

**STATE OF OHIO  
DEPARTMENT OF ADMINISTRATIVE SERVICES  
STATE TERM SCHEDULE – S&LG-BASED**

**THIS CONTRACT** is between the STATE OF OHIO, DEPARTMENT OF ADMINISTRATIVE SERVICES ("DAS"), GENERAL SERVICES DIVISION, OFFICE OF STATE PURCHASING, ON BEHALF OF THE STATE OF OHIO ("State"), with offices at 4200 Surface Road, Columbus, Ohio 43228 – 1395 and Dun & Bradstreet, Inc. ("Contractor") with Office(s) at 103 JFK Parkway, Short Hills, NJ 07078.

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**BACKGROUND**

The State recognizes that it is sometimes advantageous to do business with some service providers under a State term contract rather than through a competitive bidding or proposal process. In such cases, the State will enter into a contract with the service provider provided that the service provider offers its goods and ancillary services at the same prices that the company offers those goods and services to its distributors, or if the service provider has no distributors, the prices that the service provider offers to its similarly situated 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 the service area. Because of this, the State may sometimes agree to work directly with a manufacturer's dealers. But, if the Contractor is not the manufacturer of the goods or services under this contract, the Contractor must submit a letter from the manufacturer that assures the State that the Contractor will have sufficient quantities of the offered products for the duration of the Contract and any extensions to meet the State's needs under the Contract and that the Contractor is an authorized dealer in the manufacturer's goods or services. The letter must identify each product or service that the Contractor will supply under this Contract. The letter must

also contain an assurance of the availability through the dealer of repair and spare parts for equipment covered by this Contract for five (5) years from the date of purchase. It must also contain an assurance that software maintenance will be available under the terms of this Contract either from the dealer or the manufacturer for six (6) years from the date of acceptance. (This assurance is not necessary for PC and PC-based server software with a permanent license fee of less than \$5,000.00 per copy.) The manufacturer's letter must be signed by an authorized official of the manufacturer and submitted with the executed copies of this Contract.

This state term contract (the "Contract") establishes terms and conditions under which a State agency (including any board, instrumentality or other political body) or political subdivision may acquire the Contractor's goods or services at the Contractor's negotiated pricing. But this Contract only permits such; it in no manner obligates any State agency to do so.

Deleted:

## STANDARD TERMS & CONDITIONS

### I. CONTRACT TERM PROVISIONS:

- A. APPROPRIATION OF FUNDS.** The State of Ohio's funds are contingent upon the availability of lawful appropriations by the Ohio General Assembly. If the General Assembly fails at any time to continue funding for the payments or any other obligations due by the State under this Contract, the State will be released from its obligations on the date funding expires.

The current General Assembly cannot commit a future General Assembly to an expenditure. Therefore, this Contract will automatically expire at the end of the current applicable biennium. The State may renew this Contract in the next biennium by issuing written notice to the Contractor or by actions of the State of the decision to do so.

- B. OBM CERTIFICATION.** None of the rights, duties, or obligations in this Contract will be binding on the State, and the Contractor will not begin its performance, until all the following conditions have been met:

1. All statutory provisions under the Ohio Revised Code, including Section §126.07, have been met.
2. All necessary funds are made available by the appropriate state agencies.
3. If required, approval of this Contract is given by the Controlling Board of Ohio; and
4. If the State is relying on Federal or third-party funds for this Contract the State gives the Contractor written notice that such funds have been made available.

### C. TERMINATION / SUSPENSION.

1. **Contract Termination.** If Contractor fails to perform any one of its obligations under this Contract, it will be in default and the State may terminate this Contract in accordance with this section. The termination will be effective on the date delineated by the State.
  - a. **Termination for Default.** If Contractor's default is unable to be cured in a reasonable time, the State may terminate the Contract by written notice to the Contractor.
  - b. **Termination for Unremedied Default.** If Contractor's default may be cured within a reasonable time, the State will provide written notice to Contractor specifying the default

and the time within which Contractor must correct the default which shall not be less than 10 days or an agreeable timeframe for curing such default. If Contractor fails to cure the specified default within the time required, the State may terminate the Contract. If DAS does not give timely notice of a default to Contractor, the State has not waived any of the State's rights or remedies concerning the default.

- c. **Termination for Persistent Default.** The State may terminate this Contract by written notice to Contractor for defaults that are cured, but are persistent. "Persistent" means three or more defaults. After the State has notified Contractor of its third default, the State may terminate this Contract without providing Contractor with an opportunity to cure, if Contractor defaults for a fourth time. The four defaults are not required to be related to each other in anyway.
- d. **Termination for Endangered Performance.** The State may terminate this Contract by written notice to the Contractor if the State determines that the performance of the Contract is endangered through no fault of the State and Contractor fails to cure such endangered performance within 10 days or an agreeable timeframe.
- e. **Termination for Financial Instability.** The State may terminate this contract by written notice to Contractor if a petition in bankruptcy or similar proceeding has been filed by or against the Contractor.
- f. **Termination for Delinquency, Violation of Law.** The State may terminate this Contract by written notice, if it determines that Contractor is delinquent in its payment of federal, state or local taxes, workers' compensation, insurance premiums, unemployment compensation contributions, child support, court costs or any other obligation owed to a state agency or political subdivision in the state of Ohio. The State also may cancel this Contract, if it determines that Contractor has violated any law during the performance of this Contract. However, the State may not terminate this Contract if the Contractor has entered into a repayment agreement with which the Contractor is current
- g. **Termination for Subcontractor Default.** The State may terminate this contract for the default of the Contractor or any of its subcontractors. The Contractor will be solely responsible for satisfying any claims of its subcontractors for any suspension or termination and will indemnify the State for any liability to them. Subcontractors will hold the State harmless for any damage caused to them from a suspension or termination. The subcontractors will look solely to the Contractor for any compensation to which they may be entitled.
- h. **Termination for Failure to Retain Certification.** Pursuant to Section § 123.151 and §123.152 of the Revised Code, the State may certify businesses for participation in state sponsored business assistance programs. After certification is obtained it is the responsibility of the Contractor to maintain certification. If the Contractor is awarded a contract pursuant to a certification program and fails to renew its certification and/or is decertified, the State may immediately cancel the contract.
- i. **Termination for Convenience.** The State may terminate this Contract for its convenience after issuing written notice to the Contractor. 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 after the Contractor has submitted a proper invoice for such, with the invoice reflecting the amount determined by the State to be owing to the Contractor.

- j. **Termination, Effectiveness, Contractor Responsibilities.** The notice of termination whether for cause or without cause will be effective as soon as Contractor receives it. Upon receipt of the notice of termination, Contractor will immediately cease all work on the Project, if applicable, and refuse any additional orders and take all steps necessary to minimize the costs the Contractor will incur related to this Contract. The Contractor will immediately prepare a final status report and final invoice on deliverables that have not been previously invoiced and deliver it to the State. The report must detail either the work completed at the time of termination or the orders received and not processed prior to termination, and if applicable, the percentage of the Project's completion, estimated time for delivery of all orders received prior to termination, any costs incurred by the Contractor in doing the Project to date and any deliverables completed or partially completed but not delivered to the State at the time of termination. All costs incurred as a result of termination for convenience shall be invoiced by Contractor and paid by the state agency or political subdivision that ordered the services.
2. **Contract Suspension.** If Contractor fails to perform any one of its obligations under this Contract, it will be in default and the State may suspend rather than terminate this Contract where the State believes that doing so would better serve its interest.

In the case of a suspension for the State's convenience, the amount of compensation due to the Contractor for work performed before the suspension will be determined in the same manner as provided in this section for termination for the State's convenience or the Contractor may be entitled to compensation for work performed before the suspension, less any damage to the State resulting from the Contractor's breach of this Contract or other fault.

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

## II. CONTRACT REMEDIES:

- A. **ACTUAL DAMAGES.** Except for claims arising out of violations of section VI.B and VI.D of the special terms and conditions, aggregate liability with respect to a particular order, for customer, will not exceed the aggregate amount payable by customer to D&B pursuant to such order, or, for D&B, the aggregate amount paid by customer to D&B pursuant to such order. Any claims will be brought, in accordance with this agreement, within 12 months of either party becoming aware of the first occurrence giving rise to such, or such claims will be forever barred.
- B. **RESERVED**
- C. **DEDUCTION OF DAMAGES FROM CONTRACT PRICE.** The State may deduct all or any part of the damages resulting from Contractor's default from any part of the price still due on the contract, upon prior written notice being issued to the Contractor by the State.

## III. PAYMENT PROVISIONS:

- A. **INVOICE REQUIREMENTS.** The Contractor must submit an original invoice with three (3) copies to the office designated in the purchase order as the "bill to" address. To be a proper invoice, the invoice must include the following information:
1. The purchase order number authorizing the delivery of products or services.
  2. A description of what the Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, the Contractor must also include the payment number (e.g., 1 of 36).

If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of the Contractor's information.

**B. PAYMENT DUE DATE.** Payments under this Contract will be due on the 30<sup>th</sup> calendar day after the later of:

1. The date of actual receipt of a proper invoice in the office designated to receive the invoice, or the date the service is delivered and accepted in accordance with the terms of this Contract.
2. The date of the warrant issued in payment will be considered the date payment is made.

Interest on late payments will be paid in accordance with Ohio Revised Code Section §126.30.

**IV. CONTRACTOR WARRANTY AND LIABILITY PROVISIONS:**

**A. CONTRACTOR'S WARRANTY AGAINST AN UNRESOLVED FINDING FOR RECOVERY.**

Contractor warrants that it is not subject to an unresolved finding for recovery under ORC §9.24. If the warranty was false on the date the parties signed this Contract, the Contract is void *ab initio*.

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

1. Be in accordance with the sound professional standards and the requirements of this Contract.
2. **As of the effective date of this Contract, to Contractor's knowledge**, no Deliverable will violate any existing U.S. copyrights, patents, trademarks or infringe on the intellectual property rights of any third party when used in accordance with this Contract. The foregoing warranty does not apply to the extent Customer modifies the Deliverables in any way or combines the Deliverables with material from third parties.
3. All warranties are in accordance with Contractor's standard business practices as set forth in this Contract.
4. Though Contractor uses extensive procedures to keep its database current and to promote data accuracy, Customer acknowledges that the Information will contain a degree of error.
5. All services are provided on an "as is," "as available" basis. Other than as explicitly stated in this agreement, D&B disclaims all warranties, express or implied, including any warranties of accuracy, completeness, currentness, merchantability or fitness for a particular purpose. D&B does not warrant that the services will be uninterrupted or error-free and disclaims any warranty or representation regarding availability of a service, services levels or performance. D&B will not be liable for any loss or injury arising out of, in whole or in part, D&B's conduct in procuring, compiling, collecting, interpreting, reporting or delivering services.

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

6. The Contractor has the right to enter into this Contract.
7. 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.

8. The Contractor has the right and ability to grant the license granted in Deliverable in which title does not pass to the State.

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

- C. **INDEMNITY.** The Contractor will indemnify the State and work cooperatively with the State to defend or settle any and all claims, damages, law suits, costs, judgments, expenses, and any other liabilities resulting from bodily injury to any person (including injury resulting in death) or damage to property that may arise out of or are related to Contractor's performance under this Contract, providing such bodily injury or property damage is due to the negligence of the Contractor, its employees, agents, or subcontractors.

The Contractor will also indemnify the State against any claim of infringement of a copyright, patent, trade secret, or similar intellectual property rights based on the State's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where the State has modified or misused the Deliverable and the claim of infringement, is based on the modification or misuse. The state agrees to give the Contractor notice of any such claim as soon as reasonably practicable and to give the Contractor the authority to settle or otherwise defend any such claim upon consultation with and approval by the Office of the State Attorney General. 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 take one (1) of the following four (4) actions:

1. Modify the Deliverable so that is no longer infringing.
2. Replace the Deliverable with an equivalent or better item.
3. Acquire the right for the State to use the infringing Deliverable as it was intended for the State to use under this Contract; or
4. Remove the Deliverable and refund the fee the State paid for the Deliverable and the fee for any other Deliverable that required the availability of the infringing Deliverable for it to be useful to the State.

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

1. **EXCEPT FOR CLAIMS ARISING OUT OF VIOLATIONS TO SECTIONS VI. B AND VI. D OF THE SPECIAL TERMS AND CONDITIONS SET FORTH HEREIN, 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. SUCH LIABILITY SHALL NOT EXCEED SEVEN TIMES THE AMOUNT OF AN ORDER OR \$5 MILLION WHICHEVER IS GREATER EXCEPT IN INSTANCES OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT**
2. THE CONTRACTOR FURTHER AGREES THAT THE CONTRACTOR SHALL BE LIABLE FOR ALL DIRECT DAMAGES DUE TO THE FAULT OR NEGLIGENCE OF THE CONTRACTOR.

**V. GENERAL PROVISIONS:**

- A. **AMENDMENTS.** No amendment or modification of this Contract will be effective unless it is in writing and signed by both parties.
- B. **ANTITRUST ASSIGNMENT TO THE STATE.** Contractor assigns to the state of Ohio, through the Department of Administrative Services, all of its rights to any claims and causes of action the Contractor now has or may acquire under state or federal antitrust laws if the claims or causes of action relate to the supplies or services provided under this Contract. Additionally, the state of Ohio will not pay excess charges resulting from antitrust violations by Contractor's suppliers and subcontractors.
- C. **ASSIGNMENT/DELEGATION.** The Contractor will not assign any of its rights or obligations under this Contract without the written consent of the State which shall not be unreasonably withheld. Any assignment not consented to may be deemed void by the State.
- D. **AUDITS.** The Contractor must keep all financial records in a manner consistent with generally accepted accounting principles. Additionally, the Contractor must keep separate business records for this project, including records of disbursements and obligations incurred that must be supported by contracts, invoices, vouchers and other data as appropriate.

During the period covered by this Agreement and until the expiration of three (3) years after final payment under this Agreement, the Contractor agrees to provide the State, its duly authorized representatives or any person, agency or instrumentality providing financial support to the work undertaken hereunder, with access to and the right to examine any books, documents, papers and records of the Contractor involving transactions related to this Agreement.

The Contractor must provide access to the requested records within a reasonable period of time after the request by the State or any other party with audit rights. If an audit reveals any material deviation from the Contract requirements, any misrepresentations or any overcharge to the State or any other provider of funds for the Contract, the State or other party will be entitled to recover direct damages incurred by the State.,

- E. **CONFIDENTIALITY.** The Contractor may learn of information, documents, data, records, or other material that is confidential in the performance of this Contract. Customer represents and warrants that it has all necessary right, title, consents and authority to disclose such confidential information to Contractor. Contractor will treat all information that Customer designates in writing to be confidential in the same manner as D&B treats its own confidential information; provided that i) D&B may share such information with its third party service providers, with a need to know, in furtherance of the provision of Services hereunder, that are subject to confidentiality obligations substantially as restrictive as those set forth in this paragraph and Contractor assumes responsibility for such third party service providers use of such information. Except as necessary to perform the services required under this Contract, the Contractor may not disclose any information obtained by it as a result of this Contract, without the written permission of the State.

The Contractor's obligation to maintain the confidentiality of the information will not apply where it: (1) was already in the Contractor's possession before disclosure by the State, and it was received by the Contractor without the obligation of confidence; (2) is independently developed by the Contractor; (3) is or becomes publicly available without breach of this Contract; (4) is rightfully received by the Contractor from a third party without an obligation of confidence; (5) is disclosed by the Contractor with the written consent of the State; or (6) is released in accordance with a valid order of a court or governmental agency, provided that the Contractor (a) notifies the State of such order immediately upon receipt of the order and (b) makes a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the confidential information solely for the purposes intended to be served by the original order of production. The Contractor

will return all originals of any information and destroy any copies it has made on termination or expiration of this Contract.

The Contractor will be liable for the disclosure of any confidential information in accordance with the provisions of this Section. The parties agree that the disclosure of confidential information of the State's may cause the State irreparable damage for which remedies other than injunctive relief may be inadequate, and the Contractor agrees that in the event of a breach of the obligations hereunder, the State shall be entitled to temporary and permanent injunctive relief to enforce this provision without the necessity of proving actual damages. This provision shall not, however, diminish or alter any right to claim and recover damages.

- F. CONTRACT CONSTRUCTION.** This Contract will be constructed in accordance with the plain meaning of its language and neither for nor against the drafting party.
- G. CONTRACTOR DISCLOSURE; LOCATION OF SERVICES, DATA.** As part of this Agreement, Contractor shall disclose the following:
1. The location(s) where all services will be performed; and
  2. The location(s) where any state data applicable to the contract will be maintained or made available; and
  3. The principal location of business for the contractor and all subcontractors.
- H. DRUG FREE WORKPLACE.** The Contractor agrees to comply with all applicable state and federal laws regarding drug – free workplace and shall make a good faith effort to ensure that all its employees, while working on state property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.
- I. EQUAL EMPLOYMENT OPPORTUNITY.** The Contractor will comply with all state and federal laws regarding equal employment opportunity, including Ohio Revised Code Section 125.111 and all related Executive Orders.

Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be submitted to the DAS Equal Opportunity Division to comply with the affirmative action requirements. Affirmative Action Verification Forms and approved Affirmative Action Plans can be found by going to the Equal Opportunity Departments web site: <http://www.das.ohio.gov/Eod/AAEEO.htm>

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

- K. GOVERNING LAW / SEVERABILITY.** This Contract shall be governed by the laws of the state of Ohio, and the venue for any disputes will be exclusively with the appropriate court in Franklin County, Ohio. If any provision of the Contract or the application of any provision is held by that court to be contrary to law, the remaining provisions of the Contract will remain in full force and effect
- L. HEADINGS.** The headings used in this Contract are for convenience only and will not affect the interpretation of any of the Contract terms and conditions.
- M. NOTICES.** For any notice under this Contract to be effective it must be made in writing and sent to the address of the appropriate contact provided elsewhere in the Contract.
- N. ORDER OF PRIORITY.** If there is any inconsistency or conflict between this document and any provision incorporated by reference, this document will prevail.
- O. PUBLICITY.** The Contractor will not advertise that it is doing business with the State or use this Contract as a marketing or sales tool without the prior, written consent of the State.
- P. STRICT PERFORMANCE.** The failure of either party, at any time, to demand strict performance by the other party of any of the terms of this Contract will not be construed as a waiver of any such term, and either party may at any time demand strict and complete performance by the other party.
- Q. SUBCONTRACTING.** The State, through the Department of Administrative Services, General Services Division, Office of State Purchasing recognizes that it may be necessary for the Contractor to use a subcontractor to perform a portion of the work under the Contract. In those circumstances, the Contractor shall submit a list identifying its subcontractors or joint venture partners performing portions of the work under the Contract. If any changes occur during the term of the Contract, the Contractor shall supplement its list of subcontractors or joint venture business partners. In addition, all subcontractors or joint venture business partners agree to be bound by all of the Terms and Conditions and specifications of the Contract. The State, through the Department of Administrative Services, General Services Division, Office of State Purchasing, reserves the right to reject any subcontractor submitted by the Contractor.
- R. SURVIVORSHIP.** All sections herein relating to payment, confidentiality, license and ownership, indemnification, publicity, construction warranties, limitations of warranties and limitations on damages shall survive the termination of this contract.
- S. TAXES.** The State is exempt from all state and local taxes and does not agree to pay any taxes.
- T. ELECTIONS LAW.** Contractor, by signature affixed on this document, hereby certifies that all applicable parties listed in Division (I)(3) or (J)(3) of O.R.C. Section 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of O.R.C. Section 3517.13.

The Contractor is solely responsible to know the requirements and limitations set forth in the above-referenced Divisions of O.R.C. Section 3517.13, and to comply with those requirements and restrictions. The Contractor shall not accept a Contract and/or any purchase order issued under the Contract if the Contractor is unable to certify compliance with all provisions set forth in O.R.C. Section 3517.13. If the Contractor is unable to certify such compliance and accepts a Contract and/or purchase order issued under the Contract, DAS shall deem the Contractor in breach. As such, DAS may deem the Contract invalid and immediately cancel the Contract. If DAS cancels the Contract and applicable purchase order(s), the Contractor will be subject to all legal remedies available to the Department of Administrative Services up to and including debarment from doing business with the state of Ohio. Also, any Contractor unable to certify compliance with the above-referenced provisions in O.R.C. Section 3517.13, that accepts the Contract and any purchase orders issued under the Contract, will be held financially liable for any additional costs incurred by the DAS or other governmental entities placing orders under the Contract. These additional costs

include those costs associated with re-awarding the Contract and/or seeking replacement items related to the cancellation of the Contract and/or related purchase orders.

Additional information regarding Contribution Restrictions is available on the Office of Budget & Management's website at: [www.obm.ohio.gov](http://www.obm.ohio.gov)

U. In accordance with R. C. 2909.33 (C) I certify that I meet one of the following Conditions:

1. I have 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) I have 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) I have either pre-certified with the Office of Budget and Management, or have completed the attached Declaration of Material Assistance form certifying that I have not provided material assistance to any organization on the Terrorist Exclusion List, as that term is defined in R. C. 2909.21.

#### SPECIAL TERMS AND CONDITIONS

##### I. CONTRACT COMPLIANCE PROVISIONS:

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

##### B. **CERTIFICATION OF ACCURACY.**

The Contractor further represents and warrants that all future pricing information submitted to revise this Contract would also be true, correct, current, accurate, and complete.

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

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

The Contractor shall also submit a close - out report within one hundred and twenty (120) days after the expiration of this Contract. The contract expires upon the physical completion of the last,

outstanding task or delivery order of the Contract. The close - out report must cover all sales not shown in the final quarterly report and reconcile all errors and credits. If the Contractor reported all contract sales and reconciled all errors and credits on the final quarterly report, then the Contractor should show zero "0" sales in the close - out report.

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

Department of Administrative Services  
 General Services Division, STS Program  
 4200 Surface Road  
 Columbus, OH 43228 - 1395

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

- D. CONTRACTOR REVENUE SHARE.** The Contractor must pay the State a revenue share of the sales transacted under this Contract. The Contractor must remit the revenue share in U.S. dollars within thirty (30) days after the end of the quarterly sales reporting period. The revenue share equals 0.75% of the total quarterly sales reported. Contractors must include the revenue share in their prices. The revenue share is included in the award price(s) and reflected in the total amount charged to ordering activities.

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

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

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

The Contractor must forward the check to the following address:

Department of Administrative Services  
 General Services Division, STS Program  
 4200 Surface Road  
 Columbus, Ohio 43228 - 1395

Please make check payable to: Ohio Treasurer Richard Cordray. Payment currency is to be in United States dollars (USD).

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

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

- E. DELIVERABLES.** Attached as Exhibit 1 is the Contractor's price list for the products and services that the Contractor may provide to the State under this Contract. For convenience, those goods and services are referred to as "Deliverables" under this Contract. The Contractor may not provide any other goods or services under this Contract without an amendment to this Contract. Also, the Contractor may not charge any other prices for these Deliverables other than the prices on the Exhibit 1. If Exhibit 1 contains or incorporates by reference any terms or conditions other than a

description of the scope of license for software, product/service description, and product/service prices, they are excluded from this Contract and are of no effect. The Contractor's price list attached as Exhibit 1 is identified as the following commercial price list(s).

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

1. Workers' compensation insurance, as required by Ohio law or the laws of any other state where work under this Contract will be done. The Contractor will also maintain employer's liability insurance with at least a \$1,000,000.00 limit.
2. Personal injury, bodily injury, and property damage liability insurance, including automobile coverage, with personal injury and bodily injury of not less than \$1,000,000.00 combined single limit, and property damage of at least \$500,000.00 for any one (1) occurrence.

The Contractor will also furnish a certificate of insurance to the State for the required insurance evidencing coverage from an insurance carrier, or carriers authorized to do business in Ohio. The certificate 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 carrier(s). The certificate must also provide thirty (30) days notice to the State before cancellation.

G. **LEASES/FINANCING.** The State may elect to obtain equipment and software on a finance/lease basis subject to the terms of the state of Ohio, Department of Administrative Services, Master Financing Agreement (Revised 01/20/02) or the Master Lease Agreement (Revised 04/24/02), when the parties execute the applicable agreement.

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

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

## II. PARTIES TO THE CONTRACT:

A. **DEALERS.** The State authorizes the Contractor to name one or more dealers to work with the State on behalf of the Contractor. But if the Contractor decides to use any dealers, the Contractor must submit the name, address, and telephone number of any such dealer, as well as the dealer's purchase order and payment address(s) and federal tax identification number. The Contractor must also submit a completed W9 form for each dealer it wishes to name under this section. The Contractor's submission must be on its official letterhead, signed by an authorized representative, and addressed to the Administrator, Office of State Purchasing.

In doing so, the Contractor warrants that:

1. The dealer has been given a copy of this Contract, and a duly authorized representative of the dealer has agreed, in writing, to be bound by the terms and conditions in this Contract.
2. Such agreement specifically provides that it is for the benefit of the State as well as the Contractor.
3. The Contractor agrees to remain liable under this Contract for the services of any dealer to perform and any breach of the dealer under this Contract.

4. Payments under this Contract for the services of any dealer may be made directly to that dealer, and the Contractor will look solely to the dealer for any payments due the Contractor once the State has paid the dealer.
5. 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 would 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.

- B. **INDEPENDENT STATUS OF THE CONTRACTOR.** The parties will be acting as independent contractors. The partners, employees, officers, and agents of one party will act only in the capacity of representatives of that party and not as employees, officers, or agents of the other party and will not be deemed for any purpose to be such. Each party assumes full responsibility for the actions of its employees, officers, and agents, and agents while performing under this Contract and will be solely responsible for paying its people. Each party will also be alone responsible for withholding and paying income taxes and social security, workers' compensation, disability benefits and the like for its people. Neither party will commit, nor be authorized to commit, the other party in any manner.
- C. **POLITICAL SUBDIVISIONS.** This Contract may be relied on by Ohio political subdivisions, including Ohio cities and counties ("Political Subdivisions"). 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 will look solely to the Political Subdivision's performance, including but not limited to payment, and will 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 where the Contractor reasonably believes that the Political Subdivision is or will be unable to perform its obligations in relation to that order.

### III. PRICING PROVISIONS:

- A. **ECONOMIC PRICE ADJUSTMENT.** The State will be entitled to a price decrease any time the Contractor publishes a reduction in price for all commercial customers that is less than the price agreed to between the State and the Contractor under this Contract. The Contractor must notify the State of that event within thirty (30) calendar days of its occurrence and immediately reduce the price of the affected goods or services to the State under this Contract. The Contractor will also notify the State within thirty (30) calendar 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 will ask to renegotiate the price under this Contract of the goods and services affected by the general reduction in price. If the Contractor and the State cannot agree on a renegotiated price, the State will have the right, on notice to the Contractor, to immediately remove the affected products and services from this Contract.

- B. NOTIFICATION OF PRICE INCREASE.** The Contractor must notify the Department of Administrative Services, Office of State Purchasing and any affected State customers of price increase at least sixty (60) days before the effective date of the price increase. State customers must be notified at their purchase order "bill to" address contained in the applicable purchase order(s). This notification must specify, when applicable, the product serial number, location, current price, increased price, and applicable purchase order number.

**IV. MERCHANDISE PROVISIONS:**

- A. EQUIPMENT WARRANTY.** If any electrical equipment, mechanical device, computer hardware, telecommunications hardware, or other type of physical machinery ("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 is modified or damaged after title passes to the State.

The Contractor will do the following if any Equipment does not meet the above warranties:

1. Cause the Equipment to perform substantially in accordance with the user manuals, technical materials, and related writings published by the manufacturer with respect to the Equipment, or if that is not commercially practicable; then
2. Grant the State a refund equal to the amount the State paid for the Equipment.

For all Equipment, the warranty period will be the longer of one (1) year after acceptance or the Equipment's standard warranty period.

- B. PRODUCT RECALL.** In the event product delivered has been recalled, seized, or embargoed and/or has been determined to be misbranded, adulterated, or found to be unfit for human consumption by the packer, processor, manufacturer or by any State or Federal regulatory agency, the Contractor shall be responsible to notify the State through DAS, Office of State Purchasing and all ordering agencies/entities within two business days after notice has been given. Contractor shall, at the option of the ordering agency, either reimburse the purchase price or provide an equivalent replacement product at no additional cost. Contractor shall be responsible for removal and/or replacement of the affected product within a reasonable time as determined by the ordering agency. At the option of the ordering agency, Contractor may be required to reimburse storage and/or handling fees to be calculated from time of delivery and acceptance to actual removal. Contractor will bear all costs associated with the removal and proper disposal of the affected product. Failure to reimburse the purchase price or provide equivalent replacement product will be considered a default.
- C. QUALITY ASSURANCE.** At the option of DAS or the participating agency, samples may be taken from deliveries made and submitted for laboratory tests. The State will bear the cost of testing when samples are found to be in compliance with the Contract. If samples do not conform to the Contract, Contractor will bear the costs of testing and the State will apply the terms and conditions of the Termination provision of this Contract.
- D. RETURN GOODS POLICY.** The State will apply the following Return Goods Policy on all purchases made under the Contract. The Contractor acknowledges to have read, understood, and agrees to this Policy.

1. Return goods, when due to Contractor error (e.g. over-shipment, defective merchandise, unapproved substitution, etc.) shall be returned to the Contractor, at the Contractor's expense. The Contractor shall make arrangements to remove the return goods from the ordering agency premises within seven (7) calendar days after notification. The Contractor shall not apply any restocking or other charges to the ordering agency. At the option of the ordering agency, replacement items may be accepted and will be shipped within seven (7) calendar days of notification. Failure of the Contractor to arrange for return of the items within the specified time will result in the items being deemed as abandoned property and the ordering agency will dispose of accordingly.
2. Return goods of regular catalog stock merchandise, when due to agency error (i.e. over purchase, discontinued use, inventory reduction, etc.) will be accepted by the Contractor if notice is given by the agency within six (6) months of delivery and acceptance. All items to be returned must be unused and in their original containers and in suitable condition for resale. The ordering agency will be responsible for all transportation costs associated with both the original shipment of items to the agency and the subsequent return of the items to the location designated by the Contractor. The Contractor may assess a restocking fee associated with the return of the items to the location designated by the Contractor. The Contractor may assess a restocking fee not to exceed their standard published restocking fee or equivalent restocking fee that is assessed to other customers of the Contractor. Return of regular stock catalog merchandise, when delivery and acceptance exceed six (6) months will be at the option of the Contractor.
3. For orders of custom manufactured items, the Contractor will provide a production sample of the item to the ordering agency for acceptance. The production sample will be identical to the item to be provided. The ordering agency will provide written acceptance of the item prior to the Contractor continuing with production. Once delivery and acceptance has been completed and the ordering agency determines for any reason that any remaining quantities will not be used, the agency may request the return of the custom manufactured items. Acceptance of the return of custom manufactured items will be at the option of the Contractor. If the Contractor agrees to the return of these items, the agency will be responsible for all costs associated with packaging, shipment and transportation, to include the original shipment to the agency and subsequent return of goods to the location designated by the Contractor. The Contractor may assess restocking fees that are equivalent to restocking fees that are normally assessed to other customers or as published by the Contractor. Failure of the Contractor to provide a production sample and obtain written approval from the ordering agency will result in the Contractor bearing all responsibility and costs associated with the return of these goods.

#### V. MAINTENANCE PROVISIONS:

- A. **EQUIPMENT MAINTENANCE.** If this Contract involves computer or telecommunications hardware or other mechanical or electrical Equipment (use of the word "Equipment" means all the foregoing) as a Deliverable, then, during the warranty period and during any period covered by annual maintenance, the Contractor will provide Equipment maintenance to keep the Equipment in or restore the Equipment to good working order. This maintenance will 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 will also 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 condition means Equipment that performs in accordance with the manufacturer's published specifications.

The Contractor will exert its best efforts to perform all fault isolation and problem determination attributed to the Equipment covered under this Contract. The following services are outside the scope of this Contract:

1. 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.
2. 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 or included in the Contractor's proposal, or causes other than ordinary use of Equipment.
3. Furnishing platens, supplies, or accessories, making specification changes, or adding, or removing approved accessories, attachments or other devices except as set forth herein.
4. Maintenance or increase in 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.
5. Activities required restoring the Equipment to good operating condition if the problem has resulted from someone other than Contractor's authorized service personnel repairing, modifying or performing any maintenance service on the Equipment.

**B. EQUIPMENT MAINTENANCE CONTINUITY.** This section applies if Equipment will be a Deliverable under this Contract. If the Contractor is unable to provide maintenance services 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. But the State will also be entitled to the following items from the Contractor:

1. 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.
2. A listing of suppliers capable of supplying necessary spare parts.
3. Adequate information to permit the State to have spare parts manufactured elsewhere; and
4. A listing of spare parts and their recommended replacement schedule that will enable the State to create a centralized inventory of spare parts.

Any information in items (1) through (4) above that are rightfully identified by the Contractor as proprietary information will be maintained in confidence by the State except where disclosure to a third-party is necessary for the State to continue the maintenance. However, the State will require any third-party to whom disclosure is made to agree to hold the proprietary information in confidence and to make no further disclosure of it. Further, the State agrees that any such proprietary information will be used solely to perform maintenance for the State and will be returned to the Contractor or destroyed on completion of such use.

**C. EQUIPMENT MAINTENANCE STANDARDS.** This section applies if Equipment will be a Deliverable under this Contract. Except in the case of excusable delay, remedial Equipment maintenance by the Contractor will be completed within eight (8) 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 (8) 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 (8) hours to remedy a default. The Contractor will provide adequate staff to provide the maintenance required by this Contract.

- D. MAINTENANCE ACCESS (GENERAL).** The section applies if any software will be a Deliverable under this Contract. Software "Updates" (i.e., minor enhancements, additions, and substitutions to Software, including corrections and bug fixes) are provided at no additional fee, if made commercially available by the Contractor. "Upgrades" (i.e., modifications, additions or substitutions that result in a substantial change, improvement or addition to Software), if made commercially available by the Contractor, are provided for an additional fee, if applicable. The determination of whether a matter involves an Update or an Upgrade is within the sole discretion of the Contractor. All Updates and Upgrades made available to Customer are subject to this Contract.

The State will provide the Contractor with reasonable access to the Deliverable to perform Updates. All Updates that requires the Deliverable to be inoperable must be performed outside the State's customary working hours except when the Deliverable is already inoperable. Preventative or scheduled Updates will be performed at mutually agreeable times.

- E. PRINCIPAL PERIOD OF MAINTENANCE (GENERAL).** This section applies if software will be a Deliverable under this Contract. Telephone and email based software support is available during the Term of an Order for the currently licensed Software versions, and only if Customer has installed all Updates received. Support will be available nine (9) working hours per weekday, between 8:00 a.m. and 5:00 p.m. Eastern Standard Time. Expenses related to telephone and email support will not be considered billable but will be included in the price of the telephone and email software support.

## VI. IT PROVISIONS:

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

Contractor grants to the State a non-exclusive, non-transferable license ("License") to use and display the Commercial Material (in object code format only) constituting each of contractor's product specified in an Order issued pursuant to this Contract, subject to the limitations contained in this Agreement and such Order. Contractor retains all ownership rights (including copyrights and other intellectual property rights) in the Commercial Material, in any form, and the State obtains only such rights as are explicitly granted in this Contract and such Order.

- B. RESTRICTIONS ON USE.** Commercial Materials are licensed for the State's internal use only and subject to any restrictions set forth in the Order. The State will not provide Commercial Material to others, whether directly in any media or indirectly through incorporation in a database, marketing list, report or otherwise, or use or permit the use of Information to generate any statistical or other information that is or will be provided to third parties (including as the basis for providing recommendations to others); use or permit the use of Information to prepare any comparison to other information databases that is or will be provided to third parties; or voluntarily produce Commercial Materials in legal proceedings. In addition, Commercial Materials licensed to Customer may not be shared, distributed or otherwise made available to other agencies (public or quasi-public), departments, units or instrumentalities related to or subordinate to the State without the Contractor's prior written consent.

Notwithstanding the foregoing, the State may allow individuals performing the functions of an employee and who are working onsite for the State on a temporary basis ("Contractors") to use the Services solely for the State's internal use as permitted hereunder, and Customer shall be responsible for such contractor's compliance with this Agreement. In addition, the State may,

subject to the written approval of the Contractor, engage a third party to process, host or otherwise have access to the Commercial Materials.

The State will not attempt to access, use, modify, copy, reverse engineer, or otherwise derive the source code of Software.

The State will not use Information as a factor in establishing an individual's eligibility for (i) credit or insurance to be used primarily for personal, family, or household purposes, or (ii) employment. In addition, The State will not use any Service to engage in any unfair or deceptive practices and will use the Services only in compliance with applicable state, local, federal or foreign laws or regulations, including but not limited to laws and regulations promulgated by the Office of Foreign Asset Control, applicable export restrictions, and/or those laws and regulations regarding telemarketing, customer solicitation (including fax and/or e-mail solicitation), data protection and privacy.

Upon expiration or termination of a License with respect to particular Commercial Materials, or upon receipt of Commercial Materials that is intended to supersede previously obtained Commercial Materials, unless Contractor instructs the State otherwise, the State will immediately delete or destroy all originals and copies of the Commercial Materials, as applicable, including all Commercial Materials provided to Processors; and upon request, provide the Contractor with certification thereof.

Once per calendar year, if requested by the Contractor, an authorized official of the State will certify to the Contractor that it is in compliance with this Agreement. If, after receipt of this certification, the Contractor has reasonable basis for believing such certification is not accurate, then, upon reasonable notice and during regular business hours, the State will make available responsible officials to explain and demonstrate to the Contractor, or its designated representatives, controls in place that demonstrate the State's compliance with this Contractor.

The State will not copy, download, upload or in any other way reproduce Commercial Materials except for creating a reasonable number of copies of Commercial Materials for internal use only in accordance with this Contract and not for general internal distribution. Notwithstanding anything in this Contract to the contrary, the State is not permitted to make any Commercial Material available on the Internet or on any intranet without the Contractor's prior written consent. Any such consent shall detail any additional charges that may apply in connection with such availability.

- C. D-U-N-S® Numbers.** D-U-N-S Numbers are proprietary to and controlled by the Contractor. The Contractor grants the State a non-exclusive, perpetual, limited license to use D-U-N-S Numbers solely for identification purposes and only for the State's internal business use. Where practicable, the State will refer to the number as a "D-U-N-S® Number" and state that D-U-N-S is a registered trademark of D&B.

- D. COPYRIGHTS AND OTHER PROPRIETARY RIGHTS.** Commercial Materials are proprietary, copyrighted works of the Contractor and comprise: (i) works of original authorship, including compiled Information containing the Contractor's selection, arrangement and coordination and expression of such Commercial Materials or pre-existing material it has created, gathered or assembled; (ii) trade secret and other confidential information, including information that derives value or potential value from not being readily known or available; and (iii) information that has been created, developed and maintained by the Contractor at great expense, such that misappropriation or unauthorized use by others for commercial gain would unfairly and/or irreparably harm the Contractor or reduce the Contractor's incentive to create, develop and maintain such information. The State will not commit or permit any act or omission that would contest or impair the Contractor's proprietary and intellectual property rights in Commercial Materials or that would cause the Commercial Materials to infringe the proprietary or intellectual property rights of a third party. The State will reproduce the Contractor's copyright and proprietary rights legend on all copies of Commercial Materials.

The State will not use any trademark, service mark or trade name of the Contractor or any of the Contractor's affiliated companies or publish any press releases regarding this Contract or any Order.

The State shall implement and maintain security measures with respect to the Contractor's Commercial Materials in the State's possession that effectively restrict access to the Commercial Materials only to authorized users with a need to know, and protect Commercial Materials from unauthorized use, alteration, access, publication and distribution. In no event shall such security measures be less restrictive than those Customer employs to safeguard its confidential information.

The State shall supply the Contractor with a description of such security measures at the Contractor's request. In the event of an actual or suspected breach of such security measures, the State shall notify D&B within 24 hours.

- E. **THIRD PARTY BENEFICIARIES.** Third parties that provide Commercial Materials and services to the Contractor for use in providing the services required under this Contract ("Third Party Information Providers") are intended third party beneficiaries of the following Sections in this Contract.
- a. Standard Terms and Conditions – Section II.A
  - b. Standard Terms and Conditions – Section IV.B.5
  - c. Standard Terms and Conditions – Section IV.C

For purposes of clarification, no Third Party Information Provider is granted the right to bring an action under this contract against the state of Ohio hereunder

#### VII. OWNERSHIP/TITLE PROVISIONS:

- A. **ACCEPTANCE.** The acceptance procedure for Deliverables will be an informal review by the agency acquiring the Deliverables to ensure that each Deliverable meets the Commercial product specifications set forth in this Contract. The State will have up to thirty (30) days after installation to do this. The State will not issue a formal letter of acceptance, and passage of thirty (30) days will imply acceptance, though the State will issue a notice of noncompliance if a Deliverables does not meet the commercial product specifications in this Contract. If the State issues a letter of noncompliance, then the Contractor will have thirty (30) calendar days to correct the problems listed in the noncompliance 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 letters has been cured. If the problems have been fixed during the thirty (30) day period, the State will issue the acceptance letter within fifteen (15) days after all defects have been fixed.
- B. **DELIVERIES.** All deliveries will be F.O.B. Destination. Freight Prepaid.
- C. **OWNERSHIP OF DELIVERABLES.** Notwithstanding this contract cannot be used for software development, all custom work done by the Contractor and covered by this Contract will be treated as "work for hire" on behalf of the State, with all rights, title, and interest in all intellectual property that comes into existence through the Contractor's custom work being assigned to the State. Additionally, the Contractor waives any shop rights, author rights, and similar retained interests in custom developed material. The Contractor will provide the State with all assistance reasonably needed to vest such rights of ownership in the State. But the Contractor will retain ownership of all tools, methods, techniques, standards, and other development procedures, as well as generic and preexisting shells, subroutines, and similar material incorporated in any custom Deliverable ("Pre-existing Materials").

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

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

- D. **PASSAGE OF TITLE.** Title to any Deliverable will pass to the State only on acceptance of the Deliverable. All risk of loss will remain with the Contractor until title to the Deliverable passes to the State.

#### VIII. GENERAL PROVISIONS:

- A. **CONTRACT RENEWAL.** This Contract may be renewed solely at the discretion of the Department of Administrative Services for a period of one month. Any further renewals will be by mutual agreement between the contractor and the Department of Administrative Services for any number of times and for any period of time. The cumulative time of all mutual renewals may not exceed two years.
- B. **CONTROLLING BOARD AUTHORIZATION.** The State's obligations under this Contract are subject to the Ohio Controlling Board's continuing authorization to use state term contracts. If the Ohio Controlling Board fails to authorize or withdraws its authorization for this program, the State will notify the Contractor and this Contract will terminate, and the Contractor may not take any more orders under this Contract.
- C. **OHIO ETHICS.** All Contractors who are actively doing business with the state of Ohio or who are seeking to do business with the state of Ohio are responsible to review and comply with all relevant provisions of O.R.C. Sections 102.01 to 102.09, and Governor Strickland's Executive Order 2007-01S for Ethics.

Executive Order 2007-01S is available for review at [www.governor.ohio.gov](http://www.governor.ohio.gov), click on Governor's Office and then on Executive Orders.

- D. **OHIO PAYMENT CARD.** Participating state agencies purchasing supplies from the Contract may use the Ohio Payment Card. Such purchases may not exceed \$2,500 unless the Office of Budget & Management has approved the agency to exceed this limit. In the event that OBM increases the dollar limit for payment cards for all state agencies, notice of such increase will be posted on the Department of Administrative Services, Office of State Purchasing website. Participating state agencies are required to use the Ohio Payment Card in accordance with the Ohio, Office of Budget and Management's current guidelines for the Ohio Payment Card and the participating agency's approved plan filed with the Office of Budget of Management. Contractor may process a payment in the payment card network only upon delivery and acceptance of the supplies or services ordered. For partial deliveries or performance, Contractor may process a payment for the amount delivered or completed only and not for the entire amount ordered by the participating agency. Upon completion of the delivery of remaining supplies or services, Contractor may process a payment request in the payment card network for the remainder of the order. Contractor will receive payment through its merchant bank within the time frame agreed upon between Contractor and its merchant bank. The Contractor should expect normal processing fees from its merchant bank for payment card transaction which may not be passed on to the agency making the purchase.
- E. **TRAVEL EXPENSES.** Any travel or per diem required by the Contractor to do its obligations under this Contract will be at the Contractor's expense. The State will pay for any additional travel that it requests only with prior written approval. All additional travel and per diem that the State requests in addition to what this Contract requires the Contractor to provide at the Contractor's expense will be paid in accordance with the Office of Budget and Management's Travel Rules in Section §126-1-02 of the Ohio Administrative Code.

F. **ENTIRE AGREEMENT.** This Contract consists of this document, Addendum A; the Contractor's offer letter, and if applicable the Contractor's letter(s) designating authorized dealers and Exhibit 1. The foregoing constitutes the entire agreement between the parties, and any changes or modifications to this Contract must be in writing.

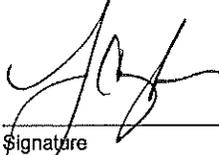
**TO SHOW THEIR AGREEMENT,** the parties have executed this Contract on the date(s) below and unless otherwise indicated is effective as of the date of the signature by the State.

ACCEPTED BY:

ACCEPTED BY:

THE CONTRACTOR

STATE OF OHIO,  
DEPARTMENT OF ADMINISTRATIVE SERVICES

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Signature

THOMAS C. BENTUM  
\_\_\_\_\_  
Name (printed)

Hugh Quill  
\_\_\_\_\_  
Name (printed)

ASSISTANT VICE PRESIDENT  
\_\_\_\_\_  
Title

Director  
\_\_\_\_\_  
Title

2/19/09  
\_\_\_\_\_  
Date

06/18/09  
\_\_\_\_\_  
Date

**Addendum A to the State Term Contract between the state of Ohio and Dun & Bradstreet, Inc.**

This Addendum is entered into on December 30, 2008 and hereby incorporated and made a part of the State Term Contract between Dun & Bradstreet Inc. ("Contractor") and the state of Ohio, Department of Administrative Services ("DAS").

The purpose of this addendum is to provide written exceptions to the terms and conditions of State Term Contract ("the Contract") as agreed by the parties during negotiations.

The Parties agree as follows:

1) Notwithstanding, anything to the Contrary in the Contract, the following provisions shall not apply to this Contract:

- a) Background, Paragraph 2;
- b) Standard Terms and Conditions, Paragraph C.1.g Termination for Subcontractor Default;
- c) Standard Terms and Conditions, Paragraph C.1.h, Termination for Failure to Retain Certification
- d) Special Terms and Conditions, Paragraph I.B.1 and I. B. 2, Certification of Accuracy;
- e) Special Terms and Conditions, Paragraph I.G, Leases/Financing;
- f) Special Terms and Conditions, Paragraph II.A, Dealers;
- g) Special Terms and Conditions, Paragraph IV.A, Equipment Warranty;
- h) Special Terms and Conditions, Paragraph IV.C, Quality Assurance;
- i) Special Terms and Conditions, Paragraph IV.D.2 Return Goods Policy;
- j) Special Terms and Conditions, Paragraph V.A, Equipment Maintenance;
- k) Special Terms and Conditions, Paragraph V.B, Equipment Maintenance Continuity;
- l) Special Terms and Conditions, Paragraph V.C, Equipment Maintenance Standards;
- m) Special Terms and Conditions, Paragraph VII.C, Ownership of Deliverables
- n) Special Terms and Conditions, Paragraph VII.D, Passage of Title

2) It is not anticipated that Contractor will have any subcontractors under this contract that will work directly and solely for the purposes of providing goods and services hereunder. It is understood and agreed between Contractor and DAS that DAS is procuring goods and services hereunder that the Contractor sells or offers to sell to the general commercial marketplace ("Commercial Items"). In providing Commercial Items to its customers, Contractor may outsource portions of its general business operations to third party vendors and partners ("Outsourced Partners"). For the purposes of this Contract, such Outsourced Partners shall not be considered subcontractors hereunder and the obligations on Contractor with respect to subcontractors shall not apply to Outsourced Partners.

3) The state of Ohio agrees to purchase \$250,000 in services from D&B. Should the state of Ohio and its political subdivisions in combination fail to meet or exceed this commitment level, all services acquired from that date forward shall revert back to D& B prices published at that time.

ACCEPTED BY:

THE CONTRACTOR

  
Signature

THOMAS C. BONTENPO  
Name (printed)

ACCEPTED BY:

STATE OF OHIO,  
DEPARTMENT OF ADMINISTRATIVE SERVICES

  
Signature

Hugh Quill  
Name (printed)

Assistant Vice President Director  
Title Title

4/15/09  
Date

06/18/09  
Date