

**STATE OF OHIO
OFFICE OF INFORMATION TECHNOLOGY
STATE TERM SCHEDULE**

THIS CONTRACT is between the STATE OF OHIO, OFFICE OF INFORMATION TECHNOLOGY ("OIT"), INVESTMENT AND GOVERNANCE DIVISION, ON BEHALF OF THE STATE OF OHIO ("State"), with offices at 30 East Broad Street, Columbus, Ohio 43215 and Nortel Networks, Inc. ("Contractor") with offices at 625 Eden Park Drive, Suite 1100 Cincinnati, OH 45202.

BACKGROUND

The Contractor has entered into a contract with the Federal Government under the Federal Government's Supply Schedule Contract Program administered by the General Services Administration ("GSA"). That program allows a contractor and the GSA to negotiate in advance of actual purchases the terms and conditions under which a contractor will supply goods or services to the Federal Government. Such a Federal schedule contract is not a commitment to purchase any goods or services; it is only a convenient way to do so should a Federal agency so choose during the contract's term.

The State has determined that it is in the interest of efficiency and economy to rely on some Federal schedule contracts of the Federal Government, with certain changes, as the basis for some state term contracts, which operate in a manner very similar to Federal schedule contracts. The Department of Administrative Services has also determined that the Contractor's Federal schedule contract offers goods or services that may be of interest to various state agencies and has therefore decided to use the Contractor's Federal contract as a basis for a State Term Contract with the Contractor. This State Term Contract (the "Contract") establishes terms and conditions under which a state agency may acquire the Contractor's goods or services, but it in no manner obligates any state agency to do so.

TERMS & CONDITIONS

COMPOSITION OF CONTRACT. This Contract consists of the terms of the Contractor's Federal Schedule Contract, Number GS-35F-0140L (the "Federal Schedule Contract" or "Schedule Contract"), as amended by this Contract (see Entire Agreement Section below). The Contractor's Schedule Contract consists of all the documents and materials incorporated in that agreement with the Federal Government. Those documents include, among possible others, the Federal Government's original solicitation, the Contractor's offer to the Federal Government, with amendments, the Contractor's best and final offer letter, the final award, and the Contractor's most current version of its Authorized Schedule Price List. For convenience, the products and services that the Contractor may provide to the State under this Contract are referred to as "Deliverables" under this Contract. Additionally, all representations, clarifications, and certifications submitted by the Contractor as a part of that contracting process are also included. And it includes any laws, regulations, documents, guidelines, and other materials incorporated by reference in the Contractor's Schedule Contract, including all FAR, DFAR, FIRMR, FIPS PUB, FED-STD and USC provisions, among others. By way of example, such would include all cited FAR and DFAR provisions relating to warranties, liabilities, and rights in data, and the GSA's Price Reduction Clause, among many others.

CERTIFICATION OF ACCURACY. The Contractor hereby certifies that all copies of the Contractor's Authorized Schedule Price List that were submitted to the State as part of the negotiation of this Contract are true, correct, current, and complete copies of that Price List. The Contractor further represents and warrants that all future Price Lists submitted to revise this Contract will also be true, correct, current, and complete copies of the then-current Price List under the Contractor's then-current Federal Contract.

FEDERAL REPRESENTATIONS. The Contractor warrants that all certifications and representations made to the Federal Government as a basis for obtaining or as a part of its GSA Schedule Contract were and still

are true and accurate. The Contractor further agrees that such representations are a basis for the State entering into this Contract and that such representation and certifications inure to the State's benefit.

FUTURE NOTICES. The Contractor acknowledges that any continuing obligation to notify the Federal Government of changes affecting its GSA Schedule Contract, including by way of example, notices required under the price reduction provisions of its Schedule Contract, must be provided in the same manner to the State. And the State's rights under those notices will be the same as the rights of the Federal Government. Additionally, the Contractor agrees to notify the State within thirty (30) days of all changes in the status of or amendments to its Federal Schedule Contract.

PARTIES TO THE CONTRACT. For purposes of this Contract, all references to "Government," "Federal Government," "GSA," or similar terms meaning the Federal Government in the Contractor's Schedule Contract will mean the "State." And references to the "Contracting Officer" will mean the State representative, or their successor or designee, who signed this Contract on behalf of the State. Additionally, for purposes of this Contract, all rights and obligations of the Contractor and the Federal Government under the Contractor's Schedule Contract, except to the extent that such would create an absurdity, or are otherwise clearly inappropriate, or would violate state or federal law, will be rights and obligations between the Contractor and the State. This Contract may be relied on by Ohio counties, townships, municipalities and other political subdivisions of the State, collectively, Political Subdivisions. Whenever a Political Subdivision relies upon this Contract to issue a purchase order, the Political Subdivision will step into the shoes of the State under this Contract. Any order placed by a Political Subdivision under this contract will be between the Contractor and the Political Subdivision. The Contractor will look solely to the Political Subdivision for performance, including but not limited to payment, and will hold the State harmless with regard to such orders. The State, however, will have the right to terminate this Contract and seek such remedies on termination as this Contract provides should the Contractor fail to honor its obligations under an order from a Political Subdivision. Nothing in this Contract requires the Contractor to accept an order from a Political Subdivision where the Contractor reasonably believes that the Political Subdivision is or will be unable to perform its obligations in relation to that order.

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

PRODUCT RECALL. In the event product delivered has been recalled, seized, or embargoed and/or has been determined to be misbranded, adulterated, by the packer, processor, manufacturer or by any State or Federal regulatory agency, the Contractor shall use commercially reasonable efforts to notify the State through The Office of Information Technology, Contract Management and all ordering agencies/entities within five business days after notice has been given. Contractor shall, at the option of the ordering agency, either reimburse the purchase price or provide an equivalent replacement product at no additional cost. Contractor shall be responsible for removal and/or replacement of the affected product within a reasonable time as determined by the ordering agency. At the option of the ordering agency, Contractor may be required to reimburse storage and/or handling fees to be calculated from time of delivery and acceptance to actual removal. Contractor will bear all costs associated with the removal and proper disposal of the affected product. Failure to reimburse the purchase price or provide equivalent replacement product will be considered a default.

TERMINATION. The State may terminate this Contract or any order under this Contract if the Contractor defaults in meeting its obligations and fails to cure its default within the time allowed by this Contract, or if a petition in bankruptcy has been filed by or against the Contractor. The State may also terminate this

Contract or any order if the Contractor violates any law or regulation while performing under this Contract, or it appears to the State that the Contractor's performance is substantially endangered through no fault of the State. In such case, the termination will be for cause.

On written notice, the Contractor will have thirty (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 thirty (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 or the applicable order(s). The State may also terminate this Contract in the case of breaches that are cured within thirty (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 three (3) times. After the third such notice, the State may terminate this Contract without a cure period if the Contractor again fails to meet any obligation. The three (3) notices do not have to relate to the same obligation or type of failure. Some provisions of this Contract may provide for a shorter cure period than thirty (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 may also terminate this Contract or any order under this Contract for its convenience and without cause or if the Ohio General Assembly fails to appropriate funds for any order under this Contract. If a third party is providing funding for a Deliverable, the State may also terminate this Contract or any order should that third party fail to release any funds.

The notice of termination, whether for cause or without cause, 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 will also 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 any affected orders by using another contractor on such commercially reasonable terms and conditions as it and such covering contractor may agree. The Contractor will be liable to the State for all costs related to covering for any affected orders to the extent that such costs exceed the costs that the State would have incurred under this Contract. The Contractor will also be liable for any other direct damages resulting from its breach of this Contract or other action 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 determined by the State to be owing to the Contractor.

The State will have the option of suspending rather than terminating this Contract where the State believes that doing so would better serve its interest.

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

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

RETURN GOODS POLICY. The State will apply the following Return Goods Policy on all purchases made under the Contract. The Contractor acknowledges to have read, understood, and agrees to this Policy.

Return goods, when due to Contractor error (i.e. over-shipment, defective merchandise, unapproved substitution, etc.) shall be returned to the Contractor, at the Contractor's expense. The Contractor shall make arrangements to remove the return goods from the ordering agency premises within seven (7) calendar days after notification. The Contractor shall not apply any restocking or other charges to the ordering agency. At the option of the ordering agency, replacement items may be accepted and will be shipped within seven (7) calendar days of notification. Failure of the Contractor to arrange for return of the items within the specified time will result in the items being deemed as abandoned property and the ordering agency will dispose of accordingly. All return goods shall be returned in accordance with Contractor's then-current State Term Schedule Return Material Authorization (RMA) procedure.

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

SPECIFIC CHANGES. The State and the Contractor agree to the following changes to specific provisions of the Contractor's Federal Schedule Contract, notwithstanding anything to the contrary contained in the Contractor's Federal Contract:

All equipment will be new, and replacement parts will be new or certified as new.

The ordering and payment addresses under this Contract will be those contained in the Contractor's offer letter to the State.

Payments and invoicing will be done according to the terms below.

All shipping of equipment under warranty for repairs will be at the Contractor's expense.

All references to hours of the day will be deemed to be references to Eastern Standard Time.

The State will not purchase goods or services using credit cards, order goods or services for overseas delivery, or provide the Contractor with overseas support.

The State has the specific right to use any software licensed to it at one (1) remote, third-party disaster recovery site for disaster recovery and disaster recovery testing.

Except for PC software, the license fee for which is less than \$5,000.00 per copy and for which maintenance is not made generally available, software maintenance will be available to the State under the terms of this Contract for the longer of the period the Contractor is required to make it available under its Federal Contract or the period the Contractor makes it generally available to its customer base. Further, the State will be entitled to software maintenance at the then-current price it is made available to the Federal Government or, if the Contractor does not make maintenance available to the Federal Government under a federal contract through the GSA, at a price that represents an annual increase in the maintenance

fee from the last Federal contract price for such of no more than five percent. For purposes of this section, the Contractor's last Federal contract means the last GSA federal supply schedule contract covering the applicable maintenance program.

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

The Contractor will not sell to the State any term software licenses. All such items listed in the Contractor's Price List are deleted for purposes of the State.

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

The Contractor will not sell to the State any Microsoft Products. All such items listed in the Contractor's Price List are deleted for purposes of the State.

As this Contract refers to a GSA schedule contract for convenience, orders under this Contract are not orders under the GSA schedule program. The Federal Supply Schedules for blanket purchase agreements, contractor team arrangements and purchase of incidental, non-schedule items, therefore, are not applicable to this Contract.

The following amendments to the terms and conditions of the Nortel Networks, Inc. GSA Contract are hereby incorporated into this agreement between the Contractor and the State.

Delete paragraph (1.13)(C)(a) page 19 Blanket Purchase Agreements (BPAs) in its entirety.

Delete paragraph (1.18) page 22 Purchase of Incidental, Non-Schedule Items in its entirety.

Delete paragraph (1.20) page 22 Overseas Activities in its entirety.

Delete paragraph (1.21)(a & b) page 23 Year 2000 Warranty-Commercial Supply Items in their entirety.

Delete paragraph (1.22) page 23 & 24 Blanket Purchase Agreements (BPAs) in its entirety.

Delete paragraph (1.23) page 24 Contractor Team Arrangement in its entirety.

Delete Section 2 pages 27 through 39 Terms and Conditions Applicable to Leasing of General Purpose Commercial Information Technology Equipment in their entirety.

Section 3 Terms and Conditions Applicable to Purchase of General Purpose Commercial Information Technology Equipment:

Modify Section (3.10) page 47 Upgrades, Moves, Additions, Changes, and Billable Service Calls: Subsection Labor Rate Schedule For Core Meridian 1, Norstar, BCM and Companion, and Subsection Labor Rate Schedule For Applications, by replacing the wording "***Travel and Living charges incurred for sites greater than 125 miles, from the nearest service city, will be additional. Help-Desk Support is a one hour minimum at the above-referenced rates." with

***Travel and Living charges will be in accordance with Section 126-1-02 of the Ohio Administrative Code. Help-Desk Support is a one hour minimum at the above-referenced rates."

Modify Section (3.10) page 47 Upgrades, Moves, Additions, Changes, and Billable Service Calls: Subsection Billable Service Calls Labor Rate Schedule For Peripherals by replacing the wording "Travel and Living charges incurred for sites greater than 125 miles, from the nearest service city, will be additional. If overnight lodging is required within the 125 mile radius due to extensive work requirements, then lodging and living expensed shall be at the expense of the Government. Help-Desk Support is a one-hour minimum at the above-referenced rates." with

"Travel and Living charges will be in accordance with Section 126-1-02 of the Ohio Administrative Code. Help-Desk Support is a one-hour minimum at the above-referenced rates."

Modify paragraph 3.15(c) page 49 Warranty by replacing the following, "THE LIMITED WARRANTIES DESCRIBED ABOVE IN THIS SECTION AND THE REMEDIES FOR A FAILURE, DEFECT OR BREACH OF ANY OF THOSE LIMITED WARRANTIES WHICH ARE DESCRIBED ARE EXCLUSIVE. THEY ARE GIVEN TO THE GOVERNMENT IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH CONTRACTOR SPECIFICALLY DISCLAIMS. THE LIMITED WARRANTIES MAY ALSO BE VOIDED BY CERTAIN ACTS OR OMISSIONS OF THE GOVERNMENT DESCRIBED IN DETAIL BELOW." with

THE LIMITED WARRANTIES DESCRIBED ABOVE IN THIS SECTION, AND THOSE IN SECTION 5.2 AND THE SECTION ENTITLED 'GENERAL REPRESENTATIONS AND WARRANTIES' BELOW, AND THE REMEDIES FOR A FAILURE, DEFECT OR BREACH OF ANY OF THOSE LIMITED WARRANTIES WHICH ARE DESCRIBED BELOW IN THIS SECTION, AND IN SECTION 5.2 AND THE SECTION ENTITLED 'INDEMNITY' BELOW, ARE EXCLUSIVE. THEY ARE GIVEN TO THE GOVERNMENT IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH CONTRACTOR SPECIFICALLY DISCLAIMS. THE LIMITED WARRANTIES MAY ALSO BE VOIDED BY CERTAIN ACTS OR OMISSIONS OF THE GOVERNMENT DESCRIBED IN DETAIL BELOW.

Modify paragraph 3.15(d) page 49 Warranty by replacing the wording "'Warranty Service' consists of the repair or replacement, at Contractor's option, of malfunctioning Hardware. Contractor may repair or replace malfunctioning Hardware using either new or like new Hardware. Title to any replacement hardware shall pass to The Government upon installation, and title to the replaced Hardware shall pass to Contractor at the same time. Warranty Service, during the Warranty Period only, shall also include the correction of malfunctioning Software and the correction of installation deficiencies." with

"Warranty Service" consists of the repair or replacement, at Contractor's option, of malfunctioning Hardware. Contractor may repair or replace malfunctioning Hardware using new or certified as new Hardware. Title to any replacement hardware shall pass to The Government upon installation, and title to the replaced Hardware shall pass to Contractor at the same time. Warranty Service, during the Warranty Period only, shall also include the correction of malfunctioning Software and the correction of installation deficiencies."

Modify paragraph 3.15 (e) page 49 & 50 Warranty by replacing the wording "The limited Warranties specified in this Contract may be voided and Contractor will be relieved of its obligation to perform Warranty Service if, during the Warranty Period, or any subsequent Maintenance Service terms and Government: (a) fails to follow applicable operation, maintenance, or environmental requirements described in any of the manufacturer's manuals, Contractor's manuals, and other material provided to the Government, including without limitation manufacturer's product bulletins; (b) makes additions to, alters, modifies, enhances, repairs or disassembles the System (itself or using a third party) without Contractor's written consent; (c) mishandles, abuses, misuses or damages the System (either itself or by others doing so); or (d) relocates the System without Contractor's written consent (other than telephone instruments relocated in accordance with the manufacturer's specifications)." with

"The limited Warranties specified in this Contract may be voided and Contractor will be relieved of its obligation to perform Warranty Service if, during the Warranty Period, or any subsequent Maintenance Service terms and Government: (a) fails to follow applicable operation, maintenance, or environmental requirements described in any of the manufacturer's manuals, Contractor's manuals, and other material provided to the Government, including without limitation manufacturer's product bulletins; (b) makes additions to, alters, modifies, enhances, repairs or disassembles the System (itself or using a third party) without Contractor's written consent; (c) mishandles, abuses, misuses or damages the System (either itself or by others doing so); or (d) relocates the System without Contractor's written consent (other than telephone instruments relocated in accordance with the manufacturer's specifications) which will not be unreasonably withheld."

Modify paragraph 3.15(g) page 50 Warranty by replacing the wording, "If the Government requests Contractor to perform Warranty Service and (a) it was required as a result of any of the causes described in either of the two preceding Subsections, or (b) it was determined that a defect or failure of the System did not exist (e.g., the problem was caused by facilities provided by the Government's local or long distance carriers or service providers, or non-System equipment interfacing with the System), Contractor reserves the right to charge the Government at Contractor's then current time and material rates for any work performed and materials supplied as an additional charge." with

"If the Government requests Contractor to perform Warranty Service and (a) it was required as a result of any of the causes described in either of the two preceding Subsections, or (b) it was determined that a defect or failure of the System did not exist (e.g., the problem was caused by facilities provided by the Government's local or long distance carriers or service providers, or non-System equipment interfacing with the System), Contractor reserves the right to charge the Government at Contractor's then current State Term Contract time and material rates for any work performed and materials supplied as an additional charge."

Insert the following new paragraph as 3.15 (h) on page 50, "Notwithstanding the disclaimer of all warranties by Contractor and its suppliers in the Nortel Networks Software License, the express warranties for the Deliverables, including licensed Software, purchased or licensed, as applicable, under this Contract are those set out in Sections 3.15 and 5.2 of Contractor's Federal Schedule Contract and in this Contract document under General Representations and Warranties."

Modify Section 3.16 page 50 Nortel Networks Software License by replacing the wording "THIS SOFTWARE LICENSE ("LICENSE") IS AN AGREEMENT BETWEEN YOU, THE END USER ("CUSTOMER") AND NORTEL NETWORKS GOVERNING YOUR RIGHTS TO USE THE LICENSED SOFTWARE. "LICENSED SOFTWARE" MEANS NORTEL NETWORKS SOFTWARE PRODUCTS, SOFTWARE INCLUDED IN OR WITH NORTEL NETWORKS PRODUCTS, AND SOFTWARE UPGRADES ACQUIRED BY YOU FROM A NORTEL NETWORKS' AUTHORIZED RESELLER ("RESELLER"). IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, RETURN THE LICENSED SOFTWARE, UNUSED, AND IN THE ORIGINAL SHIPPING CONTAINER TO THE RESELLER FROM WHOM YOU PURCHASED IT WITHIN THIRTY (30) DAYS OF PURCHASE TO OBTAIN A CREDIT FOR THE FULL PURCHASE PRICE." with

"THIS SOFTWARE LICENSE ("LICENSE") IS AN AGREEMENT BETWEEN YOU, THE END USER ("CUSTOMER") AND NORTEL NETWORKS GOVERNING YOUR RIGHTS TO USE THE LICENSED SOFTWARE. "LICENSED SOFTWARE" MEANS NORTEL NETWORKS SOFTWARE PRODUCTS, SOFTWARE INCLUDED IN OR WITH NORTEL NETWORKS PRODUCTS, AND SOFTWARE UPGRADES ACQUIRED BY YOU FROM A NORTEL NETWORKS' AUTHORIZED RESELLER ("RESELLER"). IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, RETURN THE LICENSED SOFTWARE, UNUSED, AND IN THE ORIGINAL SHIPPING CONTAINER TO THE RESELLER FROM WHOM YOU PURCHASED IT WITHIN THIRTY (30) DAYS AFTER RECEIPT TO OBTAIN A CREDIT FOR THE FULL PURCHASE PRICE."

Modify Section 3.16 Nortel Networks Software License page 53 by replacing the following wording "THE EXPRESS LIMITED WARRANTIES FOR THE LICENSED SOFTWARE WILL BE SOLELY THOSE GRANTED TO CUSTOMER BY CUSTOMER'S RESELLER IN A SEPARATE AGREEMENT. THE LICENSED SOFTWARE IS PROVIDED BY NORTEL NETWORKS AND ITS SUPPLIERS "AS IS". WITH RESPECT TO THE LICENSED SOFTWARE, NORTEL NETWORKS AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES AND CONDITIONS OF ANY KIND OR NATURE, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ALL WARRANTIES AND CONDITIONS OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. NORTEL NETWORKS IS NOT OBLIGATED TO PROVIDE SUPPORT OF ANY KIND FOR THE LICENSED SOFTWARE." with

Nortel Networks Software License page 53 "THE EXPRESS LIMITED WARRANTIES FOR THE LICENSED SOFTWARE WILL BE SOLELY THOSE GRANTED TO CUSTOMER PURSUANT TO THE STATE TERM CONTRACT. THE LICENSED SOFTWARE IS PROVIDED BY NORTEL NETWORKS AND ITS SUPPLIERS "AS IS". WITH RESPECT TO THE LICENSED SOFTWARE, NORTEL NETWORKS AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES AND CONDITIONS OF ANY KIND OR NATURE, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ALL WARRANTIES AND CONDITIONS OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. NORTEL NETWORKS IS NOT OBLIGATED TO PROVIDE SUPPORT OF ANY KIND FOR THE LICENSED SOFTWARE.

Modify Section 3.16 page 54 Nortel Networks Software License by adding the two paragraphs below to the following: "IF SUPPLIERS OF THIRD PARTY SOFTWARE INCLUDED IN OR DISTRIBUTED WITH THE LICENSED SOFTWARE REQUIRE NORTEL NETWORKS TO INCLUDE ADDITIONAL OR DIFFERENT TERMS IN THIS LICENSE, NORTEL NETWORKS MAY INCLUDE SUCH TERMS IN A SEPARATE DOCUMENT ACCOMPANYING THIS LICENSE AND SUCH TERMS SHALL BE DEEMED INCORPORATED INTO THIS LICENSE WITH RESPECT TO SUCH THIRD PARTY SOFTWARE." add

NORTEL NETWORKS SHALL NOTIFY THE OHIO OFFICE OF INFORMATION TECHNOLOGY AND CUSTOMER IN WRITING OF ANY ADDITIONAL OR DIFFERENT SOFTWARE LICENSE TERMS THAT MAY HEREAFTER BE REQUIRED BY ANY SUCH SUPPLIER OF THIRD PARTY SOFTWARE. NORTEL NETWORKS SHALL NOT BE OBLIGATED TO FULFILL ANY ORDER FOR A DELIVERABLE THAT INCLUDES THE APPLICABLE THIRD PARTY SOFTWARE UNLESS CUSTOMER HAS AGREED IN WRITING THAT SUCH TERMS SHALL BE DEEMED INCORPORATED INTO THIS LICENSE WITH RESPECT TO SUCH THIRD PARTY SOFTWARE.

NORTEL MUST FORWARD THE NOTICE TO THE OHIO OFFICE OF INFORMATION TECHNOLOGY TO THE FOLLOWING ADDRESS: Office of Information Technology
Contract Management
30 East Broad Street, 39th Floor
Columbus, Ohio 43215 - 3414

Modify the Section 3.16 page 54 Nortel Networks Software License by replacing the wording "This License constitutes the entire agreement between Nortel Networks and Customer with respect to the rights and obligations set forth herein and supersedes all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. No amendment to or modification of this License will be binding unless in writing and signed by a duly authorized representative of Nortel Networks. This License has been drawn up in English at the express wish of the parties. Le present contrat de licence ("License") a ete redige en anglais a la demande expresse des parties." with

"The State Term Contract and this License constitutes the entire agreement between Nortel Networks and Customer with respect to the rights and obligations set forth herein and supersedes all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. No amendment to or modification of this License will be binding unless in writing and signed by a duly

authorized representative of Nortel Networks. This License has been drawn up in English at the express wish of the parties. Le present contrat de licence ("License") a ete redige en anglais a la demande expresse des parties."

Modify Section 3.18 page 55 Guarantees replacing all references to "Ship Date" with "Receipt."

Modify Section 3.18 (a) page 55 Guarantees by replacing the wording "Contractor warrants to end-user that each item of Hardware will be free from defects in workmanship and materials for its respective warranty period which begins on the date of shipment to the end user." with

"Contractor warrants to end-user that each item of Hardware will be free from defects in workmanship and materials for its respective warranty period which begins on the date of receipt to the end user."

Modify Section 3.19 page 55 Purchase Price for Ordered Equipment by replacing the wording "The Government will be charged the Contract price in effect at the time of order placement." with

"The Government will be charged the State Term Schedule price in effect at the time of order placement."

Modify Section 4.2 (a) page 57 Maintenance Order by deleting BPAs from the section.

Modify Section 4.3(a) page 58 Repair Service and Repair Parts/Spare Parts Orders by replacing the wording "Agencies may use written orders, GSA Advantage, credit card orders, blanket purchase agreements (BPAs), or small order procedures for ordering repair service and/or repair parts/spare parts under this contract. Orders for repair service shall not extend beyond the end of the Contract period." with

"Agencies may use written orders, GSA Advantage, credit card orders, or small order procedures for ordering repair service and/or repair parts/spare parts under this contract. Orders for repair service shall not extend beyond the end of the Contract period."

Modify paragraph 4.13 (a)(1) page 64 Maintenance Rates by replacing the wording "Trip Charges will be assessed for Contractor's services that are outside the scope of Covered Equipment services. These conditions include, but are not limited to: " with

"Trip Charges in accordance with Section 126-1-02 of the Ohio Administrative Code will be assessed for Contractor's services that are outside the scope of Covered Equipment services. These conditions include, but are not limited to: "

Modify Section 4.15 page 68 Repair Parts/Spare Parts Rate Provisions by replacing the wording "All parts, furnished as spares or as repair parts in connection with the repair of equipment, unless otherwise indicated in this pricelist, shall be like new or refurbished, standard parts manufactured by the equipment manufacturer. When possible, all parts shall be furnished at prices indicated in the Contractor's GSA Schedule Pricelist. Open Market replacement parts will be billable at the then current commercial list price. Appropriate discounts will be applied to like-new or refurbished parts." with

"All parts, furnished as spares or as repair parts in connection with the repair of equipment, unless otherwise indicated in this pricelist, shall be like new or certified as new standard parts manufactured by the equipment manufacturer. All parts shall be furnished at prices indicated in the Contractor's GSA Schedule Pricelist. Open Market replacement parts will be billable at the then current commercial list price. Appropriate discounts will be applied to like-new or refurbished parts."

Modify paragraph 4.17(b) page 68 Repair Service and Repair Parts/Spare Parts by replacing the wording "Invoices for repair service and parts shall be submitted by the Contractor as soon as possible after completion of work. Payment under blanket purchase agreements will be made quarterly or monthly, except where cash payments procedures are used. Invoices shall be submitted separately to each Government

office ordering services under the contract. The cost of repair parts shall be shown as a separate item on the invoice, and shall be priced in accordance with this Special Item Number. Prompt payment discount, if applicable, shall be shown on the invoice.” with

“Invoices for repair service and parts shall be submitted by the Contractor as soon as possible after completion of work. Invoices shall be submitted separately to each Government office ordering services under the contract. The cost of repair parts shall be shown as a separate item on the invoice, and shall be priced in accordance with this Special Item Number. Prompt payment discount, if applicable, shall be shown on the invoice.”

Modify paragraph 5.2(c) page 69 & 70 Guarantee/Warranty, by replacing the following, ” THE LIMITED WARRANTIES DESCRIBED ABOVE IN THIS SECTION AND THE REMEDIES FOR A FAILURE, DEFECT OR BREACH OF ANY OF THOSE LIMITED WARRANTIES WHICH ARE DESCRIBED ARE EXCLUSIVE. THEY ARE GIVEN TO THE GOVERNMENT IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH CONTRACTOR SPECIFICALLY DISCLAIMS. THE LIMITED WARRANTIES MAY ALSO BE VOIDED BY CERTAIN ACTS OR OMISSIONS OF THE GOVERNMENT DESCRIBED IN DETAIL BELOW. with

THE LIMITED WARRANTIES DESCRIBED ABOVE IN THIS SECTION, AND THOSE IN SECTION 3.15 AND THE SECTION ENTITLED ‘GENERAL REPRESENTATIONS AND WARRANTIES’ BELOW, AND THE REMEDIES FOR A FAILURE, DEFECT OR BREACH OF ANY OF THOSE LIMITED WARRANTIES WHICH ARE DESCRIBED BELOW IN THIS SECTION, AND IN SECTION 3.15 AND THE SECTION ENTITLED ‘INDEMNITY’ BELOW, ARE EXCLUSIVE. THEY ARE GIVEN TO THE GOVERNMENT IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH CONTRACTOR SPECIFICALLY DISCLAIMS. THE LIMITED WARRANTIES MAY ALSO BE VOIDED BY CERTAIN ACTS OR OMISSIONS OF THE GOVERNMENT DESCRIBED IN DETAIL BELOW.

Modify paragraph 5.2(d) page 70 Guarantee/Warranty by replacing the wording “Warranty Service” consists of the repair or replacement, at Contractor’s option, of malfunctioning Hardware. Contractor may repair or replace malfunctioning Hardware using either new or like new Hardware. Title to any replacement hardware shall pass to the Government upon installation, and title to the replaced Hardware shall pass to Contractor at the same time. Warranty Service, during the Warranty Period only, shall also include the correction of malfunctioning Software and the correction of installation deficiencies.” with

“Warranty Service” consists of the repair or replacement, at Contractor’s option, of malfunctioning Hardware. Contractor may repair or replace malfunctioning Hardware using new or certified as new Hardware. Title to any replacement hardware shall pass to the Government upon installation, and title to the replaced Hardware shall pass to Contractor at the same time. Warranty Service, during the Warranty Period only, shall also include the correction of malfunctioning Software and the correction of installation deficiencies.”

Modify paragraph 5.2(e) page 70 Guarantee/Warranty by replacing the wording “The limited Warranties specified in this Contract may be voided and Contractor will be relieved of its obligation to perform Warranty Service if, during the Warranty Period, or any subsequent Maintenance Service terms and Government: (a) fails to follow applicable operation, maintenance, or environmental requirements described in any of the manufacturer’s manuals, Contractor’s manuals, and other material provided to the Government, including without limitation manufacturer’s product bulletins; (b) makes additions to, alters, modifies, enhances, repairs or disassembles the System (itself or using a third party) without Contractor’s written consent; (c) mishandles, abuses, misuses or damages the System (either itself or by others doing so); or (d) relocates the System without Contractor’s written consent (other than telephone instruments relocated in accordance with the manufacturer’s specifications).” with

"The limited Warranties specified in this Contract may be voided and Contractor will be relieved of its obligation to perform Warranty Service if, during the Warranty Period, or any subsequent Maintenance Service terms and Government: (a) fails to follow applicable operation, maintenance, or environmental requirements described in any of the manufacturer's manuals, Contractor's manuals, and other material provided to the Government, including without limitation manufacturer's product bulletins; (b) makes additions to, alters, modifies, enhances, repairs or disassembles the System (itself or using a third party) without Contractor's written consent; (c) mishandles, abuses, misuses or damages the System (either itself or by others doing so); or (d) relocates the System without Contractor's written consent (other than telephone instruments relocated in accordance with the manufacturer's specifications) which will not be unreasonably withheld."

Modify paragraph 5.2(g) page 70 Warranty by replacing the wording, "If the Government requests Contractor to perform Warranty Service and (a) it was required as a result of any of the causes described in either of the two preceding Subsections, or (b) it was determined that a defect or failure of the System did not exist (e.g., the problem was caused by facilities provided by the Government's local or long distance carriers or service providers, or non-System equipment interfacing with the System), Contractor reserves the right to charge the Government at Contractor's then current time and material rates for any work performed and materials supplied as an additional charge." with

"If the Government requests Contractor to perform Warranty Service and (a) it was required as a result of any of the causes described in either of the two preceding Subsections, or (b) it was determined that a defect or failure of the System did not exist (e.g., the problem was caused by facilities provided by the Government's local or long distance carriers or service providers, or non-System equipment interfacing with the System), Contractor reserves the right to charge the Government at Contractor's then current State Term Contract time and material rates for any work performed and materials supplied as an additional charge."

Insert the following new paragraph as 5.2 (h) on page 70, "Notwithstanding the disclaimer of all warranties by Contractor and its suppliers in the Nortel Networks Software License, the express warranties for the Deliverables, including licensed Software, purchased or licensed, as applicable, under this Contract are those set out in Sections 3.15 and 5.2 of Contractor's Federal Schedule Contract and in this Contract document under General Representations and Warranties."

Modify the following from Section 5.3 page 70 Nortel Networks Software License by replacing the wording "THIS SOFTWARE LICENSE ("LICENSE") IS AN AGREEMENT BETWEEN YOU, THE END USER ("CUSTOMER") AND NORTEL NETWORKS GOVERNING YOUR RIGHTS TO USE THE LICENSED SOFTWARE. "LICENSED SOFTWARE" MEANS NORTEL NETWORKS SOFTWARE PRODUCTS, SOFTWARE INCLUDED IN OR WITH NORTEL NETWORKS PRODUCTS, AND SOFTWARE UPGRADES ACQUIRED BY YOU FROM A NORTEL NETWORKS' AUTHORIZED RESELLER ("RESELLER"). IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, RETURN THE LICENSED SOFTWARE, UNUSED, AND IN THE ORIGINAL SHIPPING CONTAINER TO THE RESELLER FROM WHOM YOU PURCHASED IT WITHIN THIRTY (30) DAYS OF PURCHASE TO OBTAIN A CREDIT FOR THE FULL PURCHASE PRICE." with

"THIS SOFTWARE LICENSE ("LICENSE") IS AN AGREEMENT BETWEEN YOU, THE END USER ("CUSTOMER") AND NORTEL NETWORKS GOVERNING YOUR RIGHTS TO USE THE LICENSED SOFTWARE. "LICENSED SOFTWARE" MEANS NORTEL NETWORKS SOFTWARE PRODUCTS, SOFTWARE INCLUDED IN OR WITH NORTEL NETWORKS PRODUCTS, AND SOFTWARE UPGRADES ACQUIRED BY YOU FROM A NORTEL NETWORKS' AUTHORIZED RESELLER ("RESELLER"). IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, RETURN THE LICENSED SOFTWARE, UNUSED, AND IN THE ORIGINAL SHIPPING CONTAINER TO THE RESELLER FROM WHOM YOU PURCHASED IT WITHIN THIRTY (30) DAYS AFTER RECEIPT TO OBTAIN A CREDIT FOR THE FULL PURCHASE PRICE."

Replace the following wording from Section 5.3 Nortel Networks Software License page 73 "THE EXPRESS LIMITED WARRANTIES FOR THE LICENSED SOFTWARE WILL BE SOLELY THOSE GRANTED TO CUSTOMER BY CUSTOMER'S RESELLER IN A SEPARATE AGREEMENT. THE LICENSED SOFTWARE IS PROVIDED BY NORTEL NETWORKS AND ITS SUPPLIERS "AS IS". WITH RESPECT TO THE LICENSED SOFTWARE, NORTEL NETWORKS AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES AND CONDITIONS OF ANY KIND OR NATURE, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ALL WARRANTIES AND CONDITIONS OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. NORTEL NETWORKS IS NOT OBLIGATED TO PROVIDE SUPPORT OF ANY KIND FOR THE LICENSED SOFTWARE." with

"THE EXPRESS LIMITED WARRANTIES FOR THE LICENSED SOFTWARE WILL BE SOLELY THOSE GRANTED TO CUSTOMER PURSUANT TO THE STATE TERM CONTRACT. THE LICENSED SOFTWARE IS PROVIDED BY NORTEL NETWORKS AND ITS SUPPLIERS "AS IS". WITH RESPECT TO THE LICENSED SOFTWARE, NORTEL NETWORKS AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES AND CONDITIONS OF ANY KIND OR NATURE, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ALL WARRANTIES AND CONDITIONS OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. NORTEL NETWORKS IS NOT OBLIGATED TO PROVIDE SUPPORT OF ANY KIND FOR THE LICENSED SOFTWARE.

Modify Section 5.3 page 74 Nortel Networks Software License by adding the two paragraphs below to the following: "IF SUPPLIERS OF THIRD PARTY SOFTWARE INCLUDED IN OR DISTRIBUTED WITH THE LICENSED SOFTWARE REQUIRE NORTEL NETWORKS TO INCLUDE ADDITIONAL OR DIFFERENT TERMS IN THIS LICENSE, NORTEL NETWORKS MAY INCLUDE SUCH TERMS IN A SEPARATE DOCUMENT ACCOMPANYING THIS LICENSE AND SUCH TERMS SHALL BE DEEMED INCORPORATED INTO THIS LICENSE WITH RESPECT TO SUCH THIRD PARTY SOFTWARE." add

NORTEL NETWORKS SHALL NOTIFY THE OHIO OFFICE OF INFORMATION TECHNOLOGY AND CUSTOMER IN WRITING OF ANY ADDITIONAL OR DIFFERENT SOFTWARE LICENSE TERMS THAT MAY HEREAFTER BE REQUIRED BY ANY SUCH SUPPLIER OF THIRD PARTY SOFTWARE. NORTEL NETWORKS SHALL NOT BE OBLIGATED TO FULFILL ANY ORDER FOR A DELIVERABLE THAT INCLUDES THE APPLICABLE THIRD PARTY SOFTWARE UNLESS CUSTOMER HAS AGREED IN WRITING THAT SUCH TERMS SHALL BE DEEMED INCORPORATED INTO THIS LICENSE WITH RESPECT TO SUCH THIRD PARTY SOFTWARE.

NORTEL MUST FORWARD THE NOTICE TO THE OHIO OFFICE OF INFORMATION TECHNOLOGY TO THE FOLLOWING ADDRESS:

Office of Information Technology
Contract Management
30 East Broad Street, 39th Floor
Columbus, Ohio 43215 - 3414

Modify the following paragraph from Section 5.3 page 74 Nortel Networks Software License by replacing the wording "This License constitutes the entire agreement between Nortel Networks and Customer with respect to the rights and obligations set forth herein and supersedes all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. No amendment to or modification of this License will be binding unless in writing and signed by a duly authorized representative of Nortel Networks. This License has been drawn up in English at the express wish of the parties. Le present contrat de licence ("License") a ete redige en anglais a la demande expresse des parties." with

"The State Term Contract and this License constitutes the entire agreement between Nortel Networks and Customer with respect to the rights and obligations set forth herein and supersedes all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. No amendment to or modification of this License will be binding unless in writing and signed by a duly

authorized representative of Nortel Networks. This License has been drawn up in English at the express wish of the parties. Le present contrat de licence ("License") a ete redige en anglais a la demande expresse des parties."

Delete Section 6 pages 77 through 82 Terms and Conditions Applicable to Purchase of Training Courses for General Purpose Commercial Information Technology Equipment and Software in its entirety.

Delete Section 9 pages 89-91 Best Value Blanket Purchase Agreement Federal Supply Schedule in their entirety.

Delete Section 10 page 92 Basic Guidelines for Using "Contractor Team Arrangements" in its entirety.

Delete Section 11 page 98 the paragraph Nortel Return Policy For Systems Purchased with an AMP Discount in its entirety.

Delete Section 11 pages 98 and 99 Additional Terms and Conditions in its entirety.

Those terms and conditions of the Contractor's offering documentation not specifically referenced by the Amendments delineated under this heading shall remain unchanged.

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

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

The Contractor shall also submit a close - out report within one hundred and twenty (120) days after the expiration of this Contract. The contract expires upon the physical completion of the last, outstanding task or delivery order of the Contract. The close - out report must cover all sales not shown in the final quarterly report and reconcile all errors and credits. If the Contractor reported all contract sales and reconciled all errors and credits on the final quarterly report, then the Contractor should show zero "0" sales in the close - out report.

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

Office of Information Technology
Business Office
30 East Broad Street, 39th Floor
Columbus, Ohio 43215 - 3414

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

CONTRACTOR REVENUE SHARE. The Contractor must pay the State a revenue share of the sales transacted under this Contract. The Contractor must remit the revenue share in U.S. dollars within thirty (30) days after the end of the quarterly sales reporting period. The revenue share equals .0075 of the total quarterly sales reported. Contractors must include the revenue share in their prices. The revenue share is included in the award price(s) and reflected in the total amount charged to ordering activities.

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

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

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

Contractor must forward the check to the following address:

Department of Administrative Services
Office of Finance
30 East Broad Street, Suite 4060
Columbus, Ohio 43215 - 3414

Please make check payable to: Treasurer, State of Ohio.

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

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

CONTRACTOR DISCLOSURE; LOCATION OF SERVICES, DATA. As part of this Agreement, Contractor shall disclose the following:

- (1) The location(s) where all services will be performed; and
- (2) The location(s) where any state data applicable to the contract will be maintained or made available; and
- (3) The principal location of business for the contractor and all subcontractors.

Contractor shall not, during the performance of this Contract, change the location(s) of the country where the services are performed or change the location(s) of the country where the data is maintained or made available without prior written approval of the State.

CONTRACTOR'S WARRANTY AGAINST AN UNRESOLVED FINDING FOR RECOVERY. Contractor warrants that it is not subject to an unresolved finding for recovery under ORC 9.24. If the warranty was false on the date the parties sign this Contract, the Contract is void.

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

- (1) Be in accordance with the sound professional standards and the requirements of this Contract and without any material defect.
- (2) No Deliverable will infringe on the intellectual property rights of any third party.
- (3) All warranties are in accordance with Contractors standard business practices attached.
- (4) Be free from defects in materials and workmanship and conforms to its Specifications.

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

- (1) The Contractor has the right to enter into this Contract.
- (2) The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Contract.
- (3) 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.
- (4) The Contractor has good and marketable title to any goods delivered under this Contract and which title passes to the State.
- (5) The Contractor has the right and ability to grant the license granted 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 will correct such failure with all due speed or will refund the amount of the compensation paid for the Deliverable. The Contractor will also indemnify the State for any direct damages and claims by third parties based on breach of these warranties.

INDEMNITY. The Contractor will 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 the performance of this Contract, providing such bodily injury or property damage is due to the negligence of the Contractor, its employees, agents, or subcontractors. The Contractor will also indemnify the State against any claim of infringement of a copyright, patent, trade secret, or similar intellectual property rights based on the State's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where the State has modified the Deliverable and the claim of infringement, is based on the modification. The state agrees to 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, (1) of the following four (4) things:

- (1) Modify the Deliverable so that is no longer infringing.
- (2) Replace the Deliverable with an equivalent or better item.
- (3) Acquire the right for the State to use the infringing Deliverable as it was intended for the State to use under this Contract; or
- (4) If Contractor determines options 1 through 3 above are not reasonably feasible, the State agrees to return the Deliverable upon Contractor's written request and Contractor must give the State a credit equal to the net book value for the Deliverable calculated in accordance with generally accepted accounting principles, or in the event the above occurs within three (3) years of the State's order of such Deliverable, Nortel must refund the State the amount 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.

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, address, and telephone number of any such dealer, as well as the dealer's purchase order and payment address (es) and Federal tax identification number. The Contractor must also submit a completed W9 form for each dealer it wishes to name under this section. The Contractor's submission must be on its

official letterhead, signed by an authorized representative, and addressed to the Deputy Director, Office of Information Technology.

In doing so, the Contractor warrants that: (a) the dealer has been given a copy of this Contract, and a duly authorized representative of the dealer has agreed, in writing, to be bound by the terms and conditions in this Contract. (b) Such agreement specifically provides that it is for the benefit of the State as well as the Contractor. (c) The Contractor agrees to remain liable under this Contract for any failure of the dealer to Perform and 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 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. One or more distributors may be identified in the authorizing letter. In such cases, information regarding tax-payer 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.

ADDITIONAL OFFERINGS. If the Contractor supplements the products or services it offers to the Federal Government under its Federal Contract, then the following provisions are applicable.

This Contract includes the additional products and/or supplies offered in the price list(s) or catalog(s) identified below. The Contractor agrees to provide these products and/or services to the State under the same terms as those products and/or services listed in the Contractor's GSA Price List. The Contractor certifies that these products and/or services are "commercial" items, in accordance with the definition of "commercial" items in the Contractor's Federal Contract, and the Contractor agrees that the requirements of the GSA's Price Reduction Clause are applicable to these additional products. Further, the Contractor warrants that these products and/or services are being offered to the State at the most favorable prices it has made them available to any other customer within the year immediately preceding the date these products and/or services were added to this Contract.

The additional products and/or services are identified in the following price list(s) and/or catalog(s) (insert "none" if this provision is inapplicable): None.

If the price list(s) and/or catalog(s) contain suggested retail prices or undiscounted, direct customer pricing, indicate by individual item or service, or by category of item or service, the applicable discount to the State (insert none if no additional product(s) or service(s) are being offered or see price list/catalog if the prices include the applicable State discount): None.

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

1. 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 HAD BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
2. THE CONTRACTOR FURTHER AGREES THAT THE CONTRACTOR SHALL BE LIABLE FOR ALL DIRECT DAMAGES DUE TO THE BREACH OF THE CONTRACTOR OR DUE TO NEGLIGENCE OF THE CONTRACTOR RESULTING IN INJURY TO PERSONS (INCLUDING INJURY RESULTING IN DEATH) OR DAMAGE TO PROPERTY ARISING OUT OF THE PERFORMANCE OF THIS CONTRACT.

PAYMENT DUE DATE. Payments will be due on the thirtieth (30th) calendar 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 products or services. 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 thirtieth (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 Section §126.30.

INVOICE REQUIREMENTS. The Contractor must submit an original invoice with three (3) copies to the office designated in the purchase order as the "bill to" address. To be a proper invoice, the invoice must include the following information and/or attachments:

- (1) Name and address of the Contractor as designated in this Contract.
- (2) The Contractor's Federal tax identification number as designated in this Contract.
- (3) The Contractor's invoice remittance address as designated in this Contract.
- (4) The purchase order number authorizing the delivery of products or services.
- (5) A description of what the Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, the Contractor must also include the payment number (e.g., 1 of 36).

If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of the Contractor's information. 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 with the improper invoice to the address designated for receipt of purchase orders within fifteen (15) calendar days after receipt of the invoice. 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 thirty (30) days after the State receives a proper invoice and has accepted the Contractor's product or service.

OHIO PAYMENT CARD. Participating state agencies purchasing supplies from the Contract may use the Ohio Payment Card. Such purchases may not exceed \$1,000 unless the Office of Budget & Management has approved the agency to exceed this limit. In the event that OBM increases the dollar limit for payment cards for all state agencies, notice of such increase will be posted on the OIT, Office of State Purchasing website. Participating state agencies are required to use the Ohio Payment Card in accordance with the Ohio, Office of Budget and Management's current guidelines for the Ohio Payment Card and the participating agency's approved plan filed with the Office of Budget of Management. Contractor may process a payment in the payment card network only upon delivery and acceptance of the supplies or services ordered. For partial deliveries or performance, Contractor may process a payment for the amount delivered or completed only and not for the entire amount ordered by the participating agency. Upon completion of the delivery of remaining supplies or services, Contractor may process a payment request in the payment card network for the remainder of the order. Contractor will receive payment through its merchant bank within the time frame agreed upon between Contractor and its merchant bank. The Contractor should expect normal processing fees from its merchant bank for payment card transaction which may not be passed on to the agency making the purchase.

NOTIFICATION OF PRICE INCREASES. If this Contract permits any price increases, notification of such must be given to the Deputy Director Deputy Director of the IT Governance Division and to the purchase order "bill to" address contained in the applicable purchase order(s) for any orders affected by the increase (e.g., existing leases, licenses, or annual maintenance programs). The Contractor must give these notices no later than thirty (30) days before the effective date of the price increase. This notification must specify,

when applicable, the product serial number, location, current price, increased price, and applicable purchase order number.

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 the payments due under an order referencing this Contract, the order will terminate as of the date that the funding expires, and the State will have no further obligation to make any payments.

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 agrees to treat such Confidential Information as secret if it is so marked, or 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 agrees not to disclose any Confidential Information to third parties unless otherwise authorized in writing by the State to do so and to use such Confidential Information solely to perform under this Contract.

The State acknowledges that, in connection with Contract and its relationship with Contractor, it may obtain information relating to the Products or to the Contractor that is of a confidential and proprietary nature ("Confidential Information"). Such Confidential Information may include, but is not limited to, trade secrets, know how, inventions, techniques, processes, programs, schematics, software source documents, data, financial information, and sales and marketing plans or information which the State knows or has reason to know is confidential, proprietary or trade secret information of Contractor. The State shall at all times, during the term of this Contract and for a period of at least three (3) years after its termination, keep in trust and confidence all such Confidential Information, and shall not use such Confidential Information other than as expressly authorized by Contractor under this Contract, nor shall the State disclose any such Confidential Information to third parties without Contractor's written consent.

The parties' obligation to maintain the confidentiality of the Confidential Information will not apply where such: (1) was already in the possession of the receiving party before disclosure by the disclosing party, and was received by the receiving party without obligation of confidence; (2) is independently developed by the receiving party, provided documentary evidence exists to support the independent development; (3) is or becomes publicly available without breach of this Contract; (4) is rightfully received by the receiving party from a third party without 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 disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production. The receiving party will return all originals of any Confidential Information and destroy any copies it has made for its own internal use on termination or expiration of this Contract or as requested by the disclosing party.

The parties agree that 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 shall be entitled to temporary and permanent injunctive relief to enforce the provisions hereof without the necessity of proving actual damages. This provision shall not, however, diminish or alter any right to claim and recover damages.

OBM CERTIFICATION. This Contract is subject to Ohio Revised Code Section §126.07. Any orders under this Contract are void until the Director of the Office of Budget and Management certifies that there is a balance in the appropriation available to pay for the order.

TAXES. The State is exempt from all state and local taxes and does not agree to pay any taxes.

CANCELLATION. The State or the Contractor may cancel this Contract without cause and on thirty (30) days written notice. But, in the case of any lease of goods or services or any license of software or other intangible property entered into before the effective date of the termination, the State will have the right to continue such lease or license after termination on the same terms.

CONTRACT RENEWAL. This Contract may be renewed solely at the discretion of OIT for a period of one month. Any further renewals will be by agreement any number of times for any period of time. The cumulative time of all renewals may not exceed two years.

DELIVERIES. All deliveries will be F.O.B. Destination.

EQUAL EMPLOYMENT OPPORTUNITY. The Contractor will comply with all Ohio laws regarding equal employment opportunity, including Ohio Revised Code Section §125.111, and all related Executive Orders of the Governor of Ohio.

DRUG FREE WORKPLACE. The Contractor will make a good faith effort to ensure that none of its employees are under the influence of or possess illegal drugs or alcohol or abuse prescription drugs while they are on State property.

OHIO ETHICS AND ELECTIONS LAW. The Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of the Ohio ethics law, Ohio Revised Code Section §102.04. The Contractor affirms that, as applicable to the Contractor, no party listed in Division (I) or (J) of Section 3517.13 of the Ohio Revised Code or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of \$1,000.00 to the Governor or to his campaign committees.

PUBLICITY. The Contractor will not advertise that it is doing business with the State or use this Contract as a marketing or sales tool without the prior, written consent of the State.

CONTROLLING BOARD AUTHORIZATION. The State's obligations under this Contract are subject to the Ohio Controlling Board's continuing authorization to use GSA schedule contracts and negotiate state term contracts. If the Ohio Controlling Board fails to authorize or withdraws its authorization for this program, this Contract will terminate, and the Contractor may not take any more orders under this Contract. The Controlling Board's withdrawal of its authorization will not affect existing licenses, leases, warranty commitments, and maintenance obligations.

TRAVEL EXPENSES. Any travel or per diem required by the Contractor to do its obligations under this Contract will be at the Contractor's expense. The State will pay for any additional travel that it requests only with prior written approval. All travel and per diem that the State requests in addition to what this Contract requires the Contractor to provide at the Contractor's expense will be paid in accordance with §126-1-02 of the Ohio Administrative Code.

HEADINGS. The headings used in this Contract are for convenience only and will not be used in interpreting this Contract.

ASSIGNMENT. The Contractor will not assign this Contract without the written consent of the State.

ORDER OF PRIORITY. If there is any inconsistency or conflict between this document and any provision of anything incorporated by reference, this document will prevail.

ENTIRE AGREEMENT. This Contract consists of the Contractor's Schedule Contract (see Composition of Contract Section above), this Contract document, the Contractor's state offer letter, and, if applicable, the Contractor's letter(s) designating dealers (and/or distributors), and any price lists or catalogs specifically mentioned elsewhere in this Contract. The foregoing constitutes the entire agreement between the parties, and any changes or modifications to this Contract must be in writing.

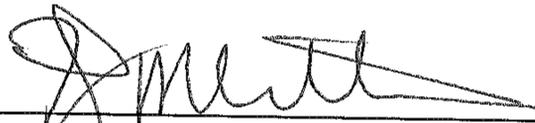
SUBCONTRACTING. The State through Office of Information Technology, Contract Management recognizes that it may be necessary for the Contractor to use a subcontractor to perform a portion of the work under the Contract. In those circumstances, the Contractor shall submit a list identifying its subcontractors or joint venture partners performing portions of the work under the Contract. If any changes occur during the term of the Contract, the Contractor shall supplement its list of subcontractors or joint venture business partners. In addition, all subcontractors or joint venture business partners agree to be bound by all of the Terms and Conditions and specifications of the Contract. The State through Office of Information Technology, Contract Management reserves the right to reject any subcontractor submitted by the Contractor.

LAW. This Contract is governed by and will be construed under Ohio law, and venue for any dispute will be with the appropriate court in Franklin County, Ohio.

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

THE CONTRACTOR

STATE OF OHIO,
DEPARTMENT OF ADMINISTRATIVE SERVICES,
INVESTMENT AND GOVERNANCE DIVISION

By: 
FRANK J MLOTKIEWICZ
VP NORTEL


Mary F. Carroll
Director, Ohio Office of Information Technology
State Chief Information Officer

Title: VP MID-ATLANTIC NORTEL By: WALTER F. Callahan, Jr.

Date: 05-10-2006 Date: 6-5-06

Revised: 05-09-06

Nortel Networks, Inc State Term Schedule
Control Document

Software License

Traditionally the State requests that vendors provide copies of license agreements for all software products offered in their STS. Vendors offering hardware products are often unable to identify all software embedded in their hardware. We are looking to ensure that wherever possible, Nortel is responsible for providing us and their customer copies of any third party licenses over the life of the contract. This provides the customer the opportunity to review the terms and conditions of the product and decide if they wish to purchase it. Similar language was included in the IBM STS to address the same issue.

Modify Section 5.3 page 74 Nortel Networks Software License by adding the two paragraphs below to the following: "IF SUPPLIERS OF THIRD PARTY SOFTWARE INCLUDED IN OR DISTRIBUTED WITH THE LICENSED SOFTWARE REQUIRE NORTEL NETWORKS TO INCLUDE ADDITIONAL OR DIFFERENT TERMS IN THIS LICENSE, NORTEL NETWORKS MAY INCLUDE SUCH TERMS IN A SEPARATE DOCUMENT ACCOMPANYING THIS LICENSE AND SUCH TERMS SHALL BE DEEMED INCORPORATED INTO THIS LICENSE WITH RESPECT TO SUCH THIRD PARTY SOFTWARE." add

NORTEL NETWORKS SHALL NOTIFY THE OHIO OFFICE OF INFORMATION TECHNOLOGY AND CUSTOMER IN WRITING OF ANY ADDITIONAL OR DIFFERENT SOFTWARE LICENSE TERMS THAT MAY HEREAFTER BE REQUIRED BY ANY SUCH SUPPLIER OF THIRD PARTY SOFTWARE. NORTEL NETWORKS SHALL NOT BE OBLIGATED TO FULFILL ANY ORDER FOR A DELIVERABLE THAT INCLUDES THE APPLICABLE THIRD PARTY SOFTWARE UNLESS CUSTOMER HAS AGREED IN WRITING THAT SUCH TERMS SHALL BE DEEMED INCORPORATED INTO THIS LICENSE WITH RESPECT TO SUCH THIRD PARTY SOFTWARE.

NORTEL MUST FORWARD THE NOTICE TO THE OHIO OFFICE OF INFORMATION TECHNOLOGY TO THE FOLLOWING ADDRESS: Office of Information Technology
Contract Management
30 East Broad Street, 39th Floor
Columbus, Ohio 43215 - 3414

STS Standard Language

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

- (1) Be in accordance with the sound professional standards and the requirements of this Contract and without any material defect.
- (2) No Deliverable will infringe on the intellectual property rights of any third party.
- (3) All warranties are in accordance with Contractors standard business practices attached.
- (4) That the Deliverables hereunder are merchantable and fit for the particular purpose described in this contract.

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

- (1) The Contractor has the right to enter into this Contract.

- (2) The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Contract.
- (3) 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.
- (4) The Contractor has good and marketable title to any goods delivered under this Contract and which title passes to the State.
- (5) The Contractor has the right and ability to grant the license granted 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 will correct such failure with all due speed or will refund the amount of the compensation paid for the Deliverable. The Contractor will also indemnify the State for any direct damages and claims by third parties based on breach of these warranties.

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

- (1) Be in accordance with the sound professional standards and the requirements of this Contract and without any material defect.
- (2) No Deliverable will infringe on the intellectual property rights of any third party.
- (3) All warranties are in accordance with Contractors standard business practices attached.
- (4) Be free from defects in materials and workmanship and conforms to its Specifications.

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

- (1) The Contractor has the right to enter into this Contract.
- (2) The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Contract.
- (3) 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.
- (4) The Contractor has good and marketable title to any goods delivered under this Contract and which title passes to the State.
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If any work of the Contractor or any Deliverable fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor will correct such failure with all due speed or will refund the amount of the compensation paid for the Deliverable. The Contractor will also indemnify the State for any direct damages and claims by third parties based on breach of these warranties.

Reason for modification: Because Nortel does not always know what the customer will be doing with the ordered equipment, Nortel is unable to guarantee merchantability and fitness for a particular purpose. In reviewing GSA contracts from other IT vendors, we have found they often use some form of the proposed language rather than guaranteeing merchantability and fitness for a particular purpose. These warranties are excluded in most commercial transactions. The State is willing to accept the modified language that the equipment perform according to it's specifications as it poses minimal risk.

STS Standard Language:

INDEMNITY. The Contractor will 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 the performance of this Contract, providing such bodily injury or property damage is due to the negligence of the Contractor, its employees, agents, or subcontractors. The Contractor will also indemnify the State against any claim of infringement of a copyright, patent, trade secret, or similar intellectual property rights based on the State's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where the State has modified the Deliverable and the claim of infringement, is based on the modification. The state agrees to 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, (1) of the following four (4) things:

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

Nortel Requested Modification

INDEMNITY. The Contractor will 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 the performance of this Contract, providing such bodily injury or property damage is due to the negligence of the Contractor, its employees, agents, or subcontractors. The Contractor will also indemnify the State against any claim of infringement of a copyright, patent, trade secret, or similar intellectual property rights based on the State's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where the State has modified the Deliverable and the claim of infringement, is based on the modification. The state agrees to 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, (1) of the following four (4) things:

- (1) Modify the Deliverable so that is no longer infringing.
- (2) Replace the Deliverable with an equivalent or better item.
- (3) Acquire the right for the State to use the infringing Deliverable as it was intended for the State to use under this Contract; or

- (4) If Contractor determines options 1 through 3 above are not reasonably feasible, the State agrees to return the Deliverable upon Contractor's written request and Contractor must give the State a credit equal to the net book value for the Deliverable calculated in accordance with generally accepted accounting principles, or in the event the above occurs within three (3) years of the State's order of such Deliverable, Nortel must refund the State the amount 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

Reason for modification: Nortel requested the State consider the use it received from the potentially infringing product if we used it over an extended period of time (i.e. 3 years). Nortel confirms that it will be responsible for the replacement of the infringing deliverable if the State has less than three (3) years of use.

STS Standard Language:

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

1. 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 HAD BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
2. THE CONTRACTOR FURTHER AGREES THAT THE CONTRACTOR SHALL BE LIABLE FOR ALL DIRECT DAMAGES DUE TO THE FAULT OR NEGLIGENCE OF THE CONTRACTOR

Nortel requested modification

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

1. 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 HAD BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
2. THE CONTRACTOR FURTHER AGREES THAT THE CONTRACTOR SHALL BE LIABLE FOR ALL DIRECT DAMAGES DUE TO THE BREACH OF THE CONTRACTOR OR DUE TO NEGLIGENCE OF THE CONTRACTOR RESULTING IN INJURY TO PERSONS (INCLUDING INJURY RESULTING IN DEATH) OR DAMAGE TO PROPERTY ARISING OUT OF THE PERFORMANCE OF THIS CONTRACT.

Reason for modification: This revision is proposed to clarify that the damages available from the state's different causes of action. Under our standard language, the Nortel feared that we would bring a breach of contract action as a tort claim. The proposed revision makes it clear that contractor negligence can result in a state claim only if it causes personal injury or property damage. Legal has reviewed and determined this change is consistent with our intended meaning under our standard language.