAW AND COURTS

- 6.1 **AMENDMENTS – WAIVER.** No amendment or modification of this Contract will be effective unless it is in writing and signed by both parties.

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

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

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

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

- 6.5 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.

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

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

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

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

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

- 6.10 **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 fourth degree. Questions regarding registration should be directed to (614) 466-3910, or visit <http://www.sos.state.oh.us>

## **7 - General Requirements Cloud Services**

### **7.1 Service Provider Warranties**

The Service Provider warrants that (i) the functionality of the Contractor Applications and Services will not be materially decreased during a subscription term, and (ii) it will not transmit viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs ("Malicious Code") to a State, provided it is not a breach of this subpart (iii) if a State uploads a file containing Malicious Code into the Services and later downloads that file containing Malicious Code. For any breach of a warranty above, the State's remedies will be as provided in this Contract and the Master Agreement.

### **7.2 Handling of State Data**

"State Data" is any information, data, files, or software that a State uses or stores on or in conjunction with the Services, including but not limited to Generated Files "Generated Files" shall be as defined below. The Service Provider must use due diligence to ensure computer and telecommunications systems and Services involved in storing, using, or transmitting State Data are secure and to protect that data from unauthorized disclosure, modification, or destruction. To accomplish this, the Service Provider must comply with all applicable National Institute of Standards and Technology ("NIST") standards for [Moderate Impact] systems and:

- (1) 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.
- (2) Ensure that its internal security policies, plans, and procedures address the basic security elements of confidentiality, integrity, and availability.
- (3) 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.

- (4) Maintain appropriate identification and authentication process for information systems and services associated with State Data.
- (5) Maintain appropriate access control and authorization policies, plans, and procedures to protect system assets and other information resources associated with State Data.
- (6) Implement and manage security audit logging on information systems, including computers and network devices.

The Service Provider 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 State Data, limiting access to only these points, and disabling all others. To do this, the Service Provider 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. The Service Provider must use two-factor authentication to limit privileged access to systems that contain State Data.

Unless a State instructs the Service Provider otherwise in writing, the Service Provider must assume all State Data is both confidential and critical for State operations, and the Service Provider'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 Service Provider's protection and control of access to and use of data, the Service Provider must employ appropriate intrusion and attack prevention and detection capabilities. Those capabilities must track unauthorized access and attempts to access State Data, as well as attacks on the Service Provider's infrastructure associated with State Data. Further, the Service Provider 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 State Data.

The Service Provider must use appropriate measures to ensure that State Data is secure before transferring control of any systems or media on which State Data is stored. 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 Service Provider's obligations under this Agreement.

The Service Provider must have a business continuity plan in place. The Service Provider 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 Service Provider maintains State 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 State Data in the case of a disaster or other business interruption. The Service Provider'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 State Data. Such resources may include, among others, communications, supplies, transportation, space, power and environmental controls, documentation, people, data, software, and hardware. The Service Provider also must provide for reviewing, testing, and adjusting the plan on an annual basis.

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

In case of an actual security breach that may have compromised State Data, including but not limited to loss or theft of devices or media, the Service Provider must notify the State in writing of the breach within 24 hours of the Service Provider becoming aware of the breach, and fully cooperate with the State to mitigate the consequences of such a breach. This includes any use or disclosure of the State Data that is inconsistent with the terms of this Agreement and of which the Service Provider 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 Service Provider.

The Service Provider must give affected Authorized Users full access to the details of the breach and assist State in making any notifications to potentially affected people and organizations that the affected Authorized Users deem are necessary or appropriate. The Service Provider must document all such incidents, including its response to them, and make that documentation available to the affected Authorized Users on request. In addition to any other liability under this Agreement related to the Service Provider's improper disclosure of State Data, and regardless of any limitation on liability of any kind in this Agreement, in the event (i) of a security breach resulting from Service Provider's failure to comply with the terms of the Contract, including the terms of this Section and (ii) State is liable (as a result of any such failure by Service Provider) for acquiring identity theft protection services on behalf of any individual or entity whose personally identifiable information is compromised while it is in the Service Provider's possession, the Service Provider shall be responsible for reimbursing State for the State's actual costs in acquiring any such identity theft protection services.

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

All State Data at rest in systems supporting the Service Provider'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 Service Provider locations.

During the term of this Contract, Service Provider agrees that it shall remain PCI compliant.

### **7.3 Return of State Data**

Upon request made and within 90 days after the effective date of termination or expiration of the Contract, the Service Provider will make available to the State for download its State Data in XML format, at the discounted Professional Services rates available under the Master Agreement (30% off the then current list price) After such 90-day period, the Service Provider will have no obligation to maintain the State Data covered by an expired Order Form and must thereafter, unless legally prohibited, delete the applicable State Data in its systems or otherwise in its possession or under its control.

**7.4 Disentanglement Service.** The Service Provider will provide to the State termination Services ("Disentanglement Service") according to the terms of the Disentanglement Plan, in connection with the termination or expiration without renewal of this Contract.

To the extent the Termination Service include any tasks that Service Provider is not otherwise obligated to perform under, the charges will be based on the , at the discounted Professional Services rates available under the Master Agreement (30% off the then current list price). Termination Service means, to the extent requested by a State, the provisioning of such assistance, cooperation, and information as is reasonably necessary to enable a smooth transition of the Services to the State or its designated third party provider ("Successor") in accordance with the Disentanglement Plan.

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

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

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

**7.6 Disentanglement Management Team.** The Service Provider will provide a project manager who will be responsible for Service Provider's overall performance of the Disentanglement Service and who will be the primary point of contact for the State and any Successor during the transfer. The State also will appoint a project manager who will be the primary point of contact for Service Provider during the disentanglement period.

**7.7 Operational Transfer.**

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

Any migration testing, test plans, back out procedures, and contingency plans shall be as described in the Disentanglement Plan.

After the transfer of the system(s) to the State or a Successor, the Service Provider will give the State or the Successor additional assistance as reasonably requested to facilitate continuity of operations in accordance with the Disentanglement Plan.

**7.8 Standards**

All Service subscriptions must provide a Service that maintains a redundant infrastructure that will ensure access for all of the State's enrolled users in the event of failure at any one of the Service Provider 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 Service Provider 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 National Institute of Standards and Technology ("NIST") 800-53 Rev. 3 ["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 Service Provider 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 Subscribing Entities. Notwithstanding any rights granted under the Agreement or at law, the Service Provider 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 Subscribing Entity's Active Directory (or other 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 Subscribing Entity's Active Directory or other LDAP service.

The Service Provider must obtain an annual *Statements on Standards for Attestation Engagements* ("SSAE") No. 16, Service Organization Control 1 Type 2, audit. The audit must cover all operations pertaining to the Services covered by this Agreement. The audit will be at the sole expense of the Service Provider and a copy of it must be provided to the State within 30 days of its completion each year.

At no cost to the State, the Service Provider must make reasonable efforts to remedy any issues, material weaknesses, or other items identified in each audit as they pertain to the Services.

#### **7.9 Object Reassignment**

Any Service subscriptions that are provided by the number of items that it 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 State 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 the State require a special code, a unique key, or similar item to reassign the subscription as contemplated by this section, the Service Provider will provide such a code, key, or similar item to the State at any time and without a fee or charge. A later section in this Agreement governs assignment of State's subscription to any Service to a successor in interest.

#### **7.10 Generated Files**

"Generated Files" are files storing information, instructions, or data that the State creates or modifies using the Service Provider's Services and in which the data or other information was provided or created by a State. Such Generated Files are also included in the definition of "State 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 Service Provider provided to State also would be considered Generated Files. As between the State and the Service Provider, the State will own all Generated Files that the State prepares by using the Services, excluding such portions of the Generated Files that consist of embedded portions of the Software. The Service Provider or its licensors will retain ownership of any portions of the Software embedded into Generated Files. But the Service Provider grants to the State 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 State creates while using the Services in the manner in which the Services are designed to be used. In the State distribution of the Generated Files, the State may not use the Service Provider'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.

#### **7.11 Service Provider Warranties**

The Service Provider warrants that the functionality of the Services will not be materially decreased during a subscription term and it will not transmit viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs ("Malicious Code") to an Authorized User, provided it is not a breach of this Section if an Authorized User uploads a file containing Malicious Code into the Services and later downloads that file containing Malicious Code. For any breach of a warranty above, the State's and individual Authorized Users' remedies will be as provided in the section of this Agreement dealing with termination.

### **8 - SUPPORT**

## **8.1 Post Production Support Related to State's PeopleSoft Upgrade.**

In accordance with Service Provider's post-production support model, Service Provider will support the State migrating to their new instance of PeopleSoft including resetting URLs to point the test instance of the Service Provider's Solution to the new test instance of upgraded PeopleSoft to allow for regression testing. Should the upgrade result in any substantial changes to any Service Provider Solution configurations or interfaces, these will be scoped per the Change Control process described in the Statement of Work.

**Exhibit I to Schedule A of the Participating Addendum**

**STANDARD AFFIRMATION AND DISCLOSURE FORM**

**EXECUTIVE ORDER 2011-12K**

**Governing the Expenditure of Public Funds on Offshore Services**

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

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

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

**1. Principal location of business of Contractor:**

6501 Weston Parkway, Suite 200, Cary, NC 27513

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

SunGard Availability Services, LP

680 East Swedesford Road  
Wayne, PA 19087

**2. Location where services will be performed by Contractor:**

6501 Weston Parkway, Suite 200, Cary, NC 27513

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

SunGard Availability Services, LP

4518 South Miami Blvd, Suite 100,  
Durham, NC and 7499 East Paradise  
Lane, Ste. 108, Scottsdale, AZ

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

6501 Weston Parkway, Suite 200, Cary, NC 27513

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

SunGard Availability Services, LP

4518 South Miami Blvd, Suite 100, Durham,  
NC and 7499 East Paradise Lane, Ste. 108,  
Scottsdale, AZ

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: Jennifer Kaelin  
Contractor

Print Name: Jennifer Kaelin

Title: VP Finance

Date: February 4, 2013