

STATE TERM CONTRACT

THIS CONTRACT (the "Contract") is between the State of Ohio ("State"), through its Office of Information Technology, IT Governance Division, with offices at 30 East Broad Street, Columbus, Ohio 43215 and: EMC Corporation ("Contractor"), with offices at 176 South Street, Hopkinton, MA, 01748.

BACKGROUND

The State recognizes that it is sometimes advantageous to do business with some manufacturers under a State term contract rather than through a competitive bidding or proposal process. In such cases, the State may enter into a contract with the manufacturer provided that the manufacturer offers its products and ancillary services at the same prices that the manufacturer offers those products and services to the US Government under the GSA's Multiple Award Schedule program or SmartBuy program. Or if the manufacturer has no contract under the GSA's Multiple Award Schedule program or SmartBuy program, the State will accept the pricing the manufacturer offers to its distributors. Further, if the manufacturer has no GSA Multiple Award Schedule or SmartBuy contract and no distributors, the State may accept the prices that the manufacturer offers to its most favored customers for each product or service.

The State also recognizes that some manufacturers work primarily through dealers for various reasons, including offering customers better support through dealers that have a local presence in a service area. Because of this, the State may sometimes agree to work directly with a manufacturer's dealers.

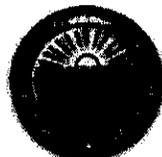
However, if the Contractor is not the manufacturer of the products or services under this Contract, the Contractor must submit a letter from the manufacturer that assures the State that the Contractor is an authorized dealer in the manufacturer's products or services. The letter also must assure the State that the Contractor will have sufficient quantities of the offered products for the duration of the Contract to meet the State's needs under the Contract during the initial term and any extensions. Further, the letter must identify each of the manufacturer's product and service that the Contractor will supply under this Contract. The letter also must contain an assurance of the availability through the dealer of repair services and spare parts for products covered by this Contract for five years from the date of purchase. It also must contain an assurance that software maintenance will be available under the terms of this Contract either from the dealer or the manufacturer for six years from the date of acceptance. (This assurance is not necessary for PC and PC-based server software with a perpetual license fee of less than \$10,000.00 per copy.) The dealer must submit the letter, signed by an authorized representative of the manufacturer, with the executed copies of this Contract.

This Contract establishes terms and conditions under which State agencies (including any board, instrumentality, commission, or other political body) and Ohio political subdivisions, such as counties, municipalities, and townships, may acquire the Contractor's products or services at the pricing identified below. This Contract, however, only permits such; it is not a requirements contract and does not obligate any State agency or political subdivision to acquire the Contractor's products or services.

TERMS AND CONDITIONS

1 - TERM

- 1.1 **TERM.** This Contract is effective on the date the State's duly authorized representative executes it, as evidenced by the date appearing with the representative's signature, below. Unless this Contract is terminated or expires without renewal, it will remain in effect until the end of the State's current fiscal biennium, which is June 30, 2009. Termination or expiration of this Contract will not limit the Contractor's continuing obligations with respect to Deliverables that the State paid for before termination or limit the State's rights in such.
- 1.2 **CONTRACT RENEWAL.** In the State's sole discretion, it may renew this Contract for a period of one month at the end of each biennium during which this Contract remains in place. Any further renewals will be only by



written agreement between the State and the Contractor. Such renewals may be for any number of times for any period not to exceed the time remaining in the State's then-current biennium.

2 - PRICING AND PAYMENT

2.1 CERTIFICATION OF ACCURACY. By checking one of the following three items, the Contractor certifies that the Contractor's prices under this Contract are:

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

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

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

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

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

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

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

2.3 PRICELIST. The Contractor's pricelist for the products and services that the Contractor may provide to the State under this Contract is attached as Exhibit I. For convenience, those products and services are called "Deliverables" in this Contract. Any custom materials resulting from the Contractor's services also are called "Deliverables" in this Contract. The Contractor may not provide any other Deliverables under this Contract without a prior written amendment to this Contract that both the State and the Contractor have signed. Furthermore, the Contractor may not charge the State greater prices for these Deliverables than the prices on the Exhibit I. If Exhibit I contains or incorporates by reference any terms or conditions other than a description of the scope of license for software, a description of the Contractor's products and

services, and the prices for those products and services, those terms or conditions are excluded from this Contract and are of no effect. Exhibit I is identified as the following pricelist:

Price list STS EXHIBIT 1 July 14, 2008.PDF

The Contractor will not sell to the State any notebook computers with less than a 1.60 GHz internal clock speed. Additionally, the Contractor will not sell to the State any PCs or servers using CPUs with less than a 3.0 GHz internal clock speed. Additionally, the Contractor will not sell to the State any term software licenses. And except in the case of operating systems licensed in conjunction with desktop PCs, notebook computers, PDAs, and similar personal computing devices that the OEM does not distribute without an operating system, the Contractor will not sell or license any Microsoft software to the State. If any of the foregoing items are listed in the Contractor's pricelist, they are deleted for purposes of this Contract.

2.4 NOTIFICATION OF PRICE INCREASES. If this Contract permits any price increases, the Contractor must notify the State and any affected State agencies of the increase at least 60 days before the effective date of the price increase. The Contractor must notify affected State agencies at their purchase order "bill to" address contained in the applicable purchase orders. This notification must specify, when applicable, the product serial number, location, current price, increased price, and applicable purchase order number.

2.5 PAYMENT DUE DATE. Payments will be due on the 30th day after the later of:

- (a) The date the State actually receives a proper invoice at the office designated in the applicable purchase order to receive it; or
- (b) The date the State accepts the Deliverable.

The date the State issues a warrant (the State's equivalent to a check) in payment of an invoice will be considered the date payment is made. Without diminishing the Contractor's right to timely payment, the payment will be overdue only if it is not received by the 30th day after the payment's due date. If the State has not issued payment by then, interest will begin to accrue under Ohio Revised Code (the "Code") § 126.30.

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

- (a) Name and address of the Contractor as designated in this Contract;
- (b) The Contractor's federal tax identification number as designated in this Contract;
- (c) The Contractor's invoice remittance address as designated in this Contract;
- (d) The purchase order number authorizing the delivery of the Deliverables;
- (e) A description of the Deliverables, including, as applicable, the time period, serial number, unit price, quantity, and total price of the Deliverables; and
- (f) If the invoice is for a lease, the Contractor also must include the payment number (e.g., 1 of 36).

If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of the Contractor's information. If an invoice does not meet this section's requirements, or if the Contractor fails to give proper notice of a price increase (see the next section), the State will send the Contractor written notice. The State will send the notice, along with the improper invoice, to the Contractor's address designated for receipt of purchase orders within 15 days. The notice will contain a description of the defect or impropriety and any additional information the Contractor needs to correct the invoice. If such notification has been sent, the payment due date will be 30 days after the State receives a proper invoice and has accepted the Contractor's Deliverable.

2.7 OHIO PAYMENT CARD. Participating State agencies issuing orders under this Contract may use the Ohio Payment Card. Such purchases may not exceed \$2,500 unless the Office of Budget and Management ("OBM") has authorized the agency to exceed this limit. If OBM increases the dollar limit for payment cards for all State agencies, the State will post notice of that on its Procurement Website. Participating State agencies are required to use the Ohio Payment Card in accordance with OBM's current guidelines for the

Ohio Payment Card and the agency's approved plan filed with the OBM. The Contractor may process a payment in the payment card network only upon delivery and acceptance of the applicable Deliverables. For partial deliveries or performance, the Contractor may process a payment for the amount delivered or completed only and not for the entire amount ordered by the ordering agency. Upon completion of the delivery of remaining Deliverables, the Contractor may process a payment request in the payment card network for the remainder of the order. The Contractor should receive payment through its merchant bank within the time agreed upon between the Contractor and its merchant bank. The Contractor should expect normal processing fees from its merchant bank for payment card transactions, which the Contractor may not pass on to the State.

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

3 - CONTRACT ADMINISTRATION

- 3.1 DEALERS AND DISTRIBUTORS.** The State authorizes the Contractor to name one or more dealers to work with the State on behalf of the Contractor. But if the Contractor decides to use any dealers, the Contractor must submit the name, principal business address, addresses for purchase orders and for payments, telephone number, and its federal tax identification number. The Contractor also must submit a completed W9 form for each dealer it wishes to name under this section. The Contractor's submission must be on its official letterhead, signed by an authorized representative, and addressed to the Deputy State Chief Information Officer, Office of Information Technology.

In doing so, the Contractor warrants that:

- (a) The Contractor has provided the dealer with a copy of this Contract, and a duly authorized representative of the dealer has agreed, in writing, to be bound by the terms and conditions in this Contract.
- (b) Such agreement specifically provides that it is for the benefit of the State as well as the Contractor.
- (c) The Contractor will remain liable under this Contract for the services of any dealer and will remedy any breach of the dealer under this Contract.

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

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

The State strongly encourages the participation of small and disadvantaged businesses in its contracting programs and has created a certification program to Encourage Diversity Growth and Equity (EDGE) in State contracting. State agencies are instructed to include in their procurements such participation, including through the use of State Term Schedule contracts that are either held by EDGE businesses or that offer the opportunity to work with EDGE dealers or distributors.

- 3.2 AUDITS.** During the term of this Contract and for three years after termination, on reasonable notice and during customary business hours, the State may audit the Contractor's records and other materials that relate to the Deliverables and to the pricing representations that the Contractor has made to acquire this Contract. This audit right also will apply to the State's duly authorized representatives and any organization providing funding for any Deliverable.

Unless it is impracticable to do so, all records related to this Contract must be kept in a single location, either at the Contractor's principle place of business or the facilities where the Contractor substantially performed under this Contract. If this is not practical, the Contractor must assume the cost of collecting, organizing, and relocating the records, along with any technology needed for accessing the records, to its office nearest Columbus, Ohio whenever the State or any entity with audit rights requests access to the records. The Contractor must do so within 15 days of receiving the State's written notice of its intent to audit the Contractor's records and must notify the State as soon as the records are ready for audit.

If any audit reveals any material misrepresentation or overcharge to the State, the State will be entitled to recover its damages, including the cost of the audit.

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

- (a) Workers' compensation insurance, as required by Ohio law, and if some work will be done outside Ohio, the laws of the appropriate states where work will be done. The Contractor also must maintain employer's liability insurance with at least a \$1,000,000.00 limit.
- (b) Commercial General Liability insurance coverage for bodily injury, personal injury, wrongful death, and property damage. The defense cost must be outside of the policy limits. Such policy must designate the State of Ohio as an additional insured, as its interest may appear. The policy also must be endorsed to include a blanket waiver of subrogation. At a minimum, the limits of the insurance must be:

- \$ 2,000,000 General Aggregate
- \$ 2,000,000 Products/Completed Operations Aggregate
- \$ 1,000,000 Per Occurrence Limit
- \$ 1,000,000 Personal and Advertising Injury Limit
- \$ 100,000 Fire Legal Liability
- \$ 10,000 Medical Payments

The policy must be endorsed to provide the State with 30-days prior written notice of cancellation or material change to the policy. And the Contractor's Commercial General Liability must be primary over any other insurance coverage.

- (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 Office of Information Technology Contract Management, 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 Office of Information Technology Contract Management, as well as all agencies that have ordered the Deliverable, within ten business days after the Contractor learns of any of the above events. At the option of the State, the Contractor must either reimburse the State for the purchase price of each affected Deliverable or provide an equal or better replacement for each Deliverable at no additional cost to the State. The Contractor also must remove and replace all affected Deliverables within a reasonable time, as determined by the State. Further, at the option of the State, the Contractor may be required to reimburse the State for storage costs and handling fees, which the State may calculate from the time of delivery of each affected Deliverable to the Deliverable's actual removal. Furthermore, the Contractor must bear all costs associated with the removal and proper disposal of the affected Deliverables. The State will treat any failure to refund the purchase price or provide a suitable replacement within a reasonable time, not to exceed 30 days, as a default.
- 3.7 TERMINATION.** The State may terminate this Contract or any order under this Contract if the Contractor defaults in meeting its obligations and fails to timely cure its default. The State also may terminate this Contract or any order under it if a petition in bankruptcy is filed by or against the Contractor and not dismissed within 60 days. And the State may terminate this Contract or any order under it if the Contractor

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

On written notice, the Contractor will have 30 days to cure any breach of its obligations under this Contract, provided the breach is curable. If the Contractor fails to cure the breach within 30 days after written notice or if the breach is not one that is curable, the State will have the right to terminate this Contract, the applicable orders, or both immediately upon written notice to the Contractor. Some provisions of this Contract may provide for a shorter cure period than 30 days or for no cure period at all. Those provisions will prevail over this one. If a particular section does not state what the cure period will be, this provision will govern.

The State also may terminate this Contract in the case of breaches that are cured within 30 days but are persistent. "Persistent" in this context means that the State has notified the Contractor in writing of the Contractor's failure to meet any of its obligations two times. After the second such notice, the State may terminate this Contract without a cure period if the Contractor again fails to meet any obligation. The three defaults do not have to relate to the same obligation or type of failure.

The State also may terminate this Contract or any order under this Contract for its convenience and without cause. And the State may terminate this Contract or any order under it if the Ohio General Assembly fails to appropriate funds for any order under this Contract. Further, if a third party is providing funding for an order, the State also may terminate this Contract or any order under it should that third party fail to release any funds related to this Contract or an order under it.

Any notice of termination will be effective as soon as the Contractor receives it. On receipt of the notice of termination, the Contractor will immediately cease all work on any Deliverables affected by the termination and take all steps necessary to minimize any costs the Contractor will incur related to the affected orders. The Contractor also must immediately prepare a report and deliver it to the State. The report must detail all open orders at the time of termination.

If the State terminates this Contract or any order for cause, it will be entitled to cover for the affected orders by using another vendor or vendors on such commercially reasonable terms and conditions as it and the covering vendors may agree. The Contractor will be liable to the State for all costs related to covering for the affected orders to the extent that such costs exceed the costs that the State would have incurred under this Contract for those orders. The Contractor also will be liable for any other direct damages resulting from its breach of this Contract or other event leading to termination for cause.

If the termination is for the convenience of the State, the Contractor will be entitled to compensation for any Deliverable that the Contractor has delivered before the termination. Such compensation will be the Contractor's exclusive remedy in the case of termination for convenience and will be available to the Contractor only once the Contractor has submitted a proper invoice for such, with the invoice reflecting the amount the State determines that it owes the Contractor.

- 3.8 EXCUSABLE DELAY.** Neither party will be liable for any delay in its performance under this Contract that arises from causes beyond its reasonable control and without its negligence or fault. The delayed party must notify the other promptly of any material delay in performance and must specify in writing the proposed revised performance date as soon as practicable after notice of delay. For any such excusable delay, the date of performance or delivery will be extended for a period equal to the time lost by reason of the excusable delay. The delayed party also must describe the cause of the delay and what steps it then is taking or will take to remove the cause. The delayed party may not rely on a claim of excusable delay to avoid liability for a delay if the party has not taken commercially reasonable steps to mitigate or avoid the delay.
- 3.9 INDEPENDENT STATUS.** The parties will be acting as independent entities. The partners, employees, officers, directors, and agents of one party may only act in the capacity of representatives of that party and not as employees, officers, directors, or agents of the other party and will not be deemed as such for any purpose. Each party assumes full responsibility for the actions of its partners, employees, officers, directors, and agents while performing under this Contract and will be solely responsible for paying those people.

Additionally, each party will be solely responsible for withholding and paying social security and income taxes, making workers' compensation contributions, paying disability benefits, and providing fringe benefits, if any, for its partners, employees, officers, directors, and agents, and neither party may legally bind the other party in any manner.

3.10 LOCATION OF SERVICES AND DATA. As part of this Contract, the Contractor must disclose the following:

- (a) All locations where any services will be performed;
- (b) All locations where any State data applicable to the Contract will be maintained or made available; and
- (c) The principal place of business for the Contractor and all its subcontractors.

The Contractor may not change any location where any services are performed to a location outside the country of the original location or change any location where the data is maintained or made available to any other location outside the country of the original location without prior written approval of the State, which the State will not be obligated to provide.

4 - DELIVERY AND ACCEPTANCE

4.1 ACCEPTANCE. The acceptance procedure for Deliverables will be an informal review by the agency acquiring the Deliverables to ensure that each Deliverable meets the warranties in this Contract. The State will have up to 30 days after installation to do this. The State will not issue a formal letter of acceptance, and passage of 30 days will imply acceptance, though the State will issue a notice of noncompliance if a Deliverable does not meet the warranties in this Contract.

If the State issues a noncompliance letter, the Contractor will have 30 days to correct the problems listed in the letter. If the Contractor fails to do so, the Contractor will be in default without a cure period. If the State has issued a noncompliance letter, the Deliverable will not be accepted until the State issues a letter of acceptance indicating that each problem noted in the noncompliance letter has been cured. If the problems have been fixed during the 30-day period, the State will issue the acceptance letter within 15 days after all defects have been fixed.

4.2 TITLE. Title to any Deliverable will pass to the State only on acceptance of the Deliverable, and all risk of loss will remain with the Contractor until title to the Deliverable passes to the State.

4.3 DELIVERIES. The Contractor must make all deliveries F.O.B. destination.

5 - INTELLECTUAL PROPERTY

5.1 COMMERCIAL MATERIAL. As used in this section, "Commercial Material" means anything that the Contractor or a third party has developed at private expense and that is commercially available in the marketplace, subject to intellectual property rights, and readily susceptible to copying through duplication on magnetic media, paper, or other media. Examples include the written reports, books, pictures, videos, movies, computer programs, source code, and documentation.

Any Commercial Material that the Contractor intends to deliver as a Deliverable must have the scope of the license granted in such material disclosed in an Exhibit to this Contract, if that scope of license is different than the scope of license contained in this section for Commercial Materials.

Except for Commercial Material that is software ("Commercial Software"), if the Commercial Material is copyrighted and published material, then the State will have the rights permitted under the federal copyright laws for each copy of the Commercial Material delivered to it by the Contractor.

Except for Commercial Software, if the Commercial Material is patented, then the State will have the rights permitted under the federal patent laws for each copy of the Commercial Material delivered to it by the Contractor.

For Commercial Software, the State will have the following, perpetual rights, subject to the next paragraph. The State may:

- (1) Use and copy the Commercial Software for use in or with the computer or computers for which it was acquired, including use at any State installation to which such computer or computers may be transferred;
- (2) Use or copy the Commercial Software for use with a backup computer for disaster recovery and disaster recovery testing purposes or if any computer for which it was acquired is inoperative;
- (3) Reproduce the Commercial Software for archival, image management, and backup purposes;
- (4) Modify, adapt, and combine the Commercial Software with other computer software, provided that the modified, combined, and adapted portions of the derivative software incorporating any of the Commercial Software will be subject to same restrictions on use;
- (5) Disclose to and reproduce the Commercial Software for use on behalf of the State by support service contractors or their subcontractors, subject to the same restrictions on use; and
- (6) Use or copy the Commercial Software for use with a replacement computer.

In the case of any other scope of license (e.g., MIPs, tier, concurrent users, enterprise, site, or otherwise), the foregoing will apply except as expressly modified by the applicable license description, which must be incorporated as part of Exhibit I. If the Contractor provides greater license rights in an item included in Exhibit I to its general customer base for the Software's list price, those additional license rights also will be provided to the State without additional cost or obligation. No license description may reduce the rights in items 1 through 6 above; it may only define the extent of use, if the use is other than a CPU license.

The State will treat any Commercial Software as Confidential Information, in accordance with the requirements of the Confidential Information section of this Contract, if the Commercial Software is clearly and conspicuously labeled as confidential or secret.

5.2 CUSTOM DELIVERABLES. All custom work done by the Contractor and covered by this Contract will belong to the State, with all rights, title, and interest in all intellectual property that comes into existence through the Contractor's work under this Contract being assigned to the State. Additionally, the Contractor waives any shop rights, author rights, and similar retained interests in any such custom developed materials. The Contractor must provide the State with all assistance reasonably needed to vest such rights of ownership in the State. However, the Contractor will retain ownership of all tools, methods, techniques, standards, and other development procedures, as well as generic and preexisting shells, subroutines, and similar material incorporated in any custom Deliverable ("Pre-existing Materials").

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

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

5.3 CONFIDENTIALITY. The State may disclose to the Contractor written material or oral or other information that the State treats as confidential ("Confidential Information"). Title to the Confidential Information and all related materials and documentation the State delivers to the Contractor will remain with the State. The Contractor must treat such Confidential Information as secret if it is so marked, otherwise identified as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of the public, other contractors or potential contractors with the State, or individuals or organizations about whom the State keeps information. The Contractor may not disclose any Confidential Information to third parties and must use it solely to perform under this Contract.

If any Deliverables contain data, documentation, or other written information that is confidential in nature and properly labeled as such, then it also will be Confidential Information for purposes of this section. The State will keep all such Confidential Information in confidence and will not use it other than as authorized under this Contract. Nor will the State disclose any such Confidential Information to any third party without first obligating the third party to maintain the secrecy of the Confidential Information.

If one party discloses Confidential Information ("Disclosing Party") to the other party to this Contract ("Receiving Party"), the Receiving Party's obligation to maintain the confidentiality of the Confidential Information will not apply where such:

- (1) Was already in the possession of the Receiving Party without an obligation of confidence;
- (2) Is independently developed by the Receiving Party, provided documentary evidence exists to support the independent development;
- (3) Except as provided in the next paragraph, is or becomes publicly available without a breach of this Contract;
- (4) Is rightfully received by the Receiving Party from a third party without an obligation of confidence;
- (5) Is disclosed by the Receiving Party with the written consent of the Disclosing Party; or
- (6) Is released under a valid order of a court or governmental agency, provided that the Receiving Party:
 - (a) Notifies the Disclosing Party of the order immediately upon receipt of it; and
 - (b) Makes a reasonable effort to obtain a protective order from the issuing court or agency limiting the disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production.

Information that may be available publicly through other sources about people that is personal in nature, such as medical records, addresses, phone numbers, social security numbers, and similar things are nevertheless sensitive in nature and may not be disclosed or used in any manner except as expressly authorized in this Contract. Therefore, item (3) in the preceding paragraph does not apply, and the Contractor must treat such information as Confidential Information whether it is available elsewhere or not.

Except for Confidential Information that the Contractor delivers to the State and that is part of a Deliverable or necessary for the proper use or maintenance of a Deliverable, the Receiving Party must return all originals of any Confidential Information and destroy any copies it has made on termination or expiration of this Contract.

The disclosure of the Confidential Information of the Disclosing Party in a manner inconsistent with the terms of this provision may cause the Disclosing Party irreparable damage for which remedies other than injunctive relief may be inadequate, and each Receiving Party agrees that in the event of a breach of the Receiving Party's obligations hereunder, the Disclosing Party will be entitled to temporary and permanent injunctive relief to enforce the provisions of this Contract without the necessity of proving actual damages. However, provision does not diminish or alter any right to claim and recover damages.

- 5.4 USE OF NAME.** The Contractor may not publicize that it is doing business with the State or use this Contract or the Contractor's relationship with the State as a marketing or sales tool, unless the State agrees otherwise in writing. The State has no obligation to agree to any such advertising, publicity, sales, or marketing activities.

6 – TRANSACTION REPORTING

- 6.1 Contractor's SALES REPORT.** The Contractor must report the quarterly dollar value (in US currency rounded to the nearest whole dollar) of the sales under this Contract each calendar quarter (i.e., January-March, April-June, July-September and October-December). The dollar value of the sales reported must equal the price paid by all State agencies and Political Subdivisions for Deliverables under this Contract during the reporting period.

The Contractor must report the quarterly dollar value of sales to the State via the Internet using the Web form at the Office of Information Technology's 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 Office of Information Technology. 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
Office of Finance
30 East Broad Street, Suite 4060
Columbus, Ohio 43215 – 3414

If the full amount of the revenue share is not paid within 30 days after the end of the applicable reporting period, the non-payment will constitute a contract debt to the State. The State may setoff any unpaid revenue share from any amount owed to the Contractor under this Contract and employ all other remedies available to it under Ohio law for the non-payment of the revenue share. Additionally, if the Contractor fails to pay the revenue share in a timely manner, the failure will be a breach of this Contract, and the State may terminate this Contract for cause and seek damages for the breach.

7 - WARRANTIES AND LIABILITIES

7.1 WARRANTIES. The Contractor warrants that the recommendations, guidance, and performance of the Contractor and all Deliverables under this Contract will:

- (a) Be in accordance with the sound professional standards and the requirements of this Contract and without any material defects;
- (b) Not infringe on the intellectual property rights of any third party;
- (c) Be the work solely of the Contractor, unless otherwise provided in this Contract; and
- (d) Be merchantable and fit for the particular purpose for which the Deliverables were acquired.

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

- (a) The Contractor has the right to enter into this Contract;
- (b) The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Contract;

- (c) The Contractor will observe and abide by all applicable laws and regulations, including those of the State regarding conduct on any premises under the State's control;
- (d) The Contractor has good and marketable title to any products delivered under this Contract and in which title passes to the State; and
- (e) The Contractor has the right and ability to grant the license provided in any Deliverable in which title does not pass to the State.

If any work of the Contractor or any Deliverable fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor must correct such failure with all due speed, not to exceed 30 days, or refund the amount of the compensation paid for the Deliverable. The Contractor also must indemnify the State for any direct damages and any claims by third parties based on any breach of these warranties.

7.2 SOFTWARE WARRANTY. If Exhibit I includes work to develop custom software as a Deliverable, then on delivery and for one year after the date of acceptance of any Deliverable that includes custom software, the Contractor warrants that:

- (a) The software will operate on the computer(s) for which the software is intended in the manner described in the relevant software documentation;
- (b) The software will be free of material defects;
- (c) The Contractor will deliver and maintain relevant and complete software documentation, commentary, and source code;
- (d) The source code language used to code the software is readily available in the commercial market, widely used and accepted for the type of programming involved, and support programming in the language is reasonably available in the open market; and
- (e) The software and all maintenance will be provided in a professional, timely, and efficient manner.

For Commercial Software developed by the Contractor or licensed from a third party, the Contractor represents and warrants that it either has the right or has obtained a binding commitment from the third party licensor to make the following warranties and commit to the following maintenance obligations. During the warranty period described in the next paragraph, the Contractor must:

- (a) Maintain or cause the third-party licensor to maintain the Commercial Software so that it operates in the manner described in its documentation;
- (b) Supply technical bulletins and updated user guides;
- (c) Supply the State with all updates, improvements, enhancements, and modifications to the Commercial Software and documentation and, if available, the commentary and the source code;
- (d) Correct or replace the software and remedy any material programming error that is attributable to the Contractor or the third-party licensor; and
- (e) Maintain or obtain a commitment from the third-party licensor to maintain the Commercial Software so that it will properly operate in conjunction with changes in the operating environment for which it was designed.

For Commercial Software designed for mainframe platforms and for Commercial Software designed for PC or PC-based servers and costing more than \$10,000.00 per license or per copy, the warranty period will be the longer of one year after acceptance or the licensor's standard warranty period. For Commercial Software designed for PC or PC-based servers and costing less than \$10,000.00 per license or per copy, the warranty period will be the longer of three months after acceptance or the licensor's standard warranty period. For PC and PC-based servers, the warranty will not include updates, improvements, enhancements, or modifications to the Commercial Software and documentation, if such are not provided as part of the licensor's standard warranty or license fee.

Software documentation means well written, readily understood, clear, and concise instructions for the software's users as well as a system administrator. The software documentation must provide the users of the software with meaningful instructions on how to take full advantage of all of the capabilities designed for end users. It also means installation and system administration documentation for a system administrator to allow proper control, configuration, and management of the software. Source code means the

uncompiled operating instructions. The Contractor must provide the source code in the language in which it was written and must include such commentary or annotations as would allow a competent programmer proficient in the source language to readily interpret the source code and understand the purpose of all routines and subroutines contained within the source code.

- 7.3 EQUIPMENT WARRANTY.** If any computer hardware or other type of electrical equipment ("Equipment") will be a part of any Deliverable, the following warranties apply. The Contractor warrants that the Equipment fully complies with all government environmental and safety standards applicable to the Equipment. The Contractor also warrants for the warranty period described in the next paragraph that the Equipment will perform substantially in accordance with its user manuals, technical materials, and related writings published by the manufacturer with respect to such Equipment, and that such Equipment will achieve any function described in such writings. The foregoing warranty will not apply to Equipment that the State modifies or damages after title passes to it. The warranty period for all Equipment will be the longer of one year after the State accepts the Equipment or the Contractor's standard warranty period.

If any Equipment does not meet the above warranties during the applicable warranty period, the Contractor must fix the nonconforming Equipment so it performs substantially in accordance with its user manuals, technical materials, and related publications, replace the Equipment, or grant the State a refund equal to the amount it paid for the Equipment. The Contractor must either fix or replace the Equipment or refund the purchase price to the State with all due speed, not to exceed seven days in the case of a fix or a replacement or 30 days in the case of a refund. The Contractor will be responsible for all shipping costs associate with fixing, replacing, or returning any defective equipment.

- 7.4 INDEMNITY.** The Contractor must indemnify the State against all liability or expense resulting from bodily injury to any person (including injury resulting in death) or damage to property arising out of its performance under this Contract, provided such bodily injury or property damage is due to the negligence or other tortious conduct of the Contractor, its employees, agents, or subcontractors. The Contractor also must indemnify the State against any claim of infringement of a copyright, patent, trade secret, or other intellectual property rights based on the State's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where the State has modified the Deliverable and the claim of infringement is based on the modification. The State will give the Contractor notice of any such claim as soon as reasonably practicable. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor will do one of the following four things:

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

- 7.5 LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS CONTRACT OR ANYTHING INCORPORATED BY REFERENCE INTO THIS CONTRACT, THE PARTIES AGREE AS FOLLOWS:

- (a) NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAVE BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
- (b) THE CONTRACTOR WILL BE LIABLE FOR ALL DIRECT DAMAGES DUE TO THE FAULT OR NEGLIGENCE OF THE CONTRACTOR OR ITS BREACH OF ANY PROVISION OF THIS CONTRACT.

8 - MAINTENANCE

8.1 SOFTWARE MAINTENANCE. If this Contract involves any custom software as a Deliverable, then during the warranty period, the Contractor must correct any material programming errors that are attributable to the Contractor within a reasonable time, provided the State notifies the Contractor, either orally or in writing, of a problem with the software and provides sufficient information to identify the problem. The Contractor's response to a programming error will depend upon the severity of the problem. In the case of programming errors that slow the processing of data by a small degree, render minor and non-critical functions of the System inoperable or unstable, or require users or administrations to employ workarounds to fully use the software, the Contractor must respond to requests for resolution within four business hours and begin working on a proper solution within one business day, dedicating the resources of one qualified programmer full-time to fixing the problem. In the case of any defects with more significant consequences, including those that render key functions of the software inoperable or significantly slow data processing, the Contractor must respond within two business hours of notification and, if requested, provide on-site assistance and dedicate all available resources to resolving the problem.

For Commercial Software other than PC or PC-based server software costing less than \$10,000.00 per copy or license, the Contractor must provide maintenance during the warranty period at no cost to the State. At a minimum, that maintenance must be the standard maintenance program that the licensor, whether the Contractor or a third party, normally provides to its client base. That maintenance program must include all new releases, updates, patches, and fixes to the Commercial Software. It also must include a commitment to keep the software current with the operating environment in which it is designed to function and a commitment to promptly correct all material defects in the software.

Additionally, the Contractor will make (or obtain a commitment from the third-party licensor to make) maintenance available for the software for at least five years after the warranty period. The Contractor will limit or obtain a commitment from the third-party licensor, if applicable, to limit increases in the annual fee for maintenance to no more than five percent annually. If the licensor, whether it is the Contractor or a third-party, is unable to provide maintenance during that period, then the licensor must do one of the following things: (a) give the State a *pro rata* refund of the license fee based on a five-year useful life; or (b) release the source code for the software to the State for use by the State solely for the purpose of maintaining any copies of the software for which the State has a proper license. The State will treat the source code as Confidential Information under the Confidentiality Section of this Contract. In the case of third-party Commercial Software, the Contractor warrants that it has legally bound the third-party licensor to the obligations of this Contract or that the Contractor has the right to make these commitments directly to the State.

For Commercial Software designed for PC or PC-based server platforms and costing less than \$10,000.00 per copy or license, the Contractor must provide the same maintenance and user assistance during the warranty period at no additional cost to the State as the Contractor or the third-party licensor makes generally available at no additional charge to its other customers.

8.2 SOFTWARE UPGRADES. After an initial acquisition of a license in Commercial Software, the State may want to acquire a broader license than the original. Or the State may later want to migrate to another platform for the Commercial Software. When the Contractor or third-party licensor make the broader license generally available to its customer base or makes the version of the Commercial Software that runs on the new platform to which the State wants to migrate, then the State will have a right to upgrade any of its licenses to that broader license or to acquire the version of the Software that is appropriate for the new platform that the State intends to use. In these cases, the Contractor will provide the broader license or other version of the Commercial Software in exchange for a license fee that is based on the lesser of the following:

- (a) The Contractor's (or third party licensor's) standard upgrade or migration fee;
- (b) The upgrade or migration fee in Exhibit I; or
- (c) The difference between the license fee originally paid and the then-current license fee for the license or version of the Commercial Software that the State seeks to acquire.

The foregoing will not apply to Commercial Software for PCs and PC-based server software with a license fee of less than \$10,000.00, unless the Contractor or third-party licensor makes upgrade

packages available for the Commercial Software to other customers. If PC or PC-based server software upgrades are available, the State will be entitled to the most favorable license fee on which such are made available to other most favored customers or dealers, as appropriate.

8.3 EQUIPMENT MAINTENANCE. If this Contract involves computer or telecommunications hardware or other mechanical or electrical equipment ("Equipment") as a Deliverable, then, during the warranty period and during any period covered by annual maintenance, the Contractor must provide maintenance to keep the Equipment in or restore the Equipment to good working order. This maintenance must include preventative and remedial maintenance, installation of safety changes, and installation of engineering changes based upon the specific needs of the individual item of Equipment. This maintenance also must include the repair, replacement, or exchange deemed necessary to keep the Equipment in good working order. For purposes of this Contract, Equipment restored to good working order means Equipment that performs in accordance with the manufacturer's published specifications. The Contractor must use its best efforts to perform all fault isolation and problem determination attributed to the Equipment. The following services are outside the scope of this Contract:

- (a) Maintenance to bring the Equipment into compliance with any law, rule, or regulation, if such law, rule, or regulation was not in effect on the acceptance date;
- (b) Repair and replacement work or increase in maintenance time as a result of damage or loss resulting from accident, casualty, neglect, misuse, or abuse, if such is the State's fault (and beyond normal wear and tear), damage resulting from improper packing or failure to follow prescribed shipping instruction (if such is done by the State), failure of electrical power, air conditioning or humidity control, use of supplies not approved by the original manufacturer of the Equipment as describe in the Equipment's documentation, or causes other than ordinary use of Equipment;
- (c) Furnishing platens, supplies, or accessories, making specification changes, or adding or removing approved accessories, attachments, or other devices except as permitted in the Equipment's user documentation;
- (d) Maintenance or increased maintenance time resulting from any improper use, maintenance, or connection to other equipment (not done by the Contractor) that results in damage to the Equipment;
- (e) Repairs needed to restore the Equipment to good operating condition if the Equipment has been damaged by anyone other than the Contractor's authorized service personnel repairing, modifying, or performing maintenance on the Equipment.

8.4 EQUIPMENT MAINTENANCE STANDARDS. Except in the case of excusable delay, remedial Equipment maintenance by the Contractor will be completed within eight business hours after notification by the State that maintenance is required. In the case of preventative maintenance, the Contractor will perform such in accordance with the manufacturer's published schedule and specifications. If maintenance is not completed within eight hours after notification by the State, the Contractor will be in default. Failure of the Contractor to meet or maintain these requirements will provide the State with the same rights and remedies as specified elsewhere in this Contract for default, except that the Contractor will only have eight hours to remedy a default. The Contractor will provide adequate staff to provide the maintenance required by this Contract.

8.5 EQUIPMENT MAINTENANCE CONTINUITY. If the Contractor is unable to provide Equipment maintenance to meet the State's ongoing performance requirements and if, in the State's sole opinion, the Contractor is unlikely to resume providing warranty services that meets the State's ongoing performance requirement, the Contractor will be in default, and the State will be entitled to the remedies in the default section of this Contract. The State will also be entitled to the following items from the Contractor:

- (a) All information necessary for the State to perform the maintenance, including but not limited to logic diagrams, maintenance manuals, and system and unit schematics, with all changes noted;
- (b) A listing of suppliers capable of supplying necessary spare parts;
- (c) Adequate information to permit the State to have spare parts manufactured elsewhere; and
- (d) A listing of spare parts and their recommended replacement schedule to enable the State to create a centralized inventory of spare parts.

The State will treat as Confidential Information in accordance with the Confidentiality Section of this Contract any information in items (a) through (d) above that the Contractor rightfully identifies in writing as confidential. And when disclosure to a third-party is necessary for the State to continue the maintenance, the State will require any third-party to whom disclosure is made to agree to hold the Confidential Information in confidence and to make no further disclosure of it. Further, the State agrees that any such Confidential Information will be used solely to perform maintenance for the State and will be returned to the Contractor or destroyed when such use is no longer needed.

- 8.6 PRINCIPAL PERIOD OF MAINTENANCE (GENERAL).** Software and Equipment maintenance must be available nine working hours per weekday, between 8:00 a.m. and 5:00 p.m. Eastern Standard Time. Travel time and expenses related to remedial and preventative maintenance will not be billable and must be included in the price of the maintenance.
- 8.7 MAINTENANCE ACCESS (GENERAL).** For all Software and Equipment maintenance under this Contract, the State will provide the Contractor with reasonable access to the Deliverable to perform maintenance. All maintenance that requires a Deliverable to be inoperable must be performed outside the State's customary working hours, except when the Deliverable is already inoperable. Preventative or scheduled maintenance must be performed at mutually agreeable times, within the parameters of the manufacturer's published schedule.

9 - ASSIGNMENT AND SUBCONTRACTING

- 9.1 ASSIGNMENT.** The Contractor may not assign this Contract without the written consent of the State, which the State will not be obligated to provide.
- 9.2 SUBCONTRACTING.** The State recognizes that it may be necessary for the Contractor to use subcontractors to perform portions of the work under this Contract. In those circumstances, before the Contractor engages any such subcontractor, the Contractor must submit a list identifying its subcontractors or joint venture partners performing portions of the work under the Contract. If any changes to that list occur during the term of the Contract, the Contractor must immediately provide the State an updated list of subcontractors or joint venture business partners. In addition, all subcontractors and joint venture business partners must agree in writing to be bound by all of the terms and conditions of this Contract and any specifications of any order under this Contract for which they perform work. The State may reject any subcontractor submitted by the Contractor.

10 - CONSTRUCTION

- 10.1 HEADINGS.** The headings used in this Contract are for convenience only and may not be used in interpreting this Contract.
- 10.2 ENTIRE DOCUMENT.** This Contract, which includes the Contractor's pricelist attached as Exhibit I and all documents referred to in this Contract, constitutes the entire agreement between the parties with respect to the subject matter and supersedes any previous agreements, whether oral or written.
- 10.3 BINDING EFFECT.** This Contract will be binding on and benefit the respective successors and assigns of the State and the Contractor.
- 10.4 AMENDMENTS - WAIVER.** No amendment or modification of this Contract will be effective unless it is in writing and signed by both parties. The failure of either party at any time to demand strict performance by the other party of any of the terms or conditions of this Contract may not be construed as a waiver of any those terms or conditions, and either party may at any time demand strict and complete performance by the other party.
- 10.5 SEVERABILITY.** If a court of competent jurisdiction finds any provision of this Contract to be unenforceable, the remaining provisions of this Contract will remain in full force and affect.
- 10.6 CONSTRUCTION.** This Contract must be construed in accordance with the plain meaning of its language and neither for nor against the drafting party.

- 10.7 NOTICES.** For any notice under this Contract to be effective, the noticing party must make it in writing and sent it to the address of the other party first appearing above, unless that party has notified the other party, in writing and in accordance with the provisions of this section, of a new mailing address for the receipt of notices. This notice requirement will not apply to any notices that this Contract expressly authorizes to be made orally.
- 10.8 CONTINUING OBLIGATIONS.** Any terms, conditions, representations, or warranties contained in this Contract that must survive termination or expiration of this Contract to be fully effective will survive the termination or expiration of the Contract. Additionally, termination or expiration of this Contract will not affect the State's right to continue to use any Deliverable for which it has paid, including licensed material. And no termination or expiration of the Contract will affect the State's right to receive maintenance, warranty work, or other services for which the State has paid.
- 10.9 PRIORITY.** If there is any inconsistency or conflict between this document and any provision of anything incorporated by reference, this document will prevail.
- 10.10 DAYS.** When this Contract refers to days, it means calendar days, unless it expressly provides otherwise.

11 - LAW AND COURTS

- 11.1 EEO.** The Contractor must comply with all Ohio laws regarding equal employment opportunity, including among others Code § 125.111, as well as all related Executive Orders of the Governor of Ohio.
- 11.2 DRUG FREE WORKPLACE.** The Contractor must comply with all Ohio laws regarding maintaining a drug-free workplace and make a good faith effort to ensure that all its employees do not possess and are not under influence of illegal drugs or alcohol or abuse prescription drugs while working on State property.
- 11.3 OHIO ETHICS LAW AND LIMITS ON POLITICAL CONTRIBUTIONS.** The Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of the Ohio ethics laws. In accordance with Executive Order 2007-01S, the Contractor, by signature on this document, certifies: (1) it has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands the Ohio ethics and conflicts of interest laws, and (3) will take no action inconsistent with those laws and this order. The Contractor understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of this Contract and may result in the loss of other contracts or grants with the State. The Contractor hereby certifies that all applicable parties listed in Division (I)(3) or (J)(3) of Ohio Revised Code Section 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of Ohio Revised Code Section 3517.13.
- 11.4 SECURITY & SAFETY RULES.** When using or possessing State data or accessing State networks and systems, the Contractor must comply with all applicable State rules, policies, and regulations regarding data security and integrity. And when on any property owned or controlled by the State, the Contractor must comply with all security and safety rules, regulations, and policies applicable to people on those premises.
- 11.5 LAW AND VENUE.** This Contract is governed by and will be construed under Ohio law, and venue for all disputes will lie exclusively with the appropriate court in Franklin County, Ohio.
- 11.6 UNRESOLVED FINDINGS.** The Contractor represents that it is not subject to an unresolved finding for recovery under Code § 9.24. If this warranty proves false when the parties sign this Contract, the Contract will be void. Additionally, if this representation proves false on the date of any renewal or extension of the Contract, the renewal or extension will be void.
- 11.7 TERROR DECLARATION.** In accordance with R.C. 2909.33(C), Contractor certifies that it meets one of the following conditions:

(a) Contractor has **not** received, nor will receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars (\$100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year;

or

(b)(1) Contractor has received, or will receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars (\$100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year. and,

(2) Contractor has either precertified with the Office of Budget and Management, or has completed the attached Declaration of Material Assistance form certifying that Contractor has not provided material assistance to any organization on the Terrorist Exclusion List, as that term is defined in R.C. 2909.21.

11.7 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.

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

BY: Chantal Lyon
Chantal vanLede Lyon
Managing Counsel
Business Law Group

DATE: 8-14-08

STATE OF OHIO,
OFFICE OF INFORMATION TECHNOLOGY

BY: R. Steve Edmonson
R. STEVE EDMONSON
DIRECTOR, OFFICE OF INFORMATION TECHNOLOGY
STATE CHIEF INFORMATION OFFICER

DATE: 8-21-08

(SGG) 05-14-05

EMC
CONTRACTS
APPROVED

Exhibit I

See PDF file labeled (Price list STS EXHIBIT 1 July 14, 2008.PDF)

EXHIBIT 2
STATE TERM SCHEDULE EXCEPTIONS

Background: If the manufacturer has no GSA Multiple Award Schedule or SmartBuy contract, the State may accept the prices that the manufacturer offers to similarly situated customers.

A. SECTION 2: PRICING AND PAYMENT

(1) Please modify 2.1 Certification of Accuracy as follows:

2.1 Certification of Accuracy. By checking on of the following three items, the Contractor certifies that the Contractor's prices under this contract are:

_____ The prices at which the Contractor currently offers each product and service to the US Government under the GSA's Multiple Award Schedule program;

_____ The prices at which the Contractor currently offers each product and service to the US Government under the GSA's SmartBuy program; or

 X The equivalent prices at which the Contractor has offered each discount class of product and service to similarly situated customers that purchase under similar terms and conditions ("Similarly Situated 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 Similarly Situated 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 this 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.

Please modify 2.2 Price Adjustments as follows:

Please replace the second paragraph with the following.

If the Contractor has relied on its equivalent pricing to Similarly Situated Customers, the State will be entitled to a price decrease any time the Contractor decreases its equivalent pricing to its Similarly Situated Customers to less than the price agreed to between the State and the Contractor under this contract. The Contractor must notify the State of that event within 30 days of its occurrence and immediately reduce the price of the affected products or services to the State under this contract.

2.3 EMC Corporation Ohio State Term Schedule Price List and Discount Schedule, June 25, 2008, Exhibit I, attached hereto.

2.4 Delete Section 2.11 "Travel Expenses".

Please delete Section 2.13 "Offset" in its entirety.

B. SECTION 3: CONTRACT ADMINISTRATION

(1) Please delete the following subsections at 3.1: subsection (e)

(2) Please modify Section 3.2 Audits such that the paragraph begins with the following language: "...Such audit shall not be more than once per year" The remainder of the section shall remain intact.

(3) Please modify Section 3.3 Insurance accordingly:

"\$1,000,000 Personal Injury Limit" in lieu of "1,000,000 Personal and Advertising Injury Limit".

In all other respects, Contractor states that it complies with these coverage amounts. Contractor provides herewith a Certificate of Insurance.

(5) Please delete 3.7 paragraph 6 (in its entirety) which states: "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." Please replace this paragraph with the following language:

"Contractor's entire liability, and the State's sole remedy, for Contractor's failure to so perform (to the extent that gave rise to termination) shall be for Contractor to, at its option, (i) use reasonable efforts to correct such failure, and/or (ii) terminate the applicable SOW and refund all fees received that correspond to such failure to perform."

C. SECTION 4: DELIVERY AND ACCEPTANCE

(1) Please delete the entirety of Section 4.1 and replace it with the following language:

"Title and risk of loss for the Deliverable (as defined in 4.2, as amended) shall transfer to The State upon Contractor's delivery at FOB Destination. Acceptance of the Deliverable that Contractor has agreed to install occurs (i) upon successful completion of Contractor's standard installation procedures which demonstrate that the operation of the Equipment conforms to the Documentation for such Deliverable, or (ii) thirty (30) days after receipt if The State causes a delay in such installation, and for all other Deliverable occurs fourteen (14) days after receipt."

(2) 4.2 Title: Please add the following definition of "Deliverable": "Deliverable shall mean any hardware, software (or any deliverable under any applicable statement of work)." For Professional Services, the Parties agree that the Statements of Work shall set forth the applicable language for "Acceptance of Deliverables."

D. SECTION 5: INTELLECTUAL PROPERTY

(1) Intellectual Property

Notwithstanding the fact that the parties agree that this Contract shall not be the governing instrument for Software Development, the parties agree that the following terms shall govern the Proprietary Rights of the Parties. Should the State at some time seek to obtain Services that would include Software Development, the Parties agree to negotiate in good faith the Intellectual Property Rights to govern in an Amendment to the STS.

(2) Proprietary Rights

As between EMC and the State, all patents, copyrights, trade secrets, methodologies, ideas, inventions, concepts, know-how, techniques or other intellectual property developed or provided by EMC are and remain EMC property ("EMC Proprietary Rights"). All written reports, analyses and other working papers delivered by EMC to The State in the performance of EMC's obligations under this SOW ("Work Product"), exclusive of any Intellectual Property Rights

embodied therein, belong to The State. As used herein, "Intellectual Property Rights" means (by whatever name or term known or designated) copyrights, trade secrets, trademarks patents, and any other intellectual and industrial property and proprietary rights, including registrations, applications, renewals and extensions of such rights. Nothing herein shall preclude EMC from developing, using or marketing services or materials that are similar or related to such Work Product.

(3) The State Furnished Materials

Any tangible materials furnished by The State for use by EMC remain The State property.

(4) Work Product License

Upon The State's payment in full for Work Product, and to the extent that EMC Proprietary Rights are contained in the Work Product, The State is licensed to use such EMC Proprietary Rights internally, for the purpose for which the Work Product was provided, on a non-exclusive, non-transferable (except as otherwise provided for herein), royalty-free, worldwide basis. The State shall not sublicense or otherwise transfer to any third party any EMC Proprietary Rights. Other than as provided herein, The State may not modify, alter, create derivative works, decompile, disassemble, or reverse-engineer the Work Product. Notwithstanding, the parties agree that any such Work Product license provided with the Deliverables may be transferred within State agencies for the limited purpose provided in the applicable SOW.

(5) Software License

If The State is granted a license to use software in conjunction with this SOW (a "Project License"), such shall consist solely of a non-exclusive, non-transferable and non-sublicensable right to use such software only in direct connection with the applicable SOW. The term of the Project License shall start on delivery of the software and expire one (1) year thereafter, or on completion of the SOW, whichever occurs first; (or by June 30, 2009, whichever occurs first).

(3) Please modify the fifth paragraph which begins "For Commercial Software, the State will have the following, perpetual rights, subject to the next paragraph. The State may:" and delete subsection (4) which reads "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;" And with respect to (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 restriction on use.", please add, "So long as such contractors and subcontractors remain obligated to the State's terms of the Software as set forth herein."

(4) 5.2 is inapplicable; to the extent that the State seeks to obtain Custom Software Development work from EMC, see above at D Section 5(1) herein.

F. SECTION 7: WARRANTIES AND LIABILITIES

(1) Please delete 7.1 the first subsection (d) in its entirety, as there will no custom work performed under the STS.

(2) Please insert the following language at the beginning of this section:

The terms of Exhibit 3 which set forth the warranty terms and maintenance terms of the respective EMC products is attached hereto and made a part of this Agreement. Further, EMC agrees to provide the printed version of the applicable Product Notice for each Quote. The following language as set forth in the Product Notice does not apply: 1) that EMC can change the terms at any time; 2) that products/software/maintenance/ services obtained from any EMC

reseller are governed solely by the agreement between the purchase and the reseller; and 3) that products/software/maintenance/services may be governed by an EMC agreement or other document.

SECTION 7.2 SOFTWARE WARRANTY. Please delete Paragraph 1 of this section and insert in its place the following language:

“Duration. The warranty term for the Software products shall be as set forth in the applicable Product Notice (as set forth above) in effect as of the date of the Quote under which The State ordered each Product. In the event of a conflict between the Product Notice and this Agreement, the Product Notice shall control.” See Exhibit 3 of the printed Product Notice information attached hereto. Over the Term of this State Term Schedule, for new Products added to the Product Notice that are approved by the State to be included on the State Term Schedule, the Parties agree to amend the State Term Schedule on a regular basis to include the current products and applicable Product Notice as an update to Exhibit 3 hereto.”

“Contractor warrants that, from the date of receipt or the date of electronic availability, as applicable, Software will conform to the applicable Documentation for such Software. Contractor does not warrant that the operation of Software shall be uninterrupted or error free, or that all defects can be corrected. Contractor’s entire liability and the State’s exclusive remedies under the warranties described in this Section shall be for Contractor, at its option, to use reasonable efforts to remedy such defects or performance failure or to replace the affected Software. If Contractor is unable to make the affected Software operate as warranted within a reasonable time, then Contractor shall refund the amount paid by the State for the affected Software license upon return of the specific Software to Contractor.”

“Warranty Exclusions. Except as expressly stated in the applicable warranty set forth in this Agreement and the applicable exhibits, Contractor including its suppliers) provides Products “AS IS” and makes no other express or implied warranties, written or oral, and ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.”

(4) Please delete Paragraph 2 of section 7.2 including subsections (a)-(e) and the entire Paragraph 3 of Section 7.2.

(5) With respect to the last full paragraph at Section 7.2, please delete the last two (2) sentences which read: “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.” In substitution for these sentences, please add the following: “Contractor shall provide the Documentation, as provided solely for purposes of supporting The State’s use of the Software, in object code only.

“Within ninety (90) days after first shipment from EMC to Customer of Core Software and/or Enterprise Storage Software under this Agreement, EMC shall place the related source code for such Core Software and/or Enterprise Storage Software into escrow, if it has not already done so,

with a third party escrow agent. The agreement between the escrow agent and EMC currently specifies the following conditions for release of the source code to Customer: (i) the Customer must have a valid license for the object code of the applicable item; (ii) the object code must be covered by a then current EMC warranty or valid maintenance contract with EMC (unless in such event that EMC has breached its obligations under a maintenance contract that resulted in the State's not remaining current); (iii) the Customer must provide written notice to the escrow agent and EMC that EMC has ceased to perform its warranty/maintenance obligations to Customer; (iv) EMC must not have filed, within thirty (30) days after receipt of the notice from Customer, a written notice with the escrow agent, with a copy to the Customer, stating that the conditions for release have not been met; and (v) Customer must pay the escrow agent's then current standard fees for the release to Customer of the applicable source code. EMC reserves the right to change the escrow agent or revise the agreement with the escrow agent, provided such actions do not materially and adversely impact Customer's rights under this paragraph. Upon such release of the source code, Customer is granted a license to use the source code solely for purpose of maintaining its existing object code licenses in a manner substantially similar to that which was required of EMC under the applicable EMC warranty or maintenance agreement. Customer shall make no other use of the source code and shall not disclose all or any portion of it to any third party, unless such third party is authorized to work on the State's behalf and is bound by these same terms and conditions.

G. SECTION 7.4 INDEMNITY

(1) Please modify the language as set forth in this section as noted below:

The first sentence shall be modified to read as follows:

"The Contractor shall indemnify the State against damage to real or tangible personal property, bodily injury (including injury resulting in death) arising out of its performance under this Contract, provided such bodily injury or real or tangible personal property damage that is directly attributable to or promixately caused by the negligence or other tortious conduct of the Contractor, its employees, agents or subcontractors."

(2) The second sentence shall read: "The Contractor shall (i) defend, subject to the approval of the Attorney General of Ohio, the State against any third party claim that a Deliverable infringes a patent, or a copyright enforceable in a country that is a signatory to the Berne Convention, and (ii) pay the resulting costs and damages." The remainder of this paragraph shall remain intact.

H. SECTION 7.5 LIMITATION OF LIABILITY

Please modify subsection (b) so that it reads as follows: **THE CONTRACTOR WILL BE LIABLE FOR DIRECT DAMAGES DUE THE FAULT OR NEGLIGENCE OF THE CONTRACTOR OR ITS BREACH OF ANY PROVISION OF THIS CONTRACT IN AN AMOUNT NOT TO EXCEED FIVE TIMES THE VALUE OF THIS CONTRACT OR \$10,000,000, WHICHEVER IS GREATER.**

I. SECTION 8: MAINTENANCE

Section 8.1: SOFTWARE MAINTENANCE

Please delete paragraphs 2, 3 and 4 [including subsections (a)-(c)] and 5 of Section 8.1. In substitution, please add the following language:

“Continuous Coverage Product Maintenance (CCPM) shall be provided by Contractor for the Products listed on a mutually agreed Maintenance Schedule, as agreed to by the parties. Time and Materials Service’s Rates are attached hereto as Exhibit 4, and shall apply to any maintenance type services provided by Contractor to the State that are not covered by CCPM.”

“For Equipment and Software, CCPM consists of the services and content applicable thereto as specified in the state term schedule, which may generally include (i) maintaining such in good operating condition in conformance with Contractor’s applicable specifications (including on-site remedial maintenance and installation of engineering changes when deemed necessary by Contractor); (ii) providing English-language help line service (via telephone or other electronic media), Software Releases and documentation updates, as they become available all in accordance with the state term schedule and options selected by The State if applicable; and (iii) replacing Software media provided by Contractor if the media becomes destroyed or unusable through no fault or negligence of the State, but does not include Equipment upgrades, if any, needed to utilize features or functionality in a Software Release. Contractor may change the scope of CCPM upon execution of an amendment signed by both parties.”

“Response Times – Contractor shall use reasonable efforts to provide a telephone response, when applicable to the Product and selected service level, to requests for CCPM within the time period option stated in the state term schedule after receipt of such request. When Contractor determines that the request requires an on-site response, Contractor shall use reasonable efforts to arrive at the Installation Site (if located within an EMC Service Area) within the time period stated in the state term schedule for the service level selected by The State after Contractor makes such determination.”

“The State Responsibilities - The State shall (i) notify Contractor when Products fail; (ii) allow Contractor access to any Product to perform Product Maintenance or implement the terms of this Agreement; (iii) furnish necessary facilities (suitable work space, computers, power, light, phone, software and equipment reasonably required by Contractor); and (iv) promptly notify Contractor of any changes to, or movement of, the configuration by anyone other than Contractor. Contractor reserves the right to inspect and evaluate the changes in configuration or location at Contractor’s Time and Materials Service’s Rates, which are attached hereto as Exhibit 4. Additional CCPM charges, provided in a Maintenance Schedule, if applicable, related to any such changes in configuration or location, shall apply from the date the change took place. The State shall fulfill the responsibilities described in this sub-section promptly at no charge to Contractor.”

“Support Contacts - The State shall designate in writing a reasonable number of authorized contacts, as determined by the State and Contractor, who shall initially report problems and receive support from Contractor. Each State representative shall be familiar with the State’s requirements and shall have the expertise and capabilities necessary to permit Contractor to complete its obligations. A change to the authorized Support Contacts by the State must be submitted in writing to Contractor by a duly authorized representative of the State.” Each agency and political subdivision may have multiple contacts.

Please delete Section 8.2 Software Upgrades in its entirety and replace it with the following language: "After an initial acquisition of a license in Commercial Software, the State may want to purchase a broader license than the original. Subject to the agreed-to payment terms between the parties, the State may seek to negotiate to purchase such broader license."

SECTION 8.3 EQUIPMENT MAINTENANCE

The first paragraph shall remain intact. With respect to subsections (a)-(e); however, please note that Contractor understands that subsection (b)-(e) are appropriately outside the scope of the Agreement; however, with respect to (a), Contractor states that such obligations would normally fall within the scope of maintenance that we provide. Therefore, please delete subsection (a).

SECTION 8.4 EQUIPMENT MAINTENANCE STANDARDS

Please delete this paragraph in its entirety save for the last sentence which shall remain intact.

In its place, please insert the following language:

A) "Response Times – Contractor shall use reasonable efforts to provide a telephone response, when applicable to the Product and selected service level, to requests for CCPM within the time period stated in the state term schedule after receipt of such request. When Contractor determines that the request requires an on-site response, Contractor shall use reasonable efforts to arrive at the Installation Site (if located within an EMC Service Area) within the time period stated in the state term schedule for the service level selected by the State." See Exhibit 3.

B) Exclusions and Limitations –(for equipment) CCPM does not include services required or efforts to remedy, repair or replace Products as a result of (i) accident or neglect or causes not attributable to normal wear and tear; (ii) problems relating to or residing in other hardware, software or services with which the Products are used; (iii) installation of the Products not in accordance with Contractor's instructions or their specifications; (iv) use of the Products in an environment, in a manner or for a purpose for which they were not designed; and (v) installation, modification, alteration or repair of the Equipment or the Software by anyone other than Contractor or its authorized representatives. EMC will have no CCPM obligations whatsoever with respect to Equipment that has been moved without EMC's consent, which will not be unreasonably withheld, Software which is installed on hardware other than Equipment, Host CPU, network, or device for which it was licensed, or Equipment or Software on which the original identification marks have been removed or altered. CCPM does not apply to any Software Release other than the current and immediately prior Software Release, but Contractor may, in its discretion, make available support therefor as a Time and Materials Service."

C) Re-Instatement of Continuous Coverage – If Maintenance has lapsed or been discontinued, The State may request re-instatement thereof by retaining Contractor under a Time and Materials Service engagement, for which a quotation for such service will be provided to the State in advance of such service, to perform an inspection and determine what steps, if any, are needed to restore the applicable Products to proper operating condition. Once so restored, such Products shall be certified by Contractor and qualify for re-instatement of Continuous Coverage upon payment to Contractor of the greater of: (i) the charge for the above described Time and Materials Service, at the rates as shown in Exhibit 4; or (ii) fifty percent (50%) of the amount EMC would have normally charged had Maintenance been in effect during the period of the lapse or discontinuation; and (iii) the pro-rated Maintenance fee for the remainder of the State's current fiscal period provided on a quotation to the State.

8.9 Pricing – The initial CCPM fee, warranty upgrade fees, maintenance upgrade fees, and affected configuration shall be set forth on the applicable Schedule. For a period of 3 years from the Effective date of this Agreement, EMC agrees to cap maintenance increases at five percent (5%) per year provided that the State has not exceeded their current licensed number of units; or added upgrades to the original configurations. Additions to such configuration may result in additional CCPM fees. EMC may implement price changes affecting the CCPM fees no more than once per calendar year by sending Customer notice thereof. Such price changes shall not take effect until the latter of (i) sixty (60) days after the date the notice is issued; or (ii) the expiration of the pre-payment period, if any. Customer shall also pay supplementary amounts (surcharges and/or time and materials charges) invoiced by EMC for EMC's performance of : (a) refurbishment services; (b) installation of Products designated by EMC as customer installable; (c) installation or configuration of Enterprise Storage Software provided under this Agreement; and/or (d) configuration changes. If EMC commences work pursuant to CCPM and subsequently determines that an exclusion or limitations (as set forth in 8.4 above) applies, the work shall be deemed Time and Materials Service and work shall be suspended until such time that the Parties meet and negotiate such Services and associated Fees in accordance with Exhibit 4.

Please add the following Term:

Assignment Rights Herein. The Parties agree that the authorized Ohio State agencies herein may reasonably assign or transfer procured products upon 30 day-prior written notice to EMC. In the event that the acquiring agency assumes payment for Support of said products, then such agency shall within 30 days of such transfer or assignment, execute a mutually-agreed upon Maintenance Schedule with EMC. Upon written notice of intent to transfer, EMC will terminate such Maintenance Schedule for the applicable Schedule (of the originating agency) effective of the date of receipt of written notice. Notwithstanding the above, EMC agrees that such agencies, may in order to fulfill Federal Fund obligations, need an additional copy of licensed software which EMC shall not unreasonably withhold in order for the agency to fulfill such obligation..

Agreed to:

STATE OF OHIO

By: [Signature]

Name: _____

Date: 8-21-08

EMC CORPORATION

By: Chantal Lyon

Name: Chantal vanLede Lyon
Managing Counsel
Business Law Group

Date: 8.14.08

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08-14-08

EMC
CONTRACTS
APPROVED

The table below sets forth EMC Product-specific warranty and maintenance terms and information. Each Product identified as Equipment also includes its related Core Software. Any software, excluding Core Software that is not specifically identified on this table is governed by the terms stated at the row entitled "Software."

EMC recommends that you locate Products on the following table by simultaneously pressing the "Control" key and the letter "f" key to activate the "Find" feature, and then typing in the name of the applicable Product.

Exhibit 3

Product	Period and Support Option	Media Replacement	Installation	Warranty Level	Installation of subsequent Software Releases	Power Supply, Disk Drives
AlphaStor Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium, Enhanced	Installation of subsequent Software Releases	None
ApplicationXtender Family Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium, Enhanced	Installation of subsequent Software Releases	None
Autograph Family Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Basic	Installation of subsequent Software Releases	None
AutoStart Family Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium, Enhanced	Installation of subsequent Software Releases	None
AutoSwap Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium	Installation of subsequent Software Releases	None
AVALONidm Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium, Enhanced	Installation of subsequent Software Releases	None
Avamar Data Store	2 years; Enhanced	Not Applicable	Performed by Customer or may be available for separate purchase	Enhanced	Replacement of the designated CRUs	Power Supply, Disk Drives
Avamar Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Enhanced	Installation of subsequent Software Releases	None

Back-up Manager for SharePoint Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium, Enhanced	Installation of subsequent Software Releases	None
Blade Logic Brand Software	No longer available for sale. Maintenance only.	Not Applicable	Performed by Customer or may be available for separate purchase	Premium, Enhanced,	Installation of subsequent Software Releases r	None
Capliva Family Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium, Enhanced, Basic	Installation of subsequent Software Releases	None
Catalog Solution Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium	Installation of subsequent Software Releases	None
Celerra Family Equipment (excluding NS 20)	2 Years; Premium	Not Applicable	Performed by EMC and included in Product Purchase	Premium	None	None
Celerra NS20 Equipment	3 Years, Enhanced	Premium	Performed by Customer or may be available for separate purchase	Premium, Enhanced	Replacement of designated CRUs. Installation of NS20 Core Software and system based Software Releases.	Power supplies, fans, Small Form-Factor Pluggable Transceivers and disk drives per approval of Disk Replacement Utility (DRU) tool
CLARIION AX100 and AX150 Equipment	1 year; Basic	Enhanced	Performed by Customer or may be available for separate purchase	Enhanced, Basic	Replacement of designated CRUs. Installation of AX100 and AX150 Core Software and system based Software Releases.	All components
CLARIION AX100i, 150/150i-EMC Insignia Equipment	1 year; Basic	Enhanced	Performed by Customer or may be available for separate purchase	Enhanced, Basic	Replacement of designated CRUs. Installation of AX100i and 150/AX150i Core Software and system based Software Releases.	All components
CLARIION AX4 series Equipment	3 Years; Enhanced	Premium	Performed by Customer or may be available for separate purchase	Premium, Enhanced	Replacement of designated CRUs. Installation of AX4 Core Software and system based Software Releases.	All components
CLARIION CX200 Equipment	No longer available for sale. Maintenance only.	Not Applicable	Performed by EMC and included in Product Purchase	Premium	None	None
CLARIION CX300 Equipment	2 Years; Premium	Not Applicable	Performed by Customer or may be available for separate purchase	Premium, Enhanced	Replacement of designated CRUs.	Disk drives
CLARIION CX400/600 Equipment	No longer available for sale. Maintenance only.	Not Applicable	Performed by EMC and included in Product Purchase	Premium	None	None
CLARIION CX500/700 Equipment	No longer available for sale. Maintenance only.	Not Applicable	Performed by Customer or may be available for separate purchase	Premium, Enhanced	Replacement of designated CRUs.	Disk drives
CLARIION CX3-series Equipment	3 Years; Enhanced	Premium	Performed by Customer or may be available for separate purchase	Premium, Enhanced	Replacement of designated CRUs. Installation of CX3-Series Core Software	Power supply, cooling units, Small Form Factor Pluggable Transceivers, disk

					and system based Software Releases.	drives per approval of Disk Replacement Utility (DRU) tool
CLARiiON FC45xx/4700/4700-2 Equipment	No longer available for sale. Maintenance only.	Not Applicable	Performed by EMC and included in Product Purchase	Premium	None	None
Connectrix Family Equipment	2 Years; Premium	Not Applicable	Performed by EMC and included in Product Purchase	Premium	None	None
CopyPoint software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium	Installation of subsequent Software Releases	None
DatabaseXtender Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium, Enhanced	Installation of subsequent Software Releases r	None
DiskXtender Family Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium, Enhanced	Installation of subsequent Software Releases	None
Documentum Family Software (except ApplicationXtender)	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium, Enhanced, Basic	Installation of subsequent Software Releases	None
EmailXtender Family Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium, Enhanced	Installation of subsequent Software Releases	None
EMC Backup Advisor Family Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium, Enhanced	Installation of subsequent Software Releases	None
EMC Centera Family Equipment	2 Years, Enhanced	Premium	Performed by EMC and included in Product Purchase	Premium, Enhanced	Resetting of modems and nodes	None
EMC ControlCenter Family Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option		Performed by Customer or may be available for separate purchase	Premium	Installation of subsequent Software Releases	None
EMC Disk Library Family Equipment	2 years; Premium	Not Applicable	Performed by EMC and included in Product Purchase	Premium	None	None
EMC Geographically Dispersed Disaster Restart Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium	Installation of subsequent Software Releases	None
EMC IT Compliance Analyzer-Application Addition Equipment	No longer available for sale. Maintenance only.	Not Applicable	Performed by Customer or may be available for separate purchase	Premium, Basic	Installation of subsequent Software Releases	None
EMC Rainlicity Appliance Equipment	1 year; Enhanced	Premium (applies only to qualifying models specified by EMC in the product quote)	Performed by Customer or may be available for separate purchase	Enhanced, Premium (applies only to qualifying models specified by EMC in the maintenance quote)	Replacement of the designated CRUs Installation of subsequent Software Releases	Disk drives and power supply

EMC Rainfinity Appliance Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Enhanced, Premium (applies only to qualifying models specified by EMC in the maintenance quote)	Installation of subsequent Software Releases	
EMC Smarts Application Discovery Manager Appliance Equipment (nLayers)	1 year; Enhanced	Not Applicable	Performed by Customer or may be available for separate purchase	Enhanced	Installation of subsequent Software Releases	None
EMC Smarts Application Discovery Manager Appliance Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium, Basic	Installation of subsequent Software Releases	None
EMC Smarts Family Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium, Basic	Installation of subsequent Software Releases	None
EMC Voyence Family Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium, Basic	Installation of subsequent Software Releases	None
eRoom software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium, Enhanced, Basic	Installation of subsequent Software Releases	None
HomeBase Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Enhanced	Installation of subsequent Software Releases	None
InfoMover	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium	Installation of subsequent Software Releases	None
Informative Graphics Brava WebKit Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium, Enhanced, Basic	Installation of subsequent Software Releases	None
Invista Equipment	2 Years; Premium	Not Applicable	Performed by EMC and included in Product Purchase	Premium	None	None
IT Compliance Analyzer Application Edition Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium, Basic	Installation of subsequent Software Releases	None
IT Performance Reporter Network Edition Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium, Basic	Installation of subsequent Software Releases	None
IT Process Centre Request Management Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium, Basic	Installation of subsequent Software Releases	None

Kofax Ascent Capture Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Enhanced	Installation of subsequent Software Releases	None
Mirror/View Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium	Installation of subsequent Software Releases	None
Navisphere Family Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium	Installation of subsequent Software Releases	None
NetWin 110 Equipment	No longer available for sale. Maintenance only.	Not Applicable	Performed by Customer or may be available for separate purchase	Support level as identified at <u>EMC Product Maintenance NetWin 110</u>	Replacement of the designated CRU.	All components
NetWin 200 Equipment	No longer available for sale. Maintenance only.	Not Applicable	Performed by Customer or may be available for separate purchase	Support level as identified at <u>EMC Product Maintenance NetWin 200</u>	Replacement of the designated CRU.	All components
NetWorker Family Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium, Enhanced	Installation of subsequent Software Releases	None
Open Migrator/LM Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium	Installation of subsequent Software Releases	None
Open Replicator For Symmetrix Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium	Installation of subsequent Software Releases	None
Performance Essential	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium	Installation of subsequent Software Releases	None
PowerPath Family Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium	Installation of subsequent Software Releases	None
RecoverPoint Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Strongly recommended for separate purchase by Customer from EMC	Premium and includes installation of subsequent Software releases by EMC	None	None
RecoverPoint Equipment	1 year; Premium	Not Applicable	Strongly recommended for separate purchase by Customer from EMC	Premium and includes installation of subsequent Core Software releases by EMC	None	None
Replication Manager Software	90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium	Installation of subsequent Software Releases	None

RepliStor Software	90 days: defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium, Enhanced	Installation of subsequent Software Releases	None
SAN Copy Software	90 days: defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium	Installation of subsequent Software Releases	None
SnapView Software	90 days: defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium	Installation of subsequent Software Releases	None
Software (Application, Enhanced Feature and/or Enterprise Storage Software, but excluding Core Software) not listed with its own warranty or maintenance Support Options on this table	90 days: defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium	Installation of subsequent Software Releases	None
SRDF Family Software	90 days: defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium	Installation of subsequent Software Releases	None
Symmetrix Family Equipment	2 Years; Premium	Not Applicable	Performed by EMC and Included in Product Purchase	Premium	None	None
Symmetrix Management Console Software	90 days: defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium	Installation of subsequent Software Releases	None
Symmetrix Manager Software	90 days: defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium	Installation of subsequent Software Releases	None
Symmetrix Optimizer Software	90 days: defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium	Installation of subsequent Software Releases	None
Telestream Flip Factory Software	90 days: defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium, Enhanced, Basic	Installation of subsequent Software Releases	None
TeraSAM Software	90 days: defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium	Installation of subsequent Software Releases	None
TimeFinder Family Software	90 days: defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium	Installation of subsequent Software Releases	None
ViewPoint Software for SAP	90 days: defective media replacement - Support during warranty available with purchase	Not Applicable	Performed by Customer or may be available for separate purchase	Premium, Enhanced,	Installation of subsequent Software Releases	None

	of a maintenance support option					
VisualSRM Software	90 days: defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium	Installation of subsequent Software Releases	None
VSAM Assist Software	90 days: defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium	Installation of subsequent Software Releases	None
Web Publisher Portlets Software	90 days: defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium, Enhanced, Basic	Installation of subsequent Software Releases	None
Woodwing Smart Connection Enterprise Software	90 days: defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium, Enhanced, Basic	Installation of subsequent Software Releases	None
X-Hive Family Software	90 days: defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Enhanced, Basic	Installation of subsequent Software Releases	None
xPression Family Software	90 days: defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Enhanced, Basic	Installation of subsequent Software Releases	None
z/OS Storage Manager Software	90 days: defective media replacement - Support during warranty available with purchase of a maintenance support option	Not Applicable	Performed by Customer or may be available for separate purchase	Premium	Installation of subsequent Software Releases	None

1. Customer-Performed Tasks:

Customer-Performed Tasks are product support tasks that Customer is authorized by EMC to perform and will not be performed by EMC as part of the Product warranty or maintenance. EMC will provide diagnostic tools and documentation to enable Customer to perform replacement of designated CRUs and other service tasks.

2. Customer Replaceable Units (CRUs):

CRUs are specific assemblies, components or individual parts of designated EMC equipment that Customer is authorized by EMC to self-replace. In the event of a failure or technical issue, Customer may remove and replace a CRU by using EMC provided diagnostic tools and/or documentation. Assemblies or components not designated as CRUs must be serviced and/or replaced by EMC or an EMC authorized service partner.

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The following chart lists the service features of Premium Support provided under EMC's warranty and/or maintenance terms.

Premium Support is available as to:

1. EMC Equipment (including its related Core Software) which is identified on the EMC Product Warranty and Maintenance Table as
 - including Premium Support during the applicable warranty period; or
 - eligible for upgrade to Premium Support during the applicable warranty period; or
 - eligible for Premium Support during a subsequent maintenance period.
2. EMC Software (other than Core Software) which is identified on the EMC Product Warranty and Maintenance Table as eligible for Premium Support during a maintenance period.

Exhibit 3

Service Feature	Description	Premium Support Coverage Details
	Customer may contact EMC by telephone or web interface on a 7x24 basis to report an Equipment, Core Software, or other Software problem and provide input for initial assessment of Severity Level*. EMC provides (i) a technical response by remote means based on the Severity Level of the problem; or (ii) when deemed necessary by EMC, onsite support as described below	Included. Initial technical response objective, based upon Severity Level, within the following time period after receipt of Customer contact: Severity Level 1: 30 minutes; on a 7x24 basis Severity Level 2: 2 hours; on a 7x24 basis Severity Level 3: 3 local business hours Severity Level 4: 8 local business hours
	EMC sends authorized personnel to installation site to work on the problem after EMC has isolated the problem and deemed onsite support necessary.	Included for Equipment and Core Software only. Onsite support response objective is 4 hours after EMC deems onsite support is necessary on a 7x24 basis. Onsite support does not apply to Software, but may be separately purchased.
	EMC provides replacement parts when deemed necessary by EMC.	Included. Installation of all replacement parts performed by EMC as part of onsite support, but Customer has option to perform installation of Customer Replaceable Units (CRUs). See <u>EMC Product Warranty and Maintenance Table</u> for listing of parts designated as CRUs for specific Equipment. If EMC installs the replacement part, EMC will arrange for its return to an EMC facility. If Customer installs the CRU, Customer is responsible for returning the replaced CRU to a facility designated by EMC.
	EMC provides new releases of Core Software as available.	Included. EMC will perform the installation of new releases of Core Software.
	EMC provides new releases as available.	Included.

Feature Coverage by existing Core Servers		Customer will perform installation unless otherwise deemed necessary by EMC.
Remote Technical Support (Powerlink Support)	Certain EMC products will automatically and independently contact EMC to provide input to assist EMC in problem determination. EMC will remotely access products if necessary for additional diagnostics and to provide remote technical support.	Included for products which have remote monitoring tools and technology available from EMC. Once EMC is notified of a problem, the same response objectives for Remote Technical Support and Onsite Support will apply that would if Customer had called or e-mailed EMC.
	Customers that have properly registered have access on a 7X24 basis to EMC's web based customer support tools via EMC Powerlink website.	Included.

* Severity Levels:

- **Severity 1 – Critical:** Severe problem preventing customer or workgroup from performing critical business functions.
- **Severity 2 – High:** Customer or workgroup able to perform job function, but performance of job function degraded or severely limited.
- **Severity 3 – Medium:** Customer or workgroup performance of job function is largely unaffected.
- **Severity 4 – Request:** Minimal system impact; includes feature requests and other non-critical questions.

The warranty periods and support options ("EMC Support Information") on this website apply (i) only between EMC and those organizations that procure the applicable products and/or maintenance under a contract directly with EMC (the "EMC Customer"); and (ii) only to those products or support options ordered by the EMC Customer at the time that the EMC Support Information is current. EMC may change the EMC Support Information at any time. The EMC Customer will be notified of any change in the EMC Support Information in the manner stated in the then current product ordering and/or maintenance related agreement between EMC and the EMC Customer, but any such change shall not apply to products or support options ordered by the EMC Customer prior to the date of such change.

Products or services obtained from any EMC reseller are governed solely by the agreement between the purchaser and the reseller. That agreement may provide terms that are the same as the EMC Support Information on this website. The reseller may make arrangements with EMC to perform warranty and/or maintenance services for the purchaser on behalf of the reseller. Please contact the reseller or the local EMC sales representative for additional information on EMC's performance of warranty and maintenance services on Products obtained from a reseller.

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The following chart lists the service features of Enhanced Support provided under EMC's warranty and/or maintenance terms.

Enhanced Support is available as to:

1. EMC Equipment (including its related Core Software) which is identified on the EMC Product Warranty and Maintenance Table as
 - including Enhanced Support during the applicable warranty period; or
 - eligible for upgrade to Enhanced Support during the applicable warranty period; or
 - eligible for Enhanced Support during a subsequent maintenance period.
2. EMC Software (other than Core Software) which is identified on the EMC Product Warranty and Maintenance Table as eligible for Enhanced Support during a maintenance period.

Exhibit 3

Service Feature	Description	Enhanced Support - Coverage Details
	Customer may contact EMC by telephone or web interface on a 7X24 basis to report an Equipment, Core Software, or other Software problem and provide input for initial assessment of Severity Level [®] . EMC provides (i) a technical response by remote means based on the Severity Level of the problem; or, (ii) when deemed necessary by EMC, onsite support as described below.	<p>Included.</p> <p>Initial technical response objective, based upon Severity Level, within the following time period after receipt of Customer contact:</p> <p>Severity Level 1: 1 hour; on a 7X24 basis Severity Level 2: 3 hours; on a 7X24 basis Severity Level 3: 4 local business hours Severity Level 4: 10 local business hours</p>
	EMC sends authorized personnel to installation site to work on the problem after EMC has isolated the problem and deemed onsite support necessary.	<p>Included for Equipment and Core Software only.</p> <p>Onsite support response objective is next local business day, on a 5X9 basis, after EMC deems onsite support is necessary.</p> <p>Arrival of support personnel onsite is dependent upon onsite arrival of any necessary replacement parts.</p> <p>Onsite support does not apply to Software, but may be separately purchased.</p>
	EMC provides replacement parts when deemed necessary by EMC.	<p>Included.</p> <p>Installation of Customer Replaceable Units (CRUs) performed by Customer. Refer to <u>Product Maintenance table</u> for listing of parts designated as CRUs.</p> <p>Installation of all other non-CRU parts performed by EMC.</p> <p>Replacement parts will be shipped to Customer for next local business day arrival. Local country shipment cut-off times may impact the no later than next local business day delivery of replacement parts and the related Onsite Support.</p> <p>If EMC installs the replacement part, EMC will arrange for its return to an EMC facility. If Customer installs the CRU, Customer is responsible for returning the replaced CRU to a</p>

		facility designated by EMC.
Core Software Installation	EMC provides new releases of Core Software as available.	Included. Customer will perform the installation of new releases of Core Software, unless deemed necessary by EMC.
EMC Products	EMC provides new releases as available.	Included. Customer will perform installation unless otherwise deemed necessary by EMC.
	Certain EMC products installed at Customer site will automatically and independently contact EMC to provide input to assist EMC in problem determination. EMC will remotely access products if necessary for additional diagnostics and to provide remote technical support.	Included for products which have remote monitoring tools and technology available from EMC. Once EMC is notified of a problem, the same response objectives for Remote Technical support and Onsite support will apply that would if Customer had called or e-mailed EMC.
	Customers that have properly registered have access on a 7X24 basis to EMC's web based customer support tools via EMC Powerlink website.	Included.

***Severity Levels:**

- **Severity 1 – Critical:** Severe problem preventing customer or workgroup from performing critical business functions.
- **Severity 2 – High:** Customer or workgroup able to perform job function, but performance of job function degraded or severely limited.
- **Severity 3 – Medium:** Customer or workgroup performance of job function is largely unaffected.
- **Severity 4 – Request:** Minimal system impact; includes feature requests and other non-critical questions

The warranty periods and support options ("EMC Support Information") on this website apply (i) only between EMC and those organizations that procure the applicable products and/or maintenance under a contract directly with EMC (the "EMC Customer"); and (ii) only to those products or support options ordered by the EMC Customer at the time that the EMC Support Information is current. EMC may change the EMC Support Information at any time. The EMC Customer will be notified of any change in the EMC Support Information in the manner stated in the then current product ordering and/or maintenance related agreement between EMC and the EMC Customer, but any such change shall not apply to products or support options ordered by the EMC Customer prior to the date of such change.

Products or services obtained from any EMC reseller are governed solely by the agreement between the purchaser and the reseller. That agreement may provide terms that are the same as the EMC Support Information on this website. The reseller may make arrangements with EMC to perform warranty and/or maintenance services for the purchaser on behalf of the reseller. Please contact the reseller or the local EMC sales representative for additional information on EMC's performance of warranty and maintenance services on Products obtained from a reseller.

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The following chart lists the service features of Basic Support provided under EMC's standard warranty and/or maintenance terms.

Basic Support is available as to:

1. EMC Equipment (including its related Core Software) which is identified on the EMC Product Warranty and Maintenance Table as
 - including Basic Support during the applicable warranty period; or
 - eligible for Basic Support during a subsequent maintenance period.
2. EMC Software (other than Core Software) which is identified on the EMC Product Warranty and Maintenance Table as eligible for Basic Support during a maintenance period.

Exhibit 3

Service Feature	Description	Basic Support Coverage
	Customer may contact EMC by telephone or web interface 7X24 to report an Equipment, Core Software, or other Software problem and provide input for initial assessment of Severity Level*. EMC provides (i) a technical response by remote means based on the Severity Level of the problem, or, (ii) when deemed necessary by EMC, onsite support as described below	Included. Initial technical response objective, based upon Severity Level, within the following time period after receipt of Customer contact:: Severity Level 1: 2 local business hours; on a 5X9 basis Severity Level 2: 4 local business hours; on a 5X9 basis Severity Level 3: 8 local business hours; on a 5X9 basis Severity Level 4: 12 local business hours; on a 5X9 basis
	EMC sends authorized personnel to installation site to work on the problem after EMC has isolated the problem and deemed onsite support necessary.	Not included. Available for purchase.
	EMC provides replacement parts when deemed necessary by EMC.	Included. Installation of all replacement parts performed by Customer. Replacement parts will be shipped to Customer for Next local business day arrival. Local country shipment cut-off times may impact the no later than next local business day delivery of replacement parts. Customer is responsible for returning all replaced parts to a facility designated by EMC.
	EMC provides new releases of Core Software as available.	Included. Customer will perform the installation of new releases of Core Software, unless deemed necessary by EMC.
	EMC provides new releases as available.	Included. Customer will perform installation unless otherwise deemed necessary by EMC.
	Certain EMC products installed at Customer site will automatically and independently contact EMC to provide input to assist EMC in problem determination. EMC will remotely access product if necessary for additional diagnostics and to provide remote technical support.	Not included.
	Customers that have properly registered have access on a 7X24 basis to EMC's web based customer support tools via EMC Powerlink website.	Included.

***Severity Levels:**

- **Severity 1 – Critical:** Severe problem preventing customer or workgroup from performing critical business functions.
- **Severity 2 – High:** Customer or workgroup able to perform job function, but performance of job function degraded or severely limited.
- **Severity 3 – Medium:** Customer or workgroup performance of job function is largely unaffected.
- **Severity 4 – Request:** Minimal system impact; includes feature requests and other non-critical questions

The warranty periods and support options ("EMC Support Information") on this website apply (i) only between EMC and those organizations that procure the applicable products and/or maintenance under a contract directly with EMC (the "EMC Customer"); and (ii) only to those products or support options ordered by the EMC Customer at the time that the EMC Support Information is current. EMC may change the EMC Support Information at any time. The EMC Customer will be notified of any change in the EMC Support Information in the manner stated in the then current product ordering and/or maintenance related agreement between EMC and the EMC Customer, but any such change shall not apply to products or support options ordered by the EMC Customer prior to the date of such change.

Products or services obtained from any EMC reseller are governed solely by the agreement between the purchaser and the reseller. That agreement may provide terms that are the same as the EMC Support Information on this website. The reseller may make arrangements with EMC to perform warranty and/or maintenance services for the purchaser on behalf of the reseller. Please contact the reseller or the local EMC sales representative for additional information on EMC's performance of warranty and maintenance services on Products obtained from a reseller.

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H4272.1

Rev. March 28, 2008

TIME AND MATERIALS RATES
EXHIBIT 4

Last Update: February 25, 2008 (Version 10)

Business Hours = M-F 8:00am-5:00pm
local time, excluding holidays

Please see Business Rules

	FIELD Support		REMOTE PREMI support (not CCA)	
	Contracted	Non-Contracted	Contracted	Non-Contracted
Hourly Rate - Business Hours	\$241	\$241	\$281	\$281
Hourly Rate - After Hours	\$320	\$320	\$373	\$373
Hourly Rate - Holiday & Weekend	\$320	\$320	\$373	\$373
Additional Non-Contract Fee	none	\$1,500	none	\$1,500
Minimum Onsite Hours Billed	3	3	NA	NA

System	Business Hours		After Hours		EMC SW	EMC SW	Data Fee	Data Fee	Business Hours	After Hrs	W/ Contract	W/ Contract	W/ Contract	Blk Hrs	After Hrs	Remarks
	Biz Hrs	After Hrs	Biz Hrs	After Hrs												
31XX/51XX																31XX/51XX
32XX/52XX																32XX/52XX
33XX/53XX																33XX/53XX
34XX/54XX																34XX/54XX
35XX/55XX																35XX/55XX
36XX/56XX																36XX/56XX
37XX/57XX																37XX/57XX
38XX/58XX																38XX/58XX
39XX/59XX																39XX/59XX
40XX																40XX
DMX/60/60/1																DMX/60/60/1
DMX/1000																DMX/1000
DMX/2000																DMX/2000
DMX/3000																DMX/3000
DMX/3700X-4																DMX/3700X-4
(3 bay)																(3 bay)
+ additional bay																+ additional bay
System Disk Library																System Disk Library
CLARION																CLARION
CX200																CX200
CX300, CX3-10																CX300, CX3-10
CX400																CX400
CX500, CX3-20																CX500, CX3-20
CX600																CX600
CX700, CX3-40																CX700, CX3-40
FC/CP XXX																FC/CP XXX
CX3-60																CX3-60
CLARION Disk Library																CLARION Disk Library
DAE upg																DAE upg
DAE upg																DAE upg
Disk upg																Disk upg
Centers																Centers
Centers																Centers
Connectix																Connectix
Switches																Switches
HBA																HBA
EDM																EDM

CONTRACTOR

BY: Chantal Lyon
Chantal vanLebe Lyon
Managing Counsel
Business Law Group

DATE: 8.14.08

STATE OF OHIO,
OFFICE OF INFORMATION TECHNOLOGY

BY: [Signature]
R. STEVE EDMONSON
DIRECTOR, OFFICE OF INFORMATION TECHNOLOGY
STATE CHIEF INFORMATION OFFICER

DATE: 8-21-08

EMC
CONTRACTS
APPROVED
(566) 08-14-08

