

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 Janova, LLC ("Contractor"), with offices at 7775 Walton Parkway Suite 120, New Albany, Ohio, 43054.

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

- X The best prices at which the Contractor has offered each product and service to its most favored customers within one year before the date the Contractor executed this Contract or adds the product or service to this Contract, whichever is later.

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

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

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

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

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

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

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

See document attached: Janova Price List as of January 2012

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.

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: _____



BY: _____



ROBERT BLAIR, DIRECTOR,
DEPARTMENT OF ADMINISTRATIVE SERVICES

DATE: _____

8/13/12

DATE: _____

8-27-12

Exhibit I

Product Name	Manufacturer	Manufacturer Part No	Vendor Part No	Description	Unit of Measure	State Price	List Price	Other Info
Lead Quality Assurance Analyst	Janova	2012 - Lead Quality Assurance Analyst	2012 - Lead Quality Assurance Analyst	Lead Quality Assurance Analyst (1/1/2012 - 12/31/2012)	hr	\$100.00	\$120.00	Application Testing Services
Senior Quality Assurance Analyst	Janova	2012 - Senior Quality Assurance Analyst	2012 - Senior Quality Assurance Analyst	Senior Quality Assurance Analyst (1/1/2012 - 12/31/2012)	hr	\$100.00	\$120.00	Application Testing Services
Quality Assurance Analyst	Janova	2012 - Quality Assurance Analyst	2012 - Quality Assurance Analyst	Quality Assurance Analyst (1/1/2012 - 12/31/2021)	hr	\$85.00	\$102.00	Application Testing Services
Junior Quality Assurance Analyst	Janova	2012 - Junior Quality Assurance Analyst	2012 - Junior Quality Assurance Analyst	Junior Quality Assurance Analyst (1/1/2012 - 12/31/2012)	hr	\$70.00	\$84.00	Application Testing Services
Lead Business Analyst	Janova	2012 - Lead Business Analyst	2012 - Lead Business Analyst	Lead Business Analyst (1/1/2012 - 12/31/2012)	hr	\$140.00	\$168.00	Business Analysis Services
Senior Business Analyst	Janova	2012 - Senior Business Analyst	2012 - Senior Business Analyst	Senior Business Analyst (1/1/2012 - 12/31/2012)	hr	\$100.00	\$120.00	Business Analysis Services
Business Analyst	Janova	2012 - Business Analyst	2012 - Business Analyst	Business Analyst (1/1/2012 - 12/31/2012)	hr	\$85.00	\$102.00	Business Analysis Services
Junior Business Analyst	Janova	2012 - Junior Business Analyst	2012 - Junior Business Analyst	Junior Business Analyst (1/1/2012 - 12/31/2012)	hr	\$70.00	\$84.00	Business Analysis Services
Project Manager	Janova	2012 - Project Manager	2012 - Project Manager	Project Manager (1/1/2012 - 12/31/2012)	hr	\$155.00	\$186.00	Project Management Services
Janova Enterprise	Janova	2012 - Janova Enterprise	2012 - Janova Enterprise	Janova Enterprise License (1/1/2012 - 12/31/2012)	user	\$1,500.00	\$2,000.00	
Janova Enterprise Maintenance	Janova	2012 - Janova Enterprise Maintenance	2012 - Janova Enterprise Maintenance	Janova Enterprise Maintenance (1/1/2021 - 12/31/2012)	user	\$270.00	\$400.00	18% of total licenses

Exhibit II

See attached License: Janova_Software_License_Sale (08-08-12) - final.doc

SOFTWARE SALE AND LICENSE AGREEMENT

This SOFTWARE SALE AND LICENSE AGREEMENT (this "Agreement"), dated as of _____ (the "Effective Date"), is made by and between Janova, LLC, an Ohio corporation having its principal office at 7775 Walton Parkway, Suite 120, New Albany, Ohio 43054 ("Licensor"), and _____, a _____ corporation, with its principal place of business at _____ ("Licensee"). In consideration of the mutual promises set forth in this Agreement, the parties, intending to be legally bound, agree as follows:

1. DEFINITIONS.

- 1.1 "Affiliate" means, with respect to either party, any entity, including without limitation, any individual, corporation, company, partnership, limited liability company or group, that directly, or indirectly through one or more intermediaries, Controls, is Controlled by or is under common control with such party.
- 1.2 "Control" means (a) owning fifty percent (50%) or more of the outstanding equity or capital interests or the maximum portion of the outstanding equity or capital interests allowed by law, or (b) the ability, whether directly or indirectly, to direct the affairs of that entity (including causing compliance with all applicable terms and conditions of this Agreement) by means of ownership, contract or otherwise.
- 1.3 "Documentation" means any and all explanatory materials or files applicable to the Software, including printed, "online" or electronic user manuals and specifications that Licensor makes available to Licensee under this Agreement and generally to its customers.
- 1.4 "License" means each license to use the Software, as provided herein.
- 1.5 "Software" means all of the computer software, information and files licensed to Licensee under this Agreement, as specified in the Licensing Schedule (in the form attached hereto as Schedule A), as may be amended or supplemented from time to time upon the parties written agreement, whether accessible online, by download, disk(s), CD-ROM(s) or other media, and any and all Revisions thereto.
- 1.6 "Revision" means a version of the Software with updates, modifications, patches, fixes, changes or corrections that is designated by Licensor in its sole discretion. Revisions do not include software that Licensor licenses separately.
- 1.7 "Support" means the software maintenance and support services set out in Schedule B (the "Support Addendum"). Support does not include consulting, development and training services, or any other professional consulting services which Licensor may otherwise provide to Licensee under this Agreement pursuant to a mutually agreed upon professional services agreement.
- 1.8 "User" means each individual authorized by Licensee to use the Software. Users may include employees, contractors and agents of Licensee or its Affiliates, provided: (a) such subcontractors and/or agents are acting solely on Licensee behalf, (b) Licensee remains responsible for such contractors' and/or agent's compliance with the terms of

this Agreement, and (c) such contractors and/or agents are subject to written confidentiality obligations comparable in scope to those contained in this Agreement. In the event the License is of a type commonly referred to as a "named user" license, Licensee acknowledges that Licensor shall under no circumstances be required to provide Licensor with the actual names (or other personally identifiable information) of its end Users, but instead the License shall be understood to mean only that a specific set of pre-designated individuals may at any one time be authorized as Users; provided, further, unless expressly stated otherwise in Schedule A, Licensee shall have the right to re-designate "named Users" in its absolute and sole discretion.

2. **LICENSE.** Subject to Licensee's payment of the Purchase Price specified in Schedule A and performance of its other obligations hereunder, Licensor grants Licensee a non-exclusive license to install, access and use the Software, solely for Licensee's internal business purposes, as further specified in Schedule A.
3. **RESTRICTIONS.** Except as may otherwise be specified in Schedule A, Licensee agrees to the following restrictions on its use of the Software:
 - 3.1 This Agreement sets forth the terms and conditions for Licensee's purchase of the Software sole use in the United States and solely for Licensee's internal business use. Licensee shall not resell to, make available for use by, or otherwise transfer title to any Software to, any end user or third party.
 - 3.2 Licensee is not authorized by the Agreement to resell Software to United States Federal, state, or local entity.
 - 3.3 No Modifications. Licensee may not modify, adapt, translate or create derivative works based upon the Software or the Documentation. Any modifications made by Licensee shall be owned by Licensor and Licensee hereby assigns all its right, title and interest in such modifications to Licensor upon creation.
 - 3.4 No Reverse Engineering. Licensee may not reverse engineer, decompile, decrypt, disassemble or otherwise attempt to discover the source code of the Software or reduce the Software to a human readable form or permit third parties to do so and as otherwise permitted under applicable U.S. Copyright law.
 - 3.5 Copying. Licensee may not make copies of the Software, or its media or Documentation, in any manner or for any purpose, except as expressly provided for in Section 3.8.
 - 3.6 No Transfer. Licensee may not license, lease, sell, sublicense, assign or transfer its rights in the Software or Documentation, or authorize all or any portion of the Software to be copied onto another computer except as expressly provided herein. If Licensee transfers any hardware incorporating the Software, Licensee shall remove the Software from any such hardware.

- 3.7 No Reselling or Distribution. Licensee may not resell or distribute the Software or Documentation, or any copy, by transfer, lease, loan or any other means, or make it available for use by others in any time-sharing, service bureau or similar arrangement.
- 3.8 Licensee shall keep the Software at its control and agrees not to allow the use of the Software by other businesses, entities or individuals and that said Software shall be used only on the machine(s) authorized by this Agreement.

4. TERM

The initial term of this Agreement shall run for one (1) year from the Effective Date (the "Initial Term"). Thereafter, this Agreement shall automatically renew for successive renewal terms equivalent in duration to the Initial Term (each a "Renewal Term" and together with the Initial Term, the "Term") unless or until terminated by written agreement. Notwithstanding the foregoing, this Agreement may be earlier terminated in accordance with this Section 15.

5. OWNERSHIP. The License granted hereunder gives Licensee a limited right to use the Software and is not a sale of the Software or any portion thereof. Licensor (and its licensors, if any) retain all right, title and interest in and to the Software and Documentation throughout the world. The Software and Documentation is protected by United States copyright laws, international treaty provisions and the applicable law of the country in which the Software and Documentation are being used. Licensor expressly reserves all rights in the Software not expressly granted hereunder. This Agreement does not grant Licensee any rights to trademarks or service marks of Licensor or its licensors or suppliers.
6. SUPPORT. During the Term, Licensor shall provide the Support services specified in Schedule B. Any fee for such support services shall be specified in Schedule A.
7. THIRD PARTY SERVICE PROVIDERS. Licensor may use third-party service providers to assist with the operations of one or more feature of the Software. Such third-party service providers may only access and use information about Licensee for the completion of the intended service provided. Notwithstanding the foregoing, such third-party service providers may directly market its additional product and service offering to Licensee. Licensor does not endorse, warrant and is not responsible for the purchase of any additional products and services from such third-party service providers.
8. FEES AND PAYMENT.
- 8.1 In consideration of the License(s) granted hereunder, Licensee shall pay Licensor the amounts specified in the applicable Schedule(s) (the "Fees") and validly invoiced to Licensee. In order to be deemed "valid," each invoice shall include, at minimum, the following information: purchase order number, business component name, description of Software, and any other information expressly agreed to by the parties in writing.

- 8.2 Subject to Schedule A, Licensee shall pay all undisputed, valid invoices within thirty (30) days of Licensee's receipt of the invoice.

9. CONFIDENTIAL INFORMATION.

- 9.1 Confidential Information. "Confidential Information" means any and all technical or non-technical information disclosed by one party (a "Disclosing Party") to the other (a "Receiving Party"), in any medium (including visually or orally), that the Disclosing Party designates as confidential, whether by marking, orally, or by other means, at the time of or promptly after disclosure, or, if not so designated, that the Receiving Party would reasonably be expected to assume is confidential due to its nature. Confidential Information includes, without limitation, the existence of this Agreement and its terms and conditions, the Software and Documentation. Confidential Information does not include any information that the Receiving Party is able to prove by documents or other competent evidence: (a) was or becomes publicly known and generally available in the public domain prior to or after the time of disclosure by the Disclosing Party; (b) was in the possession of the Receiving Party at the time of disclosure by the Disclosing Party; (c) is obtained by the Receiving Party from a third party without a breach of such third party's obligations of confidentiality; or (d) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information.
- 9.2 Duty to Maintain Confidentiality. The Receiving Party shall protect the Disclosing Party's Confidential Information against unauthorized use or disclosure using at least those measures that it takes to protect its own Confidential Information of a similar nature, but no less than reasonable care, and shall not use or disclose the Disclosing Party's Confidential Information for any purpose except in connection with its performance of this Agreement.
- 9.3 Use and Disclosure. Notwithstanding the foregoing, each party may disclose the other party's Confidential Information to its directors, officers, employees and agents who have a bona fide need to know to such information in order to perform the Services, administer this Agreement and/or manage the relationship between the parties; provided, however, each person to whom such Confidential Information is disclosed is subject to confidentiality obligations comparable in scope to those herein, and the Receiving Party shall be liable to the Disclosing Party for any breach of confidentiality by any such person. All copies that the Receiving Party makes of the Disclosing Party's Confidential Information must reproduce any confidentiality and/or proprietary notices in the same manner as set forth in or on the original.
- 9.4 Duration of Confidentiality Obligation. The obligations of this Section 9 shall be continuing and binding until the earlier of five (5) years from the date the Receiving Party receives the Disclosing Party's Confidential Information; or (b) the date on which the Disclosing Party's Confidential Information is no longer confidential other than by

a breach of this Agreement; except protection of trade secrets shall extend for as long as the relevant information qualifies as a trade secret under applicable law. Absent written consent of the Disclosing Party, the burden of proving that Confidential Information is no longer confidential or a trade secret shall be on the Receiving Party.

- 9.5 Ownership of Confidential Information. The Receiving Party acknowledges that all Confidential Information it receives from the Disclosing Party, including all copies thereof in its possession or control, in any media, is proprietary to and exclusively owned by Disclosing Party, and nothing in this Agreement grants the Receiving Party any right, title or interest in or to any of the Disclosing Party's Confidential Information. The Receiving Party's incorporation of the Disclosing Party's Confidential Information into any of its own Property shall not render Confidential Information non-confidential.
- 9.6 Third Party Rights. The Disclosing Party represents that it may lawfully disclose its Confidential Information to the Receiving Party, and that such disclosure will not infringe, misappropriate or otherwise constitute an improper disclosure of a third party's trade secrets or confidential information.
- 9.7 Return of Confidential Information. Upon termination of this Agreement for any reason or the Disclosing Party's earlier written request, the Receiving Party promptly shall use commercially reasonable efforts to: (a) return to the Disclosing Party or destroy all tangible Confidential Information of the Disclosing Party in its possession or control; and (b) delete all electronic copies of the Disclosing Party's Confidential Information residing on the Receiving Party's computers and other electronic storage devices; provided, however, the Receiving Party shall have the right, subject to its continuing confidentiality obligations, to retain copies of the Disclosing Party's Confidential Information as required by applicable law or regulatory requirement.
- 9.8 Compelled Disclosure. Should the Receiving Party be compelled by court decree, subpoena or other legal or regulatory requirement to disclose any of the Disclosing Party's Confidential Information, it shall promptly notify the Disclosing Party in writing, unless prohibited from doing so, and use reasonable good faith efforts to: (a) disclose only the specific Confidential Information required to be disclosed; and (b) assist the Disclosing Party (if and to the extent requested by the Disclosing Party) in obtaining a protective order or other appropriate assurances that the confidential nature of the Confidential Information shall be protected and preserved.
- 9.9 Remedies. The Receiving Party acknowledges that any actual or threatened violation of this Section 9 may cause irreparable, non-monetary injury to the Disclosing Party, the extent of which may be difficult to ascertain, and therefore agrees that the Disclosing Party shall be entitled to seek injunctive relief in addition to all other remedies available at law and/or in equity.

9.10 Effect on Prior Nondisclosure Agreements. This Section 9 shall supersede any prior nondisclosure agreement between Licensor and Licensee that pertains to Software and Documentation provided hereunder. Except as expressly stated in the foregoing sentence or as otherwise agreed to by the parties in writing, nothing in this Agreement shall supersede the terms of any nondisclosure agreement separately executed by the parties prior to the Effective Date hereof.

10. INDEMNIFICATION.

10.1 If any Software is alleged to infringe or misappropriate any intellectual property right of any third party, Licensor shall have the option, at its expense, to:

- (a) modify the Software to make it non-infringing;
- (b) obtain for Licensee a license to continue using the Software; or
- (c) replace the Software with functionally equivalent non-infringing materials.

If Licensor cannot reasonably exercise one of the foregoing three options or such infringement materially affects its ability to meet its obligations under this Agreement, Licensor may, upon ten (10) days' prior written notice, terminate this Agreement, whereupon Licensor shall promptly refund to Licensee the Purchase Price amortized over a 60 month term.

10.2 The foregoing states Licensor's entire liability with respect to infringement claims.

10.3 Licensee hereby assumes and shall bear the entire risk of loss, theft, damage and destruction of the Software from any cause whatsoever and no loss, theft, damage or destruction of the Software shall relieve Licensee of any obligations under this Agreement and this Lease shall remain in full force and effect. Licensee shall promptly notify Licensor in writing of any such loss, theft, damage or destruction of the Software.

10.4 Licensor, its agents and representatives shall have the right at any time during usual business hours to inspect the Software and for that purpose to have access to the location of the Software.

11. WARRANTIES; DISCLAIMERS

11.1 Licensor represents, warrants, and covenants:

- (a) For a period of ninety (90) days following delivery, all Software and the media on which it is delivered will be free from material defects in design, workmanship and materials. Licensee's sole and exclusive remedy for breach of this warranty shall be replacement by Licensor of the defective media, free of charge (including shipping).

- (b) LICENSOR DOES NOT WARRANT TO LICENSEE THAT THE SOFTWARE WILL MEET THE REQUIREMENTS OF LICENSEE, OR THAT THEIR OPERATION WILL BE UNINTERRUPTED OR ERROR FREE. EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT, LICENSOR PROVIDES THE SOFTWARE "AS IS" WITHOUT WARRANTY. LICENSOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.
 - (c) All Software shall be delivered free of any known "time-bombs," "worms," "viruses," "Trojan horses," "protect codes," "data destruct keys" or other programming devices ("Malicious Code") that might, or might be used to, access, modify, delete, damage, deactivate or disable any such Software or other software, computer hardware or data. Licensor hereby expressly waives and disclaims any right or remedy that it may have at law or in equity to exercise self-help remedies to de-install, disable or repossess any Software in the event Licensee fails to perform any of its obligations under this Agreement.
 - (d) Licensor has disclosed to Licensee, in writing, the existence of any and all third party software, including proprietary code, open source, freeware, shareware or otherwise, included in or provided in connection with the Software.
 - (e) All warranties provided by Licensor under the Agreement are solely for the other party's benefit. Licensee may not transfer or assign any of these warranties.
- 11.2 Unless otherwise agreed to by the parties in writing, Licensor does not warrant that the functions contained in Software will meet Licensee's particular requirements, and Licensee assumes all risk and liability for the results of its use of the Software and for the use of those results.
- 11.3 UNLESS OTHERWISE AGREED TO BY THE PARTIES IN WRITING, THE FOREGOING ARE LICENSEE'S SOLE AND EXCLUSIVE WARRANTIES UNDER THIS AGREEMENT. EXCEPT FOR THE EXPRESS WARRANTIES CONTAINED IN THIS SECTION 11, ALL OTHER WARRANTIES EXPRESS OR IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED AND EXCLUDED.

12. LIMITATION OF LIABILITY

- 12.1 TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, THE LICENSED SOFTWARE IS PROVIDED TO LICENSEE "AS IS," WITH ALL FAULTS, WITHOUT WARRANTY OF ANY KIND, AND YOUR USE IS AT LICENSEE'S SOLE RISK. THE ENTIRE RISK OF SATISFACTORY QUALITY AND PERFORMANCE RESIDES WITH LICENSEE. LICENSOR DISCLAIMS ANY AND ALL EXPRESS, IMPLIED OR STATUTORY WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY,

FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF THIRD PARTY RIGHTS, ANY WARRANTIES OR CONDITIONS OF TITLE, AND WARRANTIES (IF ANY) ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. LICENSOR DOES NOT WARRANT AGAINST INTERFERENCE WITH LICENSEE'S ENJOYMENT OF THE PROGRAM; THAT THE PROGRAM WILL MEET LICENSEE'S REQUIREMENTS; THAT OPERATION OF THE PROGRAM WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT THE PROGRAM WILL BE COMPATIBLE WITH THIRD PARTY SOFTWARE OR THAT ANY ERRORS IN THE PROGRAM WILL BE CORRECTED.

- 12.2 Exclusion of Consequential Damages. Except as expressly stated in Section 12.3, under no circumstances will either party or its Affiliates be liable to the other party for loss of profits, loss of business or any other indirect, punitive, special or consequential damages arising out of or in any way related to the performance or breach of this Agreement. Under no circumstances will Licensor indemnify Licensee or be liable for any of the following: (a) third party claims against you for losses or damages other than these described in this Section; (b) loss of, or damage to, any records or data; (c) the use of the Software in other than its specified operating environment; (d) the combination, operation or use of Software with any other program, product, data or apparatus; and (e) the use of the Software Programs for medical applications.
- 12.3 Exceptions. The foregoing limitations and exclusions shall not apply to any losses or damages arising out of (1) third party losses covered by a party's indemnification obligations; (2) either party's breach of the other party's intellectual property rights or rights to confidential information; or (3) either party's fraud, gross negligence, or willful misconduct.
- 12.4 The parties acknowledge that the foregoing allocation of risk is an integral and material portion of the consideration for each of them to enter into this Agreement.

13. **DISPUTE RESOLUTION.** Any dispute regarding any right or obligation under this Agreement that the parties are unable to resolve informally shall be subject to this Section 13. In the event of any dispute, the aggrieved party shall notify the other party in a writing describing the dispute. Promptly thereafter, over a period not to exceed twenty (20) business days, the parties shall meet and engage in good faith negotiations to resolve the dispute. If the parties are unable to resolve the dispute, each party shall escalate the dispute to the appropriate management level within its organization, and shall continue to engage in good faith negotiations. If the parties are not able to resolve such dispute within ten (10) business days after such escalation, each party shall escalate the dispute to the appropriate executive level within its organization, and shall continue to engage in good faith negotiations. If the parties are not able to resolve such dispute within five (5) business days after such escalation, then both parties may seek any remedies available to them in law or equity. Notwithstanding the foregoing, either party may seek injunctive relief at any time for breaches of its intellectual property or confidentiality rights. Neither party may serve a notice of dispute more than two (2) years after the date on which the acts or omissions giving rise to the dispute were or should have been discovered by the aggrieved party; and failure to serve a notice of dispute within this two (2) year period shall forever bar the claimant party from instituting these dispute resolution proceedings and from commencing any litigation based on such dispute in any court or other tribunal. Furthermore, any action arising out of, resulting from, or related to the performance or breach of this Agreement may not be filed later than three (3) years after the cause of action has accrued. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED THEREUNDER.
14. **INTELLECTUAL PROPERTY.** Each party keeps title to its copyrights, patents and any other intellectual property rights in the Software. Licensor does not transfer title to the copyright in the Software.
15. **TERMINATION**
- 15.1 Insolvency and Termination for Cause. In addition to any other rights or remedies that a Party may have under the circumstances, all of which are expressly reserved, a Party may terminate this Agreement at any time if
- (a) the other Party becomes insolvent or makes any assignment for the benefit of creditors or similar transfer evidencing insolvency; or suffers or permits the commencement of any form of insolvency or receivership proceeding; or has any petition under any bankruptcy law filed against it, which termination pursuant to this Section 15.1(a) shall be effective immediately upon written notice or as otherwise specified herein
 - (b) the other Party is in material breach of any warranty, representation, term, condition or covenant, and fails to cure such material breach within thirty (30)

days after written notice thereof, such termination to become effective immediately upon the expiration of such thirty (30) day period; or

- (c) the other Party is in breach of the Licensor, such termination to become effective upon the delivery of notice of such breach from the non-breaching Party.

15.2 Each party shall have the right to terminate this Agreement by written notice to the other if a party has materially breached any obligation herein and such breach remains uncured for a period of thirty (30) days after written notice of such breach is sent to the other party.

15.3 Upon any termination of this Agreement, Licensee must cease all use of the Software, undertake reasonable efforts to uninstall delete or destroy all copies of the Software and Documentation in its possession or control, and take such other actions as Licensor may reasonably request to ensure that no copies of the Software or Documentation remain in Licensee's possession or control. Notwithstanding the foregoing, Licensee may retain one (1) copy of the Software or Documentation, solely for archival purposes and not for use after the expiration of the License, to the extent required by applicable legal or regulatory requirement.

15.4 Licensee's duties hereunder to protect Licensor's Confidential Information shall survive expiration or termination of this Agreement and shall expire ten (10) years from the date of disclosure of such Confidential Information by Licensee, or the longest period permitted by applicable law. Expiration or Termination of this Agreement shall not affect Licensor's proprietary rights in the Confidential Information, all of which are retained herein.

16. ATTORNEY FEES

If any legal action is necessary to enforce this Agreement, the prevailing party shall be entitled to reasonable attorney fees, costs and expenses.

17. NOTICES

All notices, requests, demands and other communications which are required or may be given pursuant to the terms of this Agreement shall be in writing and shall be deemed delivered (a) on the date of transmission when sent by electronic mail or facsimile transmission during Normal Business Hours with telephone confirmation of receipt; provided, an original also is sent the same day to the address below; (b) one (1) day after dispatch when sent by reputable overnight courier maintaining records of receipt; or (c) three (3) days after dispatch when sent by registered mail, postage prepaid, return-receipt requested, all addressed as provided below or as amended by a Party from time to time upon five (5) days' notice to the other Party:

If to Licensor: Janova
 7775 Walton Parkway, Suite 120
 New Albany, Ohio 43054
 Attention:
 Facsimile: *
 E-mail: *

With required
copies to:

If to Licensee

 Attention: *
 Facsimile: *
 E-mail: *

18. GENERAL PROVISIONS.

- 18.1 Independent Contractors. The Parties are independent contractors with respect to each other hereunder, and nothing in this Agreement shall be construed as creating an employer-employee relationship, a partnership, agency relationship or a joint venture between the Parties. Notwithstanding anything contained in this Agreement to the contrary, each Party shall be solely responsible for the performance of its obligations hereunder, neither Party shall be liable for any breach by the other Party, and nothing contained in this Agreement shall be deemed to constitute a guarantee by one Party of performance of any of the obligations of the other Party.
- 18.2 Independent Development. Nothing in this Agreement shall be construed as restricting Licensor's right to acquire, license, sublicense or *independently* develop for itself, or have others develop for it, similar software or technology performing the same or similar functions as the Software, or to market and distribute such similar software or technology in addition to, or in lieu of, the Software.
- 18.3 Entire Agreement. This Agreement, together with all Exhibits hereto constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, communications, or proposals, whether oral or written, between the Parties on this subject. This Agreement shall not be modified except by an agreement dated subsequent to the date of this Agreement written and signed in a non-electronic form on behalf of the Parties by their respective duly authorized representatives.

- 18.4 Applicable law. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio. Each of the parties hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any state or superior court of the State of Georgia or federal court located in Atlanta, and any appellate court thereof, in any litigation arising out of or relating to this Agreement, and each of the parties hereto hereby irrevocably and unconditionally agrees that all litigation may be heard and determined in such state or federal court.
- 18.5 Excusal of Performance. No Party shall be responsible for, or be in breach of this Agreement, if its performance is delayed for up to thirty (30) days as a result of any act of God, war, fire, earthquake, sickness, accident, civil commotion, act of government, or any other cause wholly beyond its control, including without limitation, denial of service attacks, and not due to its own negligence or that of its contractors or representatives, and which cannot be overcome by the exercise of due diligence. Without limitation of the foregoing, a subcontractor's bankruptcy, inability or failure to pay its obligations as they come due, assignment of its assets for the benefit of creditors, institution of bankruptcy or receivership proceedings against it, or appointment of a trustee, conservator or receiver or other liquidating officer for it or its assets or other financial deficiency shall not be deemed to excuse performance of this Agreement by the Party responsible for such subcontractor's performance.
- 18.6 Non-Waiver. No delay or failure by either Party to exercise any right under this Agreement and no partial exercise of any right under the Agreement shall constitute a waiver of that right or any other right. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in a non-electronic writing and signed by an authorized representative of the waiving Party.
- 18.7 Assignment. Except for Licensor's right to grant sublicenses under Section 4, neither Party may assign or transfer control of this Agreement or any rights or obligations hereunder without the other Party's prior written approval. Any attempted assignment, sublicense, transfer, encumbrance, conveyance or other disposal without such consent shall be void and shall constitute a material default and breach of this Agreement. Notwithstanding the foregoing, (a) Licensor may assign this Agreement or any rights or obligations it may have hereunder to any Person without Licensor's prior written consent; provided that the assignee assumes such obligations in writing, and (b) Licensee may assign its rights and obligations hereunder without Licensor's prior written consent solely in connection with a merger, transfer of control, reorganization, or sale of all or substantially all of its assets or equity interests on the condition that (A) Licensee provides Licensor with at least thirty (30) days prior written notice of such assignment (a "Transfer Notice"), and (B) such assignee agrees in writing to assume all of Licensee obligations under this Agreement.

- 18.8 Non-Waiver. No delay or failure by either Party to exercise any right under this Agreement and no partial exercise of any right under the Agreement shall constitute a waiver of that right or any other right. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in a non-electronic writing and signed by an authorized representative of the waiving Party.
- 18.9 Construction. In the event that any provision of this Agreement conflicts with governing law or if any provision is held to be null, void or otherwise ineffective or invalid by a court of competent jurisdiction, (a) such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law, and (b) the remaining terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect. This Agreement has been negotiated by the Parties and their respective counsel and shall be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either Party.
- 18.10 Headings. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.
- 18.11 Cumulative Remedies. All remedies for breach of this Agreement are cumulative, and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 18.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute, together with all Appendices, Attachments, Exhibits and Schedules hereto, one and the same instrument.
- 18.13 No Third Party Beneficiaries. The parties do not intend to confer any benefit hereunder on any person or entity other than the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, effective as of the Effective Date of this Agreement.

LICENSOR:

LICENSEE:

Janova

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

[Signature Page to Software Sale and License Agreement]

SCHEDULE A

Licensed Software

1. Software

The Software is a web-based software testing tool designed to assist Licensee _____. The Software _____ . The Software will be ____ (accessible via Licensor's website, installed on Licensee's server, etc.) .

NOTE: The above statements of functionality are descriptive only and not in lieu of more detailed functionality descriptions contained in additional Documentation, if applicable.

2. Fees

Purchase Price	\$-----
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3. Additional Terms

Support: See Schedule B.

SCHEDULE B

Maintenance and Support Addendum

1. General Description

This support addendum (this "Support Addendum") describes the technical support services ("Support") made available by Licensor in connection with the Software licensed to Licensee pursuant to this Agreement. This Support Addendum and the Support provided hereunder are governed by the terms and conditions provided herein and in the Agreement. Licensor's provision of Support is conditioned upon Licensee's compliance with the terms and conditions of the License Agreement and this Support Addendum. Capitalized terms not defined in this Support Addendum shall have the meanings given to them in the License Agreement.

2. Fees

Initial Fee	\$
Annual Fee for Support	

The annual support fees are payable in full by Licensee upon execution of this Agreement. Any additional fees and charges will be billed by Licensor to Licensee by invoice. Customer shall pay all such fees and charges within thirty (30) days of invoice.

The initial support term of Support shall run for one (1) year from the Effective Date and shall automatically renew for successive renewal terms equivalent in duration for one (1) year unless or until terminated by written agreement.

3. Support Descriptions

Unless stated otherwise in the applicable Licensing Schedule, Licensor shall provide the following Support:

- 3.1 Error Correction: Licensee may call or e-mail Licensor to report an error in the Software. Licensor will use commercially reasonable efforts to (a) provide a temporary workaround or avoidance procedure; (b) address the request in the next Revision (as defined below); or (c) discuss with Licensee possible custom professional services to resolve Licensee's request. For each such incident, Licensee must provide Licensor with all information available to Licensee necessary for the diagnosis of the error.
- 3.2 Revisions: Licensor shall provide Licensee with all Revisions to the Software that it makes available generally to its customers from time to time in its sole discretion.

Exhibit III

**STANDARD AFFIRMATION AND DISCLOSURE FORM
EXECUTIVE ORDER 2011-12K**

Governing the Expenditure of Public Funds on Offshore Services

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

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

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

1. Principal location of business of Contractor:

State of Ohio Agency
(Address)

(City, State, Zip)

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

TBD
(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

2. Location where services will be performed by Contractor:

State of Ohio Agency
(Address)

(City, State, Zip)

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

TBD
(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:

State Agency
(Address)

(Address, City, State, Zip)

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

(Name)

(Address, City, State, Zip)

Contractor also affirms, understands and agrees that Contractor and its subcontractors are under a duty to disclose to the State any change or shift in location of services performed by Contractor or its subcontractors before, during and after execution of any Contract with the State. Contractor agrees it shall so notify the State immediately of any such change or shift in location of its services. The State has the right to immediately terminate the contract, unless a duly signed waiver from the State has been attained by the Contractor to perform the services outside the United States.

On behalf of the Contractor, I acknowledge that I am duly authorized to execute this Affirmation and Disclosure form and have read and understand that this form is a part of any Contract that Contractor may enter into with the State and is incorporated therein.

By: 
Contractor

Print Name: BRIAN F. STEEL

Title: VP, SALES

Date: 8/15/12