

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, 40th Floor, Columbus, Ohio, 43215 and Column Technologies, Inc. ("Contractor"), with offices at 10 E 22nd Street, Suite 300, Lombard, IL, 60148.

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 **July 28, 2022**. 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:
- X The prices at which the Contractor currently offers each product and service to the US Government under the GSA's Multiple Award Schedule program;
The prices at which the Contractor currently offers each product and service to the US Government under the GSA's SmartBuy program; or
The best prices at which the Contractor has offered each product and service to its most favored customers within one year before the date the Contractor executed this Contract or adds the product or service to this Contract, whichever is later.

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

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

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

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

If the Contractor has relied on its 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:

FINAL CPL GS35F0660M 060717

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 Rule126-1-02 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:


LEE SCHROEDER, CFO

BY:


ROBERT BLAIR, DIRECTOR,
DEPARTMENT OF ADMINISTRATIVE SERVICES

DATE: April 11, 2018

DATE: 5-9-18

MASTER LICENSE AGREEMENT

This Master License Agreement ("Agreement") This Agreement is between the entity ("ordering activity," defined as an "entity authorized to order under State Term Schedule _____, as may be revised from time to time)," entering into this Agreement ("Customer") and the Column Contracting Entity for the applicable region as described in Section 20 ("Column"). It is effective between Customer and Column as of the date of your acceptance of this Agreement.

1. GENERAL DEFINITIONS.

"Affiliate" is an entity that is a state agency of the State of Ohio or a political subdivision as defined in Section _____, Political Subdivision

"Documentation" means the technical publications relating to the software, such as release notes, license entitlement descriptions, reference, user, installation, systems administrator and technical guidelines, included with the Product. **"Licensed Capacity"** is the amount of each Product licensed as established in the Order.

"Order" is an agreed written or electronic document, subject to the terms of this Agreement that identifies the Products to be licensed and the Licensed Capacity and/or the Support to be purchased and the fees to be paid.

"Product" is the object code of the software and all accompanying Documentation delivered to Customer, including all items delivered and is either (1) software and any updates for the software and/or (2) an application or plug-in (and any updates thereto) that uses BMC ITSM Suite service process management platform ("Platform") and the Platform is either:

(a) separately licensed to Customer by BMC Software, Inc or (b) is sublicensed to Customer under the terms of this Agreement, in which case the term "Product" as hereinafter used includes the term "Platform".

"Support" is the support services program as further specified in this Agreement.

"Territory" means the country(ies) where Customer is licensed to install the Product as specified in the Order."

2. Scope. Licenses are granted, and Support is obtained, solely by execution of Orders and receipt of a Purchase Order. Each Order is deemed to be a discrete contract, separate from each other Order, unless expressly stated otherwise therein, and in the event of a direct conflict between any Order and the terms of this Agreement, the terms of the Agreement will control. Orders may be entered under this Agreement by and between (a) Column or an Affiliate of Column; and (b) the Customer or an Affiliate of Customer. With respect to an Order, the terms "Column" and "Customer" as used in this Agreement will be deemed to refer to the entities that execute that Order, the Order will be considered a two-party agreement between such entities, and Column or its authorized reseller will separately invoice the Customer named in the Order for the associated License fees and Support fees. Neither execution of this Agreement, nor anything contained herein, shall obligate either party to enter into any Orders. In the event an Order is proposed by Column and is deemed to constitute an offer, then acceptance of such offer is limited to its terms. In the event Customer proposes an Order by submitting a purchase order, then regardless of whether Column acknowledges, accepts or fully or partially performs under such purchase order, **COLUMN OBJECTS** to any additional or different terms in the purchase order.

License Subject to the terms, conditions, payment requirements and restrictions set forth in this Agreement, Column grants Customer a non-exclusive, non-transferable, non-sub-licensable perpetual license to install in the Territory, access and use the Product (i) up to the Licensed Capacity, (ii) for Customer's and its Affiliates internal business operations, (iii) in accordance with the Documentation and the applicable Order, and (iv) make one copy of the Product for archival purposes only (collectively a "License"). Affiliates may use and access the Products and Support under the terms of this Agreement. Notwithstanding anything to the contrary in this Agreement, Contractor agrees that, at no cost to the State, Contractor will permit the transfer of fully paid licenses in the event the State merges or consolidates state entities.

3. License restrictions. Customer will not: (a) copy, operate or use any Product in excess of the applicable Licensed Capacity or other than as set forth in the License above; (b) modify, delete or remove any ownership, title, trademark, patent or copyright notices from any Product, or copy or partial copy of a Product;; (c) disassemble, reverse engineer, decompile or otherwise attempt to derive any Product source code from object code, except to the extent expressly permitted by applicable law despite this limitation without possibility of contractual waiver; (d) distribute, rent, lease, sublicense or provide the Product to any third party; (e) use the Products in an outsourcing or service bureau environment on behalf of non-Affiliate third parties, or allow the products to be used by an outsourcing or service bureau provider on Customer's behalf; (f) provide a third party with the results of any functional evaluation, or performance tests, without Column's prior written approval; or (g) attempt to disable or circumvent any of the licensing mechanisms within the Product.

4. Product performance warranty. Column warrants that (a) the Product will perform in substantial accordance with its Documentation for a period of one year from the date of the first Order for the same Customer and the same product, (b) Column has used commercially reasonable

efforts consistent with industry standards to scan for and remove software viruses, and (c) other than passwords that may be required for the operation of the Product, Column has not inserted any code that is not addressed in the Documentation and that is designed to delete, interfere with or disable the normal operation of the Products in accordance with the License. This warranty will not apply to any problems caused by hardware, Computers, or software other than the Product, or misuse of the Product, use of the Product other than as provided by the applicable License, modification of the Product, or claims made either outside the warranty period or not in compliance with the notice and access requirements set forth below. No warranty is provided for additional Licensed Capacity, Product provided pursuant to Support or Product provided pursuant to Section 12.

5. Limited remedies. Column's entire liability, and Customer's exclusive remedy, for breach of the above warranty is limited to: Column's use of commercially reasonable efforts to have the Product perform in substantial accordance with its Documentation, or replacement of the non-conforming Product within a reasonable period of time, or if Column cannot have the Product perform in substantial accordance with its Documentation replace the Product within such time period, then Column will refund the amount paid by Customer for the License for that Product. Customer's rights and Column's obligations in this Section are conditioned upon Customer's providing Column during the warranty period (a) full cooperation and access to the Product in resolving any claim; and (b) written notice addressed to the Column Legal Department that includes notice of the claim, a complete description of the alleged defects sufficient to permit their reproduction in Column's development or support environment, and a specific reference to the Documentation to which such alleged defects are contrary.

6. Reserved.

7. Support. Customer may acquire Column support services ("Support") on an Order for the total Licensed Capacity of a Product. Once Support is acquired for a Product, Customer is enrolled in Support on an annual basis for all Licensed Capacity of that Product, unless either party terminates Support on all Licensed Capacity of a Product upon at least 30 days written notice prior to the next Support anniversary date. The annual fee for Support will be agreed upon at the time of each Order. Column may change its Support terms with sixty (60) days advance written notice to be effective upon Customer's support anniversary date. Column reserves the right to discontinue Support for a Product where Column generally discontinues such services to all licensees of that Product. If Customer terminates Support and then re-enrolls in Support, Column may charge Customer for support fees Customer would have paid had Customer maintained support.

8. Payments and Delivery. For Products that are delivered electronically, upon request from Column, Customer agrees to provide Column with Documentation supporting that the designated Product was received electronically. If Customer accepts any Product in a non-electronic format, . The Products are accepted on the date Column delivers the Product to the Customer either physically or by providing access codes for electronic download, whichever occurs first, however, such acceptance will not affect the Product Performance Warranty provided in this Agreement.

Proprietary Rights and Confidentiality. (a) Column, its Affiliates or licensors retain all right, title and interest to the Product, Support and all related intellectual property and proprietary rights. The Product and all third-party software provided with the Product are protected by applicable copyright, trade secret, industrial and other intellectual property laws. Customer may not remove any product identification, copyright, trademark or other notice from the Product. Column reserves any rights not expressly granted to Customer in this Agreement. (b) "Confidential Information", subject to Ohio Revised Code Section 149.43 (<http://codes.ohio.gov/orc/149.43>), means all proprietary or confidential information that is disclosed to the recipient ("Recipient") by the discloser ("Discloser"), and includes, among other things (i) any and information relating Discloser, including, without limitation, software code, flow charts, techniques, specifications, development and marketing plans, strategies, and forecasts and (ii) as to Column, and its licensors. Confidential Information does not include information that Recipient can show: (a) was rightfully in Recipient's possession without any obligation of confidentiality before receipt from the Discloser; (b) is or becomes a matter of public knowledge through no fault of Recipient; (c) is rightfully received by Recipient from a third party without violation of a duty of confidentiality; or (d) is independently developed by or for Recipient. Recipient may not disclose Confidential Information of Discloser to any third party or use the Confidential Information in violation of this Agreement. The Recipient (i) will exercise the same degree of care and protection with respect to the Confidential Information of the Discloser that it exercises with respect to its own Confidential Information and (ii) will not, either directly or indirectly, disclose, copy, distribute, republish, or allow any third party to have access to any Confidential Information of the Discloser. (c) Notification Obligation. In any event, the Recipient will exercise its commercially reasonable efforts to preserve the confidentiality of the Discloser's Confidential Information, including, without limitation, cooperating with Discloser to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded to the Confidential Information.

9. DISCLAIMERS AND LIMITS ON LIABILITY.

9.1 DISCLAIMER. CUSTOMER ACKNOWLEDGES THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, COLUMN, ITS AFFILIATES AND LICENSORS MAKE NO WARRANTY, EXPRESS, IMPLIED OR STATUTORY WITH RESPECT TO THE SERVICES OR USE THEREOF. COLUMN, ITS AFFILIATES AND LICENSORS HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR WITHOUT DELAY, AND THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INTERFERENCE, NON-INFRINGEMENT AND INFORMATION CONTENT.

10. Trial License. Column may determine, in its sole discretion, to make products available to Customer without an Order and without charge. Such products are deemed to be "Products" pursuant to this Agreement except that (a) they are provided to Customer solely so that Customer may evaluate internally whether to acquire a license to the products for a fee, (b) the license term for such products is thirty (30) days; (c) the Products are provided "AS IS" and without any warranty or support, and (d) the products cannot be put into productive use or included as part of Customer's business processes in any manner, unless or until they are expressly licensed and paid for under an Order. Column may terminate all of Customer's rights and licenses to these products for Column's convenience upon notice to Customer.

11. RESERVED.

11.1 .

12. Termination. Upon thirty days advance written notice, the State may terminate this Agreement for its convenience on a prospective basis; however, such termination will have no effect on Orders placed prior to its effective date and such Orders will remain in full force and effect under the terms of this Agreement. Column may: (i) terminate an Order and the Licenses to the Products on that Order if Customer fails to pay any applicable fees due under that Order; (ii) terminate a specific Order and Licenses to the Products, without notice or cure period, if the Customer under that Order violates the intellectual property rights of Column, its Affiliates or licensors, or uses the Products outside of the scope of the applicable Licenses; or (iii) terminate a specific License if the Customer using that License commits any other material breach of this Agreement and fails to correct the breach within 30 days after Column notifies Customer in writing of the breach. Upon any termination of a License, Customer will immediately uninstall and stop using the relevant Product, and upon Column's request, Customer will immediately return such Product to Column, together with all related Documentation and copies, or certify its destruction in writing.

13. Reserved.

14. Audit. If requested by Column, and not more than once a year, Customer agrees to deliver to Column, within 30 days of such request, as specified by Column either (a) periodic product usage reports generated from specific products or (b) written periodic product usage reports, to be provided solely when the product does not generate reports. Additionally, if requested by Column not more than once a year, Customer agrees to allow Column to perform an audit at the locations where the Products are installed, during normal business hours to ensure compliance with the terms of this Agreement. Customer agrees to cooperate during any such audit and to provide reasonable access to its information and systems. If an audit reveals that Customer has exceeded the Licensed Capacity for a Product, Customer agrees to pay the applicable fees for additional capacity upon receipt of invoice. If the understated capacity exceeds 5% of the Licensed Capacity of the applicable Product, then Customer agrees to also pay BM C's reasonable costs of conducting the audit.

15. Reserved .

16. Reserved.

17. Assignment and Transfers. Customer may not assign or transfer a Product separate from the applicable Agreement and License, and may not assign or transfer an Agreement or a License, except in the event of a merger with or into, or a transfer of all or substantially all of Customer's assets to, a third party who assumes all of Customer's liabilities and obligations under the Agreement and License, expressly agrees to be bound by and comply with all of the terms of the Agreement and License. Any attempt to assign or transfer an Agreement or License in violation of this provision will be null and void and be treated as a violation of Column's intellectual property rights or use outside the scope of the License.

18. Column Entities. The following licensing entities apply to this Agreement: In the United States, Column Technologies, Inc. 10 E 22nd Street, Suite 300, Lombard, IL 60148-6105;

19. Data Protection. (a) Customer acknowledges that Column neither requires nor needs Customer to (i) send Column any personal data collected by Customer ("Customer Collected Data") or (ii) give Column access to any Customer Collected Data. Consequently, Customer remains responsible for either filtering, making anonymous, encrypting such Customer Collected Data or for having proper procedures in place to prevent Customer Collected Data from being sent to or accessed by Column. (b) In the course of normal business, Column may collect and process personal information related to the Customer (mainly contact and related information) in order to perform its obligations under this Agreement and/or under an Order, such information being referred to hereinafter as "Customer Contact Information". Column undertakes to comply with all the relevant data protection legislation and/or regulations where the Customer Contact Information is to be processed. Column shall in particular : (i) allow Customer to access, modify, correct or erase Customer Contact Information when necessary; (ii) take reasonable technical and organizational security measures to maintain the confidentiality and integrity of Customer Contact Information and to prevent its unauthorized access, use, or disclosure; (iii) refrain from transferring any Customer Contact Information to any third party without obtaining the express consent of the person to whom Customer Contact.

20. Reserved
Exhibit A

ADDITIONAL TERMS. The following additional terms are incorporated into this Agreement.

- a. **DEFINITIONS.** Terms set forth below have the indicated meaning regardless of whether they are capitalized.
"**Client**" means a third party whose data is processed by Customer and is only permitted if Customer is an authorized BMC service provider. "**Computer**" or "**Server**" has the meaning generally given within the computer industry, which is a single machine, whether a central processing unit, such as a mainframe machine, or a distributed systems machine, such as a Unix or Intel based server. A mainframe machine would be an individual mainframe computer having single or multiple processors or engines. For purposes of distributed systems machines a Computer or Server may be physical or virtual.
"**Enterprise**" is the environment consisting of all hardware owned or leased by a Customer or by a Client respectively, in the Territory.

b. **LICENSE RESTRICTIONS.** The following restrictions apply to certain Products.
License Allocation Restriction for BMC Remedy IT Service Management Suite Products: Notwithstanding anything to the contrary in this Order or the Agreement, and when the Product is licensed (i) on the "per named user" Unit of Measurement, Customer may exchange 5 named user licenses of the Product for 2 licenses of the same Product with the Unit of Measurement of "per concurrent user" or (ii) on the "per concurrent user" Unit of Measurement, Customer may exchange 2 concurrent user licenses for 5 licenses of the same Product with the Unit of Measurement of "per named user". Customer will not incur additional charges for such exchange of licenses so long as Customer does not exceed the Licensed Capacity of the Product granted to Customer, however, Customer must: (i) notify BMC in writing of its intent to exchange the Product Licenses and (ii) enter into a separate Order to reflect Customer's new Licensed Capacity and the new Unit of Measurement.

License Allocation Restriction for BMC Remedy Service Management Products: Notwithstanding anything to the contrary in this Order or the Agreement, and when the Product is licensed (i) on the "per named user" Unit of Measurement, Customer may exchange 3 named user licenses of the Product for 1 license of the same Product with the Unit of Measurement of "per concurrent user" or (ii) on the "per concurrent user" Unit of Measurement, Customer may exchange 1 concurrent user license for 3 licenses of the same Product with the Unit of Measurement of "per named user". Customer will not incur additional charges for such exchange of licenses so long as Customer does not exceed the Licensed Capacity of the Product granted to Customer, however, Customer must: (i) notify BMC in writing of its intent to exchange the Product Licenses and (ii) enter into a separate Order to reflect Customer's new Licensed Capacity and the new Unit of Measurement.

BMC Remedy Products: Customer may not bypass or delay, in any way, the consumption of a concurrent or named user license to perform an activity that requires a user license (including, without limitation, submitting a ticket to a parallel form and then using workflow to perform the update without a license).

A Remedy instance is defined as a Remedy AR System server or server group sharing a common database. Concurrent users are for use within one Remedy instance and may not be used in more than one instance. Named user licenses cannot be shared between multiple people.

A hot backup license is a replicate of the Remedy production licenses on one backup server. Customer may access that backup server only when the customary server on which the AR System is installed fails or in preparation of that backup server for such situation.

BMC Remedy Smart Reporting component is limited to use with Remedy platform based ITSM applications (both delivered by BMC as well as custom- developed ITSM applications). It may not be used for reporting on non-ITSM applications.

Development License Restriction for BMC Remedy Products: If a Product name includes the term "Dev Lsn", Customer will restrict installation, access and use of such Product to a server dedicated to development and testing only, and will not allow any production or commercial activity on that server.

Load Balanced System Restriction for BMC Remedy Products: If Customer has multiple servers in a single logical environment pointing to a single AR System database instance, only one Instance of Remedy "per Instance" licenses is required for installation on these servers (except for the AR System, which must be licensed for each server).

BMC Remedy and MyIT Products: Customer's perpetual license in the BMC Remedy and/or BMC MyIT Products does not include a perpetual license to the Google Maps service that is currently used for the map/location feature within BMC MyIT and BMC Remedy with Smart IT. BMC Remedy with Smart IT is available for download with any license of BMC Remedy Products.

BMC Remedy Service Management Suite: The license enables the customer to use up to 100 Named MyIT Base users for each BMC Remedy Service Management Suite licensed named user and up to 250 Named MyIT Base users for each BMC Remedy ITSM Suite licensed concurrent user.

BMC Remedy Service Management Suite: Each person can have only one user license type (named or concurrent). Each user can have one and only one type of concurrent user license: BMC Remedy Service Management Suite User license, BMC Remedy Service Desk User license BMC Remedy Service Optimization User license, BMC Remedy Service Innovation User license.

c. **UNITS OF MEASUREMENT.** The following units of measurement apply to certain Products.

per adapter: A license is required for each installation of an adapter that interfaces with the Product.

per agent: A license is required for each unit of software with the official name of Remote Sys Call Daemon or RSCD Agent that can be deployed on a physical or virtual operating system.

per application: A license is required all unique collection of application component templates and configuration objects used to form a single logical platform defined by the Customer.

per asset: A license is required for every physical or logical Server Endpoint, Client Endpoint, Device Endpoint, Data Center Rack, Data Center IP Sensor, or Other Endpoint monitored, managed or discovered by the Product. "**Client Endpoint**" means a laptop, desktop or other non-Server Computer. "**Device Endpoint**" means a personal digital assistant or similar computing device. "**Other**

Endpoint" means a router, a switch, a hub, or other network device, peripheral or hardware instrument, as the case may be. "**Server**

Endpoint" is any virtual or physical Computer that provides a service for other Computers or users connected to it via the Internet, extranet, intranet, or other networked technologies.

per Cisco™ UCS Server: A license is required for each Cisco Unified Computing System (UCS) Server on which the Product is installed and/or manages regardless of whether the Product or one of its components is installed on that Server.

per Client Endpoint: A license is required for each Client Endpoint. "**Client Endpoint**" means a laptop, desktop or other non-Server Computer.

per component: A license is required for all objects that represent a physical or logical part of the service model.

per concurrent access license: A license is required for the maximum number of simultaneous sessions accessing the Product. Sessions are counted in packs of 5.

per concurrent session: A license is required for the maximum number of simultaneous sessions accessing the Product.

per concurrent user: A license is required for the maximum number of individual employees or contractors of Customer to whom simultaneous access has been granted to the Product on a computer or multiple computers.

per CPU - Full Capacity: A license is required for the total number of active, physical CPUs in each Computer upon which the Product is installed or which the Product manages, either remotely or locally. "**CPU**" means a physical processor or central unit in a designated Computer containing the logic circuitry that performs the instructions of a Computer's programs and refers to the "socket" which can contain one or more processor cores.

per CPU - Subcapacity: A license is required for all active, physical CPUs which the Product manages, either remotely or locally. "**CPU**" means a physical processor or central unit in a designated Computer containing the logic circuitry that performs the instructions of a Computer's programs and refers to the "socket" which can contain one or more processor cores.

per database: A license is required for the total allocated database space per host ID or physical Computer which the Product is managing. The total allocated database capacity cannot be segregated or aggregated into lower or higher ranges.

per deployed robot: A license is required for all PATROL End-to-End Response Timer robots deployed.

per Device Endpoint: A license is required for each Device Endpoint. "**Device Endpoint**" means a personal digital assistant or similar computing device. **per engine:** A license is required for each mainframe general purpose engine on the server upon which the Product is installed and/or manages regardless of whether the Product or one of its components is installed on that Server.

per enterprise: A license is required per Customer and per Client each, regardless of the number of times Customer installs the Product in its Enterprise or its Client's Enterprise. "**Client**" means a third party whose data is processed by Customer and is only permitted if Customer is an authorized BMC service provider.

per gigabyte: A license is required for the total allocated database space of all Computers on which the Product has been installed or operated.

per gigabyte range: A license is required for the total allocated database space per host ID or physical Computer which the Product is managing. The Product may not be moved to another Computer unless the current Computer is taken out of service. The total allocated database capacity cannot be segregated or aggregated into lower or higher ranges among different Computers. For example: if Customer licenses 26-50 gigabytes, the Customer is only licensed for a maximum of 50 gigabytes in total across all the databases of the licensed Product on one particular Computer.

per installed server: A license is required for each Server (with a Classification at the appropriate Tier level, if applicable) upon which the Product or any of its components is installed.

per instance: A license is required for all named occurrences of the Product created or installed in the Enterprise.

per Linux engine: A license is required for all engines of a mainframe Computer on which Customer is running Linux, when applicable classified by Linux Group using BMC's standard Computer classification.

per managed asset- server endpoint: A license is required for every Server Endpoint monitored, managed (directly or indirectly), or discovered by the Product(s). "**Server Endpoint**" is any virtual or physical Computer that provides a service for other Computers or users connected to it via the Internet, extranet, intranet, or other networked technologies.

per managed asset - device endpoint: A license is required for every Device Endpoint that is monitored, managed, or discovered by the Product(s). A

"**Device Endpoint**" can be any virtual or physical Non-Server Client Computer (e.g. laptop, desktop computer, PDA, smart phone); any Network device (e.g. router, switch, hub) standalone or chassis-based device/card/processor using a unique IP address (also includes virtual network devices managed through the IP address of its physical host); and independent Storage (e.g. a disk array, a fiber switch, a tape library, a switch director). When applicable, the license must be computed at the appropriate tier level.

per managed component: A license is required for all objects that represent a physical or logical part of the service model managed by the Product.

per managed network device: A license is required for each Network Device managed using a unique IP-address. "**Network Device**" means a standalone or chassis-based network device/card/processor.

per managed server: A license is required for each Server managed by the Product or one of its components whether locally or remotely. When applicable, this license must be computed at the appropriate tier level based on the cumulative count of managed servers. Network Devices are not counted as Servers. This license does not include the Product's installation on or management of Integrated Facility for Linux (IFL) engines. "**Network Device**" means a standalone or chassis-based network device/card/processor.

per MIPS: A license is required for the total aggregate number of MIPS for each Computer, including all Computers coupled in a parallel Sysplex environment, upon which the Product is installed, or which is managed or monitored by the Product. MIPS Rating is the aggregate computing power (expressed in millions of instructions per second) of a Computer, using the MIPS rating set forth in the then current Gartner Group Rating Guide. Computer-specific passwords will be issued for the Product.

per monitored element: A license is required for all remotely monitored elements, such as a Server, database, operating system, URL, firewall, storage, or network device.

per monitored server: A license is required for each Server (with a Classification at the appropriate Tier level, if applicable) which the Product or one of its components is monitoring regardless of whether the Product is monitoring it locally or remotely.

per named user: A license (with a Classification at the appropriate Level, if applicable) is required for each individual employee or contractor or client of Customer to whom access has been granted to the Product on a computer or multiple computers typically via the issuance of a unique ID regardless of whether the individual is actively using the Product at any given time.

per node: A license is required for every Node which the Product manages and/or monitors. "**Node**" means a laptop, desktop, or any virtual or physical Computer that provides a service for other Computers or users connected to it via the Internet, extranet, intranet, or other networked technologies.

per port: A license is required for each port. A port is defined as a physical connection point used by a storage device to connect other devices or systems. For the purpose of BMC licensing, all active ports (Fibre Channel, iSCSI, etc.) for all managed devices (storage arrays, filers, tape libraries, etc.) are counted. Ports on hosts, gateways and switches are not to be counted.

per project: A license is required for each specific project, facility or business unit, as the case may be specified at the time of order.

per Server Endpoint: A license is required for each Server Endpoint. "**Server Endpoint**" is any virtual or physical Computer that provides a service for other Computers or users connected to it via the Internet, extranet, intranet, or other networked technologies.

per Service Management MIPS: A license is required for the total aggregate number of MIPS for each Computer, including all Computers coupled in a parallel Sysplex environment, upon which the Product is installed, managed or monitored. MIPS Rating is the aggregate computing power (expressed in millions of instructions per second) of a Computer, using the MIPS rating set forth in the then current Gartner Group Rating Guide.

per site: A license is required for the physical site at which the Product is installed regardless of the number of times the Product is installed.

per task: For all Control-M Products, except those that run exclusively in the Mainframe environment, a license is required for the maximum number of Tasks (as defined below) present in the Control-M "Active Jobs" databases in any 24-hour period, regardless of whether the Tasks execute or not. For the Control-M Products that run exclusively in the Mainframe environment, a license is required for the maximum number of Tasks (as defined below) present in solely the Mainframe environment's Control-M "Active Jobs" database. Tasks in the Control-M "Active Jobs" databases include all Tasks in all Distributed Systems and/or Mainframe environments in any 24-hour period (including but not limited to development, staging, QA, pre-production, production, and test environments), except that, (i) SMART folders/table and sub-folders/tables which contain scheduling definitions and are listed as tasks in the "Active Jobs" databases are not counted as Tasks, (ii) Tasks that have time zone settings may remain in the "Active Jobs" databases for up to three consecutive days, but are only counted as one Task, (iii) a Task that runs more than once during the day (with the same Order ID) is counted as one Task - this includes Tasks that are rerun and cyclic Tasks, and (iv) Tasks that are provided for by licenses under alternative Units of Measurement (i.e. tier or MIPS) are not considered Tasks under this "per task" unit of measurement. The number of steps or scripts executed within the named Task shall have no bearing upon the number of

Tasks licensed. **"Task"** is interchangeable with "job" and means an executable command containing the name of the JCL, CL, DCL, ECL, script or dummy processes that is scheduled to execute, as well as the scheduling criteria, flow control, and resource usage.

per terabyte: A license is required for the total aggregate storage capacity in the Enterprise.

per third-party software: A license is required for each installation of the third-party software product that interfaces with the Product.

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:

10 E 22nd Street, Suite 300
(Address)

Lombard, IL 60148
(City, State, Zip)

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

n/a
(Name)

(Address, City, State, Zip)

n/a
(Name)

(Address, City, State, Zip)

2. Location where services will be performed by Contractor:

30 East Broad Street, 39th Floor
(Address)

Columbus, OH 43215
(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:

n/a
(Address)

(Address, City, State, Zip)

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

n/a
(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

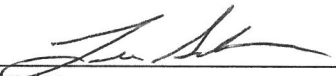
(Name)

(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:

Lee Schroeder

Title:

CFO

Date:

April 11, 2018