STATE OF OHIO
DEPARTMENT OF ADMINISTRATIVE SERVICES
STATE TERM SCHEDULE

THIS CONTRACT is between the STATE OF OHIO, DEPARTMENT OF ADMINISTRATIVE SERVICES ("DAS"), IT GOVERNANCE DIVISION, ON BEHALF OF THE STATE OF OHIO ("State"), with offices at 30 East Broad Street, Columbus, Ohio 43215 and Congent Systems Inc. ("Contractor") with offices at 209 Fair Oaks Ave. South Pasadena, CA 91030.

BACKGROUND

The Contractor has entered into a contract with the Federal Government under the Federal Government's Supply Schedule Contract Program administered by the General Services Administration ("GSA"). That program allows a contractor and the GSA to negotiate in advance of actual purchases the terms and conditions under which a contractor will supply goods or services to the Federal Government. Such a Federal schedule contract is not a commitment to purchase any goods or services; it is only a convenient way to do so should a Federal agency so choose during the contract's term.

The State has determined that it is in the interest of efficiency and economy to rely on some Federal schedule contracts of the Federal Government, with certain changes, as the basis for some state term contracts, which operate in a manner very similar to Federal schedule contracts. The Department of Administrative Services has also determined that the Contractor's Federal schedule contract offers goods or services that may be of interest to various state agencies and has therefore decided to use the Contractor's Federal contract as a basis for a State Term Contract with the Contractor. This State Term Contract (the "Contract") establishes terms and conditions under which a state agency may acquire the Contractor's goods or services, but it in no manner obligates any state agency to do so.

TERMS & CONDITIONS

COMPOSITION OF CONTRACT. This Contract consists of the terms of the Contractor's Federal Schedule Contract, Number GS-35F-0763J (the "Federal Schedule Contract" or "Schedule Contract"), as amended by this Contract (see Entire Agreement Section below). The Contractor's Schedule Contract consists of all the documents and materials incorporated in that agreement with the Federal Government. Those documents include, among possible others, the Federal Government's original solicitation, the Contractor's offer to the Federal Government, with amendments, the Contractor's best and final offer letter, the final award, and the Contractor's most current version of its Authorized Schedule Price List. Additionally, all representations, clarifications, and certifications submitted by the Contractor as a part of that contracting process are also included. And it includes any laws, regulations, documents, guidelines, and other materials incorporated by reference in the Contractor's Schedule Contract, including all FAR, DFAR, FIRMR, FIPS PUB, FED-STD and USC provisions, among others. By way of example, such would include all cited FAR and DFAR provisions relating to warranties, liabilities, and rights in data, and the GSA's Price Reduction Clause, among many others.

CERTIFICATION OF ACCURACY. The Contractor hereby certifies that all copies of the Contractor's Authorized Schedule Price List that were submitted to the State as part of the negotiation of this Contract are true, correct, current, and complete copies of that Price List. The Contractor further represents and warrants that all future Price Lists submitted to revise this Contract will also be true, correct, current, and complete copies of the then-current Price List under the Contractor's then-current Federal Contract.

FEDERAL REPRESENTATIONS. The Contractor warrants that all certifications and representations made to the Federal Government as a basis for obtaining or as a part of its GSA Schedule Contract were and still are true and accurate. The Contractor further agrees that such representations are a basis for the State entering into this Contract and that such representation and certifications inure to the State's benefit.

FUTURE NOTICES. The Contractor acknowledges that any continuing obligation to notify the Federal Government of changes affecting its GSA Schedule Contract, including by way of example, notices required under the price reduction provisions of its Schedule Contract, must be provided in the same manner to the State. And the State's rights under those notices will be the same as the rights of the Federal Government. Additionally, the Contractor agrees to notify the State within thirty (30) days of all changes in the status of or amendments to its Federal Schedule Contract.

PARTIES TO THE CONTRACT. For purposes of this Contract, all references to "Government," "Federal Government, " "GSA," or similar terms meaning the Federal Government in the Contractor's Schedule Contract will mean the "State." And references to the "Contracting Officer" will mean the State representative, or their successor or designee, who signed this Contract on behalf of the State. Additionally, for purposes of this Contract, all rights and obligations of the Contractor and the Federal Government under the Contractor's Schedule Contract, except to the extent that such would create an absurdity, or are otherwise clearly inappropriate, or would violate state or federal law, will be rights and obligations between the Contractor and the State. This Contract may be relied on by Ohio counties, townships, municipalities and other political subdivisions of the State, collectively, Political Subdivisions. Whenever a Political Subdivision relies upon this Contract to issue a purchase order, the Political Subdivision will step into the shoes of the State under this Contract. Any order placed by a Political Subdivision under this contract will be between the Contractor and the Political Subdivision. The Contractor will look solely to the Political Subdivision for performance, including but not limited to payment, and will hold the State harmless with regard to such orders. The State, however, will have the right to terminate this Contract and seek such remedies on termination as this Contract provides should the Contractor fail to honor its obligations under an order from a Political Subdivision. Nothing in this Contract requires the Contractor to accept an order from a Political Subdivision where the Contractor reasonably believes that the Political Subdivision is or will be unable to perform its obligations in relation to that order.

CONTRACT COMPLIANCE. The participating state agency and/or political subdivision that utilize this State Term Schedule will be responsible for the administration of the Contract and will monitor the Contractor's performance and compliance with the terms, conditions and specifications of the Contract. If an agency observes any infraction(s), such shall be documented and conveyed to the Contractor for immediate correction. If the Contractor fails to rectify the infraction(s), the agency will notify the State through DAS, Office of Information Technology, Acquisitions Management, by executing a Complaint to Vendor (CTV) to help resolve the infraction(s). DAS will apply the terms and conditions of the Termination provision of this Contract to resolve the infractions(s).

PRODUCT RECALL. In the event product delivered has been recalled, seized, or embargoed and/or has been determined to be misbranded, adulterated, by the packer, processor, manufacturer or by any State or Federal regulatory agency, the Contractor shall be responsible to notify the State through DAS, Office of Information Technology, Acquisitions Management and all ordering agencies/entities within two business days after notice has been given. Contractor shall, at the option of the ordering agency, either reimburse the purchase price or provide an equivalent replacement product at no additional cost. Contractor shall be responsible for removal and/or replacement of the affected product within a reasonable time as determined by the ordering agency. At the option of the ordering agency, Contractor may be required to reimburse storage and/or handling fees to be calculated from time of delivery and acceptance to actual removal. Contractor will bear all costs associated with the removal and proper disposal of the affected product. Failure to reimburse the purchase price or provide equivalent replacement product will be considered a default.

TERMINATION. The State may terminate this Contract or any order under this Contract if the Contractor defaults in meeting its obligations and fails to cure its default within the time allowed by this Contract, or if a petition in bankruptcy has been filed by or against the Contractor. The State may also terminate this Contract or any order if the Contractor violates any law or regulation while performing under this Contract, or it appears to the State that the Contractor's performance is substantially endangered through no fault of the State. In such case, the termination will be for cause.

On written notice, the Contractor will have thirty (30) days to cure any breach of its obligations under this Contract, provided the breach is curable. If the Contractor fails to cure the breach within thirty (30) days after written notice or if the breach is not one that is curable, the State will have the right to terminate this Contract or the applicable order(s). The State may also terminate this Contract in the case of breaches that are cured within thirty (30) days but are persistent. "Persistent" in this context means that the State has notified the Contractor in writing of the Contractor's failure to meet any of its obligations three (3) times. After the third such notice, the State may terminate this Contract without a cure period if the Contractor again fails to meet any obligation. The three (3) 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 thirty (30) days or for no cure period at all. Those provisions will prevail over this one. If a particular section does not state what the cure period will be, this provision will govern.

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

The notice of termination, whether for cause or without cause, will be effective as soon as the Contractor receives it. On receipt of the notice of termination, the Contractor will immediately cease all work on any Deliverables affected by the termination and take all steps necessary to minimize any costs the Contractor will incur related to the affected orders. The Contractor will also immediately prepare a report and deliver it to the State. The report must detail all open orders at the time of termination.

If the State terminates this Contract or any order for cause, it will be entitled to cover for any affected orders by using another contractor on such commercially reasonable terms and conditions as it and such covering contractor may agree. The Contractor will be liable to the State for all costs related to covering for any affected orders to the extent that such costs exceed the costs that the State would have incurred under this Contract. The Contractor will also 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 Deliverable that the Contractor has delivered before the termination. Such compensation will be the Contractor's exclusive remedy in the case of termination for convenience and will be available to the Contractor only once the Contractor has submitted a proper invoice for such, with the invoice reflecting the amount determined by the State to be owing to the Contractor.

The State will have the option of suspending rather than terminating this Contract where the State believes that doing so would better serve its interest.

In the case of a suspension for the State's convenience, the amount of compensation due to the Contractor for work performed before the suspension will be determined in the same manner as provided in this section for termination for the State's convenience or 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.

The notice of suspension, whether with or without cause will be effective immediately on the Contractor's receipt of the notice. The Contractor will immediately prepare a report and deliver it to the State as is required in the case of termination.

RETURN GOODS POLICY. The State will apply the following Return Goods Policy on all purchases made under the Contract. The Contractor acknowledges to have read, understood, and agrees to this Policy.

(A) Return goods, when due to Contractor error (i.e. over-shipment, defective merchandise, unapproved substitution, etc.) shall be returned to the Contractor, at the Contractor's expense.

The Contractor shall make arrangements to remove the return goods from the ordering agency premises within seven (7) calendar days after notification. The Contractor shall not apply any restocking or other charges to the ordering agency. At the option of the ordering agency, replacement items may be accepted and will be shipped within seven (7) calendar days of notification. Failure of the Contractor to arrange for return of the items within the specified time will result in the items being deemed as abandoned property and the ordering agency will dispose of accordingly.

(B) Return goods of regular catalog stock merchandise, when due to agency error (i.e. over purchase, discontinued use, inventory reduction, etc.) will be accepted by the Contractor if notice is given by the agency within six (6) months of delivery and acceptance. All items to be returned must be unused and in their original containers and in suitable condition for resale. The ordering agency will be responsible for all transportation costs associated with both the original shipment of items to the agency and the subsequent return of the items to the location designated by the Contractor. Return of regular stock catalog merchandise, when delivery and acceptance exceed six (6) months will be at the option of the Contractor.

FORCE MAJEURE. If the State or Contractor is unable to perform any part its obligations under this Contract by reason of force majeure, the party will be excused from its obligations, to the extent that its performance is prevented by force majeure, for the duration of the event. The party must remedy with all reasonable dispatch the cause preventing it from carrying out its obligations under this Contract. The term "force majeure" means without limitation: acts of God; such as epidemics; lightening; earthquakes; fires; storms; hurricanes; tornadoes; floods; washouts; droughts; any other severe weather; explosions; arrests; restraint of government and people; war; strikes; and other like events; or any other cause that could not be reasonably foreseen in the exercise of ordinary care, and that is beyond the reasonable control of the party.

OWNERSHIP OF DELIVERABLES. Notwithstanding this contract can not be used for software development, all custom work done by the Contractor and covered by this Contract will be treated as "work for hire" on behalf of the State, with all rights, title, and interest in all intellectual property that comes into existence through the Contractor's custom work being assigned to the State. Additionally, the Contractor waives any shop rights, author rights, and similar retained interests in custom developed material. The Contractor will provide the State with all assistance reasonably needed to vest such rights of ownership in the State. But the Contractor will retain ownership of all tools, methods, techniques, standards, and other development procedures, as well as generic and preexisting shells, subroutines, and similar material incorporated in any custom Deliverable ("Pre-existing Materials").

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

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

SPECIFIC CHANGES. The State and the Contractor agree to the following changes to specific provisions of the Contractor's Federal Schedule Contract, notwithstanding anything to the contrary contained in the Contractor's Federal Contract:

All equipment will be new, and replacement parts will be new.

The ordering and payment addresses under this Contract will be those contained in the Contractor's offer letter to the State.

Payments and invoicing will be done according to the terms below.

All shipping of equipment under warranty for repairs will be at the Contractor's expense.

All references to hours of the day will be deemed to be references to Eastern Standard Time.

The State will not purchase goods or services using credit cards, order goods or services for overseas delivery, or provide the Contractor with overseas support.

The State has the specific right to use any software licensed to it at one (1) remote, third-party disaster recovery site for disaster recovery and disaster recovery testing.

Except for PC software, the license fee for which is less than $5,000.00 per copy and for which maintenance is not made generally available, software maintenance will be available to the State under the terms of this Contract for the longer of the period the Contractor is required to make it available under its Federal Contract or the period the Contractor makes it generally available to its customer base. Further, the State will be entitled to software maintenance at the then-current price it is made available to the Federal Government or, if the Contractor does not make maintenance available to the Federal Government under a federal contract through the GSA, at a price that represents an annual increase in the maintenance fee from the last Federal contract price for such of no more than five percent. For purposes of this section, the Contractor's last Federal contract means the last GSA federal supply schedule contract covering the applicable maintenance program.

The Contractor will not sell to the State any notebook computers with less than a 1.2 GHz internal clock - speed. And the Contractor will not sell to the State any PCs or servers using CPUs with less than a 1.6 GHz internal clock speed. All such items listed in the Contractor's Price List are deleted for purposes of this contract.

The Contractor will not sell to the State any term software licenses. All such items listed in the Contractor's Price List are deleted for purposes of the State.

The Contractor will not offer to the State any product's that are not Year 2000 compliant. All such items listed in the Contractor's Price List are deleted for purposes of the State.

The Contractor will not sell to the State any Microsoft Products. All such items listed in the Contractor's Price List are deleted for purposes of the State.

As this Contract refers to a GSA schedule contract for convenience, orders under this Contract are not orders under the GSA schedule program. The Federal Supply Schedules for blanket purchase agreements, contractor team arrangements and purchase of incidental, non-schedule items, therefore, are not applicable to this Contract.

The following amendments to the terms and conditions of the Cogent Systems Inc. GSA Contract are hereby incorporated into this agreement between the Contractor and the State.

Delete paragraph (12)(d) page 8 Use of Federal Supply Service Information Technology Schedule Contracts in its entirety.

Modify paragraph (14)(b) page 9 Contractor Tasks/Special Requirements by replacing the wording "Travel: The Contractor may be required to travel in performance of orders issued under this contract. Allowable

travel and per diem charges are governed by Pub .L. 99-234 and FAR Part 31, and are reimbursable by the ordering agency or can be priced as a fixed price item on orders placed under the Multiple Award Schedule. The Industrial Funding Fee does NOT apply to travel and per diem charges." with

"Travel: The Contractor may be required to travel in performance of orders issued under this contract. Allowable travel and per diem charges are governed in accordance with Section 126-1-02 of the Ohio Administrative Code. The Industrial Funding Fee does NOT apply to travel and per diem charges."

Delete paragraph (17) page 10 Purchase of Open Market Items in its entirety.

Delete paragraph (19) page 11 Overseas Activities in its entirety.

Delete paragraph (20) page 11 Blanket Purchase Agreements (BPAs) in its entirety.

Delete paragraph (21) page 11 Contractor Team Arrangements in its entirety.

Modify paragraph (6)(a) page 14 Warranty by replacing the wording "Unless specified otherwise in this contract, the Contractor's standard commercial warranty as stated in the contract's commercial pricelist will apply to this contract. The commercial warranty covers replacement/repair of malfunctioning equipment for one year from installation date." with

"The Contractor's standard commercial warranty as stated in the contract's commercial pricelist will apply to this contract. The commercial warranty covers replacement/repair of malfunctioning equipment for one year from installation date."

Delete paragraph (5) page 20 & 21 Periods of Term Licenses (132-32) and Maintenance (132-34) in its entirety.

Delete paragraph (2) page 23 Performance Incentives in its entirety.

Modify paragraph (3)(a)(1)(ii) page 24 Ordering Procedures for Services by replacing the wording "The request should include the statement of work and request the contractors to submit either a firm-fixed price or a ceiling price to provide the services outlined in the statement of work. A firm-fixed price order shall be requested, unless the ordering office makes a determination that it is not possible at the time of placing the order to estimate accurately the extent or duration of the work to anticipate cost with any reasonable degree of confidence. When such a determination is made, a labor hour or time-and-materials proposal may be requested. The firm-fixed price shall be based on the rates in the schedule contract and shall consider the mix of labor categories and level of effort required to perform the services described in the statement of work. The firm-fixed price of the order should also include any travel costs or other incidental costs related to performance of the services ordered, unless the order provides for reimbursement of the travel costs at the rates provided in the Federal Travel or Joint Travel Regulation. A ceiling price must be established for labor hour and time-and-materials orders." with

"The request should include the statement of work and request the contractors to submit either a firm-fixed price or a ceiling price to provide the services outlined in the statement of work. A firm-fixed price order shall be requested, unless the ordering office makes a determination that it is not possible at the time of placing the order to estimate accurately the extent or duration of the work to anticipate cost with any reasonable degree of confidence. When such a determination is made, a labor hour or time-and-materials proposal may be requested. The firm-fixed price shall be based on the rates in the schedule contract and shall consider the mix of labor categories and level of effort required to perform the services described in the statement of work. The firm-fixed price of the order should also include any travel costs or other incidental costs related to performance of the services ordered, unless the order provides for reimbursement of the travel costs in accordance with Section 126-1-02 of the Ohio Administrative Code."

Delete paragraph (3)(b) page 24 & 25 Ordering Procedures for Services in its entirety.

Modify paragraph (5)(d) page 24 Performance of Services by replacing the wording "Any Contractor travel required in the performance of IT/EC Services must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all Contractor travel. Contractors cannot use GSA city pair contracts." with

"Any Contractor travel required in the performance of IT Services must comply with Section 126-1-02 of the Ohio Administrative Code."

Delete pages 29-31 Best Value Blanket Purchase Agreement in their entirety.

Delete page 31 Basic Guidelines For Using "Contractor Team Arrangements" in its entirety.

Those terms and conditions of the Contractor's offering documentation not specifically referenced by the Amendments delineated under this heading shall remain unchanged.

CONTRACTOR QUARTERLY SALES REPORT. The Contractor must report the quarterly dollar value (in U.S. dollars and rounded to the nearest whole dollar) of the sales under this Contract by calendar quarter (i.e., January-March, April-June, July-September and October-December). The dollar value of the sale is the price paid by the schedule user for the products and services on a schedule contract task or delivery order, as recorded by the Contractor.

The Contractor shall be required to report the quarterly dollar value of sales to the State on a form prescribed by DAS. If no sales occur, the Contractor must show zero. The report must be submitted thirty (30) days following the completion of the reporting period.

The Contractor shall also submit a close - out report within one hundred and twenty (120) days after the expiration of this Contract. The contract expires upon the physical completion of the last, outstanding task or delivery order of the Contract. The close - out report must cover all sales not shown in the final quarterly report and reconcile all errors and credits. If the Contractor reported all contract sales and reconciled all errors and credits on the final quarterly report, then the Contractor should show zero "0" sales in the close - out report.

The Contractor must forward the Quarterly Sales Report to the Following address:

Department of Administrative Services
IT Governance Division
Acquisitions Management
30 East Broad Street, Suite 4099
Columbus, Ohio 43215 - 3414

If the Contractor fails to submit sales reports, falsifies sales reports or fails to submit sales reports in a timely manner the State may terminate or cancel this Contract.

CONTRACTOR REVENUE SHARE. The Contractor must pay the State a revenue share of the sales transacted under this Contract. The Contractor must remit the revenue share in U.S. dollars within thirty (30) days after the end of the quarterly sales reporting period. The revenue share equals .0075 of the total quarterly sales reported. Contractors must include the revenue share in their prices. The revenue share is included in the award price(s) and reflected in the total amount charged to ordering activities.

The Contractor must remit any monies due as the result of the close - out report at the time the close - out report is submitted to DAS.

The Contractor must pay the revenue share amount due by check. To ensure the payment is credited properly, the Contractor must identify the check as a "Revenue Share" and include the following information with the payment:

Applicable State Term Schedule Number, report amount(s), and reporting period covered.

Contractor must forward the check to the following address:

Department of Administrative Services
Office of Finance
30 East Broad Street, Suite 4060
Columbus, Ohio 43215 - 3414

Please make check payable to: Treasurer, State of Ohio.

If the full amount of the revenue share is not paid within thirty (30) calendar days after the end of the applicable reporting period, the non-payment constitutes a contract debt to the State. The State may either initiate withholding or setting off of payments or employ the remedies available under Ohio law for the non-payment of the revenue share.

If the Contractor fails to pay the revenue share in a timely manner the State may terminate or cancel this Contract.

CONTRACTOR DISCLOSURE; LOCATION OF SERVICES, DATA. As part of this Agreement, Contractor shall disclose the following:

(1) The locations(s) where all services will be performed; and

(2) The location(s) where any state data applicable to the contract will be maintained or made available; and

(3) The principal location of business for the contractor and all subcontractors.

Contractor shall not, during the performance of this Contract, change the location(s) of the country where the services are performed or change the location(s)of the country where the data is maintained or made available without prior written approval of the State.

CONTRACTOR'S WARRANTY AGAINST AN UNRESOLVED FINDING FOR RECOVERY. Contractor warrants that it is not subject to an unresolved finding for recovery under ORC 9.24. If the warranty was false on the date the parties sign this Contract, the Contract is void *ab initio*.

GENERAL REPRESENTATIONS AND WARRANTIES. The Contractor warrants that the recommendations, guidance, and performance of the Contractor under this Contract will:

(1) Be in accordance with the sound professional standards and the requirements of this Contract and without any material defect.

(2) No Deliverable will infringe on the intellectual property rights of any third party.

(3) All warranties are in accordance with Contractors standard business practices attached.

(4) That the Deliverables hereunder are merchantable and fit for the particular purpose described in this contract.

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 under this Contract.

(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 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.

If any work of the Contractor or any Deliverable fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor will correct such failure with all due speed or will refund the amount of the compensation paid for the Deliverable. The Contractor will also indemnify the State for any direct damages and claims by third parties based on breach of these warranties.

INDEMNITY. The Contractor will 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 the performance of this Contract, providing such bodily injury or property damage is due to the negligence of the Contractor, its employees, agents, or subcontractors. The Contractor will also indemnify the State against any claim of infringement of a copyright, patent, trade secret, or similar intellectual property rights based on the State's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where the State has modified the Deliverable and the claim of infringement, is based on the modification. The state agrees to 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, (1) of the following four (4) things:

(1) Modify the Deliverable so that 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 fee the State paid for the Deliverable and the fee for any other Deliverable that required the availability of the infringing Deliverable for it to be useful to the State.

DISTRIBUTORS. The State authorizes the Contractor to name one or more dealers to work with the State on behalf of the Contractor. But if the Contractor decides to use any dealers, the Contractor must submit the name, address, and telephone number of any such dealer, as well as the dealer's purchase order and payment address(es) and Federal tax identification number. The Contractor must also submit a completed W9 form for each dealer it wishes to name under this section. The Contractor's submission must be on its official letterhead, signed by an authorized representative, and addressed to the Deputy Director of DAS' Division of Computer & Information Services.

In doing so, the Contractor warrants that: (a) The dealer has been given a copy of this Contract, and a duly authorized representative of the dealer has agreed, in writing, to be bound by the terms and conditions in

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

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

ADDITIONAL OFFERINGS. If the Contractor supplements the products or services it offers to the Federal Government under its Federal Contract, then the following provisions are applicable.

This Contract includes the additional products and/or supplies offered in the price list(s) or catalog(s) identified below. The Contractor agrees to provide these products and/or services to the State under the same terms as those products and/or services listed in the Contractor's GSA Price List. The Contractor certifies that these products and/or services are "commercial" items, in accordance with the definition of "commercial" items in the Contractor's Federal Contract, and the Contractor agrees that the requirements of the GSA's Price Reduction Clause are applicable to these additional products. Further, the Contractor warrants that these products and/or services are being offered to the State at the most favorable prices it has made them available to any other customer within the year immediately preceding the date these products and/or services were added to this Contract.

The additional products and/or services are identified in the following price list(s) and/or catalog(s) (insert "none" if this provision is inapplicable): None.

If the price list(s) and/or catalog(s) contain suggested retail prices or undiscounted, direct customer pricing, indicate by individual item or service, or by category of item or service, the applicable discount to the State (insert none if no additional product(s) or service(s) are being offered or see price list/catalog if the prices include the applicable State discount): None.

LIMITATION OF LIABILITY. NOTWITHSTANDING ANY LIMITATION PROVISIONS CONTAINED IN THE DOCUMENTS AND MATERIALS INCORPORATED BY REFERENCE INTO THIS AGREEMENT, THE PARTIES AGREE AS FOLLOWS:

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

2. THE CONTRACTOR FURTHER AGREES THAT THE CONTRACTOR SHALL BE LIABLE FOR ALL DIRECT DAMAGES DUE TO THE FAULT OR NEGLIGENCE OF THE CONTRACTOR

PAYMENT DUE DATE. Payments will be due on the thirtieth (30th) calendar day after the later of: (a) the date the State actually receives a proper invoice at the office designated in the applicable purchase order to receive it or (b) the date the State accepts the products or services. 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 thirtieth (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 Section §126.30.

INVOICE REQUIREMENTS. The Contractor must submit an original invoice with three (3) 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 and/or attachments:

(1) Name and address of the Contractor as designated in this Contract.
(2) The Contractor's Federal tax identification number as designated in this Contract.
(3) The Contractor's invoice remittance address as designated in this Contract.
(4) The purchase order number authorizing the delivery of products or services.
(5) A description of what the Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, the Contractor must also include the payment number (e.g., 1 of 36).

If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of the Contractor's information. If an invoice does not meet this section's requirements or if the Contractor fails to give proper notice of a price increase (see the next section), the State will send the Contractor written notice with the improper invoice to the address designated for receipt of purchase orders within fifteen (15) calendar days after receipt of the invoice. 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 thirty (30) days after the State receives a proper invoice and has accepted the Contractor's product or service.

OHIO PAYMENT CARD. Participating state agencies purchasing supplies from the Contract may use the Ohio Payment Card. Such purchases may not exceed $1,000 unless the Office of Budget & Management has approved the agency to exceed this limit. In the event that OBM increases the dollar limit for payment cards for all state agencies, notice of such increase will be posted on the DAS, Office of State Purchasing website. Participating state agencies are required to use the Ohio Payment Card in accordance with the Ohio, Office of Budget and Management's current guidelines for the Ohio Payment Card and the participating agency's approved plan filed with the Office of Budget of Management. Contractor may process a payment in the payment card network only upon delivery and acceptance of the supplies or services ordered. For partial deliveries or performance, Contractor may process a payment for the amount delivered or completed only and not for the entire amount ordered by the participating agency. Upon completion of the delivery of remaining supplies or services, Contractor may process a payment request in the payment card network for the remainder of the order. Contractor will receive payment through its merchant bank within the time frame agreed upon between Contractor and its merchant bank. The Contractor should expect normal processing fees from its merchant bank for payment card transaction which may not be passed on to the agency making the purchase.

NOTIFICATION OF PRICE INCREASES. If this Contract permits any price increases, notification of such must be given to the Deputy Director Deputy Director of the IT Governance Division and to the purchase order "bill to" address contained in the applicable purchase order(s) for any orders affected by the increase (e.g., existing leases, licenses, or annual maintenance programs). The Contractor must give these notices no later than thirty (30) days before the effective date of the price increase. This notification must specify, when applicable, the product serial number, location, current price, increased price, and applicable purchase order number.

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 the payments due under an order referencing this Contract, the order will terminate as of the date that the funding expires, and the State will have no further obligation to make any payments.

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 agrees to treat such Confidential Information as secret if it is so marked, or otherwise identified as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of the public, other contractors or potential contractors with the State, or individuals or organizations about whom the State keeps information. The Contractor agrees not to disclose any Confidential Information to third parties unless otherwise authorized in writing by the State to do so and to use such Confidential Information solely to perform under this Contract.

The State acknowledges that, in connection with Contract and its relationship with Contractor, it may obtain information relating to the Products or to the Contractor that is of a confidential and proprietary nature ("Confidential Information"). Such Confidential Information may include, but is not limited to, trade secrets, know how, inventions, techniques, processes, programs, schematics, software source documents, data, financial information, and sales and marketing plans or information which the State knows or has reason to know is confidential, proprietary or trade secret information of Contractor. The State shall at all times, during the term of this Contract and for a period of at least three (3) years after its termination, keep in trust and confidence all such Confidential Information, and shall not use such Confidential Information other than as expressly authorized by Contractor under this Contract, nor shall the State disclose any such Confidential Information to third parties without Contractor's written consent.

The parties' obligation to maintain the confidentiality of the Confidential Information will not apply where such: (1) was already in the possession of the receiving party before disclosure by the disclosing party, and was received by the receiving party without obligation of confidence; (2) is independently developed by the receiving party, provided documentary evidence exists to support the independent development; (3) is or becomes publicly available without breach of this Contract; (4) is rightfully received by the receiving party from a third party without obligation of confidence; (5) is disclosed by the receiving party with the written consent of the disclosing party; or (6) is released under a valid order of a court or governmental agency, provided that the receiving party (a) notifies the disclosing party of the order immediately upon receipt of it and (b) makes a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production The receiving party will return all originals of any Confidential Information and destroy any copies it has made for its own internal use on termination or expiration of this Contract or as requested by the disclosing party.

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

OBM CERTIFICATION. This Contract is subject to Ohio Revised Code Section §126.07. Any orders under this Contract are void until the Director of the Office of Budget and Management certifies that there is a balance in the appropriation available to pay for the order.

TAXES. The State is exempt from all state and local taxes and does not agree to pay any taxes.

LEASES/FINANCING. The State may elect to obtain equipment and software on a finance/lease basis subject to the terms of the State of Ohio, Department of Administrative Services, Master Financing Agreement -- Revised September 2001, when the parties execute that agreement.

CANCELLATION. The State or the Contractor may cancel this Contract without cause and on thirty (30) days written notice. But, in the case of any lease of goods or services or any license of software or other intangible property entered into before the effective date of the termination, the State will have the right to continue such lease or license after termination on the same terms.

CONTRACT RENEWAL. This Contract may be renewed solely at the discretion of DAS for a period of one month. Any further renewals will be by agreement any number of times for any period of time. The cumulative time of all renewals may not exceed two years.

DELIVERIES. All deliveries will be F.O.B. Destination.

EQUAL EMPLOYMENT OPPORTUNITY. The Contractor will comply with all Ohio laws regarding equal employment opportunity, including Ohio Revised Code Section §125.111, and all related Executive Orders of the Governor of Ohio.

DRUG FREE WORKPLACE. The Contractor will make a good faith effort to ensure that none of its employees are under the influence of or possess illegal drugs or alcohol or abuse prescription drugs while they are on State property.

OHIO ETHICS AND ELECTIONS LAW. The Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of the Ohio ethics law, Ohio Revised Code Section §102.04. The Contractor affirms that, as applicable to the Contractor, no party listed in Division (I) or (J) of Section 3517.13 of the Ohio Revised Code or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of $1,000.00 to the Governor or to his campaign committees.

PUBLICITY. The Contractor will not advertise that it is doing business with the State or use this Contract as a marketing or sales tool without the prior, written consent of the State.

CONTROLLING BOARD AUTHORIZATION. The State's obligations under this Contract are subject to the Ohio Controlling Board's continuing authorization to use GSA schedule contracts and negotiate state term contracts. If the Ohio Controlling Board fails to authorize or withdraws its authorization for this program, this Contract will terminate, and the Contractor may not take any more orders under this Contract. The Controlling Board's withdrawal of its authorization will not affect existing licenses, leases, warranty commitments, and maintenance obligations.

TRAVEL EXPENSES. Any travel or per diem required by the Contractor to do its obligations under this Contract will be at the Contractor's expense. The State will pay for any additional travel that it requests only with prior written approval. All travel and per diem that the State requests in addition to what this Contract requires the Contractor to provide at the Contractor's expense will be paid in accordance with §126-1-02 of the Ohio Administrative Code.

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

ASSIGNMENT. The Contractor will not assign this Contract without the written consent of the State.

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

ENTIRE AGREEMENT. This Contract consists of the Contractor's Schedule Contract (see Composition of Contract Section above), this Contract document, the Contractor's state offer letter, and, if applicable, the Contractor's letter(s) designating dealers (and/or distributors), and any price lists or catalogs specifically mentioned elsewhere in this Contract. The foregoing constitutes the entire agreement between the parties, and any changes or modifications to this Contract must be in writing.

SUBCONTRACTING. The State through DAS, Office of Information Technology, Acquisitions Management recognizes that it may be necessary for the Contractor to use a subcontractor to perform a portion of the work under the Contract. In those circumstances, the Contractor shall submit a list identifying its subcontractors or joint venture partners performing portions of the work under the Contract. If any changes occur during the term of the Contract, the Contractor shall supplement its list of subcontractors or joint venture business partners. In addition, all subcontractors or joint venture business partners agree to be bound by all of the Terms and Conditions and specifications of the Contract. The State through DAS, Office of Information Technology, Acquisitions Management reserves the right to reject any subcontractor submitted by the Contractor.

LAW. This Contract is governed by and will be construed under Ohio law, and venue for any dispute will be with the appropriate court in Franklin County, Ohio.

TO SHOW THEIR AGREEMENT, the parties have executed this Contract on the date(s) below and unless otherwise indicated is effective as of the date of signature by the State.

THE CONTRACTOR

By: Sam Salth

Title: Director of Business Dev.

Date: 5/16/05

STATE OF OHIO,
DEPARTMENT OF ADMINISTRATIVE SERVICES,
IT GOVERNANCE DIVISION

Mary F. Carroll GM

Mary F. Carroll
Interim State Chief Information Officer
Ohio Office of Information Technology

By: Gus Maragos

Cynthia J. Dougherty
Interim Deputy State Chief Information Officer
Investment and Governance Division

Date: 5/23/05

Revised: 2-16-05 5/6/05 LA