

## STATE TERM CONTRACT

THIS CONTRACT ("Contract") is between the State of Ohio ("State"), through its Department of Administrative Services, Office of Information Technology, at 30 East Broad Street, 40<sup>th</sup> Floor, Columbus, Ohio, 43215 and [Intellinetics, Inc.](#) ("Contractor"), with offices at [2190 Dividend Drive, Columbus, Ohio 43228](#).

### 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. If the manufacturer has no GSA Multiple Award Schedule or SmartBuy contract, 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, [2019](#). 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 most favored 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:

[Intellinetics Pricing as of 6/26/2017](#)

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 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;
  - (f) If the invoice is for a lease, the Contractor also must include the payment number (e.g., 1 of 36); and
  - (g) For time and material services, the invoice must reflect labor hours actually worked and if applicable supplies used;

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

### 3 - CONTRACT ADMINISTRATION

- 3.1 DEALERS AND DISTRIBUTORS.** The State authorizes the Contractor to name one or more dealers to work with the State on behalf of the Contractor. But if the Contractor decides to use any dealers, the Contractor must submit the name, principal business address, addresses for purchase orders and for payments, telephone number, and its federal tax identification number. The Contractor also must submit a completed W9 form for each dealer it wishes to name under this section. The Contractor's submission must be on its official letterhead, signed by an authorized representative, and addressed to the Deputy State Chief Information Officer, Office of Information Technology. In doing so, the Contractor warrants that:
- (a) The Contractor has provided the dealer with a copy of this Contract, and a duly authorized representative of the dealer has agreed, in writing, to be bound by the terms and conditions in this Contract.
  - (b) Such agreement specifically provides that it is for the benefit of the State as well as the Contractor.



- (c) The Contractor will remain liable under this Contract for the services of any dealer and will remedy any breach of the dealer under this Contract.
- (d) Payments under this Contract for the services of any dealer may be made directly to that dealer, and the Contractor will look solely to the dealer for any payments due to the Contractor once the State has paid the dealer.
- (e) To the extent that there is any liability to the State arising from doing business with a dealer that has not signed the agreement required under this section with the Contractor, the Contractor will indemnify the State for such liability.

If the Contractor wants to designate a dealer that will not receive payments (a "distributor"), the Contractor may do so by identifying the person or organization as a distributor in the authorizing letter. In such cases, information regarding taxpayer identification and payment addressing may be omitted, as may the distributor's W9 form. All other requirements and obligations for designating a dealer apply to designating a distributor.

Section 125.081 of the Ohio Revised Code requires state agencies to set-aside purchases for MBE and Executive Order 2008-13S encourages use of EDGE businesses. Therefore the state encourages the Contractor to purchase goods and services from Ohio certified Minority Business Enterprises (MBE) and Encouraging Diversity, Growth and Equity (EDGE) vendors.

- 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 Contractor shall, for each policy required by this Contract, provide the State with 30-days prior written notice of cancellation, material change, or non-renewal, except a ten (10) day notice for non-payment of premium. And the Contractor's Commercial General Liability must be primary over any other insurance coverage.

- c. Commercial Automobile Liability insurance with a combined single limit of \$500,000.
- d. 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 INDEPENDENT CONTRACTOR ACKNOWLEDGEMENT**

3.8.1 It is fully understood and agreed that Contractor is an independent contractor and is not an agent, servant, or employee of the State of Ohio or the Ohio Department of Administrative Services. Contractor declares that it is engaged as an independent business and has complied with all applicable federal, state, and local laws regarding business permits and licenses of any kind, including but not limited to any insurance coverage, workers' compensation, or unemployment compensation that is required in the normal course of business and will assume all responsibility for any federal, state, municipal or other tax liabilities. Additionally, Contractor understands that as an independent contractor, it is not a public employee and is not entitled to contributions from DAS to any public employee retirement system.

3.8.2 Contractor acknowledges and agrees any individual providing personal services under this agreement is not a public employee for purposes of Chapter 145 of the Ohio Revised Code. Unless Contractor is a "business entity" as that term is defined in ORC. 145.037 ("an entity with five or more employees that is a corporation, association, firm, limited liability company, partnership, sole proprietorship, or other entity engaged in business") Contractor shall have any individual performing services under this agreement complete and submit to the ordering agency the Independent Contractor/Worker Acknowledgement found at the following link:

<https://www.opers.org/forms-archive/PEDACKN.pdf#zoom=80>

3.8.3 Contractor's failure to complete and submit the Independent/Worker Acknowledgement prior to commencement of the work, service or deliverable, provided under this agreement, shall serve as Contractor's certification that contractor is a "Business entity" as the term is defined in ORC Section 145.037.

- 3.9 Excusable Delay.** Neither party will be liable for any delay in its performance that arises from causes beyond its 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. In the event of any such excusable delay, the date of performance or of 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 is taking to remove the cause. The delayed party must not rely on a claim of excusable delay to avoid liability for a delay if the delayed party has not taken commercially reasonable steps to mitigate or avoid the delay. Things that are controllable by the Contractor's subcontractors will be considered controllable by the Contractor, except for third-party manufacturers supplying commercial items and over whom the Contractor has no legal control.

- 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 CONFIDENTIALITY AGREEMENTS.

When the Contractor performs services under this Contract that require the Contractor's and its subcontractors' personnel to access facilities, data, or systems that the State in its sole discretion deems sensitive, the State may require the Contractor's and its subcontractors' personnel with such access to sign an individual confidentiality agreement and policy acknowledgements, and have a background check performed before accessing those facilities, data, or systems. Each State agency, board, and commission may require a different confidentiality agreement or acknowledgement, and the Contractor's and its subcontractors' personnel may be required to sign a different confidentiality agreement or acknowledgement for each agency. The Contractor must immediately replace any of its or its subcontractors' personnel who refuse to sign a required confidentiality agreement or acknowledgment or have a background check performed.



- 5.5 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  
L-3686

Columbus, OH 43260-3686

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 associated 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 **EQUAL EMPLOYMENT OPPORTUNITY.** The Contractor will comply with all state and federal laws regarding equal employment opportunity and fair labor and employment practices, 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 Department of Administrative Services 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 Ohio Business Gateway at: <http://business.ohio.gov/efiling/>
- 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 **ANTITRUST.** The State and the Contractor recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by the State. The Contractor therefore assigns to the State all state and federal antitrust claims and causes of action that the Contractor has or acquires relating to the goods and services acquired under this Contract.
- 11.8 **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, Exhibit III which is incorporated and becomes a part of this Agreement.



- 11.9 **REGISTRATION WITH THE SECRETARY OF STATE.** By providing a Charter Number and signature within the Certification Offer Letter, the Contractor attests that the Contractor is:

An Ohio corporation that is properly registered with the Ohio Secretary of State; or

A foreign corporation, not incorporated under the laws of the state of Ohio, but is registered with the Ohio Secretary of State pursuant to Ohio Revised Code Sections 1703.01 to 1703.31, as applicable.

Any foreign corporation required to be licensed under O.R.C. § 1703.01-1703.31, which transacts business in the state of Ohio, without being so licensed, or when its license has expired or been canceled, shall forfeit not less than \$250.00 nor more than ten thousand dollars. No officer of a foreign corporation (<http://codes.ohio.gov/orc/1703.01>) shall transact business in the state of Ohio, if such corporation is required by O.R.C. § 1703.01-1803.31 to procure and maintain a license, but has not done so. Whoever violates this is guilty of a misdemeanor of the fourth degree. Questions regarding registration should be directed to (614) 466-3910, or visit <http://www.sos.state.oh.us>

- 11.10 **IRS 1075 REQUIREMENTS.** In order to protect risk of loss, breach, or misuse of Federal Tax Information ("FTI") held by government agencies, the Internal Revenue Service issued Publication 1075 which includes specific language to include in any State contract in which FTI may be disclosed.

## I. PERFORMANCE

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be done under the supervision of the Contractor or the Contractor's employees.
- (2) Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the Contractor will be prohibited.
- (3) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- (4) The Contractor certifies that the data processed during the performance of this Contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- (5) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- (6) All computer systems receiving, processing, storing or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operations, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal Tax Information.
- (7) No work involving Federal Tax Information furnished under this Contract will be subcontracted without prior written approval of the IRS.
- (8) The Contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
- (9) The agency will have the right to void the Contract if the Contractor fails to provide the safeguards described above.

## II. CRIMINAL SANCTIONS

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may



be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of the officer or employee (United States for Federal employees) in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC 7213A and 7431.

- (3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- (4) Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (See Exhibit 4, *Sanctions for Unauthorized Disclosure*, and Exhibit 5, *Civil Damages for Unauthorized Disclosure*). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

### III. INSPECTION

The IRS and the Agency shall have the right to send its officers and employees into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work under this Contract. On the basis of such inspection, specific measures may be required in cases where the Contractor is found to be noncompliant with contract safeguards.

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: \_\_\_\_\_

6/26/2017

DATE: \_\_\_\_\_

6/27/17



**Exhibit I**

<b>Product Name</b>	<b>Manufacturer</b>	<b>Vendor Part No</b>	<b>Description</b>	<b>Unit of Measure</b>	<b>State Price</b>
Intellivue v. 6.x 5 concurrent users	Intellinetics	IVUE6-5	Intellivue v. 6.x 5 concurrent users	Each	\$ 19,711
Intellivue v. 6.x 10 concurrent users	Intellinetics	IVUE6-10	Intellivue v. 6.x 10 concurrent users	Each	\$ 29,565
Intellivue v. 6.x 15 concurrent users	Intellinetics	IVUE6-15	Intellivue v. 6.x 15 concurrent users	Each	\$ 36,851
Intellivue v. 6.x 20 concurrent users	Intellinetics	IVUE6-20	Intellivue v. 6.x 20 concurrent users	Each	\$ 44,135
Intellivue v. 6.x 25 concurrent users	Intellinetics	IVUE6-25	Intellivue v. 6.x 25 concurrent users	Each	\$ 49,919
Intellivue v. 6.x 30 concurrent users	Intellinetics	IVUE6-30	Intellivue v. 6.x 30 concurrent users	Each	\$ 55,704
Intellivue v. 6.x 35 concurrent users	Intellinetics	IVUE6-35	Intellivue v. 6.x 35 concurrent users	Each	\$ 60,703
Intellivue v. 6.x 40 concurrent users	Intellinetics	IVUE6-40	Intellivue v. 6.x 40 concurrent users	Each	\$ 65,702
Intellivue v. 6.x 45 concurrent users	Intellinetics	IVUE6-45	Intellivue v. 6.x 45 concurrent users	Each	\$ 68,023
Intellivue v. 6.x 50 concurrent users	Intellinetics	IVUE6-50	Intellivue v. 6.x 50 concurrent users	Each	\$ 70,344
Intellivue v. 6.x 55 concurrent users	Intellinetics	IVUE6-55	Intellivue v. 6.x 55 concurrent users	Each	\$ 76,475
Intellivue v. 6.x 60 concurrent users	Intellinetics	IVUE6-60	Intellivue v. 6.x 60 concurrent users	Each	\$ 82,289
Intellivue v. 6.x 65 concurrent users	Intellinetics	IVUE6-65	Intellivue v. 6.x 65 concurrent users	Each	\$ 84,619
Intellivue v. 6.x 70 concurrent uses	Intellinetics	IVUE6-70	Intellivue v. 6.x 70 concurrent uses	Each	\$ 89,528
Intellivue v. 6.x 75 concurrent users	Intellinetics	IVUE6-75	Intellivue v. 6.x 75 concurrent users	Each	\$ 93,411
Intellivue v. 6.x 100 concurrent users	Intellinetics	IVUE6-100	Intellivue v. 6.x 100 concurrent users	Each	\$ 107,123
Intellivue v. 6.x 125 concurrent users	Intellinetics	IVUE6-125	Intellivue v. 6.x 125 concurrent users	Each	\$ 119,977
Intellivue v. 6.x 150 concurrent users	Intellinetics	IVUE6-150	Intellivue v. 6.x 150 concurrent users	Each	\$ 132,832
Intellivue v. 6.x 175 concurrent users	Intellinetics	IVUE6-175	Intellivue v. 6.x 175 concurrent users	Each	\$ 135,700
Intellivue v. 6.x 200 concurrent users	Intellinetics	IVUE6-200	Intellivue v. 6.x 200 concurrent users	Each	\$ 139,280
Intellivue v. 6.x 225 concurrent users	Intellinetics	IVUE6-225	Intellivue v. 6.x 225 concurrent users	Each	\$ 141,081
Intellivue v. 6.x 250 concurrent users	Intellinetics	IVUE6-250	Intellivue v. 6.x 250 concurrent users	Each	\$ 142,124



Intellivue v. 6.x 350 concurrent users	Intellinetics	IVUE6-350	Intellivue v. 6.x 350 concurrent users	Each	\$ 176,985
Intellivue v. 6.x 500 concurrent users	Intellinetics	IVUE6-500	Intellivue v. 6.x 500 concurrent users	Each	\$ 208,611
Intellivue v. 6.x 750 concurrent users	Intellinetics	IVUE6-750	Intellivue v. 6.x 750 concurrent users	Each	\$ 253,506
Intellivue v. 6.x Scan Module	Intellinetics	IVUE6-SM	Intellivue v. 6.x Scan Module	Each	\$ 5,175
Intellivue v. 6.x OCR Module	Intellinetics	IVUE6-OCR	Intellivue v. 6.x OCR Module	Each	\$ 8,718
OCR Run Time License	Intellinetics	IVUE6-OCR-RT	OCR Run Time License	Each	\$ 156
Web-enabled intellivue v.6.x	Intellinetics	IVUE6-WEB-ENABLER	Web-enabled intellivue v.6.x	Base Fee includes 1 application	\$ 23,101
intellivue Interface Module	Intellinetics	IVUE6-IIM	intellivue Interface Module	Base Fee	\$ 23,529
Web Portal License	Intellinetics	IVUE6-WEB-PORTAL	Web Portal License	Base Fee	\$ 69,750
API License	Intellinetics	IVUE6-API	API License	Base Fee	\$ 13,800
Intellivue Auto Redaction	Intellinetics	IVUE6-AR-BASE	Intellivue Auto Redaction	Base Fee	\$ 22,540
Intellivue Auto Redaction	Intellinetics	IVUE6-AR-APPLICATION	Intellivue Auto Redaction	Per Application Fee	\$ 915
Intellivue v. 6.x 5 concurrent users annual maintenance	Intellinetics	IVUE6-5-AnnualMaint	Intellivue v. 6.x 5 concurrent users annual maintenance	Annual (1 Year)	\$ 2,957
Intellivue v. 6.x 10 concurrent users annual maintenance	Intellinetics	IVUE6-10-AnnualMaint	Intellivue v. 6.x 10 concurrent users annual maintenance	Annual (1 Year)	\$ 4,435
Intellivue v. 6.x 15 concurrent users annual maintenance	Intellinetics	IVUE6-15-AnnualMaint	Intellivue v. 6.x 15 concurrent users annual maintenance	Annual (1 Year)	\$ 5,528
Intellivue v. 6.x 20 concurrent users annual maintenance	Intellinetics	IVUE6-20-AnnualMaint	Intellivue v. 6.x 20 concurrent users annual maintenance	Annual (1 Year)	\$ 6,620
Intellivue v. 6.x 25 concurrent users annual maintenance	Intellinetics	IVUE6-25-AnnualMaint	Intellivue v. 6.x 25 concurrent users annual maintenance	Annual (1 Year)	\$ 7,488
Intellivue v. 6.x 30 concurrent users annual maintenance	Intellinetics	IVUE6-30-AnnualMaint	Intellivue v. 6.x 30 concurrent users annual maintenance	Annual (1 Year)	\$ 8,356
Intellivue v. 6.x 35 concurrent users annual maintenance	Intellinetics	IVUE6-35-AnnualMaint	Intellivue v. 6.x 35 concurrent users annual maintenance	Annual (1 Year)	\$ 9,105
Intellivue v. 6.x 40 concurrent users annual maintenance	Intellinetics	IVUE6-40-AnnualMaint	Intellivue v. 6.x 40 concurrent users annual maintenance	Annual (1 Year)	\$ 9,855
Intellivue v. 6.x 45 concurrent users annual maintenance	Intellinetics	IVUE6-45-AnnualMaint	Intellivue v. 6.x 45 concurrent users annual maintenance	Annual (1 Year)	\$ 10,203
Intellivue v. 6.x 50 concurrent users annual maintenance	Intellinetics	IVUE6-50-AnnualMaint	Intellivue v. 6.x 50 concurrent users annual maintenance	Annual (1 Year)	\$ 10,552



Intellivue v. 6.x 55 concurrent users annual maintenance	Intellinetics	IVUE6-55-AnnualMaint	Intellivue v. 6.x 55 concurrent users annual maintenance	Annual (1 Year)	\$ 11,471
Intellivue v. 6.x 60 concurrent users annual maintenance	Intellinetics	IVUE6-60-AnnualMaint	Intellivue v. 6.x 60 concurrent users annual maintenance	Annual (1 Year)	\$ 12,343
Intellivue v. 6.x 65 concurrent users annual maintenance	Intellinetics	IVUE6-65-AnnualMaint	Intellivue v. 6.x 65 concurrent users annual maintenance	Annual (1 Year)	\$ 12,693
Intellivue v. 6.x 70 concurrent users annual maintenance	Intellinetics	IVUE6-70-AnnualMaint	Intellivue v. 6.x 70 concurrent users annual maintenance	Annual (1 Year)	\$ 13,429
Intellivue v. 6.x 75 concurrent users annual maintenance	Intellinetics	IVUE6-75-AnnualMaint	Intellivue v. 6.x 75 concurrent users annual maintenance	Annual (1 Year)	\$ 14,012
Intellivue v. 6.x 100 concurrent users annual maintenance	Intellinetics	IVUE6-100-AnnualMaint	Intellivue v. 6.x 100 concurrent users annual maintenance	Annual (1 Year)	\$ 16,068
Intellivue v. 6.x 125 concurrent users annual maintenance	Intellinetics	IVUE6-125-AnnualMaint	Intellivue v. 6.x 125 concurrent users annual maintenance	Annual (1 Year)	\$ 17,997
Intellivue v. 6.x 150 concurrent users annual maintenance	Intellinetics	IVUE6-150-AnnualMaint	Intellivue v. 6.x 150 concurrent users annual maintenance	Annual (1 Year)	\$ 19,925
Intellivue v. 6.x 175 concurrent users annual maintenance	Intellinetics	IVUE6-175-AnnualMaint	Intellivue v. 6.x 175 concurrent users annual maintenance	Annual (1 Year)	\$ 20,355
Intellivue v. 6.x 200 concurrent users annual maintenance	Intellinetics	IVUE6-200-AnnualMaint	Intellivue v. 6.x 200 concurrent users annual maintenance	Annual (1 Year)	\$ 20,892
Intellivue v. 6.x 225 concurrent users annual maintenance	Intellinetics	IVUE6-225-AnnualMaint	Intellivue v. 6.x 225 concurrent users annual maintenance	Annual (1 Year)	\$ 21,162
Intellivue v. 6.x 250 concurrent users annual maintenance	Intellinetics	IVUE6-250-AnnualMaint	Intellivue v. 6.x 250 concurrent users annual maintenance	Annual (1 Year)	\$ 21,319
Intellivue v. 6.x 350 concurrent users annual maintenance	Intellinetics	IVUE6-350-AnnualMaint	Intellivue v. 6.x 350 concurrent users annual maintenance	Annual (1 Year)	\$ 26,548
Intellivue v. 6.x 500 concurrent users annual maintenance	Intellinetics	IVUE6-500-AnnualMaint	Intellivue v. 6.x 500 concurrent users annual maintenance	Annual (1 Year)	\$ 31,292
Intellivue v. 6.x 750 concurrent users annual maintenance	Intellinetics	IVUE6-750-AnnualMaint	Intellivue v. 6.x 750 concurrent users annual maintenance	Annual (1 Year)	\$ 38,026
Intellivue v. 6.x Scan Module annual maintenance	Intellinetics	IVUE6-SM-AnnualMaint	Intellivue v. 6.x Scan Module annual maintenance	Annual (1 Year)	\$ 779
Intellivue v. 6.x OCR Module annual maintenance	Intellinetics	IVUE6-OCR-AnnualMaint	Intellivue v. 6.x OCR Module annual maintenance	Annual (1 Year)	\$ 1,308
OCR Run Time License annual maintenance	Intellinetics	IVUE6-OCR-RT-AnnualMaint	OCR Run Time License annual maintenance	Annual (1 Year)	\$ 23
Web-enabled intellivue v.6.x annual maintenance	Intellinetics	IVUE6-WEB-ENABLER-AnnualMaint	Web-enabled intellivue v.6.x annual maintenance	Annual (1 Year)	\$ 3,465
intellivue Interface Module annual maintenance	Intellinetics	IVUE6-IIM-AnnualMaint	intellivue Interface Module annual maintenance	Annual (1 Year)	\$ 3,529



Web Portal License annual maintenance	Intellinetics	IVUE6-WEB-PORTAL-AnnualMaint	Web Portal License annual maintenance	Annual (1 Year)	\$ 10,462
API License annual maintenance	Intellinetics	IVUE6-API-AnnualMaint	API License annual maintenance	Annual (1 Year)	\$ 2,070
Intellive Auto Redaction annual maintenance	Intellinetics	IVUE6-AR-BASE-AnnualMaint	Intellive Auto Redaction annual maintenance	Annual (1 Year)	\$ 3,381
Intellivue Auto Redaction annual maintenance	Intellinetics	IVUE6-AR-APPLICATION-AnnualMaint	Intellivue Auto Redaction annual maintenance	Annual (1 Year)	\$ 2,236
Business Process Analyst	Intellinetics	I-BPA-PS	Review client agency's existing workflow/business rules. Provide solution(s) to enhance agency's administrative and operational efficiency through Product utilization.	Per Hour	\$ 101.18
Senior Client Services Consultant	Intellinetics	I-SCSC-PS	Provides system software, hardware, networking, support. Identifies source of problem (fault isolation) and provides or recommends solution for clients.	Per Hour	\$ 85.00
Database Administrator	Intellinetics	I-DA-PS	Provides database management and administration expertise associated with Product implementation and utilization.	Per Hour	\$ 85.00
		I-SP-PS	Senior Intellivue Integration Developer	Per Hour	\$ 150.00
Client Services Project Manager	Intellinetics	I-CSPM-PS	Client Services Project Manager	Per Hour	\$ 145.59
System Architect	Intellinetics	I-SA-PS	Provides all aspects of physical design, including internetworking components, and application server sizing and benchmark testing.	Per Hour	\$ 111.05
Senior Development Architect	Intellinetics	I-SDA-PS	Provides all aspects of software application design, including application structure, business rules, interfaces, sub-systems, and administrative functions. Primary role – research and development.	Per Hour	\$ 128.10
System Programmer	Intellinetics	I-SP-PS	Intellivue Interface Developer - Provides Intellinetics product specific programming expertise for clients that require software maintenance, customization or enhancement of Product.	Per Hour	\$ 135.00



<b>Client Services Consultant</b>	<b>Intellinetics</b>	<b>I-CSC-PS</b>	<b>Provides system software, hardware, networking support. Identifies source of problem(fault isolation) and provides or recommends solution for clients.</b>	<b>Per Hour</b>	<b>\$ 85.00</b>
<b>Client/Server Specialist</b>	<b>Intellinetics</b>	<b>I-CSS-PS</b>	<b>Provides design and engineering expertise to integrate Product into client's existing technology environment.</b>	<b>Per Hour</b>	<b>\$ 115.00</b>
<b>Document Scanner Specialist</b>	<b>Intellinetics</b>	<b>I-DSS-PS</b>	<b>Prepares documents for scanning and performs related tasks including: scanning, quality control and indexing.</b>	<b>Per Hour</b>	<b>\$ 69.01</b>
<b>Imaging Project Manager</b>	<b>Intellinetics</b>	<b>I-IPM-PS</b>	<b>Manages and coordinates every facet of the installation &amp; implementation of Product into client organization.</b>	<b>Per Hour</b>	<b>\$ 105.25</b>
<b>Imaging Specialist</b>	<b>Intellinetics</b>	<b>I-IS-PS</b>	<b>Provides consulting regarding client imaging needs, Product features, hardware &amp; networking requirements and client Product utilization issues.</b>	<b>Per Hour</b>	<b>\$ 82.95</b>
<b>Product Trainer</b>	<b>Intellinetics</b>	<b>I-PT-PS</b>	<b>Solution Support Services</b>	<b>Per Hour</b>	<b>\$ 53.16</b>
<b>System Security Engineer</b>	<b>Intellinetics</b>	<b>I-SSE-PS</b>	<b>Provides system design and engineering expertise to address client organization's specific security/access needs.</b>	<b>Per Hour</b>	<b>\$ 128.10</b>
<b>Application Development Specialist</b>	<b>Intellinetics</b>	<b>I-ADS-PS</b>	<b>Develops application(s) (grouping of similar document/data) indexing schema in accordance with the client's business &amp; security rules, retention schedule(s), retrieval rules, etc.</b>	<b>Per Hour</b>	<b>\$ 85.60</b>
<b>System Programmer Integration Specialist</b>	<b>Intellinetics</b>	<b>I-SPIS-PS</b>	<b>Provides Product specific programming expertise for clients that desire to integrate document management/imaging software into existing or acquired software application(s) (Workflow application, etc), or who require customization of the software's interface.</b>	<b>Per Hour</b>	<b>\$ 80.30</b>
<b>Network Technician</b>	<b>Intellinetics</b>	<b>I-NT-PS</b>	<b>Provides all aspects of physical network installation, troubleshooting and support – with particular</b>	<b>Per Hour</b>	<b>\$ 102.53</b>



			emphasis on TCP/IP schema.		
Redaction Specialist	Intellinetics	I-RS-PS	Provides product and solution support to operational auto-redaction systems. Fully trained in redaction quality control and document processing tasks.	Per Hour	\$ 79.00
Redaction Administrator	Intellinetics	I-RA-PS	Supports auto-redaction system administrative tasks including rules management, optimization and system performance monitoring.	Per Hour	\$ 100.00
Senior Redaction Consultant	Intellinetics	I-SRC-PS	Provides strategic requirements gathering and architectural design services throughout the auto-redaction process.	Per Hour	\$ 125.00
Intellivue Consulting Engineer	Intellinetics	I-IVUE-PS	Intellivue Consulting Engineer	Per Hour	\$ 169.00
Intellivue GX Capture License ISIS	Intellinetics	IVUE-IDCS	Intellivue Index and Data Capture Services - Machine Print; OCR capture + Manual keying up to 15 Characters	Per Field	\$ 0.0270
Intellivue GX Capture License	Intellinetics	IVUE-CSP	Intellivue Conversion Services - Paper Documents Only, Prep, Scan, Classification	Per Page	\$ 0.0660
Intellivue GX Capture License Annual Maintenance	Intellinetics	IVUE-ACS	Intellivue Advanced Capture Services - Invoice style document classification, identification and data extraction	Per Image	\$ 0.6250
Intellivue Advance Capture Module	Intellinetics	IVUE-ADVANCED-CAPTURE	Intellivue Advance Capture Module	Each	\$ 7,500.00
Intellivue GX Capture License	Intellinetics	IVUE-CAPTURE - ISIS	Intellivue GX Capture License	Each	\$ 595.00
Intellivue GX Capture License	Intellinetics	IVUE-CAPTURE	Intellivue GX Capture License	Each	\$ 1,595.00
Intellivue GX Capture License Annual Maintenance	Intellinetics	IVUE-CAPTURE-ANNUALMAINT	Intellivue GX Capture License Annual Maintenance	Annual (1Year)	\$ 287.50
Print to Save To Single License	Intellinetics	P2S2-SINGLE	Print to Save To Single License	Each	\$ 150.00
Print to Save To Single License Maintenance	Intellinetics	P2S2-SINGLE-MAINT	Print to Save To Single License Maintenance	Annual (1Year)	\$ 27.00
Print to Save To Enterprise Site License	Intellinetics	P2S2-ENTERPRISE	Print to Save To Enterprise Site License	Each	\$ 20,000.00



Integration Module	Intellinetics	INTEGRATION-MODULE	Integration Module	Each	\$ 5,000.00
Upgrade to Enterprise License from Intellivue 6.x platform	Intellinetics	GX-ENT-UPGRD	Upgrade to Enterprise License from Intellivue 6.x platform	Each	\$ 75,000.00
Intellivue GX user license	Intellinetics	GX-USER-LICENSE	Intellivue GX user license	Each	\$ 1,295.00
Intellivue GX concurrent user license Annual Maintenance and Support	Intellinetics	GX-USER-LICENSE-ANNUAL-MAINT	Intellivue GX concurrent user license Annual Maintenance and Support	Annual (1Year)	\$ 233.00
Intellivue Web Based Viewer Portal	Intellinetics	IntelliCloud - VUE HTML5 Portal	Intellivue Web Based Viewer Portal	Each	\$ 15,000.00
Intellivue Web Based Viewer Portal - Maintenance	Intellinetics	IntelliCloud - VUE HTML5 Portal - MAINT	Intellivue Web Based Viewer Portal - Maintenance	Annual (1Year)	\$ 2,700.00
Intellivue ERP Gateway	Intellinetics	IVUE- ERPG	Intellivue ERP Gateway	Each	\$ 5,000.00
Intellivue ERP Gateway Maintenance	Intellinetics	IVUE-ERPG-MX	Intellivue ERP Gateway Maintenance	Annual (1Year)	\$ 900.00



## Exhibit II

### Intellinetics™, Inc. Software License Agreement

This Agreement is made and entered into as of the **DATE** (the "Effective Date"), by and between Intellinetics™, Inc. an Ohio corporation with its principal offices located at 2190 Dividend Drive, Columbus, OH 43228, hereinafter referred to as "LICENSOR" and **NAME OF END USER ENTITY**, with its principal offices located **ADDRESS OF END USER** hereinafter referred to as "LICENSEE" (LICENSOR and LICENSEE each individually a "Party" and collectively, the "Parties").

#### Recitals

WHEREAS, LICENSOR has developed certain Licensed Software and Services that comprise a System and LICENSEE desires to obtain a license and right to use such Licensed Software and Services in accordance with the terms, and subject to the conditions, set forth below; and

WHEREAS, LICENSOR has the right to sublicense certain software developed by third parties that comprise components of the System and LICENSEE desires to obtain a sublicense and right to use such third party software in accordance with the terms, and subject to the conditions, set forth below;

NOW THEREFORE, in consideration of the mutual covenants contained herein this Agreement, the LICENSEE and LICENSOR hereby agree as follows:

#### Agreement

##### 1. Definitions. As used herein, the terms listed below shall have the following meanings:

- 1.1 **"Agreement"** shall mean the state term schedule and this Software License Agreement and its exhibits
- 1.2 **"STS"** shall mean State Term Schedule of the state of Ohio
- 1.3 **"Authorized Site"** and Server" shall be set forth on Exhibit I "Licensed Software and Authorized Environments" dated [REDACTED] attached hereto and incorporated herein by this reference.
- 1.4 **"Confidential Information"** and Trade Secrets are defined in Section 6 herein.
- 1.5 **"Derivative Works"** shall mean, with respect to any Licensed Software, any translation, abridgement, revision, modification, or other form in which such Licensed Software may be recast, transformed, modified, adapted or approved after acceptance.
- 1.6 **"Documentation"** shall mean any written, electronic, or recorded work that describes the use, functions, features, or purpose of System, or any component or subsystem thereof, that is published or provided to the LICENSEE by LICENSOR, LICENSOR'S subcontractors or the original manufacturers or developers of third party products provided to LICENSEE by LICENSOR, including, without limitation, all end user manuals, training manuals, guides, program listings, data models, flow charts, logic diagrams, and other materials related to or for use with System.
- 1.7 **"Error"** shall mean, with respect to Licensed Software, a defect in the Source Code for such Licensed Software that prevents Licensed Software from functioning in substantial conformity with its published specifications.
- 1.8 **"LICENSEE"** means any third party granted a written prescribed right to Licensed Software by LICENSOR which excludes any individual or entity acquiring Licensed Software for resale, whether separately, bundled or modified.
- 1.9 **"Licensed Software"** shall mean Software that is developed and / or owned by LICENSOR.
- 1.10 **"Licensed Software Enhancement"** shall mean, with respect to any Licensed Software, a computer program modification or addition, other than a Maintenance Modification, that alters the functionality of, or adds new functions to, such Licensed Software.
- 1.11 **"Maintenance Modifications"** shall mean, with respect to Licensed Software, a computer software change to correct an Error in, and integrated into, such Licensed Software.
- 1.12 **"Object Code"** shall mean computer programs assembled or compiled in magnetic or electronic binary form on software media, which are readable and usable by machines, but not generally readable by humans without reverse-assembly, reverse-compiling, or reverse-engineering
- 1.13 **"Point Release"** shall mean an improvement in the Licensed Software that does not significantly change the function of the program and is indicated by a sub-number appearing to the right of an initial decimal (i.e., 1.1 or 1.1.1).
- 1.14 **"Proposal or Statement of Work"** shall mean the "Proposal or Statement of Work", dated [REDACTED] presented to **NAME OF LICENSEE**.
- 1.15 **"Source Code"** shall mean computer programs written in higher-level programming languages, sometimes accompanied by English language comments. Source Code is intelligible to trained programmers and may be translated to Object Code for operation on computer equipment through the process of compiling.
- 1.16 **"Services"** shall mean the ancillary products or services associated with the System provided to LICENSEE by LICENSOR.
- 1.17 **"System"** shall mean all components of LICENSEE'S computer automated system using or interfacing with Licensed Software or other third party software products.
- 1.18 **"Version Number"** shall mean a new Product release as indicated by a new whole number designation (i.e., 1.0 or 3.0).

##### 2. Licenses and Restrictions.



- 2.1 Grant of Licenses. Subject to the conditions set forth in Section 2.2 hereof, LICENSOR hereby grants to the LICENSEE, pursuant to the terms and conditions hereof, a perpetual, irrevocable, nonexclusive, nontransferable (nontransferable exception to an agency consolidation of Ohio Government entities only. Services to transfer the licenses or configure software for new use would apply at the current STS rate would still apply) to license for to: (i) use the Licensed Software, in Object Code only, at the Authorized Site and Server; (ii) conduct internal training and testing on Licensed Software; (iii) perform disaster recovery, backup, archive and restoration testing, and implementation with respect to Licensed Software; (iv) to make no more than one (1) archival copy of Licensed Software, provided that copy of such shall include LICENSOR'S copyright, logo and other proprietary notices and; (v) make a reasonable number of copies of LICENSOR'S training and/or User manuals for internal use only retaining LICENSOR'S copyright, logo and proprietary notices which are to appear on all such copies made therefrom.
- 2.2 Conditions to Grant of Licenses include: (i) No grant of any license or right pursuant to Section 2.1 hereof with respect to any Licensed Software shall be effective, and the LICENSEE shall have no license or right to use such software, until: (a) LICENSEE executes this Agreement or issues a PO of STS purchase and; (b) all System fees set have been paid in full or in accordance with mutually agreed upon written payment terms, see Section 8, "Fees and Payment" and ; (ii) LICENSOR reserves the right to improve or change the design of any Licensed Software, and shall not incur any liability thereby or any obligation to provide such improvements on Licensed Software for which licenses were previously purchased and; (iii) Grant for third party licensed software will be governed by its product documentation
- 2.3 Restrictions on Use include: (i) LICENSEE agrees to use Licensed System Software for the LICENSEE'S own use. LICENSEE shall not allow use of any Licensed Software by any parent, subsidiaries, affiliated entities, or other third parties, or allow same to be used on other than on the Authorized Server at the Authorized Site with respect thereto.; (ii) except as otherwise specifically set forth in Section 2.1 hereof, LICENSEE shall have no right to copy any Licensed Software. Any copy of same (whether or not such copy is permitted) shall be the exclusive property of LICENSOR; (iii) LICENSEE shall not distribute or allow distribution of any Licensed Software or any Documentation or other materials relating thereto without LICENSOR's prior written consent; (iv) LICENSEE shall not, and shall not permit any other party to, make any alteration, modification or enhancement to any Licensed Software unless, and only to the extent, specifically authorized in writing by LICENSOR; and, (v) LICENSEE shall not, and shall not permit any other party to, disassemble, de-compile or reverse-engineer any Licensed Software.
3. Ownership. Except for the rights expressly granted therein pursuant to Section 2 hereof, LICENSOR shall at all times retain all right, title and interest in and to all of its Licensed Software and all copies thereof (whether or not permitted), including all Derivative Works, Maintenance Modifications, Enhancements and Documentation with respect thereto (whether or not developed by LICENSOR).
4. Term and Renewal: (i) The initial term of this Agreement shall take effect on the Effective Date after: (i) it has been fully executed by a duly authorized representative of both parties; (ii) LICENSOR'S receipt of written notification from the LICENSEE that any certification or approval of this Agreement required by statute, ordinance, or established policy of the LICENSEE has been obtained, and (iii) after the initial term, this Agreement will renew for successive twelve (12) month year periods or unless terminated under the terms contained within this Agreement;
5. Termination. Per STS Contract.
6. Confidential Information. Per STS contract.
7. Limited Warranties, Liability and Indemnification.
  - 7.1 Limited Warranty. LICENSOR, with respect to Licensed Software: (i) warrants for a period of thirty (30) days from the date of receipt, for the LICENCEE'S benefit alone, that the LICENSOR'S developed Licensed Software will perform substantially as described in the documentation accompanying the Licensed Software providing, however, LICENSEE must notify LICENSOR in writing of any warranty claim no later than thirty (30) days after the end of the warranty period; (ii) that it is the owner or licensee of the Licensed Software and that it has the right to enter into this Agreement pursuant to the terms set forth herein; (iii) that the foregoing warranty shall apply only to the most current version of the Licensed Software issued by Licensor from time to time and assumes no responsibility for the use of superseded, outdated or uncorrected versions of the Licensed Software; (iv) will, during the warranty period, attempt to correct or cure any reproducible nonconformity or defect which is discovered and timely reported; (vi) that if a nonconformity or defect is not corrected after forty-five (45) days, Licensee's exclusive remedy shall be the refund of the amount paid as license fee for the Licensed Software; (vii) shall not be obligated to correct, cure, or otherwise remedy any nonconformity or defect in the Licensed Software if LICENSEE has made any changes whatsoever to the Licensed Software, if the Licensed Software have been misused or damaged by Licensee in any respect, if Licensee did not provide timely notice of the existence and nature of such nonconformity or defect or if Licensee has not ensured a proper environment and proper utilities for the computer system on which the Licensed Software is to operate, including an uninterrupted power supply; (viii) THAT EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT THIS WARRANTY LICENSOR DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS, AND WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED SOFTWARE, INCLUDING THEIR CONDITION, THEIR CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, - THE PRODCUT MUST CONFORM TO ITS DOCUMENTATION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS, AND THEIR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO REPRESENTATION OR OTHER



AFFIRMATION OF FACT, INCLUDING BUT NOT LIMITED TO ANY STATEMENT REGARDING CAPACITY, SUITABILITY FOR USE OR PERFORMANCE OF THE LICENSED PROGRAMS, WHETHER MADE BY LICENSOR OR OTHERWISE, WHICH IS NOT CONTAINED IN THIS AGREEMENT SHALL BE DEEMED TO BE A WARRANTY BY, OR GIVE RISE TO ANY LIABILITY OF, LICENSOR WHATSOEVER.

7.2 Limitation of Liability. Per STS contract.

7.3 Indemnification. Per STS Contract.

7.4 Limitation of Action. Per STS Contract.

7.5 Extended Maintenance and Support. This Agreement covers only the specific version of the Licensed Software that is provided to LICENSEE at the time of the original order. During the warranty period, LICENSEE shall be eligible to receive point releases of the Licensed Software which are introduced by Licensor during that period, and such will be considered fully licensed versions, replacing the originally Licensed Software. After the warranty period, Licensee has the option of purchasing extended Maintenance and Support. While such is in effect, Licensee shall receive Upgrades and these will be considered fully licensed versions of the Licensed Software, replacing the originally Licensed Software.

8. Fees and Payment. Per STS terms.

9. Relationship. Per STS terms

10. No Rights in Third Parties. This Agreement is entered into for the sole benefit of the LICENSOR and the LICENSEE and, where permitted above, their permitted successors, executors, representatives, administrators and assigns. Nothing in this Agreement shall be construed as giving any benefits, rights, remedies or claims to any other person, firm, corporation or other entity, including, without limitation, the general public or any member thereof, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries, property damage, or any other relief in law or equity in connection with this Agreement.

## ***INTELLINETICS™ SUPPORT AND MAINTENANCE AGREEMENT***

This Support and Maintenance Agreement ("Agreement") is entered into this [REDACTED]th day of [REDACTED] 20[REDACTED], (the "Effective Date") by and between Intellinetics™, Inc., and Ohio Corporation with its principal offices located at 2190 Dividend Drive, Columbus, Ohio 43228 (hereinafter referred to as "Intellinetics") and ENTITY NAME with its principal office located at FULL ADDRESS, (hereinafter referred to as "Client") (Intellinetics and Client each individually a "Party" and collectively, the "Parties").

WHEREAS, the Client has determined that it desires to obtain from Intellinetics certain support services relating to an automated computer System; and

WHEREAS, Intellinetics is qualified to provide support services specified in this Agreement and, subject to the terms and conditions set forth in this Agreement, Intellinetics desires to provide such support services;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Client and Intellinetics hereby agree as follows:

1. Definitions. Capitalized terms used herein and in any exhibit hereto shall have the definitions set forth on Exhibit 1 attached hereto and incorporated herein by this reference, unless otherwise defined herein.

2. Scope of Work.

2.1 Basic Support. Subject to the terms and conditions set forth in this Agreement, Intellinetics shall provide the following support for the Licensed Software ("Basic Support").

- (i) Errors. Intellinetics will correct any Error in the Licensed Software discovered by the Client during the term of this Agreement, provided: (a) the Client provides all information regarding such Error that may be requested by Intellinetics; (b) such Error is reproduced by the Client and; (c) the Client has provided Intellinetics with remote access to the System.
- (ii) Point Releases. Intellinetics may provide Point Releases of the Licensed Software to Clients under this Agreement at no additional fee.
- (iii) Supported Licensed Software Versions. Intellinetics will support the current and prior versions of the Licensed Software (ex: If current Version is 6.0; versions 5.x, and 6.x will be covered under Basic Support).
- (iv) Customer Support Center. Intellinetics will provide toll-free telephone support for routine operational and technical assistance. All support calls are received at Intellinetics' Corporate Offices at 1-(888)-828-2827 in Columbus, Ohio local number: (614) 921-8170. Support for Priority One Calls relating to Intellinetics licensed software application(s) during normal support hours of 8:00 a.m. to 5:00 p.m. Eastern Time, (5) business days per week (Monday, Tuesday, Wednesday, Thursday and Friday), (not including weekends and Intellinetics holidays).
- (v) Client Portal. Intellinetics will provide a Client Portal ([www.intellinetics.com](http://www.intellinetics.com)) to enable Clients to electronically submit



Technology Service Requests 24 / 7. Client will be provided with appropriate credentials to access portal and receive electronic "tickets" thereby logging the request. Response times will be as set forth above in Section 2.1 (iv) "Customer Support Center."

(vi) Account Manager. Intellinetics will designate, in writing, an individual to act as the Account Manager for purposes of coordinating technical support as set forth herein.

2.2 Additional Support Options. In addition to Basic Support, the Client may purchase additional support options and other services that may, from time to time, be offered by Intellinetics (each, an "Additional Support Option") at the current STS rate. The terms and conditions for each Additional Support Option shall be set forth in a separate exhibit which, upon payment of the required annual fee for such Additional Support Option, shall automatically become part of this Agreement and shall be subject to the terms hereof. The Client may discontinue any Additional Support Option by providing Intellinetics at least sixty (60) days prior written notice identifying the Additional Support Option to be discontinued; such discontinuance shall not be effective until the next regularly scheduled Payment Date.

2.3 Enhancements. From time to time, Client may request additional Licensed Software, services(s) and installation of same, under this Agreement. Such Enhancements may be provided, at Intellinetics' option, on a fixed-quote basis based on current STS rate with payment milestones or on a time and material basis at Intellinetics' then current STS service rates plus all related travel, per diem and other expenses invoiced as incurred per Ohio Budget and Management current travel rates. The terms and conditions (statement of work, acceptance process, software licensing, fee schedule, etc.) for all System enhancements shall be set forth in an additional Exhibit which, after payment of all agreed upon fees, shall be incorporated into this Agreement and subject to the terms herein.

2.4 Out of Scope Services. From time to time, Client may request Out of Scope Services under this Agreement. Intellinetics shall be under no obligation to perform same. If Intellinetics agrees to perform such services, they will be defined and incorporated into this Agreement using the same methodology as set forth in aforementioned section 2.3 "Enhancements."

### 3. Term.

3.1 This agreement can be renewed for successive one (1) year terms, unless it is terminated according to this Agreement's Termination Terms (Section 10).

3.2 The Terms for use of Intellinetics Licensed Software shall be as set forth in the appropriate Licensed Software Agreement.

### 4. Fees and Payment.

#### 4.1 Support.

(i) Basic Support. The Client shall pay an annual support and maintenance fee for Basic Support for the Licensed Software. The amount and timing of such fee shall be set forth on Exhibit 2 attached hereto and incorporated herein by this reference. Such fee shall be paid in advance on or prior to the expiration of any Warranty Period applicable to Licensed Software and, thereafter, on each Annual Support and Maintenance Payment Date during the term of this Agreement.

(ii) Additional Support Options. The Client shall pay an annual fee for requested Additional Support Options. The amount of such annual fee shall be set forth in the Exhibit defining such Additional Support Option and shall be paid on or prior to the commencement of any services relating to such Additional Support Option and, thereafter, on each Annual Support and Maintenance Payment Date during the term of this Agreement unless such Additional Support Option has been discontinued in accordance with Section 2.2 hereof (Additional Support Options).

4.2 Annual Adjustments. The fees payable pursuant to Section 4.1 hereof (Annual Support and Maintenance Fees) may be increased annually by no more than three percent (3%) upon a minimum of thirty (30) days prior written notice to Client. Any such increase shall become effective on the next occurring Anniversary Date.

### 5. Client Responsibilities.

5.1 Authorized Client Representative. The Client shall designate in writing a single individual to act as the Client's authorized representative for purposes of this Agreement (the "Client Representative"). Such individual: (i) must be authorized to act on the Client's behalf with respect to all matters relating to this Agreement; (ii) shall ensure the Client's compliance with its responsibilities under this Agreement; and (iii) shall coordinate appropriate schedules in connection with Intellinetics' services under this Agreement.

5.2 Technical Service Requests. Client shall provide information to complete a Technical Service Request using the Intellinetics Client Portal for each request for technical services, whether under this Agreement or otherwise. See Section 2.1 (iv) "Customer Support Center" and Section 2.1 (v) "Client Portal."

5.3 Remote Access. The Client agrees to provide, at its cost, Intellinetics remote access to the System upon reasonable notice. Intellinetics shall use the authorized data connection solely to provide its required services hereunder under the supervision of Client. Further, Client will perform reasonably requested tests following such remote access to aid in issue resolution.

5.4 Physical Access. Client shall: (i) provide Intellinetics with physical access to the System at any time during normal business hours upon reasonable notice; (ii) after normal business hours, ensure that Intellinetics can gain access to the appropriate physical location to address reported support issue(s) as required; and (iii) ensure appropriate Client staff are present until there is no longer a need for physical access.



- 5.5 Error Reproduction. Upon detection of any Error in any of the Licensed Software, the Client shall provide Intellinetics a listing of output and any other data, including databases and back-up systems, that Intellinetics may reasonably request in order to reproduce operating conditions similar to those present when the Error occurred.
- 5.6 Maintenance and Back-Ups. The Client is responsible for all System maintenance and back-up activities.
- 5.7 Data Input. The Client shall update and maintain the input data as may be required by Intellinetics for operation of Licensed Software, and be responsible for the accuracy of all Client-provided data.
- 5.8 Third-Party Product Support. The Client is responsible for maintaining the licensing and support agreements of all Third Party products.
- 5.9 Operations Review. The Client shall meet with Intellinetics to discuss System operational, maintenance and enhancement matters as reasonably requested.
- 5.10 System Modifications. The Client shall ensure that, with respect to Licensed Software, such is installed only on the Authorized Server at Authorized Site. The Client shall: (i) ensure that each Authorized Site conforms in all respects to the manufacturer's Site Specifications; (ii) ensure that no changes or other alterations or modifications are made to the System Configuration without the express prior written consent of Intellinetics.
6. Customer Support Center. Intellinetics will provide toll-free telephone support for routine operational and technical assistance. All support calls are received at Intellinetics' Corporate Offices at 1-(888)-828-2827 in Columbus, Ohio, local number (614) 921-8170 or via the Intellinetics assigned Client Portal. Normal support hours are 8:00 a.m. to 5:00 p.m. E.S.T. time, five (5) business days per week (Monday, Tuesday, Wednesday, Thursday and Friday), (not including weekends and Intellinetics holidays). Intellinetics reserves the right to charge reasonable call-out fees for any call received other than during Intellinetics normal support hours.
7. Exclusions.
  - 7.1 Failure to Observe Obligations. Basic Support provided hereunder is expressly conditioned on the observance of the responsibilities of the Client set forth in Section 5 hereof (Client Responsibilities) and in the Software License Agreement. Any Additional Support Option provided hereunder is expressly conditioned on the observance of the responsibilities of the Client set forth in Section 5 hereof (Client Responsibilities), in the Software License Agreement and in the exhibit pertaining to such Additional Support Option.
  - 7.2 Erroneous Reported Problems. If Intellinetics performs diagnosis of erroneously reported problems, the Client will be charged for such services at Intellinetics' then current STS service rates.
  - 7.3 Failure of Remote Access. If the Client fails to provide remote access to the System as required by Section 5.3 hereof (Remote Access), Intellinetics will, at the Client's request, provide on-site services to correct an Error to the extent otherwise required hereunder and will charge the Client for such services at Intellinetics' then current state term schedule technical service rates plus all related travel, per diem and other expenses invoiced as incurred. All travel and expenses must be preapproved and will be reimbursed at OBM rates.
  - 7.4 Unauthorized Modifications. Intellinetics is under no obligation to correct any Error in any of the Licensed Software if the Error is due to a modification or alteration to such same in violation of the terms of the Software License Agreement or relates to any portion of such that has been affected by software not developed and installed by Intellinetics. Intellinetics is under no obligation to correct any problems caused by any modification or alteration to any component of the System or to the System Configuration in violation of the terms of this Agreement or caused by software or hardware not developed and installed by Intellinetics. If requested by the Client, Intellinetics will provide technical support services to resolve such problems pursuant to Section 2.4 hereof (Out of Scope Services) and will charge the Client for such services at Intellinetics' then current STS service rates plus all related travel, per diem and other expenses invoiced as incurred. All travel and expenses must be preapproved and will be reimbursed at OBM rates.
  - 7.5 Unauthorized Use. Intellinetics is under no obligation to correct any Error in any of the Licensed Software or any problems with any other component of the System if such Error or other problem is caused by accident, neglect, misuse or abuse on the part of any party other than Intellinetics. If requested by the Client, Intellinetics will provide technical support services to resolve such problems and will charge the Client for such services at Intellinetics' then STS technical service rates plus all related travel, per diem and other expenses invoiced as incurred. All travel and expenses must be preapproved and will be reimbursed at OBM rates.
  - 7.6 Third-Party Products. Intellinetics shall have no responsibility for correcting or resolving any errors, defects or failures in any Third-Party Products. Intellinetics' only obligation with respect to such Third-Party Products is to assist with the coordination of support services with the appropriate third-party vendor to the extent such support services are available to the Client.
  - 7.7 Third-Party Product Compatibility. Intellinetics shall have no responsibility for any Third-Party Product provided and installed on or integrated into the System by any other party without Intellinetics' prior written authorization requested by the Client, Intellinetics will provide technical support services pursuant to Section 2.4 hereof [Out of Scope Services] to resolve any operation or performance problems relating to any of the Licensed Software or any other component of the System caused by any such Third-Party Products or to assist with the integration of any such Third-Party Products with or into any of the Licensed Software or any other component of the System. Intellinetics will charge the Client for any such services at Intellinetics' then current STS service rates plus all related travel, per diem and other expenses invoiced as incurred. All travel and expenses must be preapproved and will be reimbursed at OBM rates.
  - 7.8 General Disclaimer. EXCEPT AS MAY BE EXPRESSLY SET FORTH HEREIN, INTELLINETICS DISCLAIMS ALL WARRANTIES WITH RESPECT TO ANY OF THE LICENSED SOFTWARE OR ANY OTHER COMPONENT OF THE SYSTEM, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OR CONDITIONS OF SUITABILITY, MERCHANTABILITY, SATISFACTORY QUALITY, TITLE, NON-INFRINGEMENT AND/OR FITNESS



FOR A PARTICULAR PURPOSE.

- 8 Protection of Confidential and Proprietary Information. Its Definition and treatment are set forth in the appropriate section of the Intellinetics / Client Software License Agreement dated, **DATE** which section is incorporated herein by this reference. NOTE: This Section presupposes an existing executed License Agreement between the parties.

8.1 Intellinetics Confidential Information constitutes a valuable business asset of Intellinetics, the unauthorized use or disclosure of which may irreparably damage Intellinetics. In the event of the Client's breach or threatened breach of any of the provisions in this Section, Intellinetics shall be entitled to seek an injunction obtained from any court having appropriate jurisdiction restraining the Client from any unauthorized use or disclosure of any Intellinetics Confidential Information.

8.2 Notwithstanding this Section, neither Client Confidential Information nor Intellinetics Confidential Information shall include information which the recipient can demonstrate by competent written proof (i) is now, or hereafter becomes, through no act or failure to act on the part of the recipient, generally known or available or otherwise part of the public domain; (ii) is rightfully known by the recipient without restriction on use prior to its first receipt of such information from the disclosing party as evidenced by its records; (iii) is hereafter furnished to the recipient by a third party authorized to furnish the information to the recipient, as a matter of right and without restriction on disclosure; or (iv) is the subject of a written permission by the disclosing party to disclose.

8.3 Notwithstanding Section 8.1 or Section 8.2 hereof, or any other provision hereof, disclosure of Client Confidential Information or Intellinetics Confidential Information shall not be precluded if:

- 8.3.1 such disclosure is in response to a valid order of a court or other governmental body of the United States or any political subdivision thereof; provided, however, that the recipient of such confidential information shall first have given notice to the other party and shall have made a reasonable effort to obtain a protective order requiring that the information to be disclosed be used only for the purposes for which the order was issued;
- 8.3.2 such disclosure is necessary to establish rights or enforce obligations under this Agreement, but only to the extent that any such disclosure is necessary; or
- 8.3.3 the recipient of such confidential information received the prior written consent to such disclosure from the disclosing party, but only to the extent permitted in such consent.
- 8,3.4 The obligations hereunder with respect to each item of Client Confidential Information and Intellinetics Confidential Information shall survive the termination of this Agreement.

9 **Limitation of Liability.** Per STS contract.

Limitation of Action. Except for the actions of non-payment or breach of either party's intellectual rights, no action (regardless of form) arising out of this Agreement may be commenced by either Party more than two (2) years after the cause of action has accrued.

10. Termination – Per STS Contract.

11 Independent Contractor Status. Per STS contract.

12 Assignment. Per STS contract.

13 No Third Party Beneficiaries. Per STS contract.

14 Governing Law. Per STS contract.

15 Venue. Per STS contract

16 Advice of Counsel. Per STS contract.

17 Amendment. Per STS contract.

18 Waiver. Per STS contract.

19 Force Majeure. Per STS contract.

20 Severability. Per STS contract.

21 Notices. Per STS contract.



IN WITNESS WHEREOF, the parties have hereunto set their hands as set forth below.

*Intellinetics, Inc.*

*Client*

\_\_\_\_\_  
Signature  
Signature

\_\_\_\_\_

\_\_\_\_\_  
Print Name & Title

\_\_\_\_\_  
Print Name & Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



Exhibit 1  
To  
Intellinetics Support and Maintenance Agreement

**Definitions**

This Exhibit is attached to, incorporated into, and forms a part of the Intellinetics Support and Maintenance Agreement between Intellinetics and the Client (herein referred to as the "Agreement"), dated [REDACTED].

1. "Authorized Server and Site" shall mean, with respect to Licensed Software, the server and server's location where Licensed Software described in Exhibit 2 shall be located at Client's premises.
2. "Licensed Software" shall mean all Intellinetics Licensed Software set forth in Exhibit 2 of Agreement. Further, it shall include all Maintenance Modifications, Derivative Works and all related Documentation.
3. "Derivative Works" shall mean, with respect to any Licensed Software, any translation, abridgement, revision, modification, or other form in which such Licensed Software may be recast, transformed, modified, adapted or approved after the Effective Date.
4. "Documentation" shall mean, with respect to any Licensed Software, those printed instructions, manuals, and diagrams in all forms pertaining to and furnished with such Licensed Software.
5. "Enhancement" shall mean, with respect to any Licensed Software, a computer program modification or addition, other than a Maintenance Modification, that alters the functionality of, or adds new functions to, such Licensed Software and is integrated with such Licensed Software after the Effective Date, or is related to a given Licensed Software but offered separately by Intellinetics after the Effective Date.
6. "Error" shall mean, with respect to any Licensed Software a defect in the Source Code that prevents such from functioning in substantial conformity with the published documentation pertaining thereto.
7. "Maintenance Modification" shall mean, with respect to Licensed Software, a computer software change integrated with such Licensed Software during the term of the Agreement to correct any Errors therein, but that does not alter the functionality of such Licensed Software or add new functions thereto.
8. "Software License Agreement" shall mean any license agreement between Intellinetics and Client pursuant to which Intellinetics has granted a limited license to use the Licensed Software in accordance with the terms and conditions thereof, as the same may be amended or otherwise modified from time to time.
9. "System" shall mean the Client's computer automated system consisting of Licensed Software combined with any of the Authorized Servers, operating systems installed on each of the Authorized Servers, any database or other third party software products installed on any of the Authorized Servers, any PC or other workstation equipment having access to any of the Licensed Software, any Communications Interfaces installed on any Authorized Servers, any network communications equipment and any other third party software, wiring, cabling and connections and other hardware relating to any such Authorized Servers, workstation or network communications equipment located at any of the Authorized Sites.
10. "System Configuration" shall mean the configuration for the System other than the Licensed Software existing as of the Effective Date together with any modifications or alterations thereto permitted hereunder, including without limitation the configuration of the Authorized Servers, any operating system installed on any of the Authorized Servers, any database or other third party software products installed on any of the Authorized Servers, any PC or other workstation equipment having access to Licensed Software any network communications equipment and any other third party software, wiring, cabling and connections and other hardware relating to any such Authorized Server, workstation or network communications equipment located at any of the Authorized Sites.
11. "Warranty Period" shall mean, with respect to any Licensed Software, the warranty period for such Licensed Software or Services set forth on corresponding Exhibit attached to Agreement and incorporated therein by reference.

Exhibit 1

Authorized Signatures:

Intellinetics, Inc.

Client

\_\_\_\_\_  
Signature  
Signature

\_\_\_\_\_

\_\_\_\_\_  
Print Name & Title

\_\_\_\_\_  
Print Name & Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



Exhibit 2  
To  
Intellinetics Support and Maintenance Agreement

**Licensed Software**

This Exhibit 2 is attached to, incorporated into and forms part of the Intellinetics Support and Maintenance Agreement between the Client and Intellinetics (herein referred to as the "Agreement"), dated [REDACTED]. In the event of conflict between the terms and conditions set forth herein and those set forth in the Agreement, the terms and conditions set forth in this Exhibit shall prevail.

Intellinetics will provide the Basic Support described in Section 4.1 Basic Support of the Agreement for the Licensed Software identified in the table below. The annual support and maintenance fee for such support for Licensed Software are listed in following table. Fees for such support will commence upon purchase of licensed software independent of payment as set forth in the table below.

An "Annual Support and Maintenance Payment Date" shall be established via proration to establish a specific Client payment date for all purchased Licensed Software for Client's efficient and cost effective account administration.

Licensed Software Description	Make, Model & Serial Number of Authorized Server	Address and Room Number of Authorized Server (Authorized Site)	Maintenance Period	Annual Fee
Intellivue v. [REDACTED], Number [REDACTED] Concurrent User Licenses, Number [REDACTED] Scan Station Modules	TBD	TBD		0.00
			TOTAL	0.00

Authorized Signatures:

Intellinetics, Inc.

Client

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name & Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name & Title

\_\_\_\_\_  
Date





## 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:

**2190 Dividend Drive**

**Columbus, Ohio 43228**

(Address)

(City, State, Zip)

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

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

2. Location where services will be performed by Contractor:

**2190 Dividend Drive**

**Columbus, Ohio 43228**

(Address)

(City, State, Zip)

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

(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:

(Address)

(Address, City, State, Zip)

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

**Only if hosted:**

**226 N 5<sup>th</sup> Ave Columbus Ohio 43215**

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(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: Matthew Chretien

Title: President & CEO

Date: May 1, 2017