

**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 immixTechnology, Inc. ("Contractor") with offices at 8444 Westpark Drive, Suite 200 Mclean, VA.

**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-0330J (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.

**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.

**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 either be new or refurbished and certified as 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 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 immixTechnology, Inc.'s GSA Contract are hereby incorporated into this agreement between the Contractor and the State.

Delete paragraph (12)(d) page 3 Use of Federal Supply Service Information Technology Schedule Contracts in its entirety.

Modify paragraph (14) (b) on page 4 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 the 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."

Delete paragraph (17) page 5 Purchase of Open Market Items in its entirety

Delete paragraph (19) Page 5 Overseas Activities in its entirety.

Delete paragraph (20) pages 5 and 6 Blanket Agreements (BPAs) in its entirety.

Delete paragraph (21) page 6 Contractor Team Arrangements in its entirety.

Delete pages 2 through 4 Best Value Blanket Purchase Agreement Federal Supply Schedule in their entirety.

Delete page 5 Basic Guidelines for using Contractor Team Arrangements in its entirety.

**TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF JUNIPER NETWORKS GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY EQUIPMENT (SPECIAL ITEM NUMBER 132-8)**

Modify paragraph (2) page 1 Order by replacing the wording " Written orders, EDI orders (GSA Advantage and FACNET), credit card orders, and orders placed under the blanket purchase agreements (BPA) agreements shall not be the basic of purchase in accordance with the provisions of this contract. If time of delivery extends beyond the expiration date of the contract, the Contractor will be obligated to meet the delivery date specified in the original order. For credit cards and BPAs, telephone orders are permissible." with

"Written orders, EDI orders shall not be the basic of purchase in accordance with the provisions of this contract. If time of delivery extends beyond the expiration date of the contract, the Contractor will be obligated to meet the delivery date specified in the original order."

Modify 2<sup>nd</sup> paragraph of (6)(a) page 2 Warranty by replacing the wording "Juniper Networks warrants that all hardware shall be free of defects in material and workmanship for a period of one (1) year under normal operating conditions from the shipment date, in the event that Juniper Networks receives notice during the warranty period that any hardware does not conform to its warranty, Juniper Networks will provide return to factory repair, with a 20 business day turnaround from the date of receipt of the product at a Juniper Networks Repair Center. Juniper Networks at its sole option, will either repair or replace the nonconforming hardware. Hardware replaced under the terms of any such warranty may be refurbished or new equipment substituted at the option of Juniper Networks. Juniper Networks will use commercially reasonable efforts to ship the replacement part within 20 business days after receipt of the RMS request. Actual delivery times may vary depending on the customer location." with

"Juniper Networks warrants that all hardware shall be free of defects in material and workmanship for a period of one (1) year under normal operating conditions from the receipt date, in the event that Juniper Networks receives notice during the warranty period that any hardware does not conform to its warranty, Juniper Networks will provide return to factory repair, with a 20 business day turnaround from the date of receipt of the product at a Juniper Networks Repair Center. Juniper Networks at its sole option, will either repair or replace the nonconforming hardware. Hardware replaced under the terms of any such will be new equipment substituted. Juniper Networks will use commercially reasonable efforts to ship the replacement part within 20 business days after receipt of the RMS request. Actual delivery times may vary depending on the customer location."

Modify 3<sup>rd</sup> paragraph of (6)(a) page 2 Warranty by replacing the wording "Dead on Arrival (DOA). For up to thirty (30) days from the shipment date of Product from Juniper Networks' manufacturing facilities, Juniper Networks will provide expedited replacement of affected field replaceable units of an inoperative Product. A new field replacement unit will be shipped from Juniper Networks' manufacturing facilities within two (2) business days of Juniper Networks receipt and validation of Customer's notification of an inoperative unit. Defective products must be returned within thirty (30) days of failure, or customer pays purchase price of replacement part. Non U.S. customers should allow for additional transit time due to international customs clearance." with

"Dead on Arrival (DOA). For up to thirty (30) days from the receipt date of Product from Juniper Networks' manufacturing facilities, Juniper Networks will provide expedited replacement of affected field replaceable units of an inoperative Product. A new field replacement unit will be shipped from Juniper Networks' manufacturing facilities within two (2) business days of Juniper Networks receipt and validation of Customer's notification of an inoperative unit. Defective products must be returned within thirty (30) days of failure, or customer pays purchase price of replacement part. Non U.S. customers should allow for additional transit time due to international customs clearance."

Modify 4<sup>th</sup> paragraph of (6)(a) page 2 Warranty by replacing the wording "Juniper Networks warrants that the media on which the software is recorded shall be free from defects in material and workmanship under normal use for a period of ninety (90) days from the shipment date<sup>4</sup>. The sole and exclusive remedy of the customer and the sole and exclusive remedy of Juniper Networks shall be replacement of the media in accordance with this limited warranty." with

"Juniper Networks warrants that the media on which the software is recorded shall be free from defects in material and workmanship under normal use for a period of ninety (90) days from the receipt date."

Modify 5<sup>th</sup> paragraph of (6)(a) page 2 Warranty by replacing the wording "Any defective item can only be returned if it references a return material authorization (RMA) number issued by authorized Juniper Networks service personnel. Telephone calls for RMS numbers should be placed to Juniper Networks Technical Assistance Center (JTAC) during business hours. JTAC calls for reasons other than product failure will not be accepted unless the customer has purchased a Juniper Networks service contract. The RMA number must be included on the outside of the carton label of the returned item. Transportation costs, if any, incurred in connection with the return of a defective item to Juniper Network shall be borne by customer to the in county location, if available. Juniper Networks shall pay any transportation costs incurred

with the redelivery of a repaired or replaced them, if, however, Juniper Networks reasonably determines, that the item is functional, the customer shall pay any transportation cost. If Juniper Networks determines, at its sole discretion, that the terms of the warranty provided under or that a warranty claim is made after the warranty period, the cost of repair by Juniper Networks, including all shipping expenses, shall be paid by customer.” with

“Any defective item can only be returned if it references a return material authorization (RMA) number issued by authorized Juniper Networks service personnel. Telephone calls for RMS numbers should be placed to Juniper Networks Technical Assistance Center (JTAC) during business hours. JTAC calls for reasons other than product failure will not be accepted unless the customer has purchased a Juniper Networks service contract. The RMA number must be included on the outside of the carton label of the returned item. Transportation costs, if any, incurred in connection with the return of a defective item to Juniper Network shall be borne by Juniper. Juniper Networks shall pay any transportation costs incurred with the redelivery of a repaired or replaced them, if, however, Juniper Networks reasonably determines, that the item is functional, the customer shall pay any transportation cost. If Juniper Networks determines, at its sole discretion, that the terms of the warranty provided under or that a warranty claim is made after the warranty period, the cost of repair by Juniper Networks, including all shipping expenses, shall be paid by customer.”

Modify the 2<sup>nd</sup> paragraph of paragraph (6)(b) page 2 Warranty by replacing the wording “EXCEPT AS SET FORTH ABOVE, JUNIPER NETWORKS EXPRESSLY EXCLUDES AND DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE REGARDING PRODUCTS AND SUPPORT SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ABSENCE OF HIDDEN DEFECTS, OF NON-INFRINGEMENT AND ANY WARRANTY THAT MAY ARISE BY REASON OF USAGE OR GRADE OR COURSE OF DEALING.” with

“THE FOREGOING EXPRESS WARRANTIES ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY JUNIPER NETWORKS. JUNIPER NETWORKS EXPRESSLY EXCLUDES AND DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.”

Delete the 2<sup>nd</sup> paragraph of paragraph (6)(c) pages 2 and 3 Warranty in its entirety.

**TERMS AND CONDITIONS APPLICABLE TO JUNIPER NETWORKS MAINTENANCE SERVICE, REPAIR SERVICE AND REPAIR PARTS/SPARE PARTS, AND IMPLEMENTATION SERVICES FOR GOVERNMENT OWNED GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY EQUIPMENT (AFTER EXPIRATION OF GUARANTEE/WARRANTY PROVISIONS AND/OR WHEN REQUIRED SERVICE IS NOT COVERED BY GUARANTEE/WARRANTY PROVISIONS) (SPECIAL ITEM NUMBER 132-12)**

Modify paragraph (3)(a) page 5 Repair Service and Repair Parts/Spare Parts Orders by replacing the wording “Ordering activities may use written orders, EDI orders, credit card orders, blanket purchase agreements BPAs, or small order procedures for ordering repair service and/or repair parts/spare parts under this contract. Orders for repair services shall not extend beyond the end of the contract period.” with

“Ordering activities may use written orders, EDI orders, credit card orders, for ordering repair service and/or repair parts/spare parts under this contract. Orders for repair services shall not extend beyond the end of the contract period.”

Modify 2<sup>nd</sup> paragraph of paragraph (4) page 5 Loss or Damage by replacing the wording “Dead on Arrival (DOA). For up to thirty (30) days from the shipment date of Product from Juniper Networks’ manufacturing facilities, Juniper Networks will provide expedited replacement of affected field replaceable units of an inoperative Product. A new field replaceable unit will be shipped from Juniper Networks ‘ manufacturing facilities within two (2) business days of Juniper Networks’ receipt and validation of Customers notification of an inoperative unit. Defective product must be returned within thirty (30) days of failure, or customer pays

purchase price of replacement part. Non U.S. customers should allow for additional transit time due to international customs clearance." with

"Dead on Arrival (DOA). For up to thirty (30) days from the receipt date of Product from Juniper Networks' manufacturing facilities, Juniper Networks will provide expedited replacement of affected field replaceable units of an inoperative Product. A new field replaceable unit will be shipped from Juniper Networks' manufacturing facilities within two (2) business days of Juniper Networks' receipt and validation of Customers notification of an inoperative unit. Defective product must be returned within thirty (30) days of failure, or customer pays purchase price of replacement part. Non U.S. customers should allow for additional transit time due to international customs clearance."

Modify paragraph (8)(d) page 6 Travel and Transportation by replacing the wording "Travel and Transportation by replacing the wording "If any charge is to apply, over and above the regular maintenance rates, because of the distance between the ordering activity location and the Contractor's service area, the charge will be for travel and expenses in accordance with the Federal Travel Regulation/Joint Travel Regulations." with

"Travel and Transportation by replacing the wording "If any charge is to apply, over and above the regular maintenance rates, because of the distance between the ordering activity location and the Contractor's service area, the charge will be for travel and expenses in accordance with Section 126-1-02 of the Ohio Administrative Code."

**TERMS AND CONDITIONS APPLICABLE TO JUNIPER NETWORKS TERM SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-32, PERPETUAL SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-33) AND MAINTENANCE (SPECIAL ITEM NUMBER 132-34) OF GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE**

Modify 2<sup>nd</sup> paragraph of (2)(a) page 8 Guarantee/warranty by replacing the wording "Juniper Networks warrants that the media on which the Software is recorded shall be free from defects in material and workmanship under normal use for a period of 90 days from the delivery date. Customer's sole and exclusive remedy, and Juniper Networks sole and exclusive liability, shall be replacement of the media in accordance with this limited warranty." with

"Juniper Networks warrants that the software shall be free from defects in material and workmanship under normal use for a period of 90 days from the date received."

Modify paragraph (2)(b) page 8 Guarantee/warranty by replacing the wording "EXCEPT AS SET FORTH ABOVE, JUNIPER NETWORKS EXPRESSLY EXCLUDES AND DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE REGARDING PRODUCTS AND SUPPORT SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ABSENCE OF HIDDEN DEFECTS, OF NON-INFRINGEMENT AND ANY WARRANTY THAT MAY ARISE BY REASON OF USAGE OR GRADE OR COURSE OF DEALINGS" with

"THE FOREGOING EXPRESS WARRANTIES ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY JUNIPER NETWORKS. JUNIPER NETWORKS EXPRESSLY EXCLUDES AND DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE."

Delete paragraph (2)(c) page 8 Guarantee/Warranty in its entirety.

**TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF JUNIPER NETWORKS TRAINING COURSES FOR GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY EQUIPMENT AND SOFTWARE (SPECIAL ITEM NUMBER 132-50)**

Modify paragraph (2) page 11 Order by replacing the wording "Written orders, EDI orders (GSA Advantage! And FACNET), credit cards orders, and orders placed under blanket purchase agreements (BPAs) shall be the basis for the purchase of training courses in accordance with the terms of this contract. Orders shall include the student's name, course title, course date and time, and contracted dollar amount of the course." with

"Written orders, EDI orders (GSA Advantage! And FACNET) or credit cards orders shall be the basis for the purchase of training courses in accordance with the terms of this contract. Orders shall include the student's name, course title, course date and time, and contracted dollar amount of the course."

Modify paragraph (4)(b) page 11 Cancellation and Rescheduling by replacing the wording "In the event the ordering activity fails to cancel or reschedule a training course within the time frame specified in paragraph a, above, the ordering activity will be liable for the contracted dollar amount of the training course. Juniper agrees to permit the ordering activity to reschedule a student who fails to attend the training class within ninety (90) days from the original course date, at no additional charge." with

"In the event the ordering activity fails to cancel or reschedule a training course within the time frame specified in paragraph a, above, Juniper agrees to permit the ordering activity to reschedule a student who fails to attend the training class within ninety (90) days from the original course date, at no additional charge."

Modify paragraph (8)(e) page 12 Format and Content of Training by replacing the wording "For those courses conducted at the ordering activity's location, instructor travel charges (if applicable), including mileage and daily living expenses, must be in accordance with the Federal Travel Regulation/Joint Travel Regulation. Rates paid as a result of travel must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Contractors cannot use GSA city pair contracts." with

"For those courses conducted at the ordering activity's location, instructor travel charges (if applicable), including mileage and daily living expenses, must be in accordance with Section 126-1-02 of the Ohio Administrative Code."

#### **SCHEDULE A – END USER PURCHASE AGREEMENT SUPPLEMENTAL TERMS**

Delete paragraph (5) page 14 Indemnity in its entirety.

Modify paragraph (6)(c) page 15 Assignment by replacing the wording "Customer may not assign or delegate or otherwise transfer its licenses, rights or duties under this Agreement except with prior written consent of Juniper Networks. Any prohibited assignment will be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties thereto and successors and assigns." with

"Customer may not assign or otherwise transfer its licenses under this Agreement except with prior written consent of Juniper Networks, which shall not be unreasonably withheld. Any prohibited assignment will be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties thereto and successors and assigns."

Delete paragraph (6) page 15 Termination in its entirety.

Modify paragraph (2)(d) Juniper Networks Obligations by replacing the wording " On site Support. In the event a Priority Problem cannot be resolved remotely by Customer's field engineer, then, upon Customer's request, Juniper Networks will use its commercially reasonable efforts to dispatch a technician to the affected site. If the Priority Problem for which the technician is requested is not caused by Juniper Networks' equipment, is not repeatable, or no longer exists and, in Juniper Networks' opinion, Customer's first level

support should have been able to determine the aforementioned facts. Customer will be billed at Juniper Networks' then applicable standard rate for time and materials, and for reasonable travel and living expenses in accordance with Juniper Networks' travel plan guidelines as amended from time to time." with

"On site Support In the event a Priority Problem cannot be resolved remotely by Customer's field engineer, then, upon Customer's request, Juniper Networks will use its commercially reasonable efforts to dispatch a technician to the affected site. If the Priority Problem for which the technician is requested is not caused by Juniper Networks' equipment, is not repeatable, or no longer exists and, in Juniper Networks' opinion, Customer's first level support should have been able to determine the aforementioned facts. Customer will be billed at Juniper Networks' then applicable standard State Term Schedule rate for time and materials, and for reasonable travel and living expenses in accordance with Section 126-1-02 of the Ohio Administrative Code."

Modify last paragraph of (2)(F) page 18 Juniper Networks' Obligations by replacing "Customer may, at its sole option, request that Juniper Networks provide for one or more of the above excluded problems. If Juniper Networks does attempt to resolve or more of the above excluded problems based on Customer request, Customer agrees to pay for such Support at Juniper Networks' then applicable rates for time and material." with

"Customer may, at its sole option, request that Juniper Networks provide for one or more of the above excluded problems. If Juniper Networks does attempt to resolve or more of the above excluded problems based on Customer request, Customer agrees to pay for such Support at Juniper Networks' then State Term Schedule rates for time and material.

Modify paragraph (4)(b) page 19 Hardware Repair./Replacement by replacing the wording "Warranty Repair. Juniper Networks' warranty repair procedure apply to any defective System or part purchased by Customer purchased a Hardware Replacement Support Plan then Customer may return defective System or parts only under this Section 4 b). Under Juniper Networks' warranty, Customer is responsible for the cost of returning an inoperative System or part to Juniper Networks, and the defective equipment will be repaired or replaced at the discretion of Juniper Networks' Return instructions will be provided to Customer at the time the RMA number is assigned. Juniper Networks will use commercially reasonable efforts to ship repaired or replaced equipment within 10 business days of receipt of the returned equipment." with

"Warranty Repair Juniper Networks' warranty repair procedure apply to any defective System or part purchased by Customer purchased a Hardware Replacement Support Plan then Customer may return defective System or parts only under this Section 4 b). Under Juniper Networks' warranty, Juniper is responsible for cost of returning an inoperative System or part to Juniper Networks, and the defective equipment will be repaired or replaced at the discretion of Juniper Networks' Return instructions will be provided to Customer at the time the RMA number is assigned. Juniper Networks will use commercially reasonable efforts to ship repaired or replaced equipment within 10 business days of receipt of the returned equipment,"

Modify paragraph (6)(a) page 20 Support Fees by replacing the wording "Annual Fee. In consideration for the Support, Customer shall pay an annual fee at Juniper Networks' then current published list price plus applicable taxes, if any. The fee for the first year of this Agreement is set forth on the cover/signature page. Juniper Networks may, at its sole discretion, increase such list prices at any time." with

"Annual Fee. In consideration for the Support, Customer shall pay an annual fee at Juniper Networks' then current State Term Schedule list price. The fee for the first year of this Agreement is set forth on the cover/signature page. "

Delete paragraph (8) page 21 Limitation of Liability in its entirety.

Delete paragraph (9) page 21 Term and Termination in its entirety.

Modify paragraph (10)(a) page 22 Miscellaneous by replacing the wording "Customer may not assign or delegate or otherwise transfer its licenses, rights or duties under this Agreement except with prior written consent of Juniper Networks. Any prohibited assignment will be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties thereto and successors and assigns." with

"Customer may not assign or otherwise transfer its licenses under this Agreement except with prior written consent of Juniper Networks, which shall not be unreasonable withheld. Any prohibited assignment will be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties thereto and successors and assigns."

Delete paragraph (10)(b) page 22 Miscellaneous in its entirety.

Modify part number SVG-ERX-1GSRP5-UPG page 94 by replacing the wording "ERX SRP5 Upgrade package – includes a 1GB (2GB capable) SRP-5 with ECC memory, a 1GB flash card, and an SRP\_I/O for customers that own a SRP-5 with ECC memory. (Note, Service contains refurbished parts, 90 days warranty)" with

"ERX SRP5 Upgrade package – includes a 1GB (2GB capable) SRP-5 with ECC memory, a 1GB flash card, and an SRP\_I/O for customers that own a SRP-5 with ECC memory.

**TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF KRONOS GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY EQUIPMENT (SPECIAL ITEM NUMBER 132-8)**

Modify 2<sup>nd</sup> paragraph of (6)(a) page 2 Limited Warranty by replacing the wording "Kronos warrants that all Kronos Equipment and Software media shall be free from defects in materials and workmanship, for a period of ninety (90) days from the date of shipment. This warranty is extended to Customer only and shall not apply to any Equipment, (of parts thereof) or Software media in the event of:" with

"Kronos warrants that all Kronos Equipment and Software shall be free from defects in materials and workmanship, for a period of ninety (90) days from the date of receipt. This warranty is extended to Customer only and shall not apply to any Equipment, (of parts thereof) or Software media in the event of:"

Modify paragraph (6)(b) page 2 Limited Warranty by replacing the wording "EXCEPT AS PROVIDED ABOVE, THE PARTIES AGREE THAT ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED." with

"THE FOREGOING EXPRESS WARRANTIES ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY KRONOS. KRONOS EXPRESSLY EXCLUDES AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE."

Delete paragraph (6)(c) page 2 Limitation of Liability in its entirety.

**TERMS AND CONDITIONS APPLICABLE TO KRONOS MAINTENANCE, SERVICE, REPAIR SERVICE FOR GOVERNMENT-OWNED GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY EQUIPMENT (AFTER EXPIRATION OF GUARANTEE/WARRANTY PROVISIONS AND/OR WHEN REQUIRED SERVICE IS NOT COVERED BY GUARANTEE/WARRANTY PROVISIONS) (SPECIAL ITEM NUMBER 132-12)**

Modify 2<sup>nd</sup> paragraph of (5)(a) page 4 Depot Repair Maintenance by replacing the wording "Term. This Agreement has a term of one (1) year commencing upon expiration of any applicable warranty period as specified in the Sales Agreement and Software License. The Agreement will be automatically extended for additional one year terms on the anniversary of its commencement date (the Renewal Date), unless either party has given the other thirty (30) days, prior written notice of its intent not to renew ." with

"Term. This Agreement has a term of one (1) year commencing upon expiration of any applicable warranty period as specified in the Sales Agreement and Software License."

Modify paragraph (5)(e) page 4 Depot Repair Maintenance Exclusions by replacing the wording "Customer shall be charged Kronos' then current time and materials rate for the installation of any Software or firmware upgrades, if available, and if requested by Customer. If such Software or firmware upgrades are available on Kronos' Customer web site. Customer may download such Software or firmware upgrades for no additional charge." with

"Customer shall be charged Kronos' State Term Schedule and materials rate for the installation of any Software or firmware upgrades, if available, and if requested by Customer. If such Software or firmware upgrades are available on Kronos' Customer web site. Customer may download such Software or firmware upgrades for no additional charge."

Modify 2<sup>nd</sup> paragraph of (5)(a) page 4 Depot Repair Maintenance by replacing the wording "Term This Agreement has a term of one (1) year commencing upon expiration of any applicable warranty period as specified in the Sales Agreement and Software License." with

"Term This Agreement has a term of one (1) year commencing upon expiration of any applicable warranty period as specified in the Sales Agreement and Software License. The Agreement will be automatically extended for additional one year terms on the anniversary of its commencement date (the Renewal Date), unless either party has given the other thirty (30) days prior written notice of its intent not to renew."

Modify paragraph (5)(e) page 4 Depot Repair Maintenance Exclusions by replacing the wording "Customer shall be charged Kronos' then –current time and materials rate for installation of any Software or firmware upgrades, if available, and if requested by Customer. If such Software or firmware upgrades are available on Kronos' Customer web site, Customer may download such Software or firmware upgrades for no additional charge." with

"Customer shall be charged Kronos' then –current State Term Schedule time and materials rate for installation of any Software or firmware upgrades, if available, and if requested by Customer. If such Software or firmware upgrades are available on Kronos' Customer web site, Customer may download such Software or firmware upgrades for no additional charge."

Modify paragraph (5) page 4 Depot Exchange Maintenance by replacing the wording "Term This Agreement has a term of one (1) year commencing upon the expiration of any applicable warranty period, as specified in the Sales Agreement and Software License. The Agreement will be automatically extended for additional one year terms on the anniversary of its commencement date ("Renewal Date"), unless either party has given the other thirty (30) days written notification of its intent not to renew." with

"Term This Agreement has a term of one (1) year commencing upon the expiration of any applicable warranty period, as specified in the Sales Agreement and Software License."

Modify paragraph (5)(a) pages 4 and 5 Depot Exchange Maintenance by replacing the wording "Customer, upon receipt of the replacement Product from Kronos, shall package the defective Product in the materials provided by Kronos, with the return label supplied. Failed Product not received by Kronos within ten (10) calendar days shall be billed to the Customer at the prevailing Kronos List Price. All returned Product becomes the property of Kronos. Failed Product returned between calendar days eleven (11) through thirty (30) will be subject to an additional \$150 processing fee. Kronos will not accept Product after thirty (30) days, and Customer shall not be issued any credit for any attempted return." with

"Customer, upon receipt of the replacement Product from Kronos, shall package the defective Product in the materials provided by Kronos, with the return label supplied. Failed Product not received by Kronos within

ten (10) calendar days shall be billed to the Customer at the prevailing Kronos List Price. All returned Product becomes the property of Kronos.”

Modify paragraph (5)(e) page 5 Depot Exchange Maintenance Exclusions by replacing the wording “Customer shall be charged Kronos’ then-current time and material rate for the installation of any Software or firmware upgrades, if available and if requested by Customer. If such Software or firmware upgrades are available on Kronos’ Customer web site, Customer may download such Software or firmware upgrades for no additional charge.” with

“Customer shall be charged Kronos’ then-current State Term Schedule time and material rate for the installation of any Software or firmware upgrades, if available and if requested by Customer. If such Software or firmware upgrades are available on Kronos’ Customer web site, Customer may download such Software or firmware upgrades for no additional charge.”

Modify 1st paragraph of (10)(a) page 6 For Depot and Repair by replacing the wording “WARRANTY Kronos warrants that all repairs performed under this agreement shall be performed in a professional and competent manner. ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE AND MERCHANTABILITY, ARE EXCLUDED BY AGREEMENT OF THE PARTIES.” with

“WARRANTY Kronos warrants that all repairs performed under this agreement shall be performed in a professional and competent manner. THE FOREGOING WARRANTIES ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY KRONOS. KRONOS EXPRESSLY EXCLUDES AND DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.”

Modify paragraph (10)(a) page 6 For Depot Exchange, Warranty by replacing the wording “Kronos warrants that all repairs performed under this Agreement shall be performed in a professional and competent manner. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE AND MERCHANTABILITY, ARE EXCLUDED BY AGREEMENT OF THE PARTIES.” With

“Kronos warrants that all repairs performed under this Agreement shall be performed in a professional and competent manner. THE FOREGOING WARRANTIES ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY KRONOS. KRONOS EXPRESSLY EXCLUDES AND DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.”

Modify paragraph (10) (a) page 6 Limitation of Remedies by replacing the wording “The exclusive remedy of Customer and sole liability of Kronos and the Contractor shall be replacement of the repaired Product. IN NO EVENT SHALL KRONOS OR ITS SUBSIDIARIES OR ALLIATES, OR THE CONTRACTOR BE LIABLE FOR ANY INCIDENTAL DAMAGES.” with

“Customer’s remedies shall be the replacement of the repaired Product or to refund the total purchase price paid for the product or services. IN NO EVENT SHALL KRONOS OR ITS SUBSIDIARIES OR ALLIATES, OR THE CONTRACTOR BE LIABLE FOR ANY INCIDENTAL DAMAGES.”

Modify paragraph (11)(b) page 6 Invoices and Payments by replacing the wording “Repair Service and Repair Parts/Spare Parts Invoices for repair service and parts shall be submitted by the Contractor as soon as possible after completion of work. Payment under blanket purchase agreements will be made quarterly or monthly, except where cash payment procedures are used. Invoices shall be submitted separately to each ordering activity office ordering services under the contract. The cost of repair shall be shown as a separate item on the invoice, shall be priced in accordance with paragraph #10, above PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.” with

"Repair Service and Repair Parts/Spare Parts Invoices for repair service and parts shall be submitted by the Contractor as soon as possible after completion of work. Invoices shall be submitted separately to each ordering activity office ordering services under the contract. The cost of repair shall be shown as a separate item on the invoice, shall be priced in accordance with paragraph #10, above PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE."

**TERMS AND CONDITIONS APPLICABLE TO KRONOS PERPETUAL SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-33) AND MAINTENANCE (SPECIAL ITEM NUMBER 132-34) OF GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE**

Modify paragraph (2)(a) page 7 Guarantee/Warranty that read "Limited Warranty: Kronos warrants that all Kronos Equipment and Software media shall be free from defects in materials and workmanship, for a period of ninety (90) days from the date of shipment. This warranty is extended to Customer only and shall not apply to any Equipment, (or parts thereof) or Software media in the event of: (a) Damage, defects or malfunctions resulting from modifications or replacement of any Kronos components on any board supplied with the Equipment), unusual physical or electrical stress or causes other than normal and intended use (b) Failure of Customer to provide and maintain a suitable installation environment as specified in Kronos' documentation; (c) Malfunctions resulting from the use of badges or supplies not approved by Kronos." with

"Limited Warranty: Kronos warrants that all Kronos Equipment and Software media shall be free from defects in materials and workmanship, for a period of ninety (90) days from the date of receipt. This warranty is extended to Customer only and shall not apply to any Equipment, (or parts thereof) or Software media in the event of: (a) Damage, defects or malfunctions resulting from modifications or replacement of any Kronos components on any board supplied with the Equipment), unusual physical or electrical stress or causes other than normal and intended use (b) Failure of Customer to provide and maintain a suitable installation environment as specified in Kronos' documentation; (c) Malfunctions resulting from the use of badges or supplies not approved by Kronos."

Modify paragraph (2)(b) page 7 Guarantee/Warranty by replacing the wording "EXCEPT AS PROVIDED ABOVE, THE PARTIES AGREE THAT ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED" with

"THE FOREGOING WARRANTIES ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY KRONOS. KRONOS EXPRESSLY EXCLUDES AND DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE."

Delete paragraph (2)(c) page 7 Limitation of Liability in its entirety.

Modify paragraph (4)(a) page 8 Term of Agreement by replacing the wording "This Agreement shall commence on the Effective Date, which shall mean the day after the expiration of any applicable warranty period, specified in the Sales Agreement and Software License terms and conditions, and shall continue for an initial term of twelve (12) months. This Agreement shall automatically renew for additional one year terms on the anniversary date of its Effective Date, unless either party notifies the other in writing thirty (30) days prior to that anniversary renewal date." with

"This Agreement shall commence on the Effective Date, which shall mean the day after the expiration of any applicable warranty period, specified in the Sales Agreement and Software License terms and conditions, and shall continue for an initial term of twelve (12) months."

Modify paragraph (4)(a) page 8 Software Service Offerings Provided for all Service Types (Silver, Gold, or Platinum/Platinum Plus) by replacing the wording a "Software Assurance" shall mean version upgrades, updates and/or enhancements, and legislative updates, if applicable, if available for the Software originally covered under this Agreement (and does not include any Software for which Kronos charges a separate

license fee) and if Customer's operating system and equipment meet minimum system configuration requirements, as determined by Kronos. Such version upgrades, updates and/or enhancements and legislative updates are only provided remotely. If Customer requests Kronos to install such version upgrades, updates and/or enhancements or legislative updates or to provide retaining, Customer agrees to pay Kronos for such installation or retaining at Kronos' then-current time and materials rate." with

"(a) "Software Assurance" shall mean version upgrades, updates and/or enhancements, and legislative updates, if applicable, if available for the Software originally covered under this Agreement (and does not include any Software for which Kronos charges a separate license fee) and if Customer's operating system and equipment meet minimum system configuration requirements, as determined by Kronos. Such version upgrades, updates and/or enhancements and legislative updates are only provided remotely. If Customer requests Kronos to install such version upgrades, updates and/or enhancements or legislative updates or to provide retaining, Customer agrees to pay Kronos for such installation or retaining at Kronos' then-current State Term Schedule time and materials rate."

Modify paragraph (4) (a) page 8 Additional Software Services Provided by Service Type by replacing the wording " Platinum: A One day per year Optimization Assessment to be performed at the Customer location where the Software is installed. During the Optimization Assessment, a Kronos application consultant shall work with Customer to identify ways to help Customer increase functionality or maximize utilization of the Software in Customer's specified environment, provided Customer's annual software maintenance fee is at least \$5,000 per year. Customer Travel time and expenses are not included and shall be charged to Customer in accordance with Federal and Joint Travel Regulations. Platinum Customers also receive a two hour or less response time for all calls placed to Kronos Global Support, regardless of the Priority level." with

"b "Platinum: A One day per year Optimization Assessment to be performed at the Customer location where the Software is installed. During the Optimization Assessment, a Kronos application consultant shall work with Customer to identify ways to help Customer increase functionality or maximize utilization of the Software in Customer's specified environment, provided Customer's annual software maintenance fee is at least \$5,000 per year. Customer Travel time and expenses are not included and shall be charged in accordance with Section 126-1-02 of the Ohio Administrative Code."

Modify paragraph (4) (a) pages 8 and 9 Addition of Software by replacing the wording "Additional Software purchased by Customer during the initial of any renewal term shall be added to this Agreement at the same maintenance option as the Software originally covered under this Agreement. Customer agrees to pay the prorated charges for such addition and any such addition shall be automatically renewed as provided in this Agreement." with

"Additional Software purchased by Customer during the initial of any renewal term shall be added to this Agreement at the same maintenance option as the Software originally covered under this Agreement. Customer agrees to pay the prorated charges for such."

Modify paragraph (4)(a) page 9 Reinstatement of Maintenance Service by replacing the wording "In the event that Customer allows maintenance service to lapse or if Customer did not originally purchase Software maintenance service and wishes to reinstate or procure such services, Customer must pay the list price for the Silver Support Plan for such lapsed or unprocured time period, plus twenty per cent (20%) reinstatement fee in addition to the then current Software maintenance fee for the maintenance option being purchased by Customer." with

"In the event that Customer allows maintenance service to lapse or if Customer did not originally purchase Software maintenance service and wishes to reinstate or procure such services, Customer must pay the State Term Schedule price for the Silver Support Plan for such lapsed or unprocured time period."

Modify paragraph (4)(a) page 9 Warranty and Warranty Exclusion by replacing the wording "Kronos warrants that all service performed under this Agreement shall be performed in a professional competent manner."

THE PARTIES AGREE THAT ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED." with

"Kronos warrants that all services performed under this Agreement shall be performed in a professional competent manner. THE FOREGOING WARRANTIES ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY KRONOS. KRONOS EXPRESSLY EXCLUDES AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE"

Modify paragraph (4)(a) page 9 Limitation of Remedies by replacing the wording "Customer's exclusive remedy and sole liability of Kronos and the Contractor, of the Warranty specified above for any breach by Kronos shall be repeat performance of any repair, replacement or maintenance required under this Agreement. IN NO EVENT WILL KRONOS OR CONTRACTOR BE LIABLE FOR :(a) LOST PROFITS, LOST DATA OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES; OR (b) DAMAGES CAUSED BY CUSTOMER'S FAILURE TO PERFORM ITS RESPONSIBILITIES. Kronos agrees to be liable for tangible property damages or personal injury caused solely by negligence or willful misconduct of its employees." with

"Customer's remedy and liability of Kronos and the Contractor, of the Warranty specified above for any breach by Kronos shall be repeat performance of any repair, replacement or maintenance required under this Agreement. IN NO EVENT WILL KRONOS OR CONTRACTOR BE LIABLE FOR :(a) LOST PROFITS, LOST DATA OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES; OR (b) DAMAGES CAUSED BY CUSTOMER'S FAILURE TO PERFORM ITS RESPONSIBILITIES. Kronos agrees to be liable for tangible property damages or personal injury caused solely by negligence or willful misconduct of its employees."

**TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF KRONOS TRAINING COURSES FOR GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY EQUIPMENT AND SOFTWARE (SPECIAL ITEM NUMBER 132-50)**

Modify paragraph (2) page 13 Order by replacing the wording "Written orders, EDI orders (GSA Advantage and FACMET), credit card orders and orders placed under blanket purchase agreements (BPAs) shall be the basis for the purchase of training courses in accordance with the terms of this contract. Orders shall include the student's name, course title, course date and time, and contracted dollar amount of the course." with

"Written orders, EDI orders (GSA Advantage and FACMET), credit card orders shall be the basis for the purchase of training courses in accordance with the terms of this contract. Orders shall include the student's name, course title, course date and time, and contracted dollar amount of the course."

Modify paragraph (4)(b) page 13 Cancellation and Rescheduling by replacing the wording "In the event activity fails to cancel or reschedule a training course within time frame specified in paragraph a, above, the ordering activity will be liable for the contracted dollar amount of the training courses. Kronos agrees to permit the ordering activity to reschedule a student who fails to attend a training class within (90) days from the original course date, at no additional charge." with

"In the event activity fails to cancel or reschedule a training course within time frame specified in paragraph a. Kronos agrees to permit the ordering activity to reschedule a student who fails to attend a training class within (90) days from the original course date, at no additional charge."

Modify paragraph (8)(e) page 14 Format and Content of Training by replacing the wording "For those courses conducted at the ordering activity's location, instructor travel charges (if applicable), including mileage and daily living expenses, must be billed in accordance with the Federal Travel Regulations or Joint

Travel Regulations. Rates paid as a result of travel must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Contractors cannot use GSA city pair contracts.” with

“For those courses conducted at the ordering activity’s location, instructor travel charges (if applicable), including mileage and daily living expenses, must be billed in accordance with Section 126-1-02 of the Ohio Administrative Code.”

**TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF SYMANTEC GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY EQUIPMENT (SPECIAL ITEM NUMBER 132-8)**

Modify paragraph (2) page 1 Order by replacing the wording “Written orders, EDI orders (GSA Advantage and FACNET), credit card orders, and orders placed under blanket purchase agreements (BPA) agreements shall be the basis for purchase in accordance with the provisions of this contract. If time of delivery extends beyond the expiration date of the contract, the Contractor will be obligated to meet the delivery and installation date<sup>4</sup> specified in the original order. For credit orders and BPAs, telephone orders are permissible.” with

“Written orders, EDI orders (GSA Advantage and FACNET), credit card orders, shall be the basis for purchase in accordance with the provisions of this contract. If time of delivery extends beyond the expiration date of the contract, the Contractor will be obligated to meet the delivery and installation date<sup>4</sup> specified in the original order.”

Modify paragraph ((6)(b) page 2 Warranty by replacing the wording “Limited Warranty: Symantec warrants that the Hardware component of the Appliance shall be free from defects in material and workmanship under normal use and service and substantially conform to the written documentation accompanying the Appliance for a period of three hundred sixty-five (365) days from the purchase of the Appliance. The ordering activity ‘s sole remedy in the event of a breach of this warranty will be that Symantec will at its option, repair or replace any defective Hardware returned to Symantec within the warranty period or refund the money paid by the ordering activity for the Appliance.” with

“Limited Warranty: Symantec warrants that the Hardware component of the Appliance shall be free from defects in material and workmanship under normal use and service and substantially conform to the written documentation accompanying the Appliance for a period of three hundred sixty-five (365) days from the purchase of the Appliance. The ordering activity ‘s remedy in the event of a breach of this warranty will be that Symantec will at its option, repair or replace any defective Hardware returned to Symantec within the warranty period or refund the money paid by the ordering activity for the Appliance.”

Modify the 2<sup>nd</sup> paragraph of (6)(B) page 2 Warranty by replacing the wording “Upon discovery of any failure of the Hardware, or component thereof, to conform to the applicable warrant during the applicable warranty period the ordering activity is required to contact Symantec within ten (10) days after such failure and seek a return material authorization (“RMA”) number. Symantec will promptly issue the requested RMA as long as we determine that the ordering activity meets the conditions for warranty service. The allegedly defective Appliance, or component thereof, shall be returned to Symantec, securely and properly packaged, freight and insurance prepaid , with the RMA number prominently displayed on the exterior of the shipment packaging and with the Appliance. Symantec will have no obligation to accept any Appliance which is returned without an RMA number.” with

“Upon discovery of any failure of the Hardware, or component thereof, to conform to the applicable warrant during the applicable warranty period the ordering activity is required to contact Symantec within ten (10) days after such failure and seek a return material authorization (“RMA”) number. Symantec will promptly issue the requested RMA as long as we determine that the ordering activity meets the conditions for warranty service. The allegedly defective Appliance, or component thereof, shall be returned to Symantec, securely and properly packaged, freight and insurance prepaid by Symantec with the RMA number

prominently displayed on the exterior of the shipment packaging and with the Appliance. Symantec will have no obligation to accept any Appliance which is returned without an RMA number.”

Modify the 6<sup>th</sup> paragraph of paragraph (6)(B) page 2 Warranty by replacing the wording “THE ABOVE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. THIS WARRANTY GIVES THE GOVERNMENT SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHER RIGHTS, WHICH VARY FROM STATE TO STATE.” with

“THE FOREGOING WARRANTIES ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY SYMANTIC. SYMANTIC EXPRESSLY EXCLUDES AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.”

Delete paragraph (6)(c) on page 2 Warranty in its entirety.

**TERMS AND CONDITIONS APPLICABLE TO PERPETUAL SOFTWARE LICENSE LICENSES (SPECIAL ITEM NUMBER 132-34) OF GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE**

Modify 2<sup>nd</sup> paragraph (2) (a) page 4 Guarantee/Warranty by replacing the wording “Limited Warranty: Symantec warrants that the media on which the Software is distributed will be free from defects for a period of sixty (60) days from the date of delivery of the Software to the ordering activity. The ordering activity’s sole remedy in the event of breach of this warranty will be that Symantec will, at its option, replace any defective media returned to Symantec within the warranty period or refund the money paid by the ordering activity for the Software. Symantec does not warrant that the Software will meet the ordering activity’s requirements or that operation of the Software will be uninterrupted or that the Software will be error-free.

**THE ABOVE WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. THIS WARRANTY GIVES THE GOVERNMENT SPECIFIC LEGAL RIGHTS. THE GOVERNMENT MAY HAVE OTHER RIGHTS, WHICH VARY FROM STATE TO STATE.” with**

“Limited Warranty: Symantec warrants that the media on which the Software is distributed will be free from defects for a period of ninety days (90) days from the date of delivery of the Software to the ordering activity. The ordering activity’s remedy in the event of breach of this warranty will be that Symantec will, at its option, replace any defective media returned to Symantec within the warranty period or refund the money paid by the ordering activity for the Software. Symantec does not warrant that the Software will meet the ordering activity’s requirements or that operation of the Software will be uninterrupted or that the Software will be error-free.

The FOREGOING WARRANTIES ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY SYMANTIC. SYMANTEC EXPRESSLY EXCLUDES AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.”

Delete paragraph (2)(c) page 4 Limitation of Liability in its entirety,

Delete paragraph (2)(c) page 4 Disclaimer of Damages in its entirety.

Delete on page 6 Disclaimer of Damages in its entirety.

Modify paragraph (1) page 14 Symantec NetRecon 3.5 License to Use by replacing the wording "You have permission to access that you have sufficiently backed-up in case of damage caused by this Product. **MISUSE OF THE PRODUCT OR DATA GENERATED BY THE PRODUCT IS STRICTLY PROHIBITED BY LICENSOR, MAY VIOLATE U.S. AND OTHER LAWS AND MAY SUBJECT YOU TO SUBSTANTIAL LIABILITY.** You are solely responsible for any misuse of the Product Licensed under this Agreement, and You agree to indemnify Licensor for any liability or damage related in any way to Your use of the Product in violation of this Agreement or the rights or any owner or operator of a computer network, system or device. You are also responsible for using the Product in accordance with the limitations of the license You acquired. The types of licenses are as follows 1) **Evaluation license:** You may scan an unlimited number of network resources from one system. Each is limited to ten minutes unless otherwise authorized by Licensor, and the evaluation license expires in fifteen days unless otherwise authorized by Licensor. 2) **Limited License:** You may scan Your small network (up to 254 unique network resources) from one system. 3) **Unlimited License:** You may scan Your large network (an unlimited number of network resources) from one system. 4) **Consultant License:** You may scan multiple networks belonging to Your customers as long as permission is obtained before such scan, but such scan shall last for no longer than seven days per customer and Product must be removed thereafter. 5) **Not for Resell (NFR) License:** You may scab multiple networks belonging to Your customers so long as permission is obtained before such scan, but such scan shall last for no longer than fifteen minutes per customer and Product must be removed thereafter. 6) **Single Engagement (SE) License:** You may scab multiple networks belonging to a single customer for no longer than thirty (30) days. This license is good for use on one of Your customers only and you must obtain permission before any scan is performed. Such scan may only be for delivering assessments services. You will indemnify and hold Licensor harmless for any claims arising out of the use of Product on machines belonging to any of Your customers or any third party that has been provided access to Product is scanned by You, except to the extent those claims arise out of Licensor's breach of this license." with

"You have permission to access that you have sufficiently backed-up in case of damage caused by this Product. **MISUSE OF THE PRODUCT OR DATA GENERATED BY THE PRODUCT IS STRICTLY PROHIBITED BY LICENSOR, MAY VIOLATE U.S. AND OTHER LAWS AND MAY SUBJECT YOU TO SUBSTANTIAL LIABILITY.** You are solely responsible for any misuse of the Product Licensed under this Agreement. You are also responsible for using the Product in accordance with the limitations of the license You acquired. The types of licenses are as follows 1) **Evaluation license:** You may scan an unlimited number of network resources from one system. Each is limited to ten minutes unless otherwise authorized by Licensor, and the evaluation license expires in fifteen days unless otherwise authorized by Licensor. 2) **Limited License:** You may scan Your small network (up to 254 unique network resources) from one system. 3) **Unlimited License:** You may scan Your large network (an unlimited number of network resources) from one system. 4) **Consultant License:** You may scan multiple networks belonging to Your customers as long as permission is obtained before such scan, but such scan shall last for no longer than seven days per customer and Product must be removed thereafter. 5) **Not for Resell (NFR) License:** You may scab multiple networks belonging to Your customers so long as permission is obtained before such scan, but such scan shall last for no longer than fifteen minutes per customer and Product must be removed thereafter. 6) **Single Engagement (SE) License:** You may scan multiple networks belonging to a single customer for no longer than thirty (30) days. This license is good for use on one of Your customers only and you must obtain permission before any scan is performed. Such scan may only be for delivering assessments services."

**TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF TRAINING COURSES FOR GENERAL PURPOSE COMMERCIAL INFORMATION RECHNOLOGY EQUIPMENT AND SOFTWARE (SPECIAL ITEM NUMBER 132-50)**

Delete paragraph (7) page 17 Invoice and Payment in its entirety.

Modify last paragraph of (8)(e) page 20 Certification by replacing the wording "For those courses conducted at the ordering activity's location, instructor charges travel charge (if applicable) including mileage and daily living expenses, must be indicated below. Rates paid as a result of travel must comply with the Federal

Travel Regulation or Joint Regulations, as applicable, in effect on the date(s) the travel is performed. Contractors cannot use GSA city pair contracts." with

"For those courses conducted at the ordering activity's location, instructor charges travel charge (if applicable) including mileage and daily living expenses, must be indicated below. Rates paid as a result of travel must comply in accordance with Section 126-1-02 of the Ohio Administrative Code."

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 location(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 it has been authorized by the manufacturers under this Contract, to pass on to the State the same commercial representations and warranties, as modified under this Contract, that are normally provided by such manufacturers in the course of doing business.

**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 the right and ability to grant the license granted in any Deliverable in which title does not pass to the State.

If the State asserts a valid claim during the applicable warranty period that the work of the Contractor or any Deliverable fails to comply with the manufacturers' warranties, as modified and enumerated under the Specific Changes provision of this Contract, Contractor will correct such failure through repair or

replacement of the Deliverable. If repair or replacement of the Deliverable is unsuccessful, Contractor will refund the amount of the compensation paid by the State for the Deliverable. The Contractor will also indemnify the State for any direct damages and claims by third parties based on a 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** NOT WITHSTANDING ANY LIMITATION PROVISIONS CONTAINED IN THE DOCUMENTS AND MATERIALS INCORPORATED BY REFERENCE INTO THIS AGREEMENT, THE PARTIES AGREE AS FOLLOWS:

1. THE LIMITATION IN PARAGRAPH 3 DOES NOT APPLY TO LIABILITY ARISING FROM THIRD PARTY CLAIMS OR THE SECTIONS IN THIS DOCUMENT WHERE THE SECTIONS EXPRESSLY PROVIDES A RIGHT TO PARTICULAR DAMAGES SUCH AS INDEMNITY.
2. NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS OF DAMAGE OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAVE BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGE.
3. THE CONTRACTOR FURTHER AGREES THAT THE CONTRACTOR SHALL REMAIN LIABLE FOR ALL DIRECT DAMAGES DUE TO THE CONTRACTOR'S FAULT OR NEGLIGENCE UP TO (5) FIVE TIMES THE COST OF THE PRODUCTS / SERVICES OR (\$10,000,000.) TEN MILLION DOLLARS PER PURCHASE EVENT WHICH EVER IS GREATER.

**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 parties will not assign their obligations under this Contract without the written consent of the other party, which will not be unreasonably withheld.

**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.

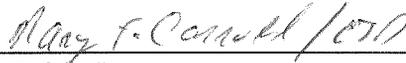
**LAW.** This Contract is governed by and will be construed under Ohio law, and venue for any dispute will be with the appropriate court in Franklin County, Ohio.

**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.

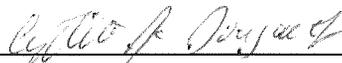
THE CONTRACTOR

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

By: 

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

Title: PRESIDENT

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

Date: 6/7/05

Date: 6-13-05

Revised: 2-16-05- 06-07-05jpd