

STATE TERM CONTRACT

THIS CONTRACT ("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 Data Systems Hardware, Inc. ("Contractor"), with offices at 6585 Merchant Place, Suite 100, Warrenton, VA 20187.

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 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.
- 1.2 **CONTRACT RENEWAL.** In the State's sole discretion, it may renew this Contract for a period of one month at the end of each biennium during which this Contract remains in place. Any further renewals will be only by written agreement between the State and the Contractor. Such renewals may be for any number of times for any period not to exceed the time remaining in the State's then-current biennium.

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

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:

DSHI Pricelist.xls

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 NOTIFICATION OF PRICE INCREASES.** If this Contract permits any price increases, the Contractor must notify the State and any affected State agencies of the increase at least 60 days before the effective date of the price increase. The Contractor must notify affected State agencies at their purchase order "bill to" address contained in the applicable purchase orders. This notification must specify, when applicable, the product serial number, location, current price, increased price, and applicable purchase order number.

- 2.5 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.

2.6 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
- (f) If the invoice is for a lease, the Contractor also must include the payment number (e.g., 1 of 36).

If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of the Contractor's information. If an invoice does not meet this section's requirements, 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.

2.7 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.

2.8 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.

2.9 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.

2.10 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.

2.11 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").

2.12 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.

- 2.13 **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. The Contractor will limit or obtain a

commitment from the third-party licensor, if applicable, to limit increases in the annual fee for maintenance to no more than five percent annually. 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 makes 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.
- 10.11 **Order of Precedence.** The State and the Contractor acknowledge that there are terms and conditions included in the Software License Agreements (attached as Exhibits under the State Term Schedule) that are in conflict with the State Term Schedule Terms and Conditions. The Contractor agrees that the Terms and Conditions of the State Term Schedule will supersede the terms and conditions of such software license agreements and that in the event of any conflicts, the terms and conditions of the State Term Schedule will prevail. The Contractor agrees that it will be responsible for resolving any disputes with the Software License provider for any reason including any disputes that arise because of the difference in the Terms and Conditions.

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.

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

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

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

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

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

BY: John Gray

BY: Robert Blair
ROBERT BLAIR, DIRECTOR,
DEPARTMENT OF ADMINISTRATIVE SERVICES

DATE: 5-22-2012

DATE: 5-24-12

Exhibit I

This page was intentionally left blank. See attached DSHI Pricelist.xls for pricing.

Mfg	Mfg Part #	5/2/2012	5/2/2012	Vendor Part #	Description	Unit of Measure	Ohio Price	Mfg List Price
					nCircle IP-360			
					Small Business List Price per IP (250 - 2,499 IPs)			
nCircle	IP360-0002-US				250 Active IP license	Each	\$8,150.33	\$9,028.13
nCircle	IP360-0005-US				500 Active IP license	Each	\$11,627.80	\$12,890.13
nCircle	IP360-0010-US				1000 Active IP license	Each	\$20,046.33	\$22,205.34
nCircle	IP360-0025-US				Medium Business List Price per IP (2,500 - 9,999 IPs)	Each		
nCircle	IP360-0025-US				2500 Active IP license	Each	\$22,046.22	\$23,497.62
nCircle	IP360-0050-US				5000 Active IP license	Each	\$48,092.58	\$53,272.20
nCircle	IP360-0075-US				7500 Active IP license	Each	\$56,604.13	\$62,700.45
nCircle	IP360-0100-US				Large Business List Price per IP (Greater than 10,000 IPs)	Each		
nCircle	IP360-0100-US				10,000 Active IP license	Each	\$65,115.68	\$72,128.70
nCircle	IP360-0125-US				12,500 Active IP license	Each	\$78,487.86	\$86,940.85
nCircle	IP360-0150-US				15,000 Active IP license	Each	\$90,696.84	\$100,464.98
nCircle	IP360-0175-US				17,500 Active IP license	Each	\$101,743.26	\$112,701.10
nCircle	IP360-0200-US				20,000 Active IP license	Each	\$111,626.88	\$123,649.20
nCircle	IP360-0225-US				22,500 Active IP license	Each	\$122,963.99	\$136,207.32
nCircle	IP360-0250-US				25,000 Active IP license	Each	\$133,719.71	\$148,121.44
nCircle	IP360-0275-US				27,500 Active IP license	Each	\$143,894.03	\$159,391.54
nCircle	IP360-0300-US				30,000 Active IP license	Each	\$153,486.97	\$170,017.65
nCircle	IP360-0325-US				32,500 Active IP license	Each	\$162,438.51	\$179,999.74
nCircle	IP360-0350-US				35,000 Active IP license	Each	\$170,928.67	\$189,337.84
nCircle	IP360-0375-US				37,500 Active IP license	Each	\$178,777.43	\$198,031.92
nCircle	IP360-0400-US				40,000 Active IP license	Each	\$186,044.81	\$206,092.00
nCircle	IP360-0425-US				42,500 Active IP license	Each	\$192,730.79	\$213,488.07
nCircle	IP360-0450-US				45,000 Active IP license	Each	\$198,835.39	\$220,250.14
nCircle	IP360-0475-US				47,500 Active IP license	Each	\$204,368.59	\$226,268.19
nCircle	IP360-0500-US				50,000 Active IP license	Each	\$209,300.41	\$231,842.25
nCircle	IP360-1000-US				100,000 Active IP license	Each	\$473,432.91	\$457,960.00
nCircle	IP360-1500-US				150,000 Active IP license	Each	\$612,397.49	\$678,353.25
nCircle	IP360-2000-US				200,000 Active IP license	Each	\$795,858.35	\$881,573.00
nCircle	IP360-2500-US				250,000 Active IP license	Each	\$981,903.15	\$1,087,855.00
nCircle	IP360-URGP-US				Upgrade to next level of license, difference in license cost +10% (3) (4)	Each		
nCircle	IP360-Mobile-US				IP360 Mobile Annual License	Each	\$9,027.71	\$10,000.00
nCircle	VNE-1100-US				VNE Manager 1100	Each	\$13,767.25	\$15,250.00
nCircle	VNE-1150-US				VNE Manager 1150	Each	\$13,767.25	\$15,250.00
nCircle	VNE-4100-US				VNE Manager 4100	Each	\$26,857.43	\$29,750.00
nCircle	VNE-5100-US				VNE Manager 5100	Each	\$51,232.24	\$56,750.00
nCircle	DP-3050-US				Device Profiler 3050 (2G)	Each	\$5,021.21	\$5,562.00
nCircle	DP-3050-US				Device Profiler 3050	Each	\$5,201.77	\$5,762.00
nCircle	DP-3000-License				Upgrade Kit DP-3000 to DP-3050	Each	\$2,347.20	\$2,600.00
nCircle	DP36AMEM.JPG				Annual 24 X 7 Maint, Support & ASPFL Updates (Software Version)	Each	\$581.11	\$400.00
nCircle	CS-IP360-ASA				Annual 24 X 7 Maint, Support & ASPFL Updates (23% of GSA Price). Price is calculated for each part number based on the original purchase amount and is not displayed on GSA Advantage.	Each		
Notes:								
1-					An Active IP is any IP address that is probed and assessed by IP360.	Each		
2-					The purchase of the first year's maintenance, support and ASPFL updates on all licenses and appliances is required at the time of the initial purchase. For customers prior to 3/31/2008 M&S must be quoted by Finpro.	Each		
3-					Example of IP license upgrade calculation: The first purchase was 1000 IPs at \$20,037.50. They now want to buy an additional 1500 IPs for a total of 2500 IPs. The cost would be \$33,175.35 (2500 IPs) - \$20,037.50 (1000 IPs) = \$13,137.85. The cost would be \$13,137.85 * 1.10 (M&S) = \$14,451.63 (Cost for Additional 1500 IPs).	Each		
4-					If a customer that has licensed any of the separate software modules increases their IP360 license, the applicable increase in the module price must also be charged as a separate license fee at the time of the IP360 license increase.	Each		
5-					If a customer's support agreement has expired and has not been renewed for a period of 20 days after the expiration, a resort fee of 25% may be added to the new 12 month agreement since each is a calculated amount based on purchase price.	Each		
6-					Annual support charges (ASA) for each SKU/Part Number is not shown on GSA Advantage since each is a calculated amount based on purchase price.	Each		

nCircle	CCM-FIM15K-SPD-US	CCM-FIM15K-SPD-US	CCM-FIM15K-SPD-US	nCircle File Integrity Monitoring - Annual Subscription	Each			
nCircle	CCM-FIM15K-SPD-US	CCM-FIM15K-SPD-US	CCM-FIM15K-SPD-US	CCM Management Server - Annual Subscription	Each	\$15,004.05		\$16,620.00
nCircle	CCM-FIM15K-SPD-US	CCM-FIM15K-SPD-US	CCM-FIM15K-SPD-US	Active Server IP license (per IP cost) - Annual Subscription - FIM Only	Each	\$43.33		\$48.00
nCircle	CCM-FIM15K-SPD-US	CCM-FIM15K-SPD-US	CCM-FIM15K-SPD-US	Active Workstation IP license (per IP cost) - Annual Subscription - FIM Only	Each	\$19.35		\$17.00
nCircle	CCM-FIM15K-SPD-US	CCM-FIM15K-SPD-US	CCM-FIM15K-SPD-US	Special Purpose Device - Less than 5000 Active IP license (per IP cost) - Annual Subscription - FIM Only	Each	\$9.03		\$10.00
nCircle	CCM-FIM15K-SPD-US	CCM-FIM15K-SPD-US	CCM-FIM15K-SPD-US	5000 Active IP license (per IP cost) - Annual Subscription - FIM Only	Each	\$9.48		\$9.39
nCircle	CCM-FIM15K-SPD-US	CCM-FIM15K-SPD-US	CCM-FIM15K-SPD-US	7500 Active IP license (per IP cost) - Annual Subscription - FIM Only	Each	\$7.24		\$8.03
nCircle	CCM-FIM15K-SPD-US	CCM-FIM15K-SPD-US	CCM-FIM15K-SPD-US	10000 Active IP license (per IP cost) - Annual Subscription - FIM Only	Each	\$6.98		\$7.73
nCircle	CCM-FIM15K-SPD-US	CCM-FIM15K-SPD-US	CCM-FIM15K-SPD-US	12500 Active IP license (per IP cost) - Annual Subscription - FIM Only	Each	\$6.04		\$6.69
nCircle	CCM-FIM15K-SPD-US	CCM-FIM15K-SPD-US	CCM-FIM15K-SPD-US	15000 Active IP license (per IP cost) - Annual Subscription - FIM Only	Each	\$5.20		\$5.76
nCircle	CCM-FIM17K-SPD-US	CCM-FIM17K-SPD-US	CCM-FIM17K-SPD-US	17500 Active IP license (per IP cost) - Annual Subscription - FIM Only	Each	\$4.58		\$5.08
nCircle	CCM-FIM20K-SPD-US	CCM-FIM20K-SPD-US	CCM-FIM20K-SPD-US	20000 Active IP license (per IP cost) - Annual Subscription - FIM Only	Each	\$4.36		\$4.83
nCircle	CCM-FIM25K-SPD-US	CCM-FIM25K-SPD-US	CCM-FIM25K-SPD-US	22500 Active IP license (per IP cost) - Annual Subscription - FIM Only	Each	\$4.27		\$4.73
nCircle	CCM-FIM25K-SPD-US	CCM-FIM25K-SPD-US	CCM-FIM25K-SPD-US	25000 Active IP license (per IP cost) - Annual Subscription - FIM Only	Each	\$4.14		\$4.58
nCircle	CCM-FIM27K-SPD-US	CCM-FIM27K-SPD-US	CCM-FIM27K-SPD-US	27500 Active IP license (per IP cost) - Annual Subscription - FIM Only	Each	\$3.99		\$4.43
nCircle	CCM-FIM30K-SPD-US	CCM-FIM30K-SPD-US	CCM-FIM30K-SPD-US	30000 Active IP license (per IP cost) - Annual Subscription - FIM Only	Each	\$3.87		\$4.29
nCircle	CCM-FIM32K-SPD-US	CCM-FIM32K-SPD-US	CCM-FIM32K-SPD-US	32500 Active IP license (per IP cost) - Annual Subscription - FIM Only	Each	\$3.75		\$4.15
nCircle	CCM-FIM35K-SPD-US	CCM-FIM35K-SPD-US	CCM-FIM35K-SPD-US	35000 Active IP license (per IP cost) - Annual Subscription - FIM Only	Each	\$3.66		\$4.05
nCircle	CCM-FIM37K-SPD-US	CCM-FIM37K-SPD-US	CCM-FIM37K-SPD-US	37500 Active IP license (per IP cost) - Annual Subscription - FIM Only	Each	\$3.54		\$3.92
nCircle	CCM-FIM40K-SPD-US	CCM-FIM40K-SPD-US	CCM-FIM40K-SPD-US	40000 Active IP license (per IP cost) - Annual Subscription - FIM Only	Each	\$3.46		\$3.83
nCircle	CCM-FIM42K-SPD-US	CCM-FIM42K-SPD-US	CCM-FIM42K-SPD-US	42500 Active IP license (per IP cost) - Annual Subscription - FIM Only	Each	\$3.33		\$3.69
nCircle	CCM-FIM45K-SPD-US	CCM-FIM45K-SPD-US	CCM-FIM45K-SPD-US	45000 Active IP license (per IP cost) - Annual Subscription - FIM Only	Each	\$3.25		\$3.60
nCircle	CCM-FIM47K-SPD-US	CCM-FIM47K-SPD-US	CCM-FIM47K-SPD-US	47500 Active IP license (per IP cost) - Annual Subscription - FIM Only	Each	\$3.12		\$3.46
nCircle	CCM-FIM50K-SPD-US	CCM-FIM50K-SPD-US	CCM-FIM50K-SPD-US	50000 Active IP license (per IP cost) - Annual Subscription - FIM Only	Each	\$3.01		\$3.34
nCircle	CCM-FIM100-SPD-US	CCM-FIM100-SPD-US	CCM-FIM100-SPD-US	100000 Active IP license (per IP cost) - Annual Subscription - FIM Only	Each	\$2.86		\$3.17
nCircle	CCM-FIM150K-SPD-US	CCM-FIM150K-SPD-US	CCM-FIM150K-SPD-US	150000 Active IP license (per IP cost) - Annual Subscription - FIM Only	Each	\$2.83		\$3.14
nCircle	CCM-FIM200K-SPD-US	CCM-FIM200K-SPD-US	CCM-FIM200K-SPD-US	200000 Active IP license (per IP cost) - Annual Subscription - FIM Only	Each	\$2.76		\$3.06
nCircle	CCM-FIM250K-SPD-US	CCM-FIM250K-SPD-US	CCM-FIM250K-SPD-US	250000 Active IP license (per IP cost) - Annual Subscription - FIM Only	Each	\$2.72		\$3.02
nCircle	CCM-FIM-SE-US	CCM-FIM-SE-US	CCM-FIM-SE-US	Configuration Compliance Manager Windows Scan Engine - Annual Subscription - FIM Only	Each	\$2,112.48		\$2,340.00
nCircle	AS-DP-3050-US	AS-DP-3050-US	AS-DP-3050-US	Device Profiler 3050 (2GB) Annual Subscription - FIM Only	Each	\$3,231.92		\$3,580.00
nCircle	PSIH-0002-US	PSIH-0002-US	PSIH-0002-US	nCircle Security Intelligence Hub Pricing	Each			
nCircle	PSIH-0005-US	PSIH-0005-US	PSIH-0005-US	250 Active IP license	Each	\$9,027.71		\$ 10,000.00
nCircle	PSIH-0010-US	PSIH-0010-US	PSIH-0010-US	500 Active IP license	Each	\$9,027.71		\$ 10,000.00
nCircle	PSIH-0025-US	PSIH-0025-US	PSIH-0025-US	1000 Active IP license	Each	\$9,027.71		\$ 10,000.00
nCircle	PSIH-0050-US	PSIH-0050-US	PSIH-0050-US	Medium Business List Price per IP (2,500 - 9,999 IPs)	Each	\$9,027.71		\$ 10,000.00
nCircle	PSIH-0075-US	PSIH-0075-US	PSIH-0075-US	2500 Active IP license	Each	\$13,090.18		\$ 14,500.00
nCircle	PSIH-0100-US	PSIH-0100-US	PSIH-0100-US	5000 Active IP license	Each	\$18,077.98		\$ 20,000.00
nCircle	PSIH-0100-US	PSIH-0100-US	PSIH-0100-US	Large Business List Price per IP (Greater than 10,000 IPs)	Each	\$22,117.88		\$ 24,500.00

nCircle	IPSIH-0125-US	IPSIH-0125-US	12,500 Active IP license	Each	\$25,503.27	\$ 28,250.00
nCircle	IPSIH-0150-US	IPSIH-0150-US	15,000 Active IP license	Each	\$28,166.45	\$ 31,200.00
nCircle	IPSIH-0175-US	IPSIH-0175-US	17,500 Active IP license	Each	\$30,175.11	\$ 33,425.00
nCircle	IPSIH-0200-US	IPSIH-0200-US	20,000 Active IP license	Each	\$31,777.53	\$ 35,200.00
nCircle	IPSIH-0225-US	IPSIH-0225-US	22,500 Active IP license	Each	\$32,905.99	\$ 36,450.00
nCircle	IPSIH-0250-US	IPSIH-0250-US	25,000 Active IP license	Each	\$33,176.83	\$ 36,750.00
nCircle	IPSIH-0275-US	IPSIH-0275-US	27,500 Active IP license	Each	\$33,267.10	\$ 36,850.00
nCircle	IPSIH-0300-US	IPSIH-0300-US	30,000 Active IP license	Each	\$33,312.24	\$ 36,900.00
nCircle	IPSIH-0325-US	IPSIH-0325-US	32,500 Active IP license	Each	\$33,741.05	\$ 37,375.00
nCircle	IPSIH-0350-US	IPSIH-0350-US	35,000 Active IP license	Each	\$33,608.77	\$ 37,450.00
nCircle	IPSIH-0375-US	IPSIH-0375-US	37,500 Active IP license	Each	\$33,853.90	\$ 37,500.00
nCircle	IPSIH-0400-US	IPSIH-0400-US	40,000 Active IP license	Each	\$36,110.83	\$ 40,000.00
nCircle	IPSIH-0425-US	IPSIH-0425-US	42,500 Active IP license	Each	\$33,957.76	\$ 42,500.00
nCircle	IPSIH-0450-US	IPSIH-0450-US	45,000 Active IP license	Each	\$40,624.69	\$ 45,000.00
nCircle	IPSIH-0475-US	IPSIH-0475-US	47,500 Active IP license	Each	\$42,881.61	\$ 47,500.00
nCircle	IPSIH-0500-US	IPSIH-0500-US	50,000 Active IP license	Each	\$45,138.54	\$ 50,000.00
nCircle	IPSIH-1000-US	IPSIH-1000-US	100,000 Active IP license	Each	\$90,277.08	\$ 100,000.00
nCircle	IPSIH-1500-US	IPSIH-1500-US	150,000 Active IP license	Each	\$135,415.62	\$ 150,000.00
nCircle	IPSIH-2000-US	IPSIH-2000-US	200,000 Active IP license	Each	\$180,554.16	\$ 200,000.00
nCircle	IPSIH-2500-US	IPSIH-2500-US	250,000 Active IP license	Each	\$225,692.70	\$ 250,000.00
nCircle	IPSIH-E21UPGD-US	IPSIH-E21UPGD-US	Upgrade to next level of licenses, difference in license cost +10%	Each		
nCircle	WebApp360-0001-US	nCircle WebApp360		Each		
nCircle	WebApp360-0001-US	WebApp360-0001-US	1-24 Active Web Servers license (Flat Rate)	Each	\$9,027.71	\$10,000.00
nCircle	WebApp360-0002-US	WebApp360-0002-US	25-99 Active Web Servers license (per server cost)	Each	\$361.11	\$400.00
nCircle	WebApp360-0010-US	WebApp360-0010-US	100-249 Active Web Servers license (per server cost)	Each	\$325.00	\$360.00
nCircle	WebApp360-0025-US	WebApp360-0025-US	250-499 Active Web Servers license (per server cost)	Each	\$292.50	\$324.00
nCircle	WebApp360-0050-US	WebApp360-0050-US	500-999 Active Web Servers license (per server cost)	Each	\$263.25	\$291.60
nCircle	WebApp360-2000-US	WebApp360-2000-US	27500-29999 Active Web Servers license (per server cost)	Each		\$82.36
nCircle	WebApp360-3000-US	WebApp360-3000-US	30000-32499 Active Web Servers license (per server cost)	Each	\$66.91	\$74.12
nCircle	WebApp360-3000-US	WebApp360-3000-US	32500-34999 Active Web Servers license (per server cost)	Each	\$60.22	\$66.71
nCircle	WebApp360-3000-US	WebApp360-3000-US	35000-37499 Active Web Servers license (per server cost)	Each	\$54.20	\$60.04
nCircle	WebApp360-3000-US	WebApp360-3000-US	37500-39999 Active Web Servers license (per server cost)	Each	\$48.78	\$54.04
nCircle	WebApp360-4000-US	WebApp360-4000-US	40000-42499 Active Web Servers license (per server cost)	Each	\$43.90	\$48.53
nCircle	WebApp360-4200-US	WebApp360-4200-US	42500-44999 Active Web Servers license (per server cost)	Each	\$39.51	\$43.77
nCircle	WebApp360-4200-US	WebApp360-4200-US	45000-47499 Active Web Servers license (per server cost)	Each	\$35.56	\$39.39
nCircle	WebApp360-4200-US	WebApp360-4200-US	47500-49999 Active Web Servers license (per server cost)	Each	\$32.01	\$35.45
nCircle	WebApp360-5000-US	WebApp360-5000-US	50000-99999 Active Web Servers license (per server cost)	Each	\$28.81	\$31.91
nCircle	WebApp360-10000-US	WebApp360-10000-US	100000-149999 Active Web Servers license (per server cost)	Each	\$25.92	\$28.72
nCircle	WebApp360-15000-US	WebApp360-15000-US	150000-199999 Active Web Servers license (per server cost)	Each	\$23.33	\$25.84
nCircle	WebApp360-20000-US	WebApp360-20000-US	200000-249999 Active Web Servers license (per server cost)	Each	\$21.00	\$23.26
nCircle	WebApp360-25000-US	WebApp360-25000-US	250000-299999 Active Web Servers license (per server cost)	Each	\$18.90	\$20.93
nCircle	WebApp360-30000-US	WebApp360-30000-US	300000- Active Web Servers license (per server cost)	Each	\$17.01	\$18.84
nCircle	CS-SDS-US	CS-SDS-US	Standard Deployment Services (per day) - Prepaid Discount Applied	Each	\$2,256.93	\$2,500.00
nCircle	CS-CDS-US	CS-CDS-US	Custom Deployment Services (per day) - Prepaid Discount Applied	Each	\$2,256.93	\$2,500.00
nCircle	ES-CTSC-US	ES-CTSC-US	Custom Ticketing System Connector Installation (per day) - Prepaid Discount Applied	Each	\$2,256.93	\$2,500.00
nCircle	CS-BPD-US	CS-BPD-US	Best Practice Deployment Services - Prepaid Discount Applied	Each	\$10,833.25	\$12,000.00
nCircle	CS-DRO-US	CS-DRO-US	Deployment Review and Optimization Services - Prepaid Discount Applied	Each	\$10,833.25	\$12,000.00

nCircle	ES-CAD-US	IP360 - Enhancement Services	Each	\$2,256.93	\$2,500.00
nCircle	TS-IP360-CAMOS-US	Custom ASP-L Development (per day) - Prepaid Discount Applied	Each	\$2,256.93	\$2,500.00
nCircle	TS-IP360-CAMOE-US	IP360 - Training Services	Each	\$10,833.25	\$12,000.00
nCircle	TS-IP360-CAMOE-US	IP360 Administration (CAM), 2 Days, On-site (up to 8 students) - Prepaid Discount Applied	Each	\$2,256.93	\$2,500.00
nCircle	TS-IP360-CAMHQ-US	IP360 Administration (CAM), 2 Days, On-site (Each Additional Student) - Prepaid Discount Applied	Each	\$2,256.93	\$2,500.00
nCircle	CS-SDS-US-CCM	IP360 Administration (CAM), 2 Days, HQ Classroom (per seat) - Prepaid Discount Applied	Each	\$2,256.93	\$2,500.00
nCircle	CS-BPD-US	Configuration Compliance Manager - Core Services	Each	\$2,256.93	\$2,500.00
nCircle	CS-DRO-US	Standard Deployment Services (per day) - Prepaid Discount Applied	Each	\$10,833.25	\$12,000.00
nCircle	ES-OPRTD-US	Best Practice Deployment Services - Prepaid Discount Applied	Each	\$10,833.25	\$12,000.00
nCircle	TS-CCM-CAMOS-US	Deployment Review and Optimization Services - Prepaid Discount Applied	Each	\$2,256.93	\$2,500.00
nCircle	TS-CCM-CAMOE-US	CCM - Enhancement Services	Each	\$2,256.93	\$2,500.00
nCircle	TS-CCM-CAMHQ-US	Custom Policy/Rule/Test Development (per day) - Prepaid Discount Applied	Each	\$10,833.25	\$12,000.00
nCircle	CS-SDS-US-SIH	Configuration Compliance Manager - Training Services	Each	\$2,256.93	\$2,500.00
nCircle	CS-BPD-US-SIH	CCM Administration (CAM), 2 Days, On-site (up to 8 students) - Prepaid Discount Applied	Each	\$2,256.93	\$2,500.00
nCircle	CS-DRO-US-SIH	CCM Administration (CAM), 2 Days, On-site (Each Additional Student) - Prepaid Discount Applied	Each	\$2,256.93	\$2,500.00
nCircle	ES-EDI-US	Suite360 Intelligence Hub - Core Services	Each	\$2,256.93	\$2,500.00
nCircle	ES-CRS-US	Standard Deployment Services (per day) - Prepaid Discount Applied	Each	\$10,833.25	\$12,000.00
nCircle	TS-SIH-CAMOS-US	Best Practice Deployment Services - Prepaid Discount Applied	Each	\$10,833.25	\$12,000.00
nCircle	TS-SIH-CAMOE-US	Deployment Review and Optimization Services - Prepaid Discount Applied	Each	\$2,256.93	\$2,500.00
nCircle	TS-SIH-CAMHQ-US	Suite360 Intelligence Hub - Enhancement Services	Each	\$2,256.93	\$2,500.00
nCircle	CP-CPS-US	External Data Integration Services (per day) - Prepaid Discount Applied - M&S Option	Each	\$2,256.93	\$2,500.00
nCircle	CP-BPS-US	Custom Reporting Services (per day) - Prepaid Discount Applied - M&S Option	Each	\$5,416.62	\$6,000.00
nCircle	TS-S360-CAMOS-US	Suite360 Intelligence Hub - Training Services	Each	\$2,256.93	\$2,500.00
nCircle	TS-S360-CAMOE-US	SIH Administration (CAM), 1 Days, On-site (up to 8 students) - Prepaid Discount Applied	Each	\$2,256.93	\$2,500.00
nCircle	TS-S360-CAMHQ-US	SIH Administration (CAM), 2 Days, On-site (Each Additional Student) - Prepaid Discount Applied	Each	\$1,354.16	\$1,500.00
nCircle	SS-ZS-TML-BASE-P1	Suite360 - Custom Professional Services	Each	\$2,256.93	\$2,500.00
nCircle	IP360-0025-US-S	Custom Professional Services (per day) - Prepaid Discount Applied (See Note)	Each	\$2,256.93	\$2,500.00
nCircle	IP360-0050-US-S	Best Practice Services (per day) - Prepaid Discount Applied	Each	\$10,833.25	\$12,000.00
nCircle	IP360-0075-US-S	Suite360 Custom Training, 2 Days, On-site (up to 8 students) - Prepaid Discount Applied	Each	\$2,256.93	\$2,500.00
nCircle	VNE 1100 US \$	Suite360 Custom Training, 2 Days, On-site (each add'l student) - Prepaid Discount Applied	Each	\$2,256.93	\$2,500.00
nCircle	VNE 4100 US \$	Premium Support Subscription Updates S&M - 1YR	Each	\$5,416.62	\$6,000.00
nCircle	VNE 5100 US \$	2500 Active IP subscription license	Each	\$20,167.90	\$22,340.00
nCircle	DP-3000-US-S	5000 Active IP subscription license	Each	\$29,791.44	\$33,000.00
nCircle	CCM-MS-US-S	7500 Active IP subscription license	Each	\$55,081.67	\$38,860.00
nCircle	CCM-S-US-S	VNE Manager 1100 subscription license	Each	\$8,834.18	\$9,450.00
nCircle	CCM-NDUS-S	VNE Manager 4100 subscription license	Each	\$16,647.09	\$18,440.00
nCircle	CCM-VVUS-S	VNE Manager 5100 subscription license	Each	\$31,170.00	\$35,170.00
nCircle	CCM-SPDUS-S	Device Profiler 3000 subscription license	Each	\$3,114.56	\$3,450.00
nCircle	DP-3050-US-S	CCM Management Server subscription license	Each	\$19,445.68	\$21,540.00
nCircle	IPSIH-0025-US-S	100 Active Server IP subscription license (per IP cost)	Each	\$111.40	\$123.40
nCircle	IPSIH-0050-US-S	100 Active Network Device IP subscription license (per IP cost)	Each	\$83.42	\$92.40
nCircle	IPSIH-0075-US-S	1000 Active Network Device IP subscription license (per IP cost)	Each	\$33.60	\$42.76
nCircle	IPSIH-0100-US-S	5000 Single Purpose Device Active IP subscription license (per IP cost)	Each	\$105.06	\$116.38
nCircle	IPSIH-0125-US-S	Device Profiler 3050 subscription license	Each	\$2,231.92	\$3,580.00
nCircle	IPSIH-0150-US-S	Security Intelligence Hub, 2500 Active IP subscription license	Each	\$5,597.18	\$6,200.00

nCircle	IPSIH-0050-US-S	IPSIH-0050-US-S	Security Intelligence Hub, 5000 Active IP subscription license	Each	\$8,115.51	\$8,990.00
nCircle	IPSIH-0075-US-S	IPSIH-0075-US-S	Security Intelligence Hub, 7500 Active IP subscription license	Each	\$11,203.39	\$12,410.00
nCircle	WebApp360-0010-US-S	WebApp360-0010-US-S	Webb App 360, 100-249 Active Web Servers subscription license	Each	\$50,347.63	\$55,770.00
nCircle	WebApp360-0025-US-S	WebApp360-0025-US-S	Webb App 360, 250-499 Active Web Servers subscription license	Each	\$713,208.71	\$725,490.00
nCircle	WebApp360-0050-US-S	WebApp360-0050-US-S	Webb App 360, 500-999 Active Web Servers subscription license	Each	\$203,908.84	\$225,870.00
nCircle	BM-S-INTRO1	BM-S-INTRO1	Benchmark Standard Edition - 12 Month License	Each	\$5,958.29	\$6,600.00
nCircle	BM-P-INTRO2	BM-P-INTRO2	Benchmark Premium - 12 Month License	Each	\$35,749.72	\$39,600.00

Exhibit II

Additional software license terms have been attached, see attached 'License_and_Purchase_Agreement (V Feb 10).doc' and section 10.11 Order of Precedence.

Exhibit III

CONTRACTOR/SUBCONTRACTOR AFFIRMATION AND DISCLOSURE:

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

The Bidder/Offeror 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 Bidder/Offeror to sanctions, termination or a damages assessment. If the Bidder/Offeror will not be using subcontractors, indicate "Not Applicable" in the appropriate spaces.

1. Principal location of business of Contractor:

6585 MERCHANT PLACE WARRENTON, VA 20187
(Address) SUITE 100 (City, State, Zip) Name/Principal

Location of business of subcontractor(s):

NONE
(Name) (Address, City, State, Zip)

(Name) (Address, City, State, Zip)

2. Location where services will be performed by Contractor:

N/A
(Address) (City, State, Zip)

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

N/A
(Name) (Address, City, State, Zip)

(Name) (Address, City, State, Zip)

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

N/A
(Address) (Address, City, State, Zip)



LICENSE AND PURCHASE AGREEMENT

This License and Purchase Agreement (this "Agreement") is made and entered into as of _____ 20__ ("Effective Date"), by and between nCircle Network Security, Inc. ("nCircle"), a California corporation, with offices at 101 Second Street, Suite 400 San Francisco, California 94105, and _____ ("Customer"), with offices at _____.

1. DEFINITIONS.

1.1 "Affiliates" shall mean any entity that Controls, is Controlled by, or is under common Control with Customer.

1.2 "Control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and operating policies of an entity through the ownership of voting securities (at least fifty-one percent (51%) of its voting or equity securities or the maximum allowed by law), contract, voting trust, or otherwise.

1.3 "Documentation" means the standard user documentation relating to the use of the nCircle Products delivered with the nCircle Products.

1.4 "Hardware" means the hardware products, as specified in the applicable Schedule.

1.5 "Installation Services" means the installation-related services for the nCircle Products provided by nCircle, as described in the applicable Schedule.

1.6 "Intellectual Property Rights" means patent rights (including patent applications and disclosures), copyrights, trademarks, trade secrets, know-how and any other intellectual property rights recognized in any country or jurisdiction in the world.

1.7 "Licensed IP Addresses" means the maximum number of individual IP Address on Customer's internal network that Customer will monitor through use of the nCircle Products. The number of such addresses is specified in the applicable Schedule.

1.8 "nCircle Products" means, collectively, the Hardware and Software.

1.9 "Schedule" means the ordering document attached hereto or any subsequent ordering document (including, without limitation, Customer's purchase order) that specifies (a) the nCircle Products and Services purchased by Customer, (b) references this Agreement and (c) is executed by Customer.

1.10 "Services" means Installation Services, Technical Support Services and any other services provide by nCircle under this Agreement.

1.11 "Software" means the software products, in object code form, as specified in the applicable Schedule, and any Software Updates that nCircle provides to Customer pursuant to this Agreement.

1.12 "Software Updates" shall mean updates, modifications or new releases of the Software made generally available by nCircle at no additional charge to its customers who are subscribing to Technical Support Services and who are current in payment of Technical Support Services fees.

1.13 "Technical Support Services" means the technical support services for nCircle Products provided by nCircle in accordance with nCircle's then-current Technical Support Services policies and procedures. nCircle's Technical Support Services policies and procedures as of the Effective Date are set forth in Exhibit A.

2. LICENSE.

2.1 Grant of License. Subject to Customer's compliance with the terms and conditions of this Agreement (including, without

limitation, payment of all applicable amounts in accordance with Section 5), nCircle grants to Customer a nonexclusive, non-transferable perpetual license to use the Software, only as installed on the Hardware and as specified in the Documentation and only for the purpose of monitoring the Licensed IP Addresses.

2.2 License Restrictions. Customer has no right to transfer, sublicense or otherwise distribute the Software to any third party. Customer will not copy or modify the Software, in whole or in part, except as expressly authorized in this Agreement. Customer will not lease, lend or rent the Software, use the Software to provide service bureau, time-sharing or other computer services to third parties, or otherwise provide or make the functionality of the Software available to third parties. Customer will not use the Software for performing comparisons or other "benchmarking" activities against competitive products. Customer acknowledges that the Software contains trade secrets of nCircle and its licensors, and, in order to protect such trade secrets and other interests that nCircle and its licensors may have in the Software, Customer agrees not to disassemble, decompile or reverse engineer the Software (or authorize any third party to do any of the foregoing), except and solely to the extent, if any, that applicable local law requires that such activities be permitted.

2.3 Other Restrictions. If Customer sells, lease, assigns, transfers or otherwise disposes of any Hardware to a third party, Customer will ensure that it erases and deletes from such Hardware any and all copies of the Software.

2.4 Limited Rights. Customer's rights in the Software will be limited to those expressly granted in this Agreement. nCircle reserves all rights and licenses in and to the Software not expressly granted to Customer under this Agreement.

2.5 Ownership. Customer expressly acknowledges that, as between nCircle and Customer, nCircle owns all worldwide right, title and interest in and to the Software, including all worldwide Intellectual Property Rights therein. Customer will not delete or in any manner alter the copyright, trademark, and

other proprietary rights notices appearing on the Software as delivered to Customer. Customer will reproduce such notices on all copies it makes of the Software.

2.6 Verification and Audit. At nCircle's written request, Customer will furnish nCircle with a certification signed by an officer of Customer verifying that the Software is being used in compliance with the terms of this Agreement. In addition, upon at least thirty (30) days prior written notice, nCircle may audit Customer's use of the Software to ensure that Customer is in compliance with the terms of this Agreement. Any such audit will be conducted during regular business hours at Customer's facilities and will not unreasonably interfere with Customer's business activities. Customer will provide nCircle with access to all relevant Customer records, facilities and systems. If an audit reveals that Customer has underpaid fees to nCircle during the period audited, then nCircle will invoice Customer, and Customer will promptly pay nCircle, for such underpaid fees based on nCircle's price list in effect at the time the audit is completed. If the underpaid fees exceed five percent (5%) of the license fees paid by Customer for the Software, then Customer will also pay nCircle's reasonable costs of conducting the audit.

3. SHIPMENT AND DELIVERY. nCircle will ship the Software and Hardware FCA (Incoterms 2000), nCircle's site. Unless specified in advance by Customer, nCircle will select the carrier in its own discretion. Customer will be responsible for all freight, packing, insurance and other shipping-related expenses. Title to the Hardware (except to the extent that the Hardware includes any software or firmware) and risk of loss will pass to Customer upon nCircle's delivery of the Hardware to the carrier.

4. SERVICES.

4.1 Installation Services. Following execution of this Agreement by both parties, on such dates as mutually agreed upon by the parties, nCircle will perform Installation Services, subject to Customer's payment of the fees for such Installation Services, as set forth in the applicable Schedule.

4.2 Technical Support Services. nCircle will provide Customer with Technical Support Services for the nCircle Products, subject to Customer's payment of nCircle's fees for such Technical Support Services, as set forth in the applicable Schedule. nCircle reserves the right to amend its Technical Support Services policy and applicable fees upon written notice to Customer. Technical Support Services fees shall be billed on an annual basis payable in advance.

5. ORDERS AND PAYMENT.

5.1 Orders. Customer may order nCircle Products and Services by submitting Schedules to nCircle. No Schedule will be deemed accepted by nCircle unless and until nCircle either accepts the Schedule in writing or ships the nCircle Products or begins performing the Services specified in such Schedule. Any terms and conditions contained in any Schedule that are inconsistent with or in addition to the terms and conditions of this Agreement will be deemed stricken from such Schedule, unless expressly agreed to in writing by nCircle. Customer Affiliates may also order nCircle Products and Services in accordance with the foregoing terms, provided that Customer will be jointly and severally liable with its Affiliates for any breach by its Affiliates of the terms and conditions of this Agreement.

5.2 Fees and Expenses. Customer will pay nCircle the total fees and charges for the nCircle Products and Services specified in the applicable Schedule. Customer will also reimburse nCircle for any reasonable and customary out-of-pocket travel, lodging and related expenses incurred by nCircle in connection with performing any Services under this Agreement. All such fees, charges and expenses will be due and payable within thirty (30) days after the date of nCircle's invoice therefore. Upon execution of the Schedule, payment obligations are non-cancelable and, except as expressly provided in this Agreement, upon payment, all payments made by Customer are non-refundable. All past due amounts will incur interest at a rate of 1.5% per month or the maximum rate permitted by law, whichever is less.

5.3 Taxes. Customer will pay all amounts due under this Agreement in U.S. currency. All amounts payable under this Agreement are net amounts and are payable in full, without deduction for taxes or duties of any kind. Customer will be responsible for, and will promptly pay, all taxes and duties of any kind (including but not limited to sales, use and withholding taxes) associated with this Agreement or Customer's receipt or use of the nCircle Products and Services, except for taxes based on nCircle's net income. In the event that nCircle is required to collect any tax for which Customer is responsible, Customer will pay such tax directly to nCircle. If Customer pays any withholding taxes that are required to be paid under applicable law, Customer will furnish nCircle with written documentation of all such tax payments, including receipts.

6. WARRANTY.

6.1 Limited Software Warranty. nCircle warrants that, for a period of ninety (90) days after the shipment date, the Software will perform in all material respects in accordance with the functional specifications set forth in the Documentation. As Customer's sole and exclusive remedy and nCircle's entire liability for any breach of the foregoing warranty, nCircle will repair or replace any nonconforming Software so that it operates as warranted or, if nCircle is unable to do so, terminate the license for such Software and, upon Customer's return of such Software to nCircle, return the license fees paid to nCircle for the nonconforming Software. The warranty set forth in this Section 6.1 will not apply to the extent that: (a) the Software is modified by Customer or any party other than nCircle, or (b) the Software is improperly installed or used in a manner other than as authorized under this Agreement. nCircle does not warrant that the Software will operate in the combinations that Customer may select for use, or that the operation of the Software will be uninterrupted or error-free, or that all Software errors will be corrected. Any claim submitted under this Section 6.1 must be submitted in writing to nCircle within the specified warranty period.

6.2 Limited Hardware Warranty. nCircle warrants only to Customer that the Hardware

will be free from defects in materials and workmanship and materials, under normal intended use, for ninety (90) days from the original shipment date. As Customer's sole and exclusive remedy and nCircle's entire liability for any breach of the foregoing warranty, nCircle will ship a replacement Hardware product. The warranty set forth in this Section 6.2 will not apply to the extent that: (a) the Hardware is improperly installed or used in a manner other than as authorized under this Agreement, (b) Hardware is modified or repaired by Customer or any party other than nCircle; (c) the Hardware is damaged due to Customer's mishandling, abuse, misuse, negligence, or improper storage, servicing or operation; or (d) the Hardware is damaged due to power failures, surges, lightning strikes, fire, flood, accident, and actions of third parties or other events outside nCircle's reasonable control. If the Hardware is damaged due to negligence or neglect, Customer will be responsible for all shipping and repair costs. Otherwise, Customer will be responsible for shipping costs to nCircle and nCircle will be responsible for shipping the replacement Hardware product to Customer. Any claim submitted under this Section 6.2 must be submitted in writing to nCircle within the specified warranty period. Replacement Hardware may consist of both new and used components or may have been previously installed. Replacement Hardware is warranted for the unexpired portion of the original Hardware warranty. All Hardware that is replaced becomes the property of nCircle. nCircle will not be responsible for Customer's or any third party's software, firmware, information, or data contained in or stored on any Hardware returned to nCircle, whether under warranty or not.

6.3 Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTIONS 6.1 AND 6.2, NCIRCLE AND ITS LICENSORS AND SUPPLIERS DISCLAIM ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

7. INDEMNIFICATION.

7.1 Infringement Indemnity. nCircle will defend or settle any action brought against Customer to the extent that it is based upon a claim that the Software, as provided by nCircle to Customer under this Agreement and used within the scope of this Agreement, infringes any U.S. patent or any copyright or misappropriates any trade secret, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are awarded against or payable in settlement by Customer, provided that Customer: (a) promptly notifies nCircle in writing of the claim; (b) grants nCircle sole control of the defense and settlement of the claim; and (c) provides nCircle, at nCircle's expense, with all assistance, information and authority reasonably required for the defense and settlement of the claim.

7.2 Injunctions. If Customer's use of any of the Software hereunder is, or in nCircle's opinion is likely to be, enjoined due to a claim of the type specified in Section 7.1 above, then nCircle may, at its sole option and expense: (a) procure for Customer the right to continue using such Software under the terms of this Agreement; (b) replace or modify such Software so that it is non-infringing and substantially equivalent in function to the enjoined Software; or (c) if options (a) and (b) above cannot be accomplished despite nCircle's reasonable efforts, then nCircle may terminate Customer's rights and nCircle's obligations hereunder with respect to such Software and refund to Customer the unamortized portion of the license fees paid for such Software, based upon a straight-line five (5) year depreciation commencing as of the date of receipt by Customer of such Software.

7.3 Exclusions. Notwithstanding the terms of Section 7.1, nCircle will have no liability for any infringement or misappropriation claim of any kind to the extent that it results from: (a) modifications to the Software made by a party other than nCircle, if a claim would not have occurred but for such modifications; (b) the combination, operation or use of the Software with equipment, devices, software or data not supplied by nCircle, if a claim would not have occurred but for such combination,

operation or use; (c) Customer's failure to use updated or modified Software provided by nCircle to avoid a claim; (d) nCircle's compliance with any designs, specifications or plans provided by Customer; or (e) Customer's use of the Software other than in accordance with this Agreement or the Documentation.

7.4 Sole Remedy. THE PROVISIONS OF THIS SECTION 7 SET FORTH NCIRCLE'S SOLE AND EXCLUSIVE OBLIGATIONS, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

8. CONFIDENTIALITY.

8.1 Definition. "Confidential Information" means (a) any information of nCircle or Customer that, if disclosed in writing, is marked "confidential" or "proprietary" at the time of disclosure, or, if disclosed orally, is identified as "confidential" or "proprietary" at the time of disclosure, and is summarized in a writing sent by the disclosing party to the other party within thirty (30) days of such disclosure; or (b) any information that, under the circumstances of disclosure, a person exercising reasonable business judgment would understand to be confidential or proprietary. Without limiting the foregoing, nCircle Confidential Information include the Software and Documentation.

8.2 Exclusions. The obligations set forth in Section 8.3 will not apply to any information that: (i) is or becomes generally known to the public through no fault or breach of this Agreement by the receiving party; (ii) is rightfully known by the receiving party at the time of disclosure without an obligation of confidentiality; (iii) is independently developed by the receiving party without use of the disclosing party's Confidential Information; (iv) the receiving party rightfully obtains from a third party without restriction on use or disclosure; or (v) is disclosed with the prior written approval of the other party.

8.3 Restrictions. Each party will not use the other party's Confidential Information, except as necessary for the performance of this Agreement. and will not disclose such

Confidential Information, except to those of its employees and subcontractors who need to know such Confidential Information for the performance of this Agreement; provided that each such employee and subcontractor is bound by a written agreement that contains use and nondisclosure restrictions at least as protective of the Confidential Information as those set forth in this Agreement. Each party will employ all reasonable steps to protect the other party's Confidential Information from unauthorized use or disclosure, including, but not limited to, the steps that it takes to protect its own information of similar importance. The foregoing obligations will not restrict either party from disclosing Confidential Information of the other party: (a) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the party required to make such a disclosure gives reasonable notice to the other party to contest such order or requirement; (b) to its legal or financial advisors; (c) as required under applicable securities regulations; or (d) subject to customary confidentiality restrictions, to present or future providers of venture capital and/or private investors in or acquirers of such party.

9. LIMITATION OF LIABILITY. EXCEPT AS PROVIDED IN SECTION 7 (INDEMNIFICATION), NCIRCLE'S LIABILITY FOR DAMAGES UNDER THIS AGREEMENT, FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, SHALL IN NO EVENT EXCEED THE AMOUNTS PAID BY CUSTOMER TO NCIRCLE UNDER THIS AGREEMENT, AND IF SUCH LIABILITY RESULTS FROM CUSTOMER'S USE OF AN NCIRCLE PRODUCT OR FROM ANY SERVICES PROVIDED BY NCIRCLE, NCIRCLE'S LIABILITY SHALL BE LIMITED TO THE ACTUAL AMOUNTS PAID BY CUSTOMER FOR THE NCIRCLE PRODUCTS OR SERVICES GIVING RISE TO THE LIABILITY. IN NO EVENT SHALL NCIRCLE BE LIABLE FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST DATA OR LOST PROFITS, HOWEVER ARISING, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, REGARDLESS OF THE FORM OF ACTION,

WHETHER BASED IN CONTRACT, TORT, OR ANY OTHER LEGAL THEORY. THE PARTIES AGREE THAT THESE LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. The parties expressly acknowledge and agree that nCircle has set its prices and entered into this Agreement in reliance upon the limitations of liability specified herein, which allocate the risk between nCircle and Customer and form an essential basis of the bargain between the parties.

10. TERM AND TERMINATION.

10.1 Term. This Agreement will begin on the Effective Date and will remain in effect thereafter unless terminated earlier in accordance with the terms of this Agreement. The term of each Software license granted by nCircle hereunder will begin upon the date of shipment by nCircle of the Software specified in the applicable Schedule, and will remain in effect thereafter unless Customer discontinues use of such Software or unless terminated earlier by either party in accordance with the terms of this Agreement.

10.2 Termination for Breach. Each party will have the right to terminate this Agreement if the other party breaches any material term of this Agreement and fails to cure such breach within thirty (30) days after written notice thereof.

10.3 Effect of Termination. Any termination of this Agreement shall also terminate the Software licenses granted hereunder. Upon termination of this Agreement, Customer will promptly return to nCircle the applicable Software and all copies and portions thereof, in all forms and types of media, and provide nCircle with an officer's written certification, certifying to Customer's compliance with the foregoing.

10.4 Survival. The rights and obligations of the parties contained in Sections 2.5, 5.2, 5.3, 7, 8, 9, 10.3, 10.4, and 11 will survive the termination of this Agreement.

11. GENERAL.

11.1 Assignment. Neither party may assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any prohibited assignment or sublicense shall be null and void. The foregoing notwithstanding, upon written notice to the other party, either party may assign or otherwise transfer this Agreement to (i) its Affiliate or (ii) the surviving entity as a result of a merger, acquisition or other consolidation, asset purchase of all or substantially all of the assets of such party, or in connection with any other transaction resulting in more than 50% of such party's voting securities being held by the surviving entity, provided that (a) such acquiring entity agrees in writing it will be bound by the terms and conditions of this Agreement and (b) in the case of such an assignment by Customer, such acquiring entity is not deemed by nCircle to be a direct competitor of nCircle.

11.2 Governing Law and Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California excluding that body of laws known as conflicts of law. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in the Northern District of California and the parties hereby consent to the personal jurisdiction and venue therein.

11.3 Government Rights. The Software (and its accompanying documentation) are "commercial computer software" and "commercial computer software documentation", as such terms are used in FAR 12.212. Any use, duplication, or disclosure of the Software (and its accompanying documentation) by or on behalf of the U.S Government is subject to restrictions as set forth in this Agreement. Manufacturer is nCircle Network Security, Inc.

11.4 Nonexclusive Remedy. Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under this Agreement will be without prejudice

to its other remedies under this Agreement or otherwise

11.5 Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

11.6 Waiver. The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision.

11.7 Notices. All notices required or permitted under this Agreement will be in writing and delivered by confirmed facsimile transmission, by courier or overnight delivery services, or by certified mail, and in each instance will be deemed given upon receipt. All communications will be sent to the addresses set forth above or to such other address as may be specified by either party to the other in accordance with this Section 11.7. Either party may change its address for notices under this Agreement by giving written notice to the other party by the means specified in this Section 11.7.

11.8 Force Majeure. Neither party will be responsible for any failure or delay in its performance under this Agreement (except for any payment obligations) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, terrorism, riot, acts of God or governmental action.

11.9 Relationship of Parties. The parties to this Agreement are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

11.10 Export Control. Both parties agree to comply fully with all export laws and regulations of the United States ("**Export Laws**") to ensure that neither the Software nor any technical data related thereto nor any direct product thereof are: (a) exported or re-exported directly or indirectly in violation of Export Laws; or (b) used for any purposes prohibited by the Export Laws, including but not limited to nuclear, chemical, or biological weapons proliferation.

11.11 Entire Agreement. This Agreement, including all Schedules, constitutes the complete and exclusive understanding and agreement between the parties regarding its subject matter and supersedes all prior or contemporaneous agreements or understandings, written or oral, relating to its subject matter. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of both parties.

11.12 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives.

CUSTOMER:

NCIRCLE NETWORK SECURITY, INC.

Authorized Signature

Authorized Signature

Printed Name & Title

Printed Name & Title

Date

Date

Exhibit A

nCircle Technical Support Services

Term of Technical Support Services

The initial term of Technical Support Services will be one (1) year commencing on the shipment of the nCircle Products. Thereafter, Customer may renew the Technical Support Services on an annual basis.

Requirements for Technical Support Services:

In order for Customer to receive Technical Support Services, Customer must:

1. Pay in advance the then-current annual Technical Support Services fee.
2. Designate three (3) technical support contacts ("**Named Support Contacts**") who are qualified and trained to competently and efficiently interface with nCircle to receive Technical Support Services. nCircle will provide a confirmation mechanism or password for each Named Support Contact. Customer may change any Named Support Contact by providing nCircle with at least one (1) business day prior written notice. To protect Customer's confidential information, nCircle will not respond to any unauthenticated individuals.
3. Furnish nCircle with any support, cooperation or information reasonably requested by nCircle to provide Technical Support Services, including providing nCircle with detailed problem descriptions, and access to Customer's facilities, network and telecommunications connections, hardware and other equipment (including access through dial-in or other means, as required). Customer must also advise nCircle of any significant changes to its network topology or operating environment that may affect Customer's nCircle Product deployment or that may cause the need for additional support attention.

Contacting Support:

By Phone: 866-597-9954

By E-Mail: support@ncircle.com

On the Web: http://www.ncircle.com/index.php?s=csupport_login

Support Hours:

24 x 7 Support Service

24 x 7 support is available via telephone.

On-site Support

nCircle will attempt to use remote means to resolve any problems in the operation of the Software that occur after completion of Installation of the Software, including problems related to reconfiguration of nCircle Products to accommodate changes to Customer's network. If Customer will not allow nCircle to attempt to resolve such problems through remote means, then Customer may request an on-site support visit. All such on-site support visits are available on a time and material basis. If Customer does allow nCircle to attempt to resolve such problems through remote means, and nCircle determines that such problem, other than problems due changes in Customer's network or operating environments may only be resolved through an on-site support visit, such on-site visit shall be at nCircle's sole expense. During nCircle's normal business hours (M-F 8AM to 5PM) there is a flat rate of \$2,500.00/day for on-site support, with a one-day minimum. In addition, Customer will reimburse nCircle for all reasonable and customary out-of-pocket travel, lodging and related expenses incurred by nCircle and its personnel in connection with providing on-site support.

Software Updates and Upgrades:

nCircle will make available all upgrades and updates to licensed or otherwise contractually authorized nCircle Products. Because of the nature of network security and compliance management, it is of the utmost importance that Customer runs the most current version the Software, signatures and compliance checks. Therefore, nCircle will support only the current version of the Software and the immediately preceding version. nCircle Support will schedule availability to assist Customers with performing upgrades.

Exclusions to Technical Support Services for Software

nCircle will have no obligation to provide Technical Support Services for problems in the operation or performance of the Software to the extent caused by any of the following:

1. Software or hardware products not provided, or authorized, or specified by nCircle or use of the Software in connection with such products.
2. Customer's use of the Software other than as authorized in the Agreement or in the applicable Documentation.
3. Problems caused by Software altered or modified by a party other than nCircle without nCircle's express written authorization.
4. Software that is not the then-current version or immediately preceding sequential version.
5. Problems caused by Customer's failure to incorporate any updates or upgrades to the Software made available to Customer, if the problem is corrected by the update or upgrade.
6. Software is not installed in a supported technical environment as described in product documentation.

If nCircle determines that it is necessary to perform Technical Support Services for a problem in the operation or performance of the Software that is caused by one of the foregoing, then nCircle will notify Customer thereof as soon as nCircle is aware of such a problem and nCircle will have the right to invoice Customer at nCircle's then-current published time and materials rates for all such Technical Support Services performed by nCircle.

Support of Hardware:

In the event of a failure of any Hardware, nCircle will ship a replacement product within one (1) business day of determination of failure. If the Hardware is damaged due to negligence or neglect, Customer will be responsible for all shipping and repair costs. Otherwise, Customer will be responsible for shipping costs to nCircle and nCircle will be responsible for shipping the replacement product to Customer.

Exclusions to Technical Support Services for Hardware

nCircle will have no obligation to provide Technical Support Services for problems in the operation or performance of the Hardware to the extent caused by any of the following:

1. Customer's failure to follow nCircle environmental, installation, operation or maintenance specifications or instructions.
2. Material modifications, alterations or repairs made other than by nCircle or at the direction of nCircle.

3. Customer's mishandling, abuse, misuse, negligence, or improper storage, servicing or operation of the Hardware.

4. Power failures, surges, lightning strikes, fire, flood, accident, and actions of third parties or other like events outside nCircle's reasonable control.

If nCircle determines that it is necessary to perform Technical Support Services for a problem in the operation or performance of the Hardware that is caused by one of the foregoing, then nCircle will notify Customer thereof as soon as nCircle is aware of such a problem and nCircle will have the right to invoice Customer at nCircle's then-current published time and materials rates for all such Technical Support Services performed by nCircle.

Problem Reporting and Classification:

Any problems experienced while using nCircle Products should be reported as soon as possible to nCircle's Technical Support Group. Once a problem is reported, the Technical Support Group will assign a ticket number and assess the severity of the issue. The assigned Technical Support Group Engineer will use reasonable efforts to respond to problems / queries in accordance with nCircle's response time schedule set forth below.

Case Response Matrix					
Severity	Description	Initial Response	Update Notification	Target Availability	Executive Escalation
P1 - Severe	Incident of highest impact & significance to customer and nCircle. <ul style="list-style-type: none"> ▪ Complete system failure. ▪ No alternative workarounds exist. 	1 hr – Phone contact from Support Engr.	Daily	Patch Release as soon as tested and available.	24 Hours
P1 - Critical	Incident of high impact & significance to customer and nCircle. <ul style="list-style-type: none"> ▪ Customer outage of a significant but partial nature. ▪ Greater than 50% of critical systems down. ▪ Critical customer system interaction resulting in a negative impact upon a large business function. ▪ No alternative workarounds exist. 	1 hr – Phone contact from Support Engr.	Daily	Patch Release as soon as tested and available.	5 days
Moderate	Incident of notable impact & significance to customer and nCircle. <ul style="list-style-type: none"> ▪ nCircle systems operate on partial or inconsistent capacity. ▪ Issue occurs infrequently or intermittently. ▪ Alternative workaround exists. ▪ Business can continue with minor capability impact. 	24 hrs – Email or phone contact from Support Engr.	Weekly	At next appropriate and scheduled release.	30 days
Low	Incident of low impact & significance to customer and nCircle. <ul style="list-style-type: none"> ▪ nCircle systems operate at normal capacity. ▪ General customer inquiry or feature request. ▪ Format or minor graphical issues. ▪ Narrow functional focus. 	24 hrs – Email or phone contact from Support Engr.	As needed	As resource availability permits.	As needed