

## STATE TERM CONTRACT

**THIS CONTRACT** (the "Contract") is between the State of Ohio ("State"), through its Department of Administrative Services, General Services Division, at 4200 Surface Road, Columbus, Ohio, 43228 and Results Engineering ("Contractor"), with offices at 130 Wetherby Lane, Westerville, Ohio, 43081.

### BACKGROUND

The State recognizes that it is sometimes advantageous to do business with some manufacturers under a State term contract rather than through a competitive bidding or proposal process. In such cases, the State may enter into a contract with the manufacturer provided that the manufacturer offers its products and ancillary services at the same prices that the manufacturer offers those products and services to the US Government under the GSA's Multiple Award Schedule program or SmartBuy program. Or if the manufacturer has no contract under the GSA's Multiple Award Schedule program or SmartBuy program, the State will accept the pricing the manufacturer offers to its distributors. Further, if the manufacturer has no GSA Multiple Award Schedule or SmartBuy contract and no distributors, the State may accept the prices that the manufacturer offers to its most favored customers for each product or service.

The State also recognizes that some manufacturers work primarily through dealers for various reasons, including offering customers better support through dealers that have a local presence in a service area. Because of this, the State may sometimes agree to work directly with a manufacturer's dealers.

However, if the Contractor is not the manufacturer of the products or services under this Contract, the Contractor must submit a letter from the manufacturer that assures the State that the Contractor is an authorized dealer in the manufacturer's products or services. The letter also must assure the State that the Contractor will have sufficient quantities of the offered products for the duration of the Contract to meet the State's needs under the Contract during the initial term and any extensions. Further, the letter must identify each of the manufacturer's product and service that the Contractor will supply under this Contract. The letter also must contain an assurance of the availability through the dealer of repair services and spare parts for products covered by this Contract for five years from the date of purchase. It also must contain an assurance that software maintenance will be available under the terms of this Contract either from the dealer or the manufacturer for six years from the date of acceptance. (This assurance is not necessary for PC and PC-based server software with a perpetual license fee of less than \$10,000.00 per copy.) The dealer must submit the letter, signed by an authorized representative of the manufacturer, with the executed copies of this Contract.

This Contract establishes terms and conditions under which State agencies (including any board, instrumentality, commission, or other political body) and Ohio political subdivisions, such as counties, municipalities, and townships, may acquire the Contractor's products or services at the pricing identified below. This Contract, however, only permits such; it is not a requirements contract and does not obligate any State agency or political subdivision to acquire the Contractor's products or services.

### TERMS AND CONDITIONS

#### 1 - TERM

- 1.1 TERM.** This Contract is effective on the date the State's duly authorized representative executes it, as evidenced by the date appearing with the representative's signature, below. Unless this Contract is terminated or expires without renewal, it will remain in effect until the end of the State's current fiscal biennium, which is June 30, 2013. Termination or expiration of this Contract will not limit the Contractor's continuing obligations with respect to Deliverables that the State paid for before termination or limit the State's rights in such.

## 2 - PRICING AND PAYMENT

- 2.1 CERTIFICATION OF ACCURACY.** By checking one of the following three items, the Contractor certifies that the Contractor's prices under this Contract are:

- The prices at which the Contractor currently offers each product and service to the US Government under the GSA's Multiple Award Schedule program;
- The prices at which the Contractor currently offers each product and service to the US Government under the GSA's SmartBuy program; or
- X The best prices at which the Contractor has offered each product and service to its most favored customers within one year before the date the Contractor executed this Contract or adds the product or service to this Contract, whichever is later.

If the Contractor is offering prices based on its most favored customer prices, the Contractor represents that it does not have a GSA Multiple Award Schedule or SmartBuy contract.

If the Contractor has submitted a manufacturer's letter to certify that the Contractor is an authorized dealer for the manufacturer, the Contractor represents that the information in the letter is accurate and that a duly authorized representative of the manufacturer signed the letter.

The Contractor further certifies that the above representations will apply and be true with respect to all future pricing information submitted to revise this Contract.

- 2.2 PRICE ADJUSTMENTS.** If the Contractor has relied on its GSA Multiple Award Schedule pricing or its GSA SmartBuy pricing, the State will be entitled to any price decreases that the Contractor offers to the GSA for any of its products and services during the term of this Contract. The Contractor must notify the State of any reduction in its GSA Multiple Award Schedule or SmartBuy pricing within 30 days of its occurrence and immediately reduce the price of the affected products or services to the State under this Contract.

If the Contractor has relied on its best customer pricing, the State will be entitled to a price decrease any time the Contractor or any of its dealers or distributors under this Contract sells a product or a service to any of its customers for less than the price agreed to between the State and the Contractor under this Contract. Any time the Contractor or any of its dealers or distributors under Section 3.1 of this Contract sells a product or provides a service to any customer for less than it is then available to the State under this Contract, the Contractor must notify the State of that event within 30 days of its occurrence and immediately reduce the price of the affected products or services to the State under this Contract.

The Contractor also must notify the State within 30 days of any general reduction in the price of any product or service covered by this Contract, even if the general reduction does not place the price of the product or service below the price available to the State under this Contract. The purpose of this notice of a general reduction in price is to allow the State to assess the value the State believes it is receiving under this Contract in light of the general reduction. If the State believes it is appropriate, the State may ask to renegotiate the Contract price for the products and services affected by the general reduction in price. If the Contractor and the State cannot agree on a renegotiated price, then on written notice to the Contractor, the State may immediately remove the affected products and services from this Contract.

- 2.3 PRICELIST.** The Contractor's pricelist for the products and services that the Contractor may provide to the State under this Contract is attached as Exhibit I. For convenience, those products and services are called "Deliverables" in this Contract. Any custom materials resulting from the Contractor's services also are called "Deliverables" in this Contract. The Contractor may not provide any other Deliverables under this Contract without a prior written amendment to this Contract that both the State and the Contractor have signed. Furthermore, the Contractor may not charge the State greater prices for these Deliverables than the prices on the Exhibit I. If Exhibit I contains or incorporates by reference any terms or conditions other than a description of the scope of license for software, a description of the Contractor's products and services, and the prices for those products and services, those terms or conditions are excluded from this Contract and are of no effect. Exhibit I is identified as the following pricelist: Insert Price List Name

The Contractor will not sell to the State any notebook computers with less than a 1.60 GHz internal clock speed. Additionally, the Contractor will not sell to the State any PCs or servers using CPUs with less than a 3.0 GHz internal clock speed. Additionally, the Contractor will not sell to the State any term software licenses. And except in the case of operating systems licensed in conjunction with desktop PCs, notebook computers, PDAs, and similar personal computing devices that the OEM does not distribute without an operating system, the Contractor will not sell or license any Microsoft software to the State. If any of the foregoing items are listed in the Contractor's pricelist, they are deleted for purposes of this Contract.

**2.4 Payment Due Date.** Payments will be due on the 30th 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 Deliverable.

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

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

- (a) Name and address of the Contractor as designated in this Contract;
- (b) The Contractor's federal tax identification number as designated in this Contract;
- (c) The Contractor's invoice remittance address as designated in this Contract;
- (d) The purchase order number authorizing the delivery of the Deliverables;
- (e) A description of the Deliverables, including, as applicable, the time period, serial number, unit price, quantity, and total price of the Deliverables; and

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. The State will send the notice, along with the improper invoice, to the Contractor's address designated for receipt of purchase orders within 15 days. The notice will contain a description of the defect or impropriety and any additional information the Contractor needs to correct the invoice. If such notification has been sent, the payment due date will be 30 days after the State receives a proper invoice and has accepted the Contractor's Deliverable.

**2.6 OHIO PAYMENT CARD.** Participating State agencies issuing orders under this Contract may use the Ohio Payment Card. Such purchases may not exceed \$2,500 unless the Office of Budget and Management ("OBM") has authorized the agency to exceed this limit. If OBM increases the dollar limit for payment cards for all State agencies, the State will post notice of that on its Procurement Website. Participating State agencies are required to use the Ohio Payment Card in accordance with OBM's current guidelines for the Ohio Payment Card and the agency's approved plan filed with the OBM. The Contractor may process a payment in the payment card network only upon delivery and acceptance of the applicable Deliverables. For partial deliveries or performance, the Contractor may process a payment for the amount delivered or completed only and not for the entire amount ordered by the ordering agency. Upon completion of the delivery of remaining Deliverables, the Contractor may process a payment request in the payment card network for the remainder of the order. The Contractor should receive payment through its merchant bank within the time agreed upon between the Contractor and its merchant bank. The Contractor should expect normal processing fees from its merchant bank for payment card transactions, which the Contractor may not pass on to the State.

- 2.7 NON-APPROPRIATION OF FUNDS.** The State's funds are contingent on the availability of lawful appropriations by the Ohio General Assembly. If the Ohio General Assembly fails to continue funding for any payments due hereunder, the order or orders under this Contract that are affected by the lack of funding will terminate as of the date that the funding expires, and the State will have no further obligation to make any payments with respect to the affected order or orders.
- 2.8 OBM CERTIFICATION.** This Contract is subject to Code § 126.07. Any orders under this Contract are void until the Director of the OBM certifies that there is a balance in the appropriation available to pay for the order.
- 2.9 CONTROLLING BOARD AUTHORIZATION.** The State's obligations under this Contract are subject to the Ohio Controlling Board continuing to authorize the State's use of its term contracts program. If the Ohio Controlling Board fails to authorize or withdraws its authorization for this program, this Contract will terminate immediately, and the Contractor may not take any more orders under it.
- 2.10 TRAVEL EXPENSES.** Any travel that the Contractor requires to perform 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. The State will pay for all additional travel expenses that it requests in accordance with OBM's travel policy in Rule 126-1-02 of the Ohio Administrative Code (the "Administrative Code").
- 2.11 TAXES.** The State is exempt from all sales, use, excise, and property taxes and will not pay any such taxes. To the extent sales, use, excise, or any similar taxes are imposed on the Contractor in connection with any Deliverable, the Contractor must pay those taxes together with any interest and penalties not successfully disputed with the taxing authority.
- 2.12 OFFSET.** The State may set off any amounts the Contractor owes to the State under this or other contracts against any payments due from the State to the Contractor under this or any other contracts with the State.

### **3 - CONTRACT ADMINISTRATION**

- 3.1 DEALERS AND DISTRIBUTORS.** The State authorizes the Contractor to name one or more dealers to work with the State on behalf of the Contractor. But if the Contractor decides to use any dealers, the Contractor must submit the name, principal business address, addresses for purchase orders and for payments, telephone number, and its federal tax identification number. The Contractor also must submit a completed W9 form for each dealer it wishes to name under this section. The Contractor's submission must be on its official letterhead, signed by an authorized representative, and addressed to the Deputy State Chief Information Officer, Office of Information Technology. In doing so, the Contractor warrants that:
- (a) The Contractor has provided the dealer with 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 will remain liable under this Contract for the services of any dealer and will remedy 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 to 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. In such cases, information regarding taxpayer identification and payment addressing may be omitted, as may the distributor's W9 form. All other requirements and obligations for designating a dealer apply to designating a distributor.

The State strongly encourages the participation of small and disadvantaged businesses in its contracting programs and has created a certification program to Encourage Diversity Growth and Equity (EDGE) in State contracting. State agencies are instructed to include in their procurements such participation, including through the use of State Term Schedule contracts that are either held by EDGE businesses or that offer the opportunity to work with EDGE dealers or distributors.

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

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

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

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

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

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

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

- a. Commercial Automobile Liability insurance with a combined single limit of \$500,000.
- b. Professional Liability insurance covering all staff with a minimum limit of \$1,000,000 per incident and \$3,000,000 aggregate. If the Contractor's policy is written on a "claims made" basis, the Contractor must provide the State with proof of continuous coverage at the time the policy is renewed. If for any reason the policy expires, or coverage is terminated, the Contractor must purchase and maintain "tail" coverage through the applicable statute of limitations.

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

- 3.4 CONTRACT COMPLIANCE.** Any State agency that uses this Contract will be responsible for the administration of this Contract with respect to the orders that it places and may monitor the Contractor's performance and compliance with this Contract. If an agency becomes aware of any noncompliance with the terms of this Contract or the specifications of an order, the agency may document the noncompliance and give the Contractor written notice of the noncompliance for immediate correction. If the Contractor fails to cure the noncompliance, the agency may notify the State through the Department of Administrative Services, Office of State Purchasing, by executing a Complaint to Vendor form to help resolve the issue. Should the State determine that the form identifies an uncured breach of this Contract, the State may terminate this Contract and seek such other remedies as may be available to it.
- 3.5 POLITICAL SUBDIVISIONS.** Ohio political subdivisions, such as Ohio cities, counties, and townships ("Political Subdivisions"), may rely on this Contract. Whenever a Political Subdivision relies on this Contract to issue a purchase order, the Political Subdivision will step into the shoes of the State under this Contract for purposes of its order, and, as to the Political Subdivision's order, this Contract will be between the Contractor and the Political Subdivision. The Contractor must look solely to the Political Subdivision for performance, including but not limited to payment, and must hold the State harmless with regard to such orders and the Political Subdivision's performance. But the State 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, if the Contractor reasonably believes that the Political Subdivision is or will be unable to perform its obligations in relation to that order.
- 3.6 RECALLS.** If a Deliverable is recalled, seized, or embargoed, or if the Contractor, a manufacturer, packer, processor, or regulatory body finds that a Deliverable has been misbranded, adulterated, or is unsafe, the Contractor must notify the State, through the Department of Administrative Services, Office of State Purchasing, as well as all agencies that have ordered the Deliverable, within ten business days after the Contractor learns of any of the above events. At the option of the State, the Contractor must either reimburse the State for the purchase price of each affected Deliverable or provide an equal or better replacement for each Deliverable at no additional cost to the State. The Contractor also must remove and replace all affected Deliverables within a reasonable time, as determined by the State. Further, at the option of the State, the Contractor may be required to reimburse the State for storage costs and handling fees, which the State may calculate from the time of delivery of each affected Deliverable to the Deliverable's actual removal. Furthermore, the Contractor must bear all costs associated with the removal and proper disposal of the affected Deliverables. The State will treat any failure to refund the purchase price or provide a suitable replacement within a reasonable time, not to exceed 30 days, as a default.
- 3.7 TERMINATION.** The State may terminate this Contract or any order under this Contract if the Contractor defaults in meeting its obligations and fails to timely cure its default. The State also may terminate this Contract or any order under it if a petition in bankruptcy is filed by or against the Contractor and not dismissed within 60 days. And the State may terminate this Contract or any order under it if the Contractor violates any law or regulation while performing under this Contract or if it appears to the State that the Contractor's performance is substantially endangered through no fault of the State. In all of the foregoing cases, the termination will be for cause.

On written notice, the Contractor will have 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 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, the applicable orders, or both immediately upon written notice to the Contractor. Some provisions of this Contract may provide for a shorter cure period than 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 also may terminate this Contract in the case of breaches that are cured within 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 two times. After the second such notice, the State may terminate this Contract without a cure period if the Contractor again fails to meet any obligation. The three defaults do not have to relate to the same obligation or type of failure.

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

Any notice of termination 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 also must 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 the affected orders by using another vendor or vendors on such commercially reasonable terms and conditions as it and the covering vendors may agree. The Contractor will be liable to the State for all costs related to covering for the affected orders to the extent that such costs exceed the costs that the State would have incurred under this Contract for those orders. The Contractor also will be liable for any other direct damages resulting from its breach of this Contract or other event 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 the State determines that it owes the Contractor.

**3.8 EXCUSABLE DELAY.** Neither party will be liable for any delay in its performance under this Contract that arises from causes beyond its reasonable control and without its negligence or fault. The delayed party must notify the other promptly of any material delay in performance and must specify in writing the proposed revised performance date as soon as practicable after notice of delay. For any such excusable delay, the date of performance or delivery will be extended for a period equal to the time lost by reason of the excusable delay. The delayed party also must describe the cause of the delay and what steps it then is taking or will take to remove the cause. The delayed party may not rely on a claim of excusable delay to avoid liability for a delay if the party has not taken commercially reasonable steps to mitigate or avoid the delay.

**3.9 INDEPENDENT STATUS.** The parties will be acting as independent entities. The partners, employees, officers, directors, and agents of one party may only act in the capacity of representatives of that party and not as employees, officers, directors, or agents of the other party and will not be deemed as such for any purpose. Each party assumes full responsibility for the actions of its partners, employees, officers, directors, and agents while performing under this Contract and will be solely responsible for paying those people. Additionally, each party will be solely responsible for withholding and paying social security and income taxes, making workers' compensation contributions, paying disability benefits, and providing fringe benefits, if any, for its partners, employees, officers, directors, and agents, and neither party may legally bind the other party in any manner.

**3.10 LOCATION OF SERVICES AND DATA.** As part of this Contract, the Contractor must disclose the following:

- (a) All locations where any services will be performed;
- (b) All locations where any State data applicable to the Contract will be maintained or made available; and
- (c) The principal place of business for the Contractor and all its subcontractors.

The Contractor may not change any location where any services are performed to a location outside the country of the original location or change any location where the data is maintained or made available to any other location outside the country of the original location without prior written approval of the State, which the State will not be obligated to provide.

#### 4 - DELIVERY AND ACCEPTANCE

- 4.1 **ACCEPTANCE.** The acceptance procedure for Deliverables will be an informal review by the agency acquiring the Deliverables to ensure that each Deliverable meets the warranties in this Contract. The State will have up to 30 days after installation to do this. The State will not issue a formal letter of acceptance, and passage of 30 days will imply acceptance, though the State will issue a notice of noncompliance if a Deliverables does not meet the warranties in this Contract.

If the State issues a noncompliance letter, the Contractor will have 30 days to correct the problems listed in the letter. If the Contractor fails to do so, the Contractor will be in default without a cure period. If the State has issued a noncompliance letter, the Deliverable will not be accepted until the State issues a letter of acceptance indicating that each problem noted in the noncompliance letter has been cured. If the problems have been fixed during the 30-day period, the State will issue the acceptance letter within 15 days after all defects have been fixed.

- 4.2 **TITLE.** Title to any Deliverable will pass to the State only on acceptance of the Deliverable, and all risk of loss will remain with the Contractor until title to the Deliverable passes to the State.

- 4.3 **DELIVERIES.** The Contractor must make all deliveries F.O.B. destination.

#### 5 - INTELLECTUAL PROPERTY

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

Any Commercial Material that the Contractor intends to deliver as a Deliverable must have the scope of the license granted in such material disclosed in an Exhibit to this Contract, if that scope of license is different than the scope of license contained in this section for Commercial Materials.

Except for Commercial Material that is software ("Commercial Software"), if the Commercial Material is copyrighted and published material, then the State will have the rights permitted under the federal copyright laws for each copy of the Commercial Material delivered to it by the Contractor.

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

For Commercial Software, the State will have the following, perpetual rights, subject to the next paragraph. The State may:

- (1) Use and copy the Commercial Software for use in or with the computer or computers for which it was acquired, including use at any State installation to which such computer or computers may be transferred;
- (2) Use or copy the Commercial Software for use with a backup computer for disaster recovery and disaster recovery testing purposes or if any computer for which it was acquired is inoperative;
- (3) Reproduce the Commercial Software for archival, image management, and backup purposes;
- (4) Modify, adapt, and combine the Commercial Software with other computer software, provided that the modified, combined, and adapted portions of the derivative software incorporating any of the Commercial Software will be subject to same restrictions on use;
- (5) Disclose to and reproduce the Commercial Software for use on behalf of the State by support service contractors or their subcontractors, subject to the same restrictions on use; and
- (6) Use or copy the Commercial Software for use with a replacement computer.

In the case of any other scope of license (e.g., MIPs, tier, concurrent users, enterprise, site, or otherwise), the foregoing will apply except as expressly modified by the applicable license description, which must be incorporated as part of Exhibit I. If the Contractor provides greater license rights in an

item included in Exhibit I to its general customer base for the Software's list price, those additional license rights also will be provided to the State without additional cost or obligation. No license description may reduce the rights in items 1 through 6 above; it may only define the extent of use, if the use is other than a CPU license.

The State will treat any Commercial Software as Confidential Information, in accordance with the requirements of the Confidential Information section of this Contract, if the Commercial Software is clearly and conspicuously labeled as confidential or secret.

**5.2 CUSTOM DELIVERABLES.** All custom work done by the Contractor and covered by this Contract will belong to the State, with all rights, title, and interest in all intellectual property that comes into existence through the Contractor's work under this Contract being assigned to the State. Additionally, the Contractor waives any shop rights, author rights, and similar retained interests in any such custom developed materials. The Contractor must provide the State with all assistance reasonably needed to vest such rights of ownership in the State. However, the Contractor will retain ownership of all tools, methods, techniques, standards, and other development procedures, as well as generic and preexisting shells, subroutines, and similar material incorporated in any custom Deliverable ("Pre-existing Materials").

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

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

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

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

If one party discloses Confidential Information ("Disclosing Party") to the other party to this Contract ("Receiving Party"), the Receiving Party's obligation to maintain the confidentiality of the Confidential Information will not apply where such:

- (1) Was already in the possession of the Receiving Party without an obligation of confidence;
- (2) Is independently developed by the Receiving Party, provided documentary evidence exists to support the independent development;
- (3) Except as provided in the next paragraph, is or becomes publicly available without a breach of this contract;
- (4) Is rightfully received by the Receiving Party from a third party without an 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 the disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production.

Information that may be available publicly through other sources about people that is personal in nature, such as medical records, addresses, phone numbers, social security numbers, and similar things are nevertheless sensitive in nature and may not be disclosed or used in any manner except as expressly authorized in this Contract. Therefore, item (3) in the preceding paragraph does not apply, and the Contractor must treat such information as Confidential Information whether it is available elsewhere or not.

Except for Confidential Information that the Contractor delivers to the State and that is part of a Deliverable or necessary for the proper use or maintenance of a Deliverable, the Receiving Party must return all originals of any Confidential Information and destroy any copies it has made on termination or expiration of this Contract.

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

**5.4 USE OF NAME.** The Contractor may not publicize that it is doing business with the State or use this Contract or the Contractor's relationship with the State as a marketing or sales tool, unless the State agrees otherwise in writing. The State has no obligation to agree to any such advertising, publicity, sales, or marketing activities.

## 6 – TRANSACTION REPORTING

**6.1 Contractor's SALES REPORT.** The Contractor must report the quarterly dollar value (in US currency rounded to the nearest whole dollar) of the sales under this Contract each calendar quarter (i.e., January-March, April-June, July-September and October-December). The dollar value of the sales reported must equal the price paid by all State agencies and Political Subdivisions for Deliverables under this Contract during the reporting period.

The Contractor must report the quarterly dollar value of sales to the State via the Internet using the Web form at the Department of Administrative Services, OIT vendor portal, <https://cm.ohio.gov>. If no sales occur, the Contractor must show zero sales on the report. The report must be submitted 30 days after the completion of the reporting period.

The Contractor also must submit a closeout report within 120 days after the expiration of this Contract. The Contract expires on the physical completion of the last, outstanding task or delivery order of the Contract. The closeout 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 sales in the closeout report.

If the Contractor fails to submit any sales report in a timely manner or falsifies any sales report, the State may terminate this Contract for cause.

**6.2 Contractor's REVENUE SHARE.** The Contractor must pay the State a share of the sales transacted under this Contract. The Contractor must remit the revenue share in US dollars within 30 days after

the end of the quarterly reporting period. The revenue share that the Contractor must pay equals .0075 of the total quarterly sales reported. The revenue share is included in the prices reflected on

Exhibit I and reflected in the total amount charged to ordering activities, and the Contractor may not add a surcharge to orders under this Contract to cover the cost of the revenue share.

The Contractor must remit any amount due as the result of a quarterly or closeout report at the time the quarterly or closeout report is submitted to the Department of Administrative Services, Office of State Purchasing. The Contractor also must pay the revenue share by check. To ensure the payment is credited properly, the Contractor must identify the check as a "Revenue Share" and include the applicable State Term Contract Number, total report amount, and reporting period covered.

The Contractor must make each check payable to "Treasurer, State of Ohio", and forward it to the following address:

Department of Administrative Services  
GSD Business Office  
4200 Surface Road  
Columbus, OH 43228

If the full amount of the revenue share is not paid within 30 days after the end of the applicable reporting period, the non-payment will constitute a contract debt to the State. The State may setoff any unpaid revenue share from any amount owed to the Contractor under this Contract and employ all other remedies available to it under Ohio law for the non-payment of the revenue share. Additionally, if the Contractor fails to pay the revenue share in a timely manner, the failure will be a breach of this Contract, and the State may terminate this Contract for cause and seek damages for the breach.

## 7 - WARRANTIES AND LIABILITIES

**7.1 WARRANTIES.** The Contractor warrants that the recommendations, guidance, and performance of the Contractor and all Deliverables under this Contract will:

- (a) Be in accordance with the sound professional standards and the requirements of this Contract and without any material defects;
- (b) Not infringe on the intellectual property rights of any third party;
- (c) Be the work solely of the Contractor, unless otherwise provided in this Contract; and
- (d) Be merchantable and fit for the particular purpose for which the Deliverables were acquired.

Additionally, with respect to the Contractor's activities under this Contract, the Contractor warrants that:

- (a) The Contractor has the right to enter into this Contract;
- (b) The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Contract;
- (c) 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;
- (d) The Contractor has good and marketable title to any products delivered under this Contract and in which title passes to the State; and
- (e) The Contractor has the right and ability to grant the license provided in any Deliverable in which title does not pass to the State.

If any work of the Contractor or any Deliverable fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor must correct such failure with all due speed, not to exceed 30 days, or refund the amount of the compensation paid for the Deliverable. The Contractor also must indemnify the State for any direct damages and any claims by third parties based on any breach of these warranties.

**7.2 SOFTWARE WARRANTY.** If Exhibit I includes work to develop custom software as a Deliverable, then on delivery and for one year after the date of acceptance of any Deliverable that includes custom software, the Contractor warrants that:

- (a) The software will operate on the computer(s) for which the software is intended in the manner described in the relevant software documentation;
- (b) The software will be free of material defects;

- (c) The Contractor will deliver and maintain relevant and complete software documentation, commentary, and source code;
- (d) The source code language used to code the software is readily available in the commercial market, widely used and accepted for the type of programming involved, and support programming in the language is reasonably available in the open market; and
- (e) The software and all maintenance will be provided in a professional, timely, and efficient manner.

For Commercial Software developed by the Contractor or licensed from a third party, the Contractor represents and warrants that it either has the right or has obtained a binding commitment from the third party licensor to make the following warranties and commit to the following maintenance obligations. During the warranty period described in the next paragraph, the Contractor must:

- (a) Maintain or cause the third-party licensor to maintain the Commercial Software so that it operates in the manner described in its documentation;
- (b) Supply technical bulletins and updated user guides;
- (c) Supply the State with all updates, improvements, enhancements, and modifications to the Commercial Software and documentation and, if available, the commentary and the source code;
- (d) Correct or replace the software and remedy any material programming error that is attributable to the Contractor or the third-party licensor; and
- (e) Maintain or obtain a commitment from the third-party licensor to maintain the Commercial Software so that it will properly operate in conjunction with changes in the operating environment for which it was designed.

For Commercial Software designed for mainframe platforms and for Commercial Software designed for PC or PC-based servers and costing more than \$10,000.00 per license or per copy, the warranty period will be the longer of one year after acceptance or the licensor's standard warranty period. For Commercial Software designed for PC or PC-based servers and costing less than \$10,000.00 per license or per copy, the warranty period will be the longer of three months after acceptance or the licensor's standard warranty period. For PC and PC-based servers, the warranty will not include updates, improvements, enhancements, or modifications to the Commercial Software and documentation, if such are not provided as part of the licensor's standard warranty or license fee.

Software documentation means well written, readily understood, clear, and concise instructions for the software's users as well as a system administrator. The software documentation must provide the users of the software with meaningful instructions on how to take full advantage of all of the capabilities designed for end users. It also means installation and system administration documentation for a system administrator to allow proper control, configuration, and management of the software. Source code means the uncompiled operating instructions. The Contractor must provide the source code in the language in which it was written and must include such commentary or annotations as would allow a competent programmer proficient in the source language to readily interpret the source code and understand the purpose of all routines and subroutines contained within the source code.

**7.3 EQUIPMENT WARRANTY.** If any computer hardware or other type of electrical equipment ("Equipment") will be a part of any Deliverable, the following warranties apply. The Contractor warrants that the Equipment fully complies with all government environmental and safety standards applicable to the Equipment. The Contractor also warrants for the warranty period described in the next paragraph that the Equipment will perform substantially in accordance with its user manuals, technical materials, and related writings published by the manufacturer with respect to such Equipment, and that such Equipment will achieve any function described in such writings. The foregoing warranty will not apply to Equipment that the State modifies or damages after title passes to it. The warranty period for all Equipment will be the longer of one year after the State accepts the Equipment or the Contractor's standard warranty period.

If any Equipment does not meet the above warranties during the applicable warranty period, the Contractor must fix the nonconforming Equipment so it performs substantially in accordance with its user manuals, technical materials, and related publications, replace the Equipment, or grant the State

a refund equal to the amount it paid for the Equipment. The Contractor must either fix or replace the Equipment or refund the purchase price to the State with all due speed, not to exceed seven days in the case of a fix or a replacement or 30 days in the case of a refund. The Contractor will be responsible for all shipping costs associate with fixing, replacing, or returning any defective equipment.

**7.4 INDEMNITY.** The Contractor must indemnify the State against all liability or expense resulting from bodily injury to any person (including injury resulting in death) or damage to property arising out of its performance under this Contract, provided such bodily injury or property damage is due to the negligence or other tortious conduct of the Contractor, its employees, agents, or subcontractors. The Contractor also must indemnify the State against any claim of infringement of a copyright, patent, trade secret, or other intellectual property rights based on the State's proper use of any 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 will give the Contractor notice of any such claim as soon as reasonably practicable. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor will do one of the following four things:

- (a) Modify the Deliverable so that it is no longer infringing;
- (b) Replace the Deliverable with an equivalent or better item;
- (c) Acquire the right for the State to use the Deliverable as it was intended for the State to use under this Contract; or
- (d) 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.

**7.5 LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS CONTRACT OR ANYTHING INCORPORATED BY REFERENCE INTO THIS CONTRACT, THE PARTIES AGREE AS FOLLOWS:

- (a) NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAVE BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
- (b) THE CONTRACTOR WILL BE LIABLE FOR ALL DIRECT DAMAGES DUE TO THE FAULT OR NEGLIGENCE OF THE CONTRACTOR OR ITS BREACH OF ANY PROVISION OF THIS CONTRACT.

## **8 - MAINTENANCE**

**8.1 SOFTWARE MAINTENANCE.** If this Contract involves any custom software as a Deliverable, then during the warranty period, the Contractor must correct any material programming errors that are attributable to the Contractor within a reasonable time, provided the State notifies the Contractor, either orally or in writing, of a problem with the software and provides sufficient information to identify the problem. The Contractor's response to a programming error will depend upon the severity of the problem. In the case of programming errors that slow the processing of data by a small degree, render minor and non-critical functions of the System inoperable or unstable, or require users or administrations to employ workarounds to fully use the software, the Contractor must respond to requests for resolution within four business hours and begin working on a proper solution within one business day, dedicating the resources of one qualified programmer full-time to fixing the problem. In the case of any defects with more significant consequences, including those that render key functions of the software inoperable or significantly slow data processing, the Contractor must respond within two business hours of notification and, if requested, provide on-site assistance and dedicate all available resources to resolving the problem.

For Commercial Software other than PC or PC-based server software costing less than \$10,000.00 per copy or license, the Contractor must provide maintenance during the warranty period at no cost to

the State. At a minimum, that maintenance must be the standard maintenance program that the licensor, whether the Contractor or a third party, normally provides to its client base. That maintenance program must include all new releases, updates, patches, and fixes to the Commercial Software. It also must include a commitment to keep the software current with the operating

environment in which it is designed to function and a commitment to promptly correct all material defects in the software.

Additionally, the Contractor will make (or obtain a commitment from the third-party licensor to make) maintenance available for the software for at least five years after the warranty period. If the licensor, whether it is the Contractor or a third-party, is unable to provide maintenance during that period, then the licensor must do one of the following things: (a) give the State a *pro rata* refund of the license fee based on a five-year useful life; or (b) release the source code for the software to the State for use by the State solely for the purpose of maintaining any copies of the software for which the State has a proper license. The State will treat the source code as Confidential Information under the Confidentiality Section of this Contract. In the case of third-party Commercial Software, the Contractor warrants that it has legally bound the third-party licensor to the obligations of this Contract or that the Contractor has the right to make these commitments directly to the State.

For Commercial Software designed for PC or PC-based server platforms and costing less than \$10,000.00 per copy or license, the Contractor must provide the same maintenance and user assistance during the warranty period at no additional cost to the State as the Contractor or the third-party licensor makes generally available at no additional charge to its other customers.

**8.2 SOFTWARE UPGRADES.** After an initial acquisition of a license in Commercial Software, the State may want to acquire a broader license than the original. Or the State may later want to migrate to another platform for the Commercial Software. When the Contractor or third-party licensor make the broader license generally available to its customer base or makes the version of the Commercial Software that runs on the new platform to which the State wants to migrate, then the State will have a right to upgrade any of its licenses to that broader license or to acquire the version of the Software that is appropriate for the new platform that the State intends to use. In these cases, the Contractor will provide the broader license or other version of the Commercial Software in exchange for a license fee that is based on the lesser of the following:

- (a) The Contractor's (or third party licensor's) standard upgrade or migration fee;
- (b) The upgrade or migration fee in Exhibit I; or
- (c) The difference between the license fee originally paid and the then-current license fee for the license or version of the Commercial Software that the State seeks to acquire.

The foregoing will not apply to Commercial Software for PCs and PC-based server software with a license fee of less than \$10,000.00, unless the Contractor or third-party licensor makes upgrade packages available for the Commercial Software to other customers. If PC or PC-based server software upgrades are available, the State will be entitled to the most favorable license fee on which such are made available to other most favored customers or dealers, as appropriate.

**8.3 EQUIPMENT MAINTENANCE.** If this Contract involves computer or telecommunications hardware or other mechanical or electrical equipment ("Equipment") as a Deliverable, then, during the warranty period and during any period covered by annual maintenance, the Contractor must provide maintenance to keep the Equipment in or restore the Equipment to good working order. This maintenance must include preventative and remedial maintenance, installation of safety changes, and installation of engineering changes based upon the specific needs of the individual item of Equipment. This maintenance also must include the repair, replacement, or exchange deemed necessary to keep the Equipment in good working order. For purposes of this Contract, Equipment restored to good working order means Equipment that performs in accordance with the manufacturer's published specifications. The Contractor must use its best efforts to perform all fault isolation and problem determination attributed to the Equipment. The following services are outside the scope of this Contract:

- (a) Maintenance to bring the Equipment into compliance with any law, rule, or regulation, if such law, rule, or regulation was not in effect on the acceptance date;
- (b) Repair and replacement work or increase in maintenance time as a result of damage or loss resulting from accident, casualty, neglect, misuse, or abuse, if such is the State's fault (and beyond normal wear and tear), damage resulting from improper packing or failure to follow

prescribed shipping instruction (If such is done by the State), failure of electrical power, air conditioning or humidity control, use of supplies not approved by the original manufacturer of

- the Equipment as describe in the Equipment's documentation, or causes other than ordinary use of Equipment;
- (c) Furnishing platens, supplies, or accessories, making specification changes, or adding or removing approved accessories, attachments, or other devices except as permitted in the Equipment's user documentation;
  - (d) Maintenance or increased maintenance time resulting from any improper use, maintenance, or connection to other equipment (not done by the Contractor) that results in damage to the Equipment;
  - (e) Repairs needed to restore the Equipment to good operating condition if the Equipment has been damaged by anyone other than the Contractor's authorized service personnel repairing, modifying, or performing maintenance on the Equipment.

**8.4 EQUIPMENT MAINTENANCE STANDARDS.** Except in the case of excusable delay, remedial Equipment maintenance by the Contractor will be completed within eight business hours after notification by the State that maintenance is required. In the case of preventative maintenance, the Contractor will perform such in accordance with the manufacturer's published schedule and specifications. If maintenance is not completed within eight hours after notification by the State, the Contractor will be in default. Failure of the Contractor to meet or maintain these requirements will provide the State with the same rights and remedies as specified elsewhere in this Contract for default, except that the Contractor will only have eight hours to remedy a default. The Contractor will provide adequate staff to provide the maintenance required by this Contract.

**8.5 EQUIPMENT MAINTENANCE CONTINUITY.** If the Contractor is unable to provide Equipment maintenance to meet the State's ongoing performance requirements and if, in the State's sole opinion, the Contractor is unlikely to resume providing warranty services that meets the State's ongoing performance requirement, the Contractor will be in default, and the State will be entitled to the remedies in the default section of this Contract. The State will also be entitled to the following items from the Contractor:

- (a) All information necessary for the State to perform the maintenance, including but not limited to logic diagrams, maintenance manuals, and system and unit schematics, with all changes noted;
- (b) A listing of suppliers capable of supplying necessary spare parts;
- (c) Adequate information to permit the State to have spare parts manufactured elsewhere; and
- (d) A listing of spare parts and their recommended replacement schedule to enable the State to create a centralized inventory of spare parts.

The State will treat as Confidential Information in accordance with the Confidentiality Section of this Contract any information in items (a) through (d) above that the Contractor rightfully identifies in writing as confidential. And when disclosure to a third-party is necessary for the State to continue the maintenance, the State will require any third-party to whom disclosure is made to agree to hold the Confidential Information in confidence and to make no further disclosure of it. Further, the State agrees that any such Confidential Information will be used solely to perform maintenance for the State and will be returned to the Contractor or destroyed when such use is no longer needed.

**8.6 PRINCIPAL PERIOD OF MAINTENANCE (GENERAL).** Software and Equipment maintenance must be available nine working hours per weekday, between 8:00 a.m. and 5:00 p.m. Eastern Standard Time. Travel time and expenses related to remedial and preventative maintenance will not be billable and must be included in the price of the maintenance.

**8.7 MAINTENANCE ACCESS (GENERAL).** For all Software and Equipment maintenance under this Contract, the State will provide the Contractor with reasonable access to the Deliverable to perform maintenance. All maintenance that requires a Deliverable to be inoperable must be performed outside the State's customary working hours, except when the Deliverable is already inoperable. Preventative or scheduled maintenance must be performed at mutually agreeable times, within the parameters of the manufacturer's published schedule.

## 9 - ASSIGNMENT AND SUBCONTRACTING

- 9.1 **ASSIGNMENT.** The Contractor may not assign this Contract without the written consent of the State, which the State will not be obligated to provide.
- 9.2 **SUBCONTRACTING.** The State recognizes that it may be necessary for the Contractor to use subcontractors to perform portions of the work under this Contract. In those circumstances, before the Contractor engages any such subcontractor, the Contractor must submit a list identifying its subcontractors or joint venture partners performing portions of the work under the Contract. If any changes to that list occur during the term of the Contract, the Contractor must immediately provide the State an updated list of subcontractors or joint venture business partners. In addition, all subcontractors and joint venture business partners must agree in writing to be bound by all of the terms and conditions of this Contract and any specifications of any order under this Contract for which they perform work. The State may reject any subcontractor submitted by the Contractor.

## 10 – CONSTRUCTION

- 10.1 **HEADINGS.** The headings used in this Contract are for convenience only and may not be used in interpreting this Contract.
- 10.2 **ENTIRE DOCUMENT.** This Contract, which includes the Contractor's pricelist attached as Exhibit I and all documents referred to in this Contract, constitutes the entire agreement between the parties with respect to the subject matter and supersedes any previous agreements, whether oral or written.
- 10.3 **BINDING EFFECT.** This Contract will be binding on and benefit the respective successors and assigns of the State and the Contractor.
- 10.4 **AMENDMENTS – WAIVER.** No amendment or modification of this Contract will be effective unless it is in writing and signed by both parties. The failure of either party at any time to demand strict performance by the other party of any of the terms or conditions of this Contract may not be construed as a waiver of any those terms or conditions, and either party may at any time demand strict and complete performance by the other party.
- 10.5 **SEVERABILITY.** If a court of competent jurisdiction finds any provision of this Contract to be unenforceable, the remaining provisions of this Contract will remain in full force and affect.
- 10.6 **CONSTRUCTION.** This Contract must be construed in accordance with the plain meaning of its language and neither for nor against the drafting party.
- 10.7 **NOTICES.** For any notice under this Contract to be effective, the noticing party must make it in writing and sent it to the address of the other party first appearing above, unless that party has notified the other party, in writing and in accordance with the provisions of this section, of a new mailing address for the receipt of notices. This notice requirement will not apply to any notices that this Contract expressly authorizes to be made orally.
- 10.8 **CONTINUING OBLIGATIONS.** Any terms, conditions, representations, or warranties contained in this Contract that must survive termination or expiration of this Contract to be fully effective will survive the termination or expiration of the Contract. Additionally, termination or expiration of this Contract will not affect the State's right to continue to use any Deliverable for which it has paid, including licensed material. And no termination or expiration of the Contract will affect the State's right to receive maintenance, warranty work, or other services for which the State has paid.
- 10.9 **PRIORITY.** If there is any inconsistency or conflict between this document and any provision of anything incorporated by reference, this document will prevail.
- 10.10 **DAYS.** When this Contract refers to days, it means calendar days, unless it expressly provides otherwise.

## 11 - LAW AND COURTS

- 11.1 **EEO.** The Contractor must comply with all Ohio laws regarding equal employment opportunity, including among others Code § 125.111, as well as all related Executive Orders of the Governor of Ohio.
- 11.2 **DRUG FREE WORKPLACE.** The Contractor must comply with all Ohio laws regarding maintaining a drug-free workplace and make a good faith effort to ensure that all its employees do not possess and are not under influence of illegal drugs or alcohol or abuse prescription drugs while working on State property.
- 11.3 **OHIO ETHICS LAW AND LIMITS ON POLITICAL CONTRIBUTIONS.** The Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of the Ohio ethics laws. The Contractor hereby certifies that all applicable parties listed in Ohio Revised Code Section 3517.13 are in full compliance with Ohio Revised Code Section 3517.13.
- 11.4 **SECURITY & SAFETY RULES.** When using or possessing State data or accessing State networks and systems, the Contractor must comply with all applicable State rules, policies, and regulations regarding data security and integrity. And when on any property owned or controlled by the State, the Contractor must comply with all security and safety rules, regulations, and policies applicable to people on those premises.
- 11.5 **LAW AND VENUE.** This Contract is governed by and will be construed under Ohio law, and venue for all disputes will lie exclusively with the appropriate court in Franklin County, Ohio.
- 11.6 **UNRESOLVED FINDINGS.** The Contractor represents that it is not subject to an unresolved finding for recovery under Code § 9.24. If this warranty proves false when the parties sign this Contract, the Contract will be void. Additionally, if this representation proves false on the date of any renewal or extension of the Contract, the renewal or extension will be void.
- 11.7 **TERROR DECLARATION.** In accordance with R.C. 2909.33(C), Contractor certifies that it meets one of the following conditions:
- (a) Contractor has **not** received, nor will receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars (\$100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year;  
or
  - (b) (1) Contractor has received, or will receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars (\$100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year.  
and,  
  
(2) Contractor has either precertified with the Office of Budget and Management, or has completed the attached Declaration of Material Assistance form certifying that Contractor has not provided material assistance to any organization on the Terrorist Exclusion List, as that term is defined in R.C. 2909.21.
- 11.7 **ANTITRUST.** The State and the Contractor recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by the State. The Contractor therefore assigns to the State all state and federal antitrust claims and causes of action that the Contractor has or acquires relating to the goods and services acquired under this Contract.
- 11.8 **Executive Order 2011-12K Affirmation and Disclosure Instructions.**

Contractor hereby represents and warrants that Contractor, and any subcontractor will not, as a part of the contract with the State, provide any of its services outside the United States, and that Contractor has truthfully disclosed the following:

1. The location(s) where all services will be performed by Contractor and any subcontractor;

2. If applicable, the location(s) where any state data associated with any of the provided services will be accessed, tested, maintained, backed-up or stored; and
3. The principal location(s) of business for the Contractor and any subcontractors providing the services to the State.

As part of the above disclosure and affirmation requirement, the Contractor must complete the Affirmation and Disclosure Form (Exhibit III). In addition, Contractor agrees to the following:

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

To SHOW THEIR AGREEMENT, the parties have executed this Contract on the date(s) identified below, and this Contract will be effective as of the date it is signed on behalf of the State.

CONTRACTOR

BY: 

DATE: 11/3/11

STATE OF OHIO,  
DEPARTMENT OF ADMINISTRATIVE SERVICES  
OFFICE OF STATE PURCHASING

BY:   
ROBER BLAIR DIRECTOR,  
DEPARTMENT OF ADMINISTRATIVE SERVICES

DATE: 12-8-11

**Exhibit I**

[Insert Price list]

Results Engineering State Term Schedule - Contract Number 534124.1231/2011

Product Name	Manufacturer	Manufacturer Part No	Vendor Part No	Description	Unit of Measure	State Price	List Price	Options/License Type	Other Info	URL Product Picture	URL Product Specs/Details	UNSPS C Code
AP Workflow	APW100	APW100	APW100	A/P WORKFLOW - AP SYSTEM THAT STREAMLINES THE FLOW OF WORK THROUGH A PAYABLES PROCESS.	User	\$4,995.00	\$7,684.62					
AP Workflow	APW999	APW999	APW999	ANNUAL SUPPORT AND UPGRADES FOR A/P WORKFLOW	User	\$820.00	\$1,261.54					
AP Workflow	APINSL	APINSL	APINSL	WORKFLOW INSTALL SERVICES - SERVICES TO INSTALL, TEST A/P WORKFLOW SYSTEM	Hour	\$165.00	\$250.00					
AP Workflow	APWS3	APWS3	APWS3	WORKFLOW SERVICES - SERVICES TO CUSTOMIZE AND DESIGN A/P WORKFLOW SYSTEM	Hour	\$165.00	\$250.00					
AP Workflow	APWS4	APWS4	APWS4	ADVANCED WORKFLOW SERVICES - PROJECT MANAGEMENT TO SUPERVISE THE CUSTOMIZATION, DESIGN AND INSTALLATION OF AP WORKFLOW SYSTEM	Hour	\$250.00	\$384.62					
AP Workflow	APTRAIN3	APTRAIN3	APTRAIN3	ON SITE END USER WORKFLOW TRAINING (3 DAYS, \$100/STUDENT FOR TRAINING MATERIALS)		\$6,000.00	\$9,230.77					

Forms Processor	FP100	FP100	FORMS PROCESSOR - SYSTEM EXTRACTS, VERIFIES, AND MANAGES THE FLOW OF INFORMATION COLLECTED FROM FORMS.	User	\$4,995.00	\$7,684.62				
Forms Processor	FP999	FP999	FORMS PROCESSOR MAINTENANCE - ANNUAL SUPPORT AND UPGRADES FOR FORMS PROCESSOR	User	\$820.00	\$1,261.54				
Forms Processor	FPS3	FPS3	DATA CONVERSION SERVICES - SCAN, COMMIT, FILE EXISTING DOCUMENTS INTO FORMS PROCESSOR SYSTEM	Hour	\$145.00	\$223.08				
Forms Processor	FPINSL	FPINSL	FORMS PROCESSOR INSTALL SERVICES - SERVICES TO INSTALL, TEST FORMS PROCESSOR SYSTEM	Hour	\$165.00	\$250.00				
Forms Processor	FPWS3	FPWS3	FORMS PROCESSOR SERVICES - SERVICES TO CUSTOMIZE AND DESIGN FORMS PROCESSOR SYSTEM	Hour	\$165.00	\$250.00				
Forms Processor	FPWS4	FPWS4	ADVANCED FORMS PROCESSOR SERVICES - PROJECT MANAGEMENT TO SUPERVISE THE CUSTOMIZATION, DESIGN AND INSTALLATION OF FORMS PROCESSOR SYSTEM	Hour	\$250.00	\$384.62				
						\$0.00				

EDM System	EDM300	EDM300	EDM300	EDM SYSTEM - ENTERPRISE DOCUMENT MANAGEMENT SYSTEM, CAPTURES, STORES, AND ORGANIZES DOCUMENTS AND INFORMATION, AND PROVIDES RAPID RETRIEVAL OF THAT INFORMATION.	User	\$3,995.00	\$6,146.15				
EDM System	EDM999	EDM999	EDM999	ANNUAL SUPPORT AND UPGRADES FOR EDM SYSTEM	User	\$650.00	\$1,000.00				
EDM System	EDMS3	EDMS3	EDMS3	EDM SERVICES - SERVICES TO CUSTOMIZE AND DESIGN ENTERPRISE DOCUMENT MANAGEMENT SYSTEM	Hour	\$165.00	\$250.00				
EDM System	EDMINSL	EDMINSL	EDMINSL	EDM INSTALL SERVICES - SERVICES TO INSTALL, TEST A/P WORKFLOW SYSTEM	Hour	\$165.00	\$250.00				
EDM System	EDMS4	EDMS4	EDMS4	ADVANCED EDM SERVICES - PROJECT MANAGEMENT TO SUPERVISE THE CUSTOMIZATION, DESIGN AND INSTALLATION OF EDM SYSTEM	Hour	\$250.00	\$384.62				
EDM System	EDMSCAN3	EDMSCAN3	EDMSCAN3	Documents (3 pages or less) from 3" X 4" to legal sized paper into TIFF images 200 dpi (black and white) including document preparation, scanning, indexing of two fields of thirty characters each, and one CD-ROM copy of conversion.	Page	\$0.16	\$0.25				

EDM System	EDMSCAN10	EDMSCAN10	Documents (4 to 10 pages) from 3" X 4" to legal sized paper into TIFF images 200 dpi (black and white) including document preparation, scanning, indexing of two fields of thirty characters each, and one CD-ROM copy of conversion.	Page	\$0.13	\$0.20				
EDM System	EDMSCAN11	EDMSCAN11	Documents (11 or more pages) from 3" X 4" to legal sized paper into TIFF images 200 dpi (black and white) including document preparation, scanning, indexing of two fields of thirty characters each, and one CD-ROM copy of conversion.	Page	\$0.11	\$0.17				
EDM System	EDMSCAN35	EDMSCAN35	Documents smaller than 3" X 5" paper into TIFF images 200 dpi (color or grayscale) including document preparation, scanning, indexing of two fields of thirty characters each, and one CD-ROM copy of conversion.	Image	\$2.95	\$4.54				
EDM System	EDMSCANLTR	EDMSCANLTR	Documents 3" X 5" to letter sized paper into TIFF images 200 dpi (color or grayscale) including document preparation, scanning, indexing of two fields of thirty characters each, and one CD-ROM copy of conversion.	Image	\$3.25	\$5.00				
EDM System	EDMSCAN1722	EDMSCAN1722	17" X 22" paper documents into TIFF images 200 dpi (black and white) including document preparation, scanning, and indexing of two fields of thirty characters each	Image	\$1.40	\$2.15				

EDM System	EDMSCAN2234	EDMSCAN2234	EDMICMF1	22" X 34" paper documents into TIFF images 200 dpi (black and white) including document preparation, scanning, and indexing of two fields of thirty characters each	Image	\$1.85	\$2.85				
EDM System	EDMSCAN3444	EDMSCAN3444	EDMICMF1	34"X 44" paper documents into TIFF images 200 dpi (black and white) including document preparation, scanning, and indexing of two fields of thirty characters each	Image	\$2.35	\$3.62				
EDM System	EDMICMF1	EDMICMF1	EDMICMF1	Image Conversion - 16mm or 35mm microfilm to TIFF images 200 dpi (black and white) including job set up, scanning, and one CD-ROM copy of conversion	Image	\$0.0625	\$0.10				
EDM System	EDMICMF2	EDMICMF2	EDMICMF2	16mm or 35mm microfilm to TIFF images 200 dpi (black and white) including job set up, scanning, and one CD-ROM copy of conversion, indexing of two fields of thirty characters each. Single-level Blipped or Unblipped	Image	\$0.1765	\$0.27				
EDM System	EDMICMF3	EDMICMF3	EDMICMF3	16mm or 35mm microfilm to TIFF images 200 dpi (black and white) including job set up, scanning, and one CD-ROM copy of conversion, indexing of two fields of thirty characters each. Double-level Blipped	Image	\$0.1037	\$0.16				
EDM System	EDMIC2TIFF3-1	EDMIC2TIFF3-1	EDMIC2TIFF3-1	3 or less pages per document - Microfiche into TIFF images 200 dpi (black and white) including job set up, scanning, and indexing of two fields of thirty characters each	Image	\$0.3275	\$0.50				

EDM System	EDMIC2TIFF410-2	EDMIC2TIFF410-2	4 to 10 pages per document - Microfiche into TIFF images 200 dpi (black and white) including job set up, scanning, and indexing of two fields of thirty characters each	Image	\$0.2900	\$0.45			
EDM System	EDMIC2TIFF11-3	EDMIC2TIFF11-3	11 or more pages per document - Microfiche into TIFF images 200 dpi (black and white) including job set up, scanning, and indexing of two fields of thirty characters each	Image	\$0.2650	\$0.41			
EDM System	EDMADDLFIELD	EDMADDLFIELD	Additional index fields	Index	\$0.0455	\$0.07			
EDM System	EDMGFTSC	EDMGFTSC	Image for full text search capability	Page	\$0.0275	\$0.04			
EDM System	EDMDUPCDROM	EDMDUPCDROM	Duplicate CD-ROM	Each	\$18.00	\$27.69			
EDM System	EDMDATAENTRY	EDMDATAENTRY	Data entry	Keystroke	\$0.0032	\$0.00			
EDM System	EDMDOCPREP	EDMDOCPREP	Document Preparation - involves the utilization of facilities and staff consistent with receiving and processing large volumes of paper also includes the cost to store incoming boxes and areas to stage work in progress.	Hour	\$20.50	\$31.54			
EDM System	EDMFTPTRANS	EDMFTPTRANS	FTP transport fee	Per File	\$9.10	\$14.00			
EDM System	EDMDOCDEPREP	EDMDOCDEPREP	Document de-prepping- involves the utilization of facilities and staff consistent with receiving and processing large volumes of paper also includes the cost to store incoming boxes and areas to stage work in progress.	Hour	\$20.50	\$31.54			
EDM System	EDMIMGENHC	EDMIMGENHC	Image enhancement per hour \$ 32.00	Hour	\$29.25	\$45.00			
EDM System	EDMPUDELCO	EDMPUDELCO	Pickup and delivery within central Ohio	Trip	\$185.00	\$284.62			

Fax Processing System	FAX400	FAX400	FAX400	FAX PROCESSING SYSTEM - AUTOMATES COLLECTION OF DATA FROM INBOUND FAX FORMS	User	\$9,995.00	\$15,376.92			
Fax Processing System	FAX999	FAX999	FAX999	FAX PROCESSING SYSTEM MAINTENANCE - ANNUAL SUPPORT AND UPGRADES FOR FAX PROCESSING SYSTEM	User	\$895.00	\$1,530.77			
Fax Processing System	FAXINSL	FAXINSL	FAXINSL	FAX PROCESSING INSTALL SERVICES - SERVICES TO INSTALL, TEST A/P WORKFLOW SYSTEM	Hour	\$165.00	\$250.00			
Forms Recognition System	FRS100	FRS100	FRS100	FORMS RECOGNITION SYSTEM - SYSTEM CONFIGURED TO RECOGNIZE ANY NUMBER OF SPECIFIC FORMS AND MODIFY THEM AS NEEDED.	User	\$3,995.00	\$6,146.15			
Forms Recognition System	FRS999	FRS999	FRS999	ANNUAL SUPPORT AND UPGRADES FOR THE FORMS RECOGNITION SYSTEM	User	\$650.00	\$1,000.00			
Forms Recognition System	FRSINSL	FRSINSL	FRSINSL	FORMS RECOGNITION SYSTEM INSTALL SERVICES - SERVICES TO INSTALL, TEST FORMS RECOGNITION SYSTEM	Hour	\$165.00	\$250.00			
Forms Recognition System	FRSS3	FRSS3	FRSS3	FORMS RECOGNITION SERVICES - SERVICES TO CUSTOMIZE AND DESIGN FORMS RECOGNITION SYSTEM	Hour	\$165.00	\$250.00			

Forms Recognition System	FRSS4	FRSS4	FORMS RECOGNITION ADVANCED SERVICES - PROJECT MANAGEMENT TO SUPERVISE THE CUSTOMIZATION, DESIGN AND INSTALLATION OF FORMS RECOGNITION SYSTEM	Hour	\$250.00	\$384.62				
Licenseure	LIC100	LIC100	LICENSEURE - IMAGING/WORKFLOW SYSTEM DESIGNED TO AUTOMATE THE RECEIPT AND PROCESSING OF LICENSE INFORMATION FOR ANY AGENCY RESPONSIBLE FOR CERTIFYING PROFESSIONALS, SUCH AS NURSES, PSYCHOLOGISTS, ARBITRATORS, ETC.	User	\$4,995.00	\$7,684.62				
Licenseure	LIC999	LIC999	ANNUAL PRODUCT SUPPORT AND UPGRADES FOR LICENSEURE	User	\$820.00	\$1,261.54				
Licenseure	LICINSL	LICINSL	LICENSEURE SYSTEM INSTALL SERVICES - SERVICES TO INSTALL, TEST LICENSEURE SYSTEM	Hour	\$165.00	\$250.00				
Licenseure	LICS3	LICS3	LICENSEURESERVICES -SERVICES TO CUSTOMIZE AND DESIGN LICENSEURE SYSTEM	Hour	\$165.00	\$250.00				

Licenseure	LICS4	LICS4	LICS4	LICENSEUREADVANCE D SERVICES - PROJECT MANAGEMENT TO SUPERVISE THE CUSTOMIZATION, DESIGN AND INSTALLATION OF LICENSESURE SYSTEM	Hour	\$250.00	\$384.62				
OCR System	OCR500	OCR500	OCR500	OCR SYSTEM - PROVIDES ABILITY TO CONVERT HAND- PRINTED AND COMPUTER TYPED INFO ON FORMS OR IN PRINT TO NUMBERS AND LETTERS READABLE AND USABLE IN SPREADSHEETS, DATABASES, AND WORD PROCESSORS. (Please see the attached Results License Agreement for warranty/software license information)	User	\$4,995.00	\$7,684.62				
OCR System	OCR999	OCR999	OCR999	ANNUAL PRODUCT SUPPORT AND UPGRADES FOR OCR	User	\$820.00	\$1,261.54				

OCR System	OCRINSL	OCRINSL	OCR SERVICES - SERVICES TO INSTALL, TEST OCR SYSTEM - Minimum Education: BS/BA degree required in an appropriate field (engineering, computer science, mathematics), manufacturer certifications including Microsoft Certified Professional and Minimum of 4 years professional experience in OCR and Content Management, VB and Java scripting, SQL.	Hour	\$165.00	\$250.00				
OCR System	OCRS3	OCRS3	OCR SERVICES - SERVICES TO CUSTOMIZE AND DESIGN OCR SYSTEM - Minimum Education: BS/BA degree required in an appropriate field (engineering, computer science, mathematics), manufacturer certifications including Microsoft Certified Professional and a Minimum of 4 years professional experience in OCR and Content Management, VB and Java scripting, SQL.	Hour	\$165.00	\$250.00				



Software Interface	DAWINSTALL	DAWINSTALL		EA	\$5,200.00	\$8,000.00				
			Results Engineering DAW/OnBase Interface Module Installation, including Services and User Training							
Web Development Tools	WDEV100	WDEV100		EA	\$4,995.00	\$7,684.62				
			WEB DEVELOPMENT TOOLS - SOFTWARE COMPONENTS AND TOOLS THAT FACILITATE AND SUPPORT THE WEB DEVELOPMENT PROCESS							
Web Development Tools	WDEV999	WDEV999		EA	\$820.00	\$1,261.54				
			WEB DEV TOOLS MAINTENANCE - ANNUAL SUPPORT FOR THE WEB DEVELOPMENT TOOLS.							
Web Development Tools	WINT100	WINT100		EA	\$9,995.00	\$15,376.92				
			WEB INTERFACE - ENABLES INTERNAL AND EXTERNAL USERS TO ACCESS APPROPRIATE INFORMATION, FROM ANY SITE WITH THE NECESSARY AND APPROPRIATE WEB ACCESS.							
Web Development Tools	WINT999	WINT999		EA	\$1,625.00	\$2,500.00				
			WEB INTERFACE MAINTENANCE - ANNUAL SUPPORT AND UPGRADES FOR THE WEB INTERFACE							
Web Development Tools	WOLAP300	WOLAP300		EA	\$4,995.00	\$7,684.62				
			WEB OLAP - SPECIALIZED SOFTWARE FOR ONLINE ANALYTICAL PROCESSING APPLICATIONS							
Web Development Tools	WOLAP999	WOLAP999		EA	\$820.00	\$1,261.54				
			WEB OLAP MAINTENANCE - ANNUAL SUPPORT AND UPGRADES FOR WEB OLAP							

Web Development Tools	WPDF100	WPDF100	WPDF100	WEB PDF GENERATOR - SPECIALIZED SOFTWARE FOR THE AUTOMATED PRODUCTION OF PDF FILES IN WEB APPLICATIONS	EA	\$4,995.00	\$7,684.62				
Web Development Tools	WPDF999	WPDF999	WPDF999	WEB PDF GENERATOR MAINTENANCE - ANNUAL SUPPORT AND UPGRADES FOR THE WEB PDF GENERATOR.	EA	\$820.00	\$1,261.54				
Web Development Tools	WREP200	WREP200	WREP200	WEB REPORTING - SPECIALIZED SOFTWARE FOR DEFINITION AND PRODUCTION OF A WIDE VARIETY OF SOPHISTICATED REPORTS	EA	\$4,995.00	\$7,684.62				
	WREP999	WREP999	WREP999	WEB REPORTING MAINTENANCE - ANNUAL SUPPORT AND UPGRADES FOR WEB REPORTING	EA	\$820.00	\$1,261.54				
Discontinued - please refer to Chase75, Chase150, Chase300 or CbaseUNL	CIMaxOB100P	CIMaxOB100P	CIMaxOB100P	Maximus Courtview 2000 to Hyland OntBase Court Interface	EA	\$14,995.00	\$23,069.23				
Discontinued - please refer to CBasePS	CIMaxOB100S	CIMaxOB100S	CIMaxOB100S	Installation, configuration and training for CIMaxOB100P - 4 days	EA	\$4,995.00	\$7,684.62				

CourtBase	CBasePCP1	CBasePCP1	Interface from the court's Case Management System to ECM system for first Court of the jurisdiction. Jurisdiction size determined by the last U.S. Census.	EA	\$0.10 per constituent in the jurisdiction up to cap of 250,000 constituents	\$0.125 per constituent in the jurisdiction				
CourtBase	CBasePCP2+	CBasePCP2+	Interface from the court's Case Management System to ECM system for each additional court of the jurisdiction. A separate CourtBase license is required for each court jurisdiction. Jurisdiction size determined by the last U.S. Census.	EA	\$0.03 per constituent in the jurisdiction up to cap of 250,000 constituents	\$0.04 per constituent in the jurisdiction				
CourtBase	CBaseDM-pcp	CBaseDM-pcp	Interface from the Court's Case Management System to DOC DM document management system. A separate CourtBaseDM license is required for each court jurisdiction. Jurisdiction size determined by the last U.S. Census.		\$0.08 per constituent in the jurisdiction up to cap of 250,000 constituents	\$0.10 per constituent in the jurisdiction				
CourtBase	CBaseSFS1	CBaseSFS1	CourtBase ScanFirst Server License. Need to charge a price for ScanFirst Workflow \$0.02 or \$0.03 per 1st court. \$0.01 or \$0.02 per for each court thereafter.		\$0.03 per constituent in the jurisdiction up to cap of 250,000 constituents	\$0.04 per constituent in the jurisdiction				
CourtBase	CBaseSFS2	CBaseSFS2	CourtBase ScanFirst Server License for each additional court of the jurisdiction. A separate ScanFirst Server license is required for each court jurisdiction. Jurisdiction size determined by the last U.S. Census.		\$0.01 per constituent in the jurisdiction up to cap of 250,000 constituents	\$0.02 per constituent in the jurisdiction				

CourtBase	CBase\$FO	CBase\$FO	CBaseSFO	CourtBase ScanFirst Operator License. Per user pricing for each docketing person using the ScanFirst Server Workflow.	ea	\$300	\$500					
CourtBase Maintenance	CBaseM	CBaseM	CBaseM	Annual maintenance for all CourtBase licensed products	ea	20% of STS price	20% of List Price					
CourtBase	CBaseRWF1	CBaseRWF1	CBaseRWF1	CourtBase Redaction Workflow for first court of the jurisdiction. Jurisdiction size determined by the last U.S. Census.	ea	\$0.05 per constituent in the jurisdiction up to a cap of 250,000 constituents	\$0.07 per constituent in the jurisdiction up to a cap of 250,000 constituents					
CourtBase	CBaseRWF2	CBaseRWF2	CBaseRWF2	CourtBase Redaction Workflow for each additional court of the jurisdiction. Jurisdiction size determined by the last U.S. Census.	ea	\$0.02 per constituent in the jurisdiction up to a cap of 250,000 constituents	\$0.05 per constituent in the jurisdiction up to a cap of 250,000 constituents					
CourtBase Desk Scan	CBaseDS	CBaseDS	CBaseDS	CourtBase Desk Scan capture	EA	\$680.00	\$850.00					
CourtBase Electronic Journalizing	CBase+eJmI	CBase+eJmI	CBase+eJmI	CourtBase Electronic Journalizing to Hyland OnBase	EA	\$14,995.00	\$23,069.23					
CourtBase Interface Video Arraignment	CBase+VidArr	CBase+VidArr	CBase+VidArr	CourtBase Interface Video Arraignment Workflow to Hyland OnBase (two locations)	EA	\$9,995.00	\$15,376.92					
CourtBase Interface Video Arraignment	CBase+VidArrAddit	CBase+VidArrAddit	CBase+VidArrAddit	CourtBase Interface Video Arraignment Workflow to Hyland OnBase (each additional location)	EA	\$1,200.00	\$1,846.15					
CourtBase Installation, configuration and training	CBasePS	CBasePS	CBasePS	Installation, configuration and training for CourtBase products (per day)	EA	\$1,400.00	\$2,153.85					

CourtBase ScanFirst	CBBaseSFS	CBBaseSFS	CBBaseSFS	CourtBase ScanFirst Server License	EA	\$4,751.49	\$7,309.98					
CourtBase ScanFirst	CBBaseSFO	CBBaseSFO	CBBaseSFO	CourtBase ScanFirst Operator License	EA	\$7,500.00	\$11,538.46					
CourtBase Maintenance	CBBaseSFS-M	CBBaseSFS-M	CBBaseSFS-M	Maintenance CourtBase ScanFirst Server License	EA	\$855.27	\$1,315.80					
CourtBase Maintenance	CBBaseSFO-M	CBBaseSFO-M	CBBaseSFO-M	Maintenance CourtBase ScanFirst Operator License	EA	\$1,350.00	\$2,076.92					
CourtBase Maintenance	CBBase75M	CBBase75M	CBBase75M	Maintenance CourtBase Interface Courtview 2000 to Hyland OnBase Court - for jurisdictions of less than 75,000	EA	\$1,199.25	\$1,845.00					
CourtBase Maintenance	CBBase150M	CBBase150M	CBBase150M	Maintenance - CourtBase Interface Courtview 2000 to Hyland OnBase Court - for jurisdictions of less than 150,000	EA	\$2,399.25	\$3,691.15					
CourtBase Maintenance	CBBase250M	CBBase250M	CBBase250M	Maintenance - CourtBase Interface Courtview 2000 to Hyland OnBase Court - for jurisdictions of less than 250,000	EA	\$3,749.25	\$5,768.08					
CourtBase Maintenance	CBBaseUNLM	CBBaseUNLM	CBBaseUNLM	Maintenance - CourtBase Interface Courtview 2000 to Hyland OnBase Court - for jurisdictions of greater than 250,000	EA	\$5,999.25	\$9,229.62					
CourtBase Maintenance	CBBase+eJrIM	CBBase+eJrIM	CBBase+eJrIM	Maintenance - CourtBase Electronic Journalizing to Hyland OnBase	EA	\$2,249.25	\$3,460.38					
CourtBase Maintenance	CBBase+VidArrM	CBBase+VidArrM	CBBase+VidArrM	Maintenance - CourtBase Interface Video Arraignment Workflow to Hyland OnBase (two locations)	EA	\$1,499.25	\$2,306.54					
CourtBase Maintenance	CBBase+VidArrAdditM	CBBase+VidArrAdditM	CBBase+VidArrAdditM	Maintenance - CourtBase Interface Video Arraignment Workflow to Hyland OnBase (each additional locations)	EA	\$180.00	\$276.92					

DOC DM SQL Server	DDSQL100	DDSQL100	DOC DM Server for SQL	EA	\$15,000.00	\$18,750.00			
DOC Workflow Server	DDWFL101	DDWFL101	DOC Workflow Server for SQL	EA	\$25,000.00	\$31,250.00			
DOC DM Standard Named License	DDSNL102	DDSNL102	DOC DM Client Licenses Standard - Named (Dedicated)	EA	\$395.00	\$493.75	Named (Dedicated)		
DOC DM Standard Concurrent License	DDSCL103	DDSCL103	DOC DM Client Licenses Standard - Concurrent	EA	\$795.00	\$993.75	Concurrent		
DOC DM Office Named License	DDONL104	DDONL104	DOC DM Client Licenses Office - Named (Dedicated)	EA	\$495.00	\$618.75	Named (Dedicated)		
DOC DM Office Concurrent License	DDOCL105	DDOCL105	DOC DM Client Licenses Office - Concurrent	EA	\$995.00	\$1,243.75	Concurrent		
DOC DM CAD Named License	DDCNL106	DDCNL106	DOC DM Client Licenses CAD - Named (Dedicated)	EA	\$995.00	\$1,243.75	Named (Dedicated)		
DOC DM CAD Concurrent License	DDCCL107	DDCCL107	DOC DM Client Licenses CAD - Concurrent	EA	\$1,995.00	\$2,493.75	Concurrent		
DOC DM Web Server	DDWSR108	DDWSR108	DOC DM Web Server	EA	\$9,995.00	\$12,493.75			
DOC DM Batch Server	DDBSR109	DDBSR109	DOC DM Batch Server	EA	\$995.00	\$1,243.75			
DOC DM File Monitor	DDFMR110	DDFMR110	DOC DM File Monitor	EA	\$995.00	\$1,243.75			
DOC DM Mail Monitor	DDMMR111	DDMMR111	DOC DM Mail Monitor	EA	\$995.00	\$1,243.75			
DOC DM Importer	DDIMP112	DDIMP112	DOC DM Importer	EA	\$995.00	\$1,243.75			

DOC DM Full Text Server	DDFTS113	DDFTS113	DDFTS113	DOC DM Full Text Server	EA	\$9,500.00	\$11,875.00				
DOC DM SDK	DDSDK114	DDSDK114	DDSDK114	DOC DM SDK	EA	\$9,995.00	\$12,493.75				
DOC DM Print Server	DDPSR115	DDPSR115	DDPSR115	DOC DM Print Server	EA	\$995.00	\$1,243.75				
DOC DM Version Control	DDVCL116	DDVCL116	DDVCL116	DOC DM Version Control	EA	\$4,995.00	\$6,243.75				
DOC DM Rightfax Connector	DDRFC117	DDRFC117	DDRFC117	DOC DM Rightfax Connector	EA	\$4,995.00	\$6,243.75				
DOC DM Exchange Connector	DDEXC118	DDEXC118	DDEXC118	DOC DM Exchange Connector	EA	\$4,995.00	\$6,243.75				
DOC DM Parser	DDPAR119	DDPAR119	DDPAR119	DOC DM Parser	EA	\$9,995.00	\$12,493.75				
DOC Capture Lite	DDCPL120	DDCPL120	DDCPL120	DOC Capture Lite	EA	\$1,995.00	\$2,493.75				
DOC Capture Professional	DDCPP121	DDCPP121	DDCPP121	DOC Capture Professional	EA	\$3,995.00	\$4,993.75				
DOC Capture PDF Option	DDPDF122	DDPDF122	DDPDF122	DOC Capture PDF Option	EA	\$995.00	\$1,243.75				
DOC Capture Indexer	DDCIN123	DDCIN123	DDCIN123	DOC Capture Indexer	EA	\$1,995.00	\$2,493.75				
DOC DM Maint	DDCMNT	DDCMNT	DDCMNT	DOC DM Maintenance	EA	20% of State Term Price	20% of List Price				
DOC DM Court System	DDCRT	DDCRT	DDCRT	DOC DM Court Solution, 15 User	EA	\$18,000.00	\$22,500.00				
REdact	REDACTSL	REDACTSL	REDACTSL	REdact Server License	EA	\$2,550.00	\$3,000.00				

REdact	RETL100	RETL100	RETL100	REdact Transactional license, 1 to 100,000 image pages (cost per image page)	EA	\$0.05	\$0.06	requires the purchase of an REdact Server License			
REdact	RETL250	RETL250	RETL250	REdact Transactional license, 100,001 to 250,000 image pages (cost per image page)	EA	\$0.04	\$0.04	requires the purchase of an REdact Server License			
REdact	RETL500	RETL500	RETL500	REdact Transactional license, 250,001 to 500,000 image pages (cost per image page)	EA	\$0.03	\$0.03	requires the purchase of an REdact Server License			
REdact	RETL750	RETL750	RETL750	REdact Transactional license, 500,001 to 750,000 image pages (cost per image page)	EA	\$0.02	\$0.02	requires the purchase of an REdact Server License			
REdact	RETL1000	RETL1000	RETL1000	REdact Transactional license, 750,001 to 1,000,000 image pages (cost per image page)	EA	\$0.02	\$0.02	requires the purchase of an REdact Server License			

REdact	RETL3000	RETL3000	REdact Transactional license, 1,000,001 to 3,000,000 image pages (cost per image page)	EA	\$0.02	\$0.02		requires the purchase of an REdact Server License		
REdact	RETL10000	RETL10000	REdact Transactional license, 3,000,001 to 10,000,000 image pages (cost per image page)	EA	\$0.01	\$0.01		requires the purchase of an REdact Server License and corresponding annual support and maintenance		
REdact	REPL100	REPL100	REdact Perpetual license, 1 to 100,000 image pages annually	EA	\$8,415.00	\$8,415.00	\$9,900.00	requires the purchase of an REdact Server License and corresponding annual support and maintenance		

REdact	REPL250	REPL250	REdact Perpetual license, 100,001 to 250,000 image pages annually	EA	\$14,726.25	\$17,325.00	requires the purchase of an REdact Server License and coresponding annual support and maintenance	
REdact	REPL500	REPL500	REdact Perpetual license, 250,001 to 500,000 image pages annually	EA	\$21,037.50	\$24,750.00	requires the purchase of an REdact Server License and coresponding annual support and maintenance	

REdact	REPL75000	REPL75000	REdact Perpetual license, 500,001 to 750,000 image pages annually	EA	\$25,245.00	\$29,700.00	requires the purchase of an REdact Server License and corresponding annual support and maintenance		
REdact	REPL1000	REPL1000	REdact Perpetual license, 750,001 to 1,000,000 image pages annually	EA	\$29,452.50	\$34,650.00	requires the purchase of an REdact Server License and corresponding annual support and maintenance		
REdact	REPL100M	REPL100M	REdact Perpetual license - annual support and maintenance, 1 to 100,000 image pages annually	EA	\$1,262.25	\$1,485.00			

REdact	REPL250M	REPL250M	REPL250M	REdact Perpetual license - annual support and maintenance, 100,001 to 250,000 image pages annually	EA	\$2,209.58	\$2,599.50				
REdact	REPL500M	REPL500M	REPL500M	REdact Perpetual license - annual support and maintenance, 250,001 to 500,000 image pages annually	EA	\$3,155.63	\$3,712.50				
REdact	REPL7500M	REPL7500M	REPL7500M	REdact Perpetual license - annual support and maintenance, 500,001 to 750,000 image pages annually	EA	\$3,786.75	\$4,455.00				
REdact	REPL1000M	REPL1000M	REPL1000M	REdact Perpetual license - annual support and maintenance, 750,001 to 1,000,000 image pages annually	EA	\$4,417.88	\$5,197.50				
REdact	REPL3000M	REPL3000M	REPL3000M	REdact Perpetual license - annual support and maintenance, 1,000,001 to 3,000,000 image pages annually	EA	\$11,360.25	\$13,365.00				
REdact	REPL10000M	REPL10000M	REPL10000M	REdact Perpetual license - annual support and maintenance, 3,000,001 to 10,000,000 image pages annually	EA	\$28,400.63	\$33,412.50				
RESCAN	RESCCP	RESCCP	RESCCP	RE Color ans Black & White Scanner/Color Printer	EA	\$12,500.00	\$19,230.77				
RESCAN	RESCBW	RESCBW	RESCBW	RE Color ans Black & White Scanner/Black and White Printer	EA	\$4,500.00	\$6,923.08				

## Exhibit II

[Insert scope of license]

### Results Engineering License Agreement

RESULTS ENGINEERING COMMERCIAL LICENSE AGREEMENT ("Agreement") dated as of this the \_\_\_ day of \_\_\_\_\_, 200\_\_ ("Effective Date") by and between \_\_\_\_\_, a(n) \_\_\_\_\_ corporation ("Licensee"), having its principal place of business at \_\_\_\_\_, and Results Engineering, ("Licensor"), an Ohio corporation, having its principal place of business at \_\_\_\_\_, Columbus, Ohio \_\_\_\_\_.

#### 1. DEFINITIONS.

- 1.1. "Agreement", means this Commercial License Agreement, and all Schedules, amendments exhibits and other attachments to the Commercial License Agreement as may, from time to time, be agreed upon by Licensor and Licensee.
- 1.2. "Affiliate", means any entity that directly or indirectly is under common control with Licensee, or is under contract to be under common control with Licensee, and shall include a subsidiary or parent company of Licensee.
- 1.3. "Incident" shall mean (i) any irregularity, error, problem or defect resulting from an incorrect functioning of any version of the Licensed Software if such irregularity, error, problem or defect renders the Licensed Software incapable of meeting the material specifications contained in its Documentation or causes incorrect functions to occur, or (ii) an incorrect or incomplete identification, statement or diagram in the Documentation that causes the Documentation to be inaccurate or incomplete in any material respect.
- 1.4. "Licensed Documentation", means Licensor's user manuals and related technical publications, including updates, if any, that facilitate the use of, and relate to the Licensed Software.
- 1.5. "Licensed Materials", means Licensed Documentation and Licensed Software collectively.
- 1.6. "Licensed Software", means the actual computer software, including any third party software products or Optional Features, licensed hereunder and shall also include all modifications and enhancements to the Licensed Software as may be provided by Licensor from time to time under this Agreement.
- 1.7. "Optional Features", means a version of the Licensed Software that incorporates additional capability or functionality and that is not generally distributed to licensees without charge and does not include routine program fixes, updates, or revisions.
- 1.8. "Schedule(s)" means the attachments to this Agreement, executed by both parties, incorporating the terms and conditions of this Agreement, the term of license, license type, license fees, billing and shipping information, delivery dates, operating systems, maintenance and support services fees. We need to insure that the Schedule does not include additional terms and conditions.
- 1.9. "Specifications", means the functional and operational characteristics of the Licensed Software as described in Licensor's current published sales literature, Licensed Documentation, and the specific features, functions and capabilities listed in the Schedule(s).

#### 2. GRANT OF RIGHTS AND IMPOSITION OF OBLIGATIONS

- 2.1. License. Subject to the terms and conditions of this Agreement and compliance therewith by Licensee, commencing on the Effective Date and for the term of this Agreement, Licensor grants Licensee a non-exclusive, non-transferable license (i) to permit its Authorized Users to use the Licensed Software solely in executable form, (ii) to install (if applicable) one copy of any Licensed Software delivered to Licensee by or on behalf of Licensor for each Authorized User of such Licensed Software, and (iii) to use the associated Documentation.

- 2.2. Right to Copy Software. Licensee may not copy the Licensed Software except (i) as necessary to exercise its right to install any Licensed Software delivered pursuant to Section 2.1 for making one (1) copy of any Licensed Software installed pursuant to Section 2.1 for disaster recovery, backup and archival purposes. Licensee shall reproduce and include Licensor's and any third-party licensor's trademark, trade name, copyright and other proprietary rights notices, legends, symbols or labels appearing on or in the Licensed Software on all copies of the Licensed Software, and all copies shall be subject to all terms, conditions and obligations set forth in or arising under this Agreement.
- 2.3. Right to Copy Documentation. Licensee may copy the Documentation (other than the Documentation of third-party licensors) to the extent necessary to exercise the foregoing licenses. Licensee shall reproduce and include Licensor's trademark, trade name, copyright and other proprietary rights notices, legends, symbols or labels appearing on or in the Documentation on all copies of the Documentation and all copies shall be subject to all terms, conditions and obligations set forth in or arising under this Agreement.
- 2.4. Restrictions on Use; Audit Rights. The foregoing rights to install, use and copy various components of the Licensed Materials shall be subject to the following restrictions:
  - 2.4.1. Licensee shall not copy or allow copies of the Licensed Materials to be made, except as specifically authorized under this Agreement;
  - 2.4.2. Licensee shall only use the Licensed Materials for its own internal business purposes. Without derogating the generality of the foregoing, Licensee shall not use or allow others to use the Licensed Materials in a multiple-use arrangement or as a part of a service bureau;
  - 2.4.3. Licensee shall not resell, sublicense, distribute or otherwise transfer for any purpose any component of the Licensed Materials to any person, firm or entity;
  - 2.4.4. Licensee shall not rent, lease, grant a security interest in, or otherwise transfer ownership rights to, the Licensed Materials; This does not apply to the surviving entity in situations where: 1) two or more agencies are consolidated; and 2) if a private entity purchases a state agency.
  - 2.4.5. Licensee shall not attempt to disassemble, decompile, reverse engineer, derive or otherwise reproduce any part of the source code form of the Licensed Software, except to the extent that such activity is expressly permitted by applicable law;
  - 2.4.6. Licensee shall not modify, alter, translate or create derivative works based upon the Licensed Materials;
  - 2.4.7. No, we are agreeing to the terms and conditions in this agreement. If there are other terms and conditions ("shrink wrap" or "clickwrap" for software being sold under this STS, we need to negotiate those Ts&Cs too.
- 2.5. Licensor shall have the right, upon reasonable notice to Licensee, to enter Licensee's premises to audit Licensee's use of the Licensed Materials and Licensee agrees to allow Licensor or its representatives access to such facilities, books and records as are reasonably required to audit Licensee's compliance with this Agreement.

### 3. OWNERSHIP OF LICENSED MATERIALS

- 3.1. Ownership. Licensee agrees that title and all ownership rights to the Licensed Materials and all copies thereof made by Licensee hereunder, and any and all copyrights, trademarks, trade names, trade secret or patent rights, if any, therein shall reside in Licensor or its third-party licensors, as the case may be. Licensee further acknowledges that (i) the Licensed Materials are protected by copyright and other intellectual property laws and by international treaties, and (ii) Licensee has no rights in the Licensed Materials, except those expressly granted by this Agreement.
- 3.2. Protection. Licensee will take all reasonable measures requested by Licensor, and/or as otherwise provided in this Agreement, to protect the Licensed Materials from any use, reproduction, publication, disclosure or distribution, except as specifically authorized by this Agreement.

4. DELIVERY. Licensor shall provide Licensee with the following materials in connection with this Agreement:
  - 4.1. Licensed Software. For each Licensee site at which Licensee plans to use or access specific Licensed Software, Licensor shall deliver one machine-readable copy of any related Licensed Software designed to reside on end-user systems (or make such Licensed Software available electronically, via the Internet or otherwise). Such Licensed Software shall be delivered (or made available) following identification of each such site by Licensee in writing or by electronic mail.
  - 4.2. Documentation. Following the licensing of specific Licensed Software pursuant to the relevant Schedule(s), Licensor shall deliver one copy of any related Documentation (or make such Documentation available electronically).
5. RIGHTS AND RESPONSIBILITIES OF LICENSEE.
  - 5.1. Hardware; Software; Alternative Systems. Licensee shall be exclusively responsible for (i) providing all hardware and software (other than any Licensed Software) necessary for installing, operating and using any Licensed Software that is to be used at Licensee's premises, and (ii) providing alternative systems when the Licensed Software is not available. Hardware and software requirements are indicated in Schedule A.
  - 5.2. Incident Reporting. Licensee agrees to provide Licensor with data, documentation or other such evidence of Incident(s) that it experiences during the term of this Agreement within one business day of becoming aware of such Incident(s).
  - 5.3. Rights in Improvements. Notwithstanding any provision to the contrary in this Agreement, Licensor shall be the sole and exclusive owner of, and Licensee hereby assigns and agrees to assign to Licensor all rights in (i) any changes, modifications, upgrades or enhancements, in design, functionality or otherwise, to the Licensed Materials and/or any successor products, and (ii) any of Licensee's proposed or suggested changes, modifications, upgrades or enhancements, in design, functionality or otherwise, to the Licensed Materials and/or any successor products without any recourse or obligation to Licensee. Licensee acknowledges and agrees that Licensor shall be under no obligation to consider or implement any such changes, modifications, upgrades or enhancements recommended or requested by Licensee.
  - 5.4. Security and Data Retention Procedures. Licensee shall be responsible for implementing appropriate procedures to protect its data and other materials and shall be responsible for security breaches caused by its employees, agents or contractors, including, without limitation, any access or entry into any Licensed Software or third party system not covered by this Agreement. Licensee is solely responsible for the back-up and restoration of its data and other materials.
6. PAYMENT.
  - 6.1. In the event of a good faith dispute with regard to an item appearing on an invoice, Licensee has the right to withhold such disputed amount while the parties attempt to resolve the dispute in accordance with this Agreement. Licensee's withholding of such payment shall not constitute a breach of this Agreement, nor shall it be grounds for Licensor to suspend its performance hereunder, so long as Licensee pays on a timely basis those amounts that are undisputed and owing.
7. WARRANTY.
  - 7.1. Licensor warrants to Licensee that the media containing the Licensed Software delivered to Licensee will be free from defects in materials and workmanship under normal use for a period of sixty (60) days from the date of original delivery to Licensee pursuant to a Schedule hereto (the "Warranty Period"). If a defect in such media occurs during the Warranty Period, the defective media may be returned to Licensor, and Licensor will replace such media without charge.

- 7.2. Licensor warrants that the Licensed Software owned by Licensor shall perform substantially in accordance with the Documentation during the Warranty Period. In the event any Licensed Software provided pursuant to a Schedule hereto does not so perform during the Warranty Period, Licensee shall, prior to the expiration of the Warranty Period, document the instance(s) of nonperformance to Licensor in writing. Subject to the foregoing, Licensor will (at its option) either repair or replace such Licensed Software or terminate the applicable Schedule(s) and provide Licensee a refund of any Subscription Fees actually paid by Licensee for such Licensed Software for the month prior to the written notification to Licensor. If requested by Licensor, Licensee will return any components of the related Licensed Materials and any copies thereof in Licensee's possession.
- 7.3. The remedies set forth in this Section 7 shall be the sole and exclusive remedies available to Licensee for any breach of warranty under this Section 7.
- 7.4. Without limiting the generality of the foregoing, Licensor and its licensors specifically do not warrant that (i) the Licensed Software or any components thereof will perform without interruption or error, or that all Incidents will be corrected, (ii) the Licensed Materials (including the data and other information contained therein) will meet Licensee's requirements, (. Neither Licensor nor its licensors shall be responsible for the accurate or complete transmission of data or other materials. The warranties set forth above shall not apply to any irregularities, errors, problems or defects arising from (i) modification of the Licensed Software by any party other than Licensor or from accident, neglect, abuse, misuse or misapplication, (ii) failure of Licensee to provide a suitable installation and operating environment, including but not limited to, failure to use supplies, materials, software and hardware platforms that meet the specifications set forth in the Documentation, (iii) Licensee's incorporation, attachment or engagement of any attachment, feature, program or device to the Licensed Software, if the Licensed Software would have conformed to the warranty set forth in Section 7.1 but for such incorporation, attachment or engagement, (iv) use of the Licensed Software outside the scope of its intended purpose, as described in the Documentation, or (v) Licensee's failure to incorporate any update previously released by Licensor that corrects such item. Licensor reserves the right to (i) modify any Licensed Materials or substitute any materials contained therein so long as the new materials do not materially affect the functionality of the Licensed Software, and (ii) discontinue the licensing and/or support of any Licensed Materials.

## 8. LIMITATION OF LIABILITY.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS CONTRACT OR ANYTHING INCORPORATED BY REFERENCE INTO THIS CONTRACT, THE PARTIES AGREE AS FOLLOWS:

- (a) NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAVE BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
- (b) THE CONTRACTOR WILL BE LIABLE FOR ALL DIRECT DAMAGES DUE TO THE FAULT OR NEGLIGENCE OF THE CONTRACTOR OR IT'S BREACH OF ANY PROVISION OF THIS CONTRACT.

## 9. INDEMNIFICATION.

- 9.1. Licensor agrees to defend or, at Licensor's option, settle any action or proceeding of any kind or description based upon a third party's claim of patent or copyright infringement, related to the Licensed Software and/or the Licensed Materials, asserted against Licensee by such third party, or against an Affiliate, provided: (i) any modifications to the Licensed Software created by Licensee or at Licensee's direction without the consent or participation of Licensor are not the sole cause of the claim of infringement; (ii) Licensor is given prompt notice of any such

claim; and, (iii) With the consent of the Ohio Attorney General's Office, Licensor is given the right to control and direct the investigation, defense and settlement of each such claim. Licensee shall reasonably cooperate with Licensor in connection with the foregoing. If notified promptly in writing of any claim, demand or a judicial action brought against Licensee based on an allegation that Licensee's use of the Licensed Materials constitutes infringement, Licensor will pay the costs, including reasonable attorney fees, associated with resolving such claim and will pay the settlement amount (if any) provided that Licensor shall have sole control, with the consent of the Ohio Attorney General's Office, of the resolution of any such claim and all negotiations for its settlement. Any settlement made by Licensor under this Section shall not adversely affect Licensee's ability to exercise the license rights granted hereunder without Licensee's prior written consent.

9.2. Should the Licensed Materials or the operation of the Licensed Program(s), become, or in Licensor's opinion are likely to become, the subject of a claim of infringement, Licensee shall permit Licensor, at Licensor's option and expense, either: (i) to procure for the Licensee the right to continue using the Licensed Materials; (ii) to replace or modify the same so that they become non-infringing; or, if after Licensor uses its best efforts to accomplish (i) and (ii) and is unable to do so, then; (iii) to grant the Licensee a refund for such Licensed Materials, upon return, as depreciated. The depreciation refund shall be calculated as a sum equal to one-sixtieth of the license fee paid for each month remaining of a five year period, calculated from the effective date of the applicable Schedule(s), a pro rata amount of the prepaid maintenance and support services fees for the period paid, and reasonable costs, other than license fees, for Licensee to obtain a replacement.

9.3. Exclusions. The restrictions on use and disclosure set forth above shall not apply when, and to the extent that the Proprietary Information: (i) is or becomes generally available to the public through no fault of the receiving party (or anyone acting on its behalf); (ii) was previously rightfully known to the receiving party free of any obligation to keep it confidential; (iii) is subsequently disclosed to the receiving party by a third party who may rightfully transfer and disclose such information without restriction and free of any obligation to keep it confidential; (iv) is independently developed by the receiving party or a third party without reference to the disclosing party's Proprietary Information, or (v) is required to be disclosed by the receiving party as a matter of law, provided that the receiving party uses all reasonable efforts to provide the disclosing party with at least ten (10) days' prior notice of such disclosure and the receiving party discloses only that portion of the Proprietary Information that is legally required to be furnished pursuant to the opinion of legal counsel of the receiving party. This is a public record.

## 10. Termination

10.1. Licensor shall have the right to terminate this agreement and license(s) granted herein:

10.1.1. Upon thirty days' written notice in the event that Licensee, its officers or employees violates any provision of this License Agreement including, but not limited to, confidentiality and payment and fails to cure that violation within thirty (30) days after receiving notice;

10.1.2. In the event Licensee (i) terminates or suspends its business; (ii) becomes subject to any bankruptcy or insolvency proceeding under Federal or state statute or (iii) becomes insolvent or becomes subject to direct control by a trustee, receiver or similar authority.

10.2. In the event of termination by reason of the Licensee's failure to comply with any part of this agreement, or upon any act which shall give rise to Licensor's right to terminate, Licensor shall have the right, at any time, to terminate the license(s) and take immediate possession of the Licensed Software and documentation and all copies wherever located, without demand or notice. Within five (5) days after termination of the license(s), Licensee will return to Licensor the Software in the form provided by Licensor or as modified by the Licensee, or upon request by Licensor destroy the Licensed Software and all copies, and certify in writing that they have been destroyed. Termination under this paragraph shall not relieve Licensee of its obligations regarding confidentiality of the Software.

10.3. Without limiting any of the above provisions, in the event of termination as a result of the Licensee's failure to comply with any of its obligations under this License Agreement, the Licensee shall continue to be obligated for any payments due.

## 11. Installation and Testing

- 11.1. Installation, testing and customization services are not covered under this agreement. These services may be contracted for separately at the Licensor's current State Term Schedule time and material charges.

## 12. General

- 12.1. Each party acknowledges that it has read this Agreement, it understands it, and agrees to be bound by its terms, and further agrees that this is the complete and exclusive statement of the Agreement between the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to this Agreement. This Agreement may not be modified or altered except by written instrument duly executed by both parties.
- 12.2. Dates or times by which Licensor is required to make performance under this license shall be postponed automatically to the extent that Licensor is prevented from meeting them by causes beyond its reasonable control.
- 12.3. This Agreement shall be governed by and construed solely and exclusively in accordance with the laws of the State of Ohio, without reference to or application of its conflicts of law principles. In the event that any provision of this Agreement conflicts with the law under which this Agreement is to be construed or if any such provision is held invalid, void or unenforceable by a court with jurisdiction over the parties to this Agreement, such provision shall be deemed to be restated to reflect as nearly as possible the original intention of the parties in accordance with applicable law, and the remainder of this Agreement shall remain in full force and effect.
- 12.4. Any and all disputes between the parties that cannot be settled by mutual agreement shall be resolved solely and exclusively in the courts located within Franklin County, Ohio, and Licensee hereby consents to the jurisdiction of such courts and irrevocably waives any objections thereto, including without limitation, on the basis of improper venue or forum non convenes.
- 12.5. No action, regardless of form, arising out of this Agreement may be brought by Licensee more than two years after the cause of action has arisen.
- 12.6. If Licensee is any unit or agency of the U.S. Government, then the following provision applies:

### U.S. GOVERNMENT RIGHTS

Use, duplication, or disclosure by the U.S. Government is subject to restrictions set forth in this Agreement and as provided in DFARS 227.7202-1(a) and 227.7202-3(a) (1995), DFARS 252.227-7013(c)(1)(ii) (OCT 1988), FAR 12.212(a) (1995), FAR 52.227-19, or FAR 52.227-14 (ALT III), as applicable.

- 12.7. This Agreement may not be assigned by Licensee to any other person(s), firm(s), corporation(s) or other entities (by operation of law or otherwise) without the prior express written approval of Licensor which shall not be unreasonably withheld, and any attempt to assign without such approval shall be void and shall be deemed to be a material breach of this Agreement. Notwithstanding the foregoing, Licensee may assign this Agreement to any entity that controls, is controlled by, or is under common control with Licensee and agrees to notify Licensor of any such assignment.
- 12.8. The waiver or failure of Licensor to exercise in any respect any right provided for herein shall not be deemed a waiver of any further right hereunder.

LICENSOR:

Name: \_\_\_\_\_  
(Print)

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

LICENSEE:

Name: \_\_\_\_\_  
(Print)

Company: \_\_\_\_\_

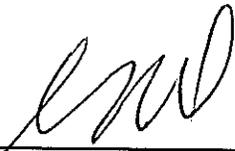
Address: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

CONTRACTOR

BY: 

DATE: 11/3/11

STATE OF OHIO,  
DEPARTMENT OF ADMINISTRATIVE SERVICES  
OFFICE OF STATE PURCHASING

BY:   
ROBERT BLAIR, DIRECTOR,  
DEPARTMENT OF ADMINISTRATIVE SERVICES

DATE: 12-8-11

**DEPARTMENT OF ADMINISTRATIVE SERVICES**  
**STANDARD AFFIRMATION AND DISCLOSURE FORM**  
**EXECUTIVE ORDER 2011-12K**

Governing the Expenditure of Public Funds on Offshore Services

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

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**CONTRACTOR/SUBCONTRACTOR AFFIRMATION AND DISCLOSURE:**

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

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

1. Principal location of business of Contractor:

130 Wetherby Lane  
(Address)

Westerville, OH 43081  
(City, State, Zip)

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

NA  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

NA  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

2. Location where services will be performed by Contractor:

130 Wetherby Lane  
(Address)

Westerville, OH 43081  
(City, State, Zip)

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

NA  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

NA  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

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

130 Wetherby Lane  
(Address)

Westerville, OH 43081  
(City, State, Zip)

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

NA  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

4. Location where services to be performed will be changed or shifted by Contractor:

130 Wetherby Lane  
(Address)

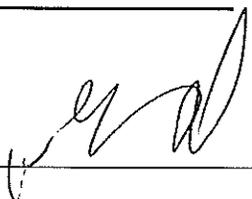
Westerville, OH 43081  
(City, State, Zip)

Name/Location(s) where services will be changed or shifted to be performed by subcontractor(s):

NA  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

Signature: \_\_\_\_\_



Print Name: Greg Boyd

Title: President

Date: 11/3/11