

## STATE TERM CONTRACT

THIS CONTRACT ("Contract") is between the State of Ohio ("State"), through its Department of Administrative Services, General Services Division, at 4200 Surface Road, Columbus, Ohio, 43228 and IMMIXTECHNOLOGY, INC. ("Contractor"), with offices at 8444 WESTPARK DRIVE, SUITE 200, MCLEAN, VIRGINIA, 22102.

### 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 June 30, 2013. Termination or expiration of this Contract will not limit the Contractor's continuing obligations with respect to Deliverables that the State paid for before termination or limit the State's rights in such.
- 1.2 **CONTRACT RENEWAL.** In the State's sole discretion, it may renew this Contract for a period of one month at the end of each biennium during which this Contract remains in place. Any further renewals will be only by written agreement between the State and the Contractor. Such renewals may be for any number of times for any period not to exceed the time remaining in the State's then-current biennium.

#### 2 - PRICING AND PAYMENT

- 2.1 **CERTIFICATION OF ACCURACY.** By checking one of the following three items, the Contractor certifies that the Contractor's prices under this Contract are:
- X The prices at which the Contractor currently offers each product and service to the US Government under the GSA's Multiple Award Schedule program;  
The prices at which the Contractor currently offers each product and service to the US Government under the GSA's SmartBuy program; or

The best prices at which the Contractor has offered each product and service to its most favored customers within one year before the date the Contractor executed this Contract or adds the product or service to this Contract, whichever is later.

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

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

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

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

If the Contractor has relied on its 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:

ITECH-OHIO STS PL-01.23.2012.XLS

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.

- a. Commercial Automobile Liability insurance with a combined single limit of \$500,000.
- b. Professional Liability insurance covering all staff with a minimum limit of \$1,000,000 per incident and \$3,000,000 aggregate. If the Contractor's policy is written on a "claims made" basis, the Contractor must provide the State with proof of continuous coverage at the time the policy is renewed. If for any reason the policy expires, or coverage is terminated, the Contractor must purchase and maintain "tail" coverage through the applicable statute of limitations.

All certificates must be in a form that is reasonably satisfactory to the State as to the contents of the policies and the quality of the insurance carriers. All carriers must have at least an "A-" rating by A.M. Best.

- 3.4 **CONTRACT COMPLIANCE.** Any State agency that uses this Contract will be responsible for the administration of this Contract with respect to the orders that it places and may monitor the Contractor's performance and compliance with this Contract. If an agency becomes aware of any noncompliance with the terms of this Contract or the specifications of an order, the agency may document the noncompliance and give the Contractor written notice of the noncompliance for immediate correction. If the Contractor fails to cure the noncompliance, the agency may notify the State through the Department of Administrative Services, Office of State Purchasing, by executing a Complaint to Vendor form to help resolve the issue. Should the State determine that the form identifies an uncured breach of this Contract, the State may terminate this Contract and seek such other remedies as may be available to it.
- 3.5 **POLITICAL SUBDIVISIONS.** Ohio political subdivisions, such as Ohio cities, counties, and townships ("Political Subdivisions"), may rely on this Contract. Whenever a Political Subdivision relies on this Contract to issue a purchase order, the Political Subdivision will step into the shoes of the State under this Contract for purposes of its order, and, as to the Political Subdivision's order, this Contract will be between the Contractor and the Political Subdivision. The Contractor must look solely to the Political Subdivision for performance, including but not limited to payment, and must hold the State harmless with regard to such orders and the Political Subdivision's performance. But the State will have the right to terminate this Contract and seek such remedies on termination as this Contract provides should the Contractor fail to honor its obligations under an order from a Political Subdivision. Nothing in this Contract requires the Contractor to accept an order from a Political Subdivision, if the Contractor reasonably believes that the Political Subdivision is or will be unable to perform its obligations in relation to that order.
- 3.6 **RECALLS.** If a Deliverable is recalled, seized, or embargoed, or if the Contractor, a manufacturer, packer, processor, or regulatory body finds that a Deliverable has been misbranded, adulterated, or is unsafe, the Contractor must notify the State, through the Department of Administrative Services, Office of State Purchasing, as well as all agencies that have ordered the Deliverable, within ten business days after the Contractor learns of any of the above events. At the option of the State, the Contractor must either reimburse the State for the purchase price of each affected Deliverable or provide an equal or better replacement for each Deliverable at no additional cost to the State. The Contractor also must remove and replace all affected Deliverables within a reasonable time, as determined by the State. Further, at the option of the State, the Contractor may be required to reimburse the State for storage costs and handling fees, which the State may calculate from the time of delivery of each affected Deliverable to the Deliverable's actual removal. Furthermore, the Contractor must bear all costs associated with the removal and proper disposal of the affected Deliverables. The State will treat any failure to refund the purchase price or provide a suitable replacement within a reasonable time, not to exceed 30 days, as a default.
- 3.7 **TERMINATION.** The State may terminate this Contract or any order under this Contract if the Contractor defaults in meeting its obligations and fails to timely cure its default. The State also may terminate this Contract or any order under it if a petition in bankruptcy is filed by or against the Contractor and not dismissed within 60 days. And the State may terminate this Contract or any order under it if the Contractor violates any law or regulation while performing under this Contract or if it appears to the State that the Contractor's performance is substantially endangered through no fault of the State. In all of the foregoing cases, the termination will be for cause.

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

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

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

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

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

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

- 3.8** **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 Deliverables does not meet the warranties in this Contract.

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

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

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

#### 5 - INTELLECTUAL PROPERTY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The disclosure of the Confidential Information of the Disclosing Party in a manner inconsistent with the terms of this provision may cause the Disclosing Party irreparable damage for which remedies other than

injunctive relief may be inadequate, and each Receiving Party agrees that in the event of a breach of the Receiving Party's obligations hereunder, the Disclosing Party will be entitled to temporary and permanent injunctive relief to enforce the provisions of this Contract without the necessity of proving actual damages. However, provision does not diminish or alter any right to claim and recover damages.

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

## 6 – TRANSACTION REPORTING

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

The Contractor must report the quarterly dollar value of sales to the State via the Internet using the Web form at the Department of Administrative Services, OIT vendor portal, <https://cm.ohio.gov>. If no sales occur, the Contractor must show zero sales on the report. The report must be submitted 30 days after the completion of the reporting period.

The Contractor also must submit a closeout report within 120 days after the expiration of this Contract. The Contract expires on the physical completion of the last, outstanding task or delivery order of the Contract. The closeout report must cover all sales not shown in the final quarterly report and reconcile all errors and credits. If the Contractor reported all Contract sales and reconciled all errors and credits on the final quarterly report, then the Contractor should show zero sales in the closeout report.

If the Contractor fails to submit any sales report in a timely manner or falsifies any sales report, the State may terminate this Contract for cause.

- 6.2 **Contractor's REVENUE SHARE.** The Contractor must pay the State a share of the sales transacted under this Contract. The Contractor must remit the revenue share in US dollars within 30 days after the end of the quarterly reporting period. The revenue share that the Contractor must pay equals .0075 of the total quarterly sales reported. The revenue share is included in the prices reflected on Exhibit I and reflected in the total amount charged to ordering activities, and the Contractor may not add a surcharge to orders under this Contract to cover the cost of the revenue share.

The Contractor must remit any amount due as the result of a quarterly or closeout report at the time the quarterly or closeout report is submitted to the Department of Administrative Services, Office of State Purchasing. The Contractor also must pay the revenue share by check. To ensure the payment is credited properly, the Contractor must identify the check as a "Revenue Share" and include the applicable State Term Contract Number, total report amount, and reporting period covered.

The Contractor must make each check payable to "Treasurer, State of Ohio", and forward it to the following address:

Department of Administrative Services  
GSD Business Office  
4200 Surface Road  
Columbus, OH 43228

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 FURTHER AGREES THAT THE CONTRACTOR SHALL REMAIN LIABLE FOR ALL DIRECT DAMAGES DUE TO THE CONTRACROR'S FAULT OR NEGLIGENCE UP TO (5) FIVE TIMES THE COST OF THE PRODUCTS / SERVICES OR (\$10,000,000.00) TEN MILLION DOLLARS PER PURCHASE EVENT WHICHEVER IS GREATER. THE LIMITATION IN THE PRECEDING SENTENCE DOES NOT APPLY TO LIABILITY ARISING FROM THIRD PARTY CLAIMS OR THE SECTIONS IN THIS DOCUMENT WHERE THE SECTIONS EXPRESSLY PROVIDES A RIGHT TO PARTICULAR DAMAGES SUCH AS INDEMNIIY

## **8 - MAINTENANCE**

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

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

current with the operating environment in which it is designed to function and a commitment to promptly correct all material defects in the software.

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

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

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

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

The foregoing will not apply to Commercial Software for PCs and PC-based server software with a license fee of less than \$10,000.00, unless the Contractor or third-party licensor makes upgrade packages available for the Commercial Software to other customers. If PC or PC-based server software upgrades are available, the State will be entitled to the most favorable license fee on which such are made available to other most favored customers or dealers, as appropriate.

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

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

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

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

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

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

**8.6 PRINCIPAL PERIOD OF MAINTENANCE (GENERAL).** Software and Equipment maintenance must be available nine working hours per weekday, between 8:00 a.m. and 5:00 p.m. Eastern Standard Time. Travel time and expenses related to remedial and preventative maintenance will not be billable and must be included in the price of the maintenance.

**8.7 MAINTENANCE ACCESS (GENERAL).** For all Software and Equipment maintenance under this Contract, the State will provide the Contractor with reasonable access to the Deliverable to perform maintenance. All maintenance that requires a Deliverable to be inoperable must be performed outside the State's customary working hours, except when the Deliverable is already inoperable. Preventative or scheduled maintenance must be performed at mutually agreeable times, within the parameters of the manufacturer's published schedule.

## **9 - ASSIGNMENT AND SUBCONTRACTING**

**9.1 ASSIGNMENT.** The Contractor may not assign this Contract without the written consent of the State, which the State will not be obligated to provide.

**9.2 SUBCONTRACTING.** The State recognizes that it may be necessary for the Contractor to use subcontractors to perform portions of the work under this Contract. In those circumstances, before the Contractor engages any such subcontractor, the Contractor must submit a list identifying its subcontractors or joint venture partners performing portions of the work under the Contract. If any changes to that list occur during the term of the Contract, the Contractor must immediately provide the State an updated list of subcontractors or joint venture business partners. In addition, all subcontractors and joint venture business partners must agree in writing to be bound by all of the terms and conditions of this Contract and any specifications of any order under this Contract for which they perform work. The State may reject any subcontractor submitted by the Contractor.

## **10 – CONSTRUCTION**

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

**10.2 ENTIRE DOCUMENT.** This Contract, which includes the Contractor's pricelist attached as Exhibit I and all documents referred to in this Contract, constitutes the entire agreement between the parties with respect to the subject matter and supersedes any previous agreements, whether oral or written.

**10.3 BINDING EFFECT.** This Contract will be binding on and benefit the respective successors and assigns of the State and the Contractor.

- 10.4 **AMENDMENTS – WAIVER.** No amendment or modification of this Contract will be effective unless it is in writing and signed by both parties. The failure of either party at any time to demand strict performance by the other party of any of the terms or conditions of this Contract may not be construed as a waiver of any those terms or conditions, and either party may at any time demand strict and complete performance by the other party.
- 10.5 **SEVERABILITY.** If a court of competent jurisdiction finds any provision of this Contract to be unenforceable, the remaining provisions of this Contract will remain in full force and affect.
- 10.6 **CONSTRUCTION.** This Contract must be construed in accordance with the plain meaning of its language and neither for nor against the drafting party.
- 10.7 **NOTICES.** For any notice under this Contract to be effective, the noticing party must make it in writing and sent it to the address of the other party first appearing above, unless that party has notified the other party, in writing and in accordance with the provisions of this section, of a new mailing address for the receipt of notices. This notice requirement will not apply to any notices that this Contract expressly authorizes to be made orally.
- 10.8 **CONTINUING OBLIGATIONS.** Any terms, conditions, representations, or warranties contained in this Contract that must survive termination or expiration of this Contract to be fully effective will survive the termination or expiration of the Contract. Additionally, termination or expiration of this Contract will not affect the State's right to continue to use any Deliverable for which it has paid, including licensed material. And no termination or expiration of the Contract will affect the State's right to receive maintenance, warranty work, or other services for which the State has paid.
- 10.9 **PRIORITY.** If there is any inconsistency or conflict between this document and any provision of anything incorporated by reference, this document will prevail.
- 10.10 **DAYS.** When this Contract refers to days, it means calendar days, unless it expressly provides otherwise.

#### 11 - LAW AND COURTS

- 11.1 **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. The Contractor hereby certifies that all applicable parties listed in Ohio Revised Code Section 3517.13 are in full compliance with Ohio Revised Code Section 3517.13.
- 11.4 **SECURITY & SAFETY RULES.** When using or possessing State data or accessing State networks and systems, the Contractor must comply with all applicable State rules, policies, and regulations regarding data security and integrity. And when on any property owned or controlled by the State, the Contractor must comply with all security and safety rules, regulations, and policies applicable to people on those premises.
- 11.5 **LAW AND VENUE.** This Contract is governed by and will be construed under Ohio law, and venue for all disputes will lie exclusively with the appropriate court in Franklin County, Ohio.
- 11.6 **UNRESOLVED FINDINGS.** The Contractor represents that it is not subject to an unresolved finding for recovery under Code § 9.24. If this warranty proves false when the parties sign this Contract, the Contract will be void. Additionally, if this representation proves false on the date of any renewal or extension of the Contract, the renewal or extension will be void.
- 11.7 **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.

11.8 **ANTITRUST.** The State and the Contractor recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by the State. The Contractor therefore assigns to the State all state and federal antitrust claims and causes of action that the Contractor has or acquires relating to the goods and services acquired under this Contract.

11.9 **Governing the Expenditure of Public Funds on Offshore Services (EO 2011-12K).** The Contractor affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Contract. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid for services the Contractor performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided the State in this Contract.

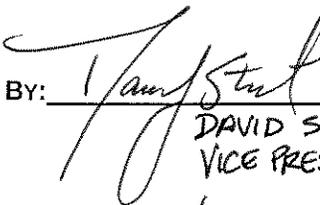
The Contractor agrees to complete the attached Executive Order 2011-12K Affirmation and Disclosure Form which is incorporated and becomes a part of this Agreement.

To SHOW THEIR AGREEMENT, the parties have executed this Contract on the date(s) identified below, and this Contract will be effective as of the date it is signed on behalf of the State.

CONTRACTOR

STATE OF OHIO,  
DEPARTMENT OF ADMINISTRATIVE SERVICES  
OFFICE OF STATE PURCHASING

BY:

  
\_\_\_\_\_  
DAVID STEWART  
VICE PRESIDENT

BY:

  
\_\_\_\_\_  
ROBERT BLAIR, DIRECTOR,  
DEPARTMENT OF ADMINISTRATIVE SERVICES

DATE:

1/23/12

DATE:

1-26-12

**EXHIBIT II**

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

*INSTRUCTIONS: Select the Manufacturer whose supplemental pricelist information and terms you want to view.*

**MANUFACTURER NAME**

---

[COMPUWARE](#)

[KRONOS](#)

[SERENA SOFTWARE](#)

[SOFTWARE AG](#)

**“Ordering Activity”** means an Ohio State Agency or other State entity authorized to purchase off the Ohio STS.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**COMPUWARE CORPORATION**

**COMPUWARE CORPORATION LICENSE, WARRANTY AND SUPPORT TERMS**

---

**1. DEFINITIONS**

The following terms shall have the meanings set forth below, unless otherwise indicated:

- (a) "Concurrent User(s)" means the maximum number of users who are licensed to access the Software through a network connection at any given time, as set forth on the Product Schedule.
- (b) "Licensed Computer(s)" means the designated processing unit(s) owned or leased by Ordering Activity, upon which the Software is licensed to operate, as set forth on the Product Schedule.
- (c) "Licensed Location(s)" means the physical location(s) at which the Software is licensed to operate, as set forth on the Product Schedule.
- (d) "Named Users" means the maximum number of identified individual computers on which Users are authorized to access the Software on the Licensed Computers, as set forth on the Product Schedule.
- (e) "Product Schedule" means the most recent document listing the Software licensed under this Attachment A.
- (f) "Software" means the proprietary software product(s) provided in machine-readable form, including any related User Documentation.
- (g) "Users" means either Named, Concurrent or Virtual Users.
- (h) "User Documentation" means Software user manuals and other user documents normally provided by Compuware to its ordering activities, whether in printed or electronic form.
- (i) "Virtual User(s)" means the total number of simulated, simultaneous client connections to a server, as set forth on the Product Schedule.

**2. LICENSE GRANT**

- (a) Contractor grants to Ordering Activity a non-exclusive, non-transferable, personal license to use the Software solely under the terms of this Attachment A. The Software may be used only on the Licensed Computers, for the term, license type specified and up to the total number of Users as set forth on the Product Schedule. If the Users are Named Users, the Software may only be installed on individual single processing units and only Ordering Activity employees using those single processing units shall have access to the Software.

Ordering Activity shall implement technical or procedural methods to prevent use of the Software other than as explicitly authorized under this Attachment A.

The Software may be used only by Ordering Activity for the benefit of Ordering Activity, to process Ordering Activity's own data for Ordering Activity's own internal operations. The Software may also be used by Ordering Activity contractors under obligation of non-disclosure solely for the benefit of Ordering Activity. Ordering Activity shall ensure that each person authorized to use the Software under the terms of this Attachment A is informed of and agrees to conform to the obligations of the Ordering Activity hereunder. Ordering Activity may not use the Software to offer data processing services to third parties, including but not limited to timesharing, facilities management, outsourcing or service bureau use, or for any other third party commercial purpose or gain, unless the use is otherwise authorized in writing by Contractor.

Notwithstanding anything to the contrary in this Section, the State may use the State of Ohio Computer Center to process data on behalf of other Ohio State agencies (the "Agencies") for such individual Agency's own internal business purpose using such individual Agency's own licensed Software. The State may allow its third party contractors under obligation of non-disclosure, to use the Software on the behalf of a licensed Agency solely in accordance with the terms and conditions of this Agreement.

Any shrink wrap license agreement packaged and distributed with the Software shall be of no force or effect and the Software licensed hereunder shall be governed under the terms and conditions of this Attachment A.

- (b) Ordering Activity may license the Software for additional Licensed Computers, Users, and alternate operating systems or, subject to Maintenance Service being current alternate Licensed Computers by obtaining written authorization from Contractor for such use.
- (c) Ordering Activity may use the internal backup copy of the Software temporarily on an alternate-processing unit other than the Licensed Computer. Such use shall be limited to preparation of disaster recovery procedures or for use for a reasonably necessary period while the Licensed Computer is inoperable due to the disaster. Any other use on an alternate-processing unit requires Contractor prior written approval.

Ordering Activity shall maintain accurate records of the use of the Software. At Contractor's request, Ordering Activity shall certify in writing all Software use information reasonably requested by Contractor, including but not limited to the number of Users, and processing units, together with identification numbers or names of such processing units, on which the Software is or has been installed.

- (f) In no event may the Software be used or transferred outside of the country boundaries in which the Software is originally licensed.

### 3. TITLE, PROPRIETARY RIGHTS

- (a) Title and full ownership rights to the Software licensed under this Attachment A and all intellectual property rights therein including patent, copyright, trademark and trade secret rights shall remain with Compuware or, where applicable, its third party providers.
- (b) Ordering Activity acknowledges and agrees that (i) the Software is the property of and contains trade secrets of Compuware, and (ii) Ordering Activity shall keep in confidence and protect the Software from disclosure to unauthorized parties, and restrict its use as provided in this Attachment A. Ordering Activity acknowledges that unauthorized disclosure of the Software may cause irreparable harm and substantial economic loss to Compuware or its third party providers. Compuware reserves all rights granted to it under the copyright, patent and other intellectual property laws of the United States.
- (c) To enable Compuware to maintain the confidential nature of the Software to the maximum extent allowed by law, Ordering Activity shall not sublicense, distribute, modify or create derivative works of, reverse assemble, reverse compile, or otherwise reverse engineer the Software.
- (d) Ordering Activity shall not make or allow others to make copies or reproductions of the Software in any form, except for machine-readable copies solely for internal archive and backup purposes. Such copies shall display the same Compuware legends and notices and shall be subject to the same conditions and restrictions as the Software. Upon Ordering Activity's request, Compuware will supply Ordering Activity with additional copies of User Documentation, beyond that provided with the Software, at the STS rates then in effect.

### 4. LIMITED WARRANTIES AND REMEDIES

- (a) Contractor warrants and represents that (i) it has the authority to grant the license described in this Attachment A, (ii) at the time of delivery the Software will operate in substantial accordance with the User Documentation applicable to the Software, (iii) the Software media will be free of defects in material and workmanship under normal use for a period of ninety (90) days from the date of execution of the applicable Product Schedule, and (iv) any service rendered by Contractor under this Attachment A will be performed by qualified personnel.
- (b) THE WARRANTIES GIVEN IN THIS SECTION ARE IN LIEU OF, AND CONTRACTOR HEREBY DISCLAIMS, ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

### 5. MAINTENANCE SERVICE

- (a) Maintenance Service will be provided at no additional charge for the period, if any, stated on the applicable Product Schedule(s).
- (b) If Ordering Activity is current in the payment of all license and Maintenance Service fees, Contractor through Compuware will make available the following Maintenance Service (Maintenance Service) :
- (i) maintain the Software in an operable condition in substantial accordance with the then-current User Documentation;
  - (ii) telephone technical support;
  - (iii) Compuware-designated updates and enhancements to the Software that Compuware generally makes available without charge to other Ordering Activity's of the Software under Maintenance Service; and use commercially reasonable efforts to provide correction, replacement or other services for a defect. Ordering Activity agrees to identify any suspected defects and notify Compuware in accordance with the reporting procedures outlined in the User Documentation.
- (c) When the Software is licensed on multiple Licensed Computers at a single Licensed Location, and Ordering Activity enrolls for Maintenance Service for the Software, such enrollment shall include all copies of the Software on the Licensed Computers.

### **EXHIBIT A – COMPUWARE MAINTENANCE SERVICES**

Contractor through Compuware's current maintenance program provides Ordering Activity who has paid for such maintenance program with the following:

- **New Versions:** Ordering Activity will be entitled to receive all new releases of licensed software products as they become generally available.
- **Telephone Hotline:** Contractor through Compuware will provide 24-hour emergency telephone assistance for all supported products. Compuware's standard customer support business hours are 8:00 a.m. to 6:00 p.m. (Eastern Time), Monday through Friday, exclusive of Compuware holidays. After hours, emergency calls are directed to Compuware's answering service and an on-call technician is paged. Compuware's Automated Customer Support Hotline numbers are (800) 538-7822 and (313) 227-5444. Changepoint customers may also call (905) 886-7000 or (800) 263-7700.
- **Updates:** Ordering Activity will be entitled to receive all updates and revisions to the licensed software products including updates to the product documentation.
- **Fixes:** Contractor through Compuware will attempt to correct or replace the licensed software under the maintenance plan and/or provide services necessary to remedy programming errors attributable to Compuware.

- **Technical Questions:** Contractor through Compuware's Customer Support staff is available to respond to questions regarding standard installation procedures, compatibility with other software, and general questions regarding the capabilities of the licensed software.
- **Web-based Support:** Ordering Activity may access a web-based site--either FrontLine (<http://frontline.compuware.com>) or the Changepoint Client Portal (Changepoint Product Specific: <https://quest.changepoint.com>)--providing technical help and information on Compuware products. Some products require registration for access to information. Users can go on-line 24 hours per day to:
  - Log a call.
  - View technical information.
  - Read or download product documentation.
  - Search and download fixes to known problems.
  - Order or download maintenance and new product releases.
  - Download Product Spotlight training materials.
- **Maintenance Response Time:** Technical problems for all Compuware products will be assessed by the following priority levels:

Priority Assigned	General Description	Callback Time
1	<p><b><u>Urgent</u></b>            Major functional issue for which there is no workaround at the time the call is logged.            Causes the software or operating system to fail completely.            Requires constant restarting of the software or operating system.            Prevents the installation of the software.            Irrecoverable data loss/corruption or severe memory leak.</p>	1 Hour
2	<p><b><u>High</u></b>            Explicitly documented major functionality of the software is missing or not usable.            Obscure, difficult to reproduce, infrequent crashes, hangs or abends.            Software cannot be used as designed, advertised or documented.            Documentation issue leading to a severe error, installation failure or data corruption.            No workaround or solution known at the time the issue is logged.</p>	4 Business Hours
3	<p><b><u>Medium</u></b>            It does not meet the criteria of a priority 1 or priority 2.            General question related to installation, product functionality or usage.            Situations in which the functionality of the product is slightly restricted.            Some business impact.            Priority 3 issues usually have workarounds.</p>	8 Business Hours
4	<p><b><u>Low</u></b>            It does not meet the criteria of the previous priorities.            Low priority request for information.            A defect in very obscure product functionality.            Misspelling in the documentation or in a product screen.            Cosmetic problem.</p>	2 Business Days

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**KRONOS**

**KRONOS LICENSE, WARRANTY AND SUPPORT TERMS**

---

**SOFTWARE LICENSE AND SERVICES TERMS**

Ordering Activity and Contractor agree that the terms and conditions set forth in this Software License and Services Terms ("Terms") shall apply to all Kronos Incorporated ("Manufacturer") Equipment, Software, Professional and Educational Services, Support, and such other Contractor offerings as may be provided to Ordering Activity. Services may be provided directly by Contractor or by Contractor through Manufacturer.

**GENERAL LICENSE TERMS**

Contractor owns or has the right to license the Software. The Software and Software documentation are confidential and may not be disclosed to a third party without Contractor's written consent. The Software contains proprietary trade secret technology. Unauthorized use and copying of such Software is prohibited by law, including United States and foreign copyright law. The price Ordering Activity pays for a copy of the Software constitutes a license fee that entitles Ordering Activity to use the Software as set forth below. Contractor grants to Ordering Activity a non-exclusive, nontransferable, perpetual (except as provided herein) license to use the Software. This license may be terminated by Contractor by written notice to Ordering Activity upon any material breach of this Attachment A by Ordering Activity which remains uncured for a period of thirty (30) days after such written notice from Contractor. Upon such termination of this license by Contractor, Ordering Activity will have no further right to use the Software and will return the Software media to Contractor and destroy all copies of the Software (and related documentation) in Ordering Activity's possession or control. This license is subject to all of the terms and conditions set forth in these Terms.

**FEE BASED LIMITATIONS**

Ordering Activity recognizes and agrees that the license to use the Software is limited, based upon the amount of the license fee paid by Ordering Activity. Limitations, which are applicable to an applicable order, may include the number of employees, simultaneous or active users, Software product modules, Software features, computer model and serial number, and/or the number of telephone lines or terminals to which the Software is permitted to be connected. Ordering Activity agrees to: i) use the Software only for the number of employees, simultaneous or active users, computer model and serial number, and/or terminals permitted by the applicable license fee; ii) use only the product modules and/or features permitted by the applicable license fees; and iii) use the Software only in support of Ordering Activity's own business. Ordering Activity agrees not to increase the number of employees, simultaneous or active users, terminals, products modules, features, or to upgrade the model, as applicable, unless and until Ordering Activity pays the applicable fee for such increase/upgrade. Ordering Activity may not relicense or sublicense the Software to, or otherwise permit use of the Software (including timesharing or networking use) by any third party. Ordering Activity may not provide service bureau or other data processing services that make use of the Software without the express prior written consent of Contractor.

**OBJECT CODE ONLY**

Ordering Activity may use the computer programs included in the Software (the "Programs") in object code form only, and shall not reverse compile, disassemble or otherwise convert the Programs into uncompiled or unassembled code.

**PERMITTED COPIES**

Ordering Activity may copy the Programs as reasonably necessary to load and execute the Programs and for backup and disaster recovery and testing purposes only, except for additional copies of the Teletime Software (which must be purchased separately). All copies of the Programs or any part thereof, whether in printed or machine readable form and whether on storage media or otherwise, are subject to all the terms of this license, and all copies of the Programs or any part of the Programs shall include the copyright and proprietary rights notices contained in the Programs as delivered to the Ordering Activity.

**UPDATES**

In the event that Contractor supplies Service Packs, Point Releases and Major Releases (including legislative updates if available) of the Software (collectively referred to as "Updates"), such Updates shall be part of the Software and the provisions of this license shall apply to such Updates and to the Software as modified thereby.

**FIRMWARE**

Ordering Activity may not download firmware updates for the Contractor Equipment unless Ordering Activity is maintaining such Equipment under a support plan with Contractor.

**TRAINING POINTS**

Ordering Activity may purchase the quantity of Contractor "training points" applicable to an order at the rate(s) set forth on the Ohio STS price list ("Training Points"). Purchased Training Points may be redeemed for an equivalent value of instructor-led training sessions offered by Contractor. Available instructor-led sessions are listed at <http://customer.Kronos.com> and each session has the Training Points value indicated. Training Points may be redeemed at any time within 12 months of the date of the applicable Order Form, at which time they shall expire. Training Points may not be exchanged for other Contractor products and/or services. Contractor will invoice Ordering Activity for the Training Points identified in the Order Form upon completion of the instructor-led training selected by Ordering Activity.

**LIMITED WARRANTY**

Contractor warrants that all Contractor Equipment and Software media shall be free from defects in materials and workmanship, for a period of ninety (90) days from delivery. In the event of a breach of this warranty, Ordering Activity's exclusive remedy shall be Contractor's repair or replacement of the deficient Equipment and/or Software media, at Contractor's option, provided that Ordering Activity's use, installation and

maintenance thereof have conformed to the meet the Contractor specifications ("Specifications"). This warranty is extended to Ordering Activity only and shall not apply to any Equipment (or parts thereof) or Software media in the event of:

- (a) damage, defects or malfunctions resulting from misuse, accident, neglect, tampering, (including modification or replacement of any Contractor components on any boards supplied with the Equipment), unusual physical or electrical stress or causes other than normal and intended use;
- (b) failure of Ordering Activity to provide and maintain a suitable installation environment, as specified in the Specifications; or
- (c) malfunctions resulting from the use of badges or supplies not approved by Contractor.

## **PROFESSIONAL AND EDUCATIONAL SERVICES**

### **Warranty**

Contractor warrants that all professional and educational services performed under this Attachment A shall be performed in a professional and competent manner. In the event that Contractor breaches this warranty, and Ordering Activity so notifies Contractor within 30 days of receipt of invoice for the applicable services, the Ordering Activity's remedy shall be Contractor's re-performance of the services which were deficient in a manner so as to conform to the foregoing warranty, at no additional cost to Ordering Activity.

### **Contractor professional and educational services terms**

The following terms and conditions shall apply to Contractor's provision of Professional and/or Educational Services purchased by Ordering Activity:

#### **a. Professional Services:**

- Contractor will provide Ordering Activity with a Professional Services Estimate or Statement of Work that outlines the project deliverables and provides an estimate for the project scope and cost required to complete the engagement, based upon preliminary information provided by Ordering Activity.
- Contractor and Ordering Activity agree that given the use of estimated times; the Assess Phase of the engagement will be used to determine whether modifications to project scope and cost are required.
- Any such modification to project scope and cost will be supported through the generation of a Contractor Change Order that is signed by the Ordering Activity (see Change Order Process below).
- The original project scope and cost of an engagement will apply until, and if, the Ordering Activity signs a Change Order.
- The Professional Services Estimate or Statement of Work is valid for one year from the date of signature.
- Contractor will invoice the Ordering Activity on a monthly basis for all Professional Services provided during the previous month.
- Professional Services work will be conducted during normal business hours, 8:00 AM – 5:00 PM, Monday through Friday.
- All Professional Services work scheduled to start outside of normal business hours will be billed in full at a premium rate described below. For work to be performed After Hours, on Holidays, or on Weekends, an approved Change Order will be required prior to scheduling (see Change Order Process below). Ordering Activity will be charged as follows:
  - (i) All Professional Services will be scheduled and billed in 4 hour increments with a minimum charge of 4 hours.
  - (ii) After Hours
    - (a) All scheduled work will be billed at 1.5 times the current contract rate by role.
    - (b) After Hours are 5:00 PM – 8:00 AM, Monday through Thursday.
  - (iii) Weekend
    - (a) All scheduled work will be billed at 2.0 times the current contract rate by role.
    - (b) Weekend is 5:00 PM Friday– 8:00 AM Monday.
  - (iv) Holiday
    - (a) All scheduled work will be billed at 2.0 times the current contract rate by role.
    - (b) Holiday is recognized Contractor Holiday (see below).
  - (v) Onsite Support requiring Travel:
    - (a) All travel time (portal to portal) will be billed at the current contract rate by role.
    - (b) Expense reimbursement is pursuant to the Attachment A covering such Professional Services between the Ordering Activity and Contractor.
- Contractor requires advance notification for the cancellation or rescheduling of Contractor personnel. Ordering Activity will use its best efforts to notify contractor no less than four (4) business days prior to the start of work.
  - (i)
  - (ii)
- In providing Professional Services, Contractor recognizes the following holidays:
  - (i) New Year's Day
  - (ii) President's Day
  - (iii) Memorial Day

- (iv) Independence Day
- (v) Labor Day
- (vi) Thanksgiving Day and the day after
- (vii) Christmas Day

• **Change Order Process:**

- (i) All changes to the original, signed Professional Services Estimate or Statement of Work will be initiated by the Contractor Project Manager and reflected through the use of a Change Order, approved and signed by the Ordering Activity.
- (ii) A change of project scope and cost, resulting in a Change Order, could result from: an increase or change to project deliverables, customer allocated time, customer scheduling changes, technology limitations.
- (iii) The last authorized Professional Services Estimate or Statement of Work, including any previously approved Change Orders, will prevail until amended by a subsequent approved Change Order.
- (iv) Unless otherwise addressed within these policies, the hourly rate(s) quoted within a Change Order for work to be performed within normal business hours will be consistent with that contained within the original Professional Service Estimate or Statement of Work, if such Change Order is executed during the course of the original engagement, or within one (1) year of the signing of the original Professional Services Estimate or Statement of Work, whichever is earlier.
- (v) In instances where specialized resources are requested, but not contained within the original Professional Services Estimate or Statement of Work, the quoted rate will be established at Contractor' then current Schedule rate for such requested services.

• **Travel**

- (i) Travel expenses for Professional Services will be charged in accordance with the Ohio OBM rates.
- (ii) In certain instances specialized resources may be used that require the payment of airfare, lodging and related travel expenses. Ordering Activity shall be made aware of any such instance during the sales or Change Order process.
- (iii) Ordering Activity is responsible for travel costs for employees attending training at a Contractor location.

**b. Educational Services:**

- All Instructor-led Educational Services classes will be held at a Contractor facility, or via the Contractor Virtual Classroom (if offered in that modality), unless Ordering Activity has purchased onsite location training.
- Contractor requires notification of cancellation from an Instructor-led class in accordance with the following notification requirements:
  - (i) For any PUBLIC course held in the traditional classroom or in the virtual classroom:  
Attendees must cancel at least five business days before the class start date. Student substitutions can be made at any time as long as prerequisites have been met.
  - (ii) For any PRIVATE course held at a customer site, in the traditional classroom, or in the virtual classroom:  
Attendees must cancel at least ten business days before the class start date. Student substitutions can be made at any time as long as prerequisites have been met.
- Contractor reserves the right to cancel classes up to five business days before the scheduled start date for public courses held in a Contractor Traditional Classroom (KTC) and up to two business days before the scheduled start date for public courses held in a Contractor Virtual Classroom (KVC) due to lack of enrollment or any other unforeseen circumstances.
- Educational Services purchases are valid for one (1) year from the date of signature. Educational Service purchased but not used within this one-year period will expire.
- All training course delivery scheduled to start outside of normal business hours will be billed in full at a premium rate described below. Ordering Activity will be charged as follows:
  - (i) After Hours  
There will be a 1.5 times premium in either per student public or per class private day rates.  
After Hours are 5:00 PM – 8:00 AM, Monday through Thursday.
  - (ii) Weekend  
There will be a 2.0 times premium in either per student public or per class private day rates.  
Weekend is 5:00 PM Friday – 8:00 AM Monday.
  - (iii) Holiday  
There will be a 2.0 times premium in either per student public or per class private day rates.  
Holiday is recognized Contractor Holiday (see above).
- **Travel**
  - (i) Travel expenses for Educational Services will be charged in accordance with the Ohio OBM rates.
  - (ii) In certain instances specialized resources may be used that require the payment of airfare, lodging and related travel expenses. Ordering Activity shall be made aware of any such instance during the sales or Change Order process.
  - (iii) Ordering Activity is responsible for travel costs for employees attending training at a Contractor location.
- Ordering Activity is responsible for travel and related costs for a Contractor trainer providing instruction at the Ordering Activity location.

- **Additional Terms Applicable to Educational Services:**

- (i) Contractor personnel working at the Ordering Activity site shall have access to necessary infrastructure (servers, network, etc.).

- (ii) In instances where Contractor personnel are working remotely access will be granted through the use of industry standard tools (DTS, GoToMyPC, PCAnywhere, etc.).

- (iii) Ordering Activity agrees to not hire any Contractor employee who has performed services under the Attachment A for a period of one-year after the completion of such services.

- (iv) All required system administration, maintenance, backups, tuning, etc., is the responsibility of the Ordering Activity.

- (v) Ordering Activity Data: To perform the implementation and to provide support after completion, Contractor may need to access and retain information regarding your employees and business organization. Contractor will take all reasonable steps to limit and safeguard the security of this information. We may make recommendations to enhance your organization's procedures for securing your data — these recommendations are intended to enhance the security of any sensitive information that is provided to us. However, there are no guarantees that they will ensure the security of your information, nor should Contractor' actions be viewed as the only safeguards necessary. The security of your data is ultimately your responsibility.

## **SOFTWARE AND EQUIPMENT SUPPORT SERVICES**

### **Software support options**

Ordering Activity may select from the following Software support purchase options: Gold (or Gold Plus) and Platinum (or Platinum Plus) support ("Service Type"), each providing different service coverage periods and/or service offerings, as specified herein ("Service Offerings") and in the Contractor Support Service Policies (defined below). Ordering Activity must purchase the same Service Type for all of the Software specified on the Order Form, (however, if Ordering Activity is purchasing support services for Visionware Software, Ordering Activity may only purchase Gold Service Type for the Visionware Software). All Updates shall be provided via remote access.

### **GOLD SERVICE OFFERINGS Ordering Activity shall be entitled to receive:**

- (i) Updates for the Software (not including any Software for which Contractor charges a separate license fee), provided that Ordering Activity's operating system and equipment meet minimum system configuration requirements, as reasonably determined by Contractor. If Ordering Activity requests Contractor to install such Updates or to provide retraining, Ordering Activity agrees to pay Contractor for such installation or retraining at Contractor' then-current time and materials rate as set forth on the Ohio STS price list.
- (ii) Telephone and/or electronic access to the Contractor Global Support Center for the logging of requests for service during the Service Coverage Period. The Service Coverage Period for the Gold Service Offering is 8:00 a.m. to 8:00 p.m., local time, Monday through Friday, excluding Contractor holidays.
- (iii) Web-based support including access to Software documentation, FAQ's, access to Contractor knowledge base, Ordering Activity forums, and e-case management. Such offerings are subject to modification by Contractor.
- (iv) Web-based remote diagnostic technical assistance which may be utilized by Contractor to resolve Software functional problems and user problems during the Service Coverage Period.
- (v) Access to specialized content as and when made available by Contractor such as technical advisories, learning quick tips, brown bag seminars, technical insider tips, SHRM e-Learning, HR Payroll Answerforce and service case studies.

### **PLATINUM AND PLUS SERVICE OFFERINGS:**

Platinum: In addition to the Service Offerings specified for the Gold Service Offering above, the Service Coverage Period for the Platinum Service Offering is 24 hours a day, seven days a week, 365 days a year.

Plus option: In addition to the Service Offerings specified for the Gold Service Offering above, Ordering Activities purchasing the Plus option shall receive the services of a dedicated, but not exclusive, Contractor Technical Account Manager ("TAM") for one production instance of the Software. Ordering Activities purchasing the Gold-Plus option shall designate up to one primary and one secondary backup technical contacts ("Technical Contacts") to be the sole contacts with the TAM, while Ordering Activities purchasing the Platinum-Plus option shall designate up to two primary and three secondary backup Technical Contacts. Upon request, Ordering Activity may designate additional and/or backup Technical Contacts. Ordering Activity is required to place all primary Technical Contacts through Contractor product training for the Software covered under this Attachment A at Ordering Activity's expense.

Ordering Activity purchasing the Platinum-Plus option shall also receive a one day per year visit to be performed at the Ordering Activity location where the Software is installed. During this onsite visit, Contractor shall work with Ordering Activity to identify ways to help Ordering Activity increase functionality or maximize utilization of the Software in Ordering Activity's specific environment. Ordering Activity must be utilizing the then-current version of the Software. Travel and expenses are not included and shall be paid by Ordering Activity in accordance with the Ohio OBM rates.

### **ADDITION OF SOFTWARE**

Additional Software purchased by Ordering Activity during the initial or any renewal term shall be added to this Attachment A at the same support option as the then current Software support coverage in place under these terms. Ordering Activity agrees to pay the charges for such addition, and any such addition shall be automatically renewed as provided in these terms.

### **RESPONSIBILITIES OF ORDERING ACTIVITY**

Ordering Activity agrees (i) to provide Contractor personnel with full, free and safe access to Software for purposes of support, including use of Contractor' standard remote access technology, if required; (ii) to maintain and operate the Software in an environment and according to procedures which conform to the Specifications; and (iii) not to allow support of the Software by anyone other than Contractor without prior written authorization from Contractor. Failure to utilize Contractor' remote access technology may delay Contractor' response and/or resolution to Ordering Activity's reported Software problem. If Ordering Activity requires the use of a specific remote access technology not specified by

Contractor, then Ordering Activity must purchase the Plus option to receive support and provide Contractor personnel with full, free and safe access to the remote access hardware and/or software.

### **DEPOT SUPPORT SERVICES**

In the event Ordering Activity elects to purchase depot equipment repair support services ("Depot Support Services") for Ordering Activity's Contractor Equipment ("Product(s)") in locations within the United States, Canada, and Puerto Rico, Contractor shall provide such services pursuant to the following terms and conditions:

**DEPOT SUPPORT SERVICE.** Upon the failure of an installed Product, Ordering Activity shall notify Contractor of such failure and Contractor will provide remote fault isolation at the FRU (Field Replacement Unit) or subassembly level and attempt to resolve the problem. Those failures determined by Contractor to be Product related shall be dispatched to a Manufacturer Depot Repair Center, and Ordering Activity will be provided with an RMA for the failed Product if Ordering Activity is to return the failed Product to Contractor, as reasonably determined by Contractor. Ordering Activity must return the failed product with the supplied Return Material Authorization Number (RMA).

(i) Depot Exchange: Contractor will provide a replacement for the failed Product at the FRU or subassembly level on an "advanced exchange" basis, utilizing a carrier of Contractor's choice. Replacement Product will be shipped the same day, for next business day delivery to Ordering Activity's location. REPLACEMENT PRODUCT(S) MAY BE NEW OR RECONDITIONED. Ordering Activity shall specify the address to which the Product is to be shipped. All shipments will include the Contractor provided RMA designating the applicable Manufacturer Depot Repair Center, as the recipient. Ordering Activity, upon receipt of the replacement Product from Contractor, shall package the defective Product in the materials provided by Contractor, with the RMA supplied and promptly return failed Products directly to Contractor using the carrier specified by Contractor.

(ii) Depot Repair: It is Ordering Activity's obligation to purchase and retain, at Ordering Activity's location and at Ordering Activity's sole risk and expense, a sufficient number of spare products ("Spare Products") to allow Ordering Activity to replace failed Products at all Ordering Activity locations. Upon failure of an installed Product, Ordering Activity shall install a Spare Product to replace the failed Product. Ordering Activity shall also specify the address to which the repaired Product should be return shipped. Ordering Activity shall then return the failed Product, with the required RMA, to the applicable Manufacturer Depot Repair Center. Ordering Activity shall make every reasonable effort to return the failed Product using the same packing materials in which the original Product was sent. Upon receipt of the failed Product, Contractor shall repair the failed Product and ship it, within ten (10) business days after receipt, to Ordering Activity. Contractor shall ship the repaired Product by regular surface transportation to Ordering Activity.

**RESPONSIBILITIES OF CUSTOMER.** Ordering Activity agrees that it shall return failed Products promptly as the failures occur and that it shall not hold failed Products and send failed Product to Contractor in "batches" which shall result in a longer turnaround time. In addition, Ordering Activity agrees to:

- (i) Maintain the Products in an environment conforming to Contractor's published specifications for such Products;
- (ii) Deinstall all failed Products and install all replacement Products in accordance with Contractor's published installation guidelines;
- (iii) Ensure that the Product(s) are returned to Contractor properly packaged; and
- (iv) Obtain an RMA before returning any Product to Contractor and place the RMA clearly and conspicuously on the outside of the shipping package. Ordering Activity may only return the specific Product authorized by Contractor when issuing the RMA.

### **SUPPORT EXCLUSIONS**

Depot Support Service does not include the replacement of "consumables". In addition, Depot Support Service does not include the repair of damages, and Ordering Activity will not attempt to return damaged Product, resulting from:

- (i) Any cause external to the Products including, but not limited to, electrical work, fire, flood, water, wind, lightning, transportation, or any act of God;
- (ii) Ordering Activity's failure to continually provide a suitable installation environment (as indicated in Contractor's published installation guidelines) including, but not limited to, adequate electrical power;
- (iii) Ordering Activity's improper use, relocation, packaging, refinishing, management or supervision of the Product(s) or other failure to use Products in accordance with published specifications;
- (iv) Ordering Activity's use of the Products for purposes other than those for which they are designed or the use of accessories or supplies not approved by Contractor;
- (v) Government imposed sanctions, rules, regulations or laws preventing the shipment of the Products; or
- (vi) Ordering Activity's repair, attempted repair or modification of the Products.

Professional services provided by Contractor in connection with the installation of any Software or firmware upgrades, if available, and if requested by Ordering Activity are not covered by Depot Support Services. Firmware (including equipment service packs) which may be available to resolve a Product issue is not installed by the Manufacturer Depot Repair Center but is available for download at Contractor's customer web site provided Ordering Activity is maintaining the Product under an annual Depot Support Services plan with Contractor.

**WARRANTY AND DISCLAIMERS.** Contractor warrants that all repairs performed under this Attachment A shall be performed in a professional and competent manner. ALL OTHER WARRANTIES FOR THE REPAIR SERVICES PROVIDED HEREUNDER, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE AND MERCHANTABILITY, ARE EXCLUDED BY ATTACHMENT A OF THE PARTIES.

**REMEDY.** The remedy of Ordering Activity and sole liability of Contractor shall be replacement of the repaired Product.

**EXTENDED SUPPORT PROGRAM (DELL SERVERS)**

An Ordering Activity purchasing the Extended Support Program for its Dell servers purchased from Contractor shall receive a specialized, bundled set of Contractor Support Services. Because of the specialized nature of these services, the following terms and conditions shall apply to the Extended Support Program.

**Payroll Tax Process and Reporting Services (Only available in the United States)**

(i) Ordering Activity understands that Empower shall supply the Payroll Tax Processing Services to Ordering Activity using Ordering Activity's data, and that Ordering Activity is required to transmit accurate data to Empower, and review all draft returns provided to Ordering Activity by Empower, in a timely fashion in accordance with any applicable Empower instructions .

(ii) Ordering Activity understands and acknowledges that all Services (including support services) rendered by Contractor and Empower will be based upon information furnished by Ordering Activity. Assuming the receipt from Ordering Activity of accurate information, timely-submitted and correct data, and, if applicable, timely funding of payroll tax liabilities by Ordering Activity, Empower assumes full responsibility to Ordering Activity for the accurate and timely payment of applicable liabilities to the proper taxing authorities, in the manner prescribed by those agencies. Should Empower fail to comply due to its negligence, Empower shall be responsible for any related penalties which may result, provided Empower has the authority to negotiate those penalties at its own expense.

**Dell Ready to Run Program**

(i) The Dell hardware products with which the Software is bundled ("Dell Products") are subject to Dell's U.S. Terms and Conditions of Sale ("Dell Terms and Conditions"), a copy of which shall be provided by Dell directly to Ordering Activity. The only warranty applicable to Dell Products, if any, is limited to the warranty stated in the Dell Terms and Conditions. Contractor reserves the right to substitute a Dell Product with another Dell Product of equal or greater functionality if the Dell Product ordered by Ordering Activity is unavailable.

(ii) Contractor is not responsible for support of the Dell Products and shall not be liable for any costs, damages or expenses resulting from problems with the Dell Products. Ordering Activity is to contact Dell for any problems or questions with the Dell Products.

(iii) The Dell Return Policy, as described in the Dell Terms and Conditions, is not available on Dell Products purchased through the Program. All other Dell Terms and Conditions shall apply as described therein.

(iv) The Dell Products are sized by Contractor based on the employee capacity of the Software licensed by Ordering Activity. In the event that Ordering Activity purchases additional license capacity of the Software or adds other applications to be run on the Dell Products, it may become necessary for Ordering Activity to purchase additional Dell Products in order to maintain the increased server load.

(v) If Ordering Activity is sublicensing Microsoft SQL Server software as part of the Program, the following additional terms shall apply: The Microsoft SQL Server software being sublicensed hereunder ("SQL") as part of the Contractor Software is standard edition ("Runtime-Restricted Use") software; as such, SQL may only be used to run the Software. SQL may not be used either (i) to develop and/or (ii) in conjunction with, new applications, databases or tables other than those contained in the Software. The foregoing, however, does not prohibit Ordering Activity from using a tool to run queries or reports from existing tables, and/or from using a development environment or workbench, which is part of the Software to configure or extend such Software. Notwithstanding any provision of the Attachment A, Ordering Activity may only transfer SQL as part of the Software. Ordering Activity also agrees to use the Microsoft SQL Server software only on the servers, processors or other electronic devices which the Software is permitted to be connected.

**Dell Extended Support Program.**

**ADDITIONAL SERVICE OFFERINGS PROVIDED UNDER EXTENDED SUPPORT PROGRAM**

Services	Description
Upgrades	Installation of every other software point release is included. Contractor will perform the technical work required to upgrade your software. New feature configuration, project management, testing, and training are not included and can be ordered separately.
Database Monitoring and Performance Tuning	Contractor is responsible for monitoring and managing performance of the DBMS. This includes running all maintenance scripts such as updating statistics, free space, indexes and database integrity checks as described in Contractor Best Practices.
Contractor Application Service Packs and Legislative Updates	Service packs and legislative updates are provided and installed as required to repair reported product issues. Modifications to product or report customizations impacted by Service packs or legislative updates are not included and can be ordered separately.
Backup & Restore Assistance	Data backup configuration planning assistance. Ordering Activity is required to perform data backups. Contractor is not responsible for data loss.

## DEFAULT

Ordering Activity shall have the right to terminate Contractor support services in the event that Contractor is in breach of the support services warranty set forth below and such breach is not cured within fifteen (15) days after written notice specifying the nature of the breach. In the event of such termination, Contractor shall refund to Ordering Activity on a pro-rata basis those pre-paid annual support fees associated with the unused portion of the support term. Contractor reserves the right to terminate or suspend support service in the event the Ordering Activity is in default under this Attachment A with Contractor and such default is not corrected within fifteen (15) days after written notice.

## WARRANTY

Contractor warrants that all support services shall be performed in a professional and competent manner.

## CONTRACTOR SOFTWARE SUPPORT SERVICE POLICIES

The following Contractor Support Services Policies shall apply to all Software Support Services purchased by Ordering Activity:

### a. Product Coverage.

(i) For each installation, Ordering Activity's must purchase the same software support service type for all software and must purchase the same equipment support service type for all equipment.

(ii) Workforce Central suite

Contractor only provides service packs for the current release and the two immediately prior releases of the Software. Contractor currently come out with new releases every eighteen months. Resolution of an issue may require that you upgrade to the current release of the Software. Workforce HR and Workforce Payroll are exceptions to the rule. Contractor provides service packs for the current release and the immediately prior release of the Software only for Workforce HR and Workforce Payroll.

(iii) Contractor iSeries Central suite

Contractor only provides service packs for the current release and the two immediately prior releases of the Software. Resolution of an issue may require that you upgrade to the current release of the Software.

(iv) Timekeeper Central

Contractor only provides "defect repairs" for the current release of the Software.

(v) Contractor defines Version, Release, and Service Pack as follows:

**(a) Version:** A software product upgrade that includes major new features or functionality.

**(b) Release:** A software product upgrade that includes minor new features or functionality.

**(c) Service Pack:** One or more defect repairs bundled into a single update. Service packs are cumulative - Service Pack N will, at minimum, include all of the changes delivered in Service Pack N-1.

**(d) The software product hierarchy is: Version . Release . Service Pack**

### b. Support Exclusions.

(i) Support service does not include service to the Software resulting from, or associated with:

- (a) Any cause external to the Software including, but not limited to, electrical work, fire, flood, water, wind, lightning and transportation, or any act of God; or
- (b) Ordering Activity's failure to continually provide a suitable installation environment as specified in Contractor' specifications; or
- (c) Ordering Activity's improper use, management or supervision of the Software or other failure to use the Software in accordance with Contractor' specifications; or
- (d) Ordering Activity's repair, attempted repair or modification of the Software without prior authorization from Contractor; or
- (e) Ordering Activity's use of the Software for purposes other than those for which they are designed or the use of accessories or supplies not approved by Contractor; or
- (f) Ordering Activity's computer or operating system malfunctions; or
- (g) Services required for application programs and/or conversions from products or software not supplied by Contractor; or
- (h) Reprogramming, including reconfiguration of the Software or the rebuilding of Ordering Activity's database.

(ii) In addition to the Support exclusions above the following Services are NOT covered and are subject to the applicable Contractor Service rates:

- (a) Configuration Changes, Reprogramming, New Programming such as, but not limited to, Work Rules, Pay Rules, Accrual Rules, Profiles, and Fields
- (b) Creating New Schedules
- (c) Terminal Programming and Cold Start
- (d) Pay Period Changes
- (e) Programming, modifying, implementing, training or troubleshooting the following:
  1. Data integration interfaces (i.e. Connect, Integration Manager)
  2. Custom Reports
  3. Custom Application extensions
- (f) Editing Process Manager templates and creating new templates
- (g) Installing or reinstalling Applications such as, but not limited to,

1. Adding a Workstation
  2. Moving the Application
  3. Reinstalling following a Hard Drive Crash
- (h) Database Administration Maintenance or Services such as, but not limited to,
1. Database maintenance scripts
  2. Writing or customizing database scripts for data reporting and/or retrieval
  3. Performance Tuning
  4. Sizing
  5. Disaster Recovery
  6. Database backup strategy and/or setup
- (i) Establishing a Non-Production Environment such as, but not limited to,
1. Test environments, i.e., application servers, database servers
  2. K-Demo
- (j) Troubleshooting Environmental Issues such as, but not limited to,
1. Operating System
  2. Network Issues
  3. Firewalls
  4. Servers
  5. Workstations
  6. Single Sign On
- (k) Custom Reports or Custom Application Extensions
- (l) Implementation or configuration services related to upgrading product such as, but not limited to,
1. Software implementation
  2. Porting custom software (i.e., reports)
  3. Change management
  4. Training
  5. New functionality deployment
  6. Application interfaces
- (m) Service to Contractor custom software is not provided, unless otherwise specified on the applicable Order Form for such custom software.
- (n) Importing new data i.e. from acquisitions or purchasing of another company.
- (o) Load balancing configuration
- (p) Virtual server configuration

### Support Discontinuance – End of Life

Contractor may discontinue support for the Software upon 30 days written notice to Ordering Activity, or at the anniversary date of the relevant support Attachment A, whichever is longer. If such support is discontinued during the initial or any renewal term of the relevant support Attachment A, the remaining value of the Attachment A will be left as a credit on the account to be applied against any future invoices.

### Reinstatement of Support Services.

In the event that Ordering Activity allows Software or Equipment support services to lapse or if Ordering Activity did not originally purchase Software or Equipment support services and wishes to reinstate or procure such services, Ordering Activity must pay (i) the support services fees at the then current Ohio STS price for such lapsed or un-procured time period for when the products were not on support; and (ii) the annual support services at the then current Ohio STS price for the applicable product(s), plus twenty per cent (20%) of the support services fees.

### Service Coverage Period:

8:00 a.m. to 5:00 p.m., local time, Monday through Friday, excluding Contractor holidays, with access to Contractor's technical support staff - Silver Support.

*The availability of Silver support for new purchases was discontinued on July 1, 2007, and for Silver support Attachment A renewals on May 1, 2008.*

8:00 a.m. to 8:00 p.m., local time, Monday through Friday, excluding Contractor holidays, with access to Contractor's technical support staff - Gold or Gold Plus Support.

24 hours a day, seven days a week, 365 days a year, with access to Contractor's technical support staff - Platinum or Platinum Plus Support

### Priority Based Support

Contractor provides support on a "priority" basis. As such, customers with the most critical request(s) will be serviced first. Contractor Global Support has set up the following guidelines to assess the priority of each service request:

**High Priority:** A critical customer issue with no available workaround where the system or a module may be down, experiencing major system degradation, data corruption or other related factors resulting in the customer not being able to process their payroll such as:

- Unable to sign-off Time Cards

- Totals are not accurate
- Unable to collect punches from terminals
- Unable to access a critical application function such as scheduling

No workaround is available.

**Medium Priority:** A serious customer issue which impacts ability to utilize the product effectively such as:

- Intermittent or inconsistent functionality results or data accuracy - accrual balances not matching pay codes but balances are accurate
- Data display inaccuracies or inconsistencies across multiple tasks
- System performance is inconsistent or fluctuates

A workaround is available.

**Low Priority:** Non-critical problem generally Use and Usability issues and or "how to" questions such as:

- How do I set up a holiday pay rule?
- How do I run a report?
- How often should database maintenance be executed?

A workaround is available on the customer portal.

### Response Time.

Response Time shall mean from the time the case priority is set by Contractor' Support Center until a Contractor support representative contacts the Ordering Activity to begin service. Contractor utilizes a priority based support focus. Customers with the most critical request will be serviced in accordance with the following guidelines:

Priority	Gold	Platinum
High	2 hours	1 hour
Medium	4 hours	4 hours
Low	8 hours	8 hours

All response times are business hours.

The above are only guidelines and may be modified, for a particular incident, based on joint agreement A between Ordering Activity and Contractor, e.g., if a Gold support customer's case is logged at 4:55 p.m., local time, with a "Medium Priority" designation, Contractor would respond before 8:55 a.m., local time, the next business day (Monday - Friday for Gold Support customers).

### Critical Outages.

Contractor Global Support will provide continuous effort on all high priority events through either bug identification, the development of a workaround or problem resolution. If this effort goes beyond normal hours, the case may be passed to the after hours team or to the mission critical support engineer on duty. **On-going continuous effort may also be dependent on Ordering Activity's ability to provide a resource to work with the Contractor Global Support engineer during this period. Support outside the scope of the services Attachment A is billable.**

### Technical Escalation.

Contractor's case resolution process is a team-based approach structured around specific products of the Application suite and staffed by Support Engineers covering the full spectrum of skill sets and technical expertise. The Teams are empowered to dynamically apply the appropriate resources to a case based on severity and complexity to ensure the fastest resolution time possible. The teams are also integrated with the Development Engineering staff and engage their assistance and technical guidance when necessary and/or directly escalate depending on case severity and time to resolve considerations. For situations that contain multiple cases an Account Manager may be assigned to act as a single point of contact and communication regarding case resolution status, action plan development, resource integration and implementation co-ordination. The Account Manager remains engaged until the situation has been successfully remediated.

### Management Escalation.

Ordering Activity may, at any time, ask to speak to a Contractor manager if they experience dissatisfaction with the level of service received with respect to a specific case or service in general. To contact a Contractor Global Support manager, please telephone your Contractor Support Services center and ask to speak to a manager.

### Software Support Services and Features

Contractor provides different levels of support offerings through our Platinum **Plus**, Platinum, Gold **Plus**, and Gold support services.

### **Platinum Plus Support Service.**

Platinum Plus Support customers have access to the same features as the Platinum Support customers and access to the Technical Account Manager (TAM). The TAM is a seasoned service professional that will draw upon a vast knowledge of Contractor products and services to provide you with proactive, consultative expertise. For Platinum Plus customers, a TAM is available **24 hours per day**, 7 days per week. Platinum Plus customers can designate **5 named contacts**, and also enjoy one on-site visit per year.

### **Platinum Support Service.**

Platinum Support customers have access to the same service features as Gold Support customers and the following additional entitlements:

- 24 x 7 x 365 telephone access to Contractor Global Support
- Access to Senior Support Engineers
- Response time of 1 hour or less for High, 4 hours or less for Medium, and 1 business day or less for Low Priority calls.

Platinum Support customers also have the option of upgrading to Platinum Plus.

### **Gold Plus Support Service.**

Gold Plus Support customers have access to the same features as the Gold Support customers and access to the Technical Account Manager (TAM). The TAM is a seasoned service professional that will draw upon a vast knowledge of Contractor products and services to provide you with proactive, consultative expertise. For Gold Plus customers, a TAM is available from **8:00 a.m.-8:00 p.m.**, local time, Monday-Friday. Gold Plus customers can designate **2 named contacts**.

### **Gold Support Service.**

Gold Support offers a very well-rounded support program. Included is free access to Contractor Global Support from 8:00 a.m. to 8:00 p.m. local time, as well as the following entitlements noted below. Gold Support customers also have the option of upgrading to Gold Plus.

(i) SuperSearch (Available to all Support Attachment A customers).

The Search engine searches the following data sources\* and includes Basic and Advanced filters to search by product.

- Knowledge base
- Documentation (Manuals and User Guides)
- Service packs
- Ordering Activity forums
- Technical Advisories and Technical Insiders
- Frequently asked questions (FAQs)

\*Access to data sources is limited by type of support service.

(ii) Technical Advisories (Available to all Support Attachment A customers)

Contractor Global Support Center personnel are a valuable source of knowledge and experience. Ordering Activity has access to the same vast repositories of information that they use. Ordering Activity has access to these technical alerts located on the Contractor customer portal.

(iii) Service Case Studies (Available to Gold and Platinum level customers)

An in-depth understanding of technology and how Contractor applications incorporate that technology.

(iv) Learning Quick Tips (Available to Gold and Platinum level customers)

Web-based, self-paced recorded training modules for Ordering Activity's Contractor application. These training recordings are short in duration and are available anytime and anywhere via the internet.

(v) Technical Insider (Available to Gold and Platinum level customers)

The Technical Insider offers best practices, procedures, and tools and is available through Contractor's customer portal.

(vi) Brown Bag Sessions (Available to Gold and Platinum level customers)

Training over the Internet on a variety of topics pertaining to the Contractor system. Contractor Global Support offers these Brown Bag workshops in a structured online format without costly travel or interruption to schedule. These sessions are one hour in length and are FREE for all Contractor customers with Gold or Platinum support agreements.

(vii) HR and Payroll Answerforce (Available to Gold and Platinum level customers)

HR and Payroll Answerforce enables Ordering Activity to facilitate communication between employees, managers and HR professionals. It

provides managers and employees with current HR information they need to make effective decisions. Experience an award-winning user interface which delivers up-to-date human resources, employee benefits, compensation, employment and regulatory information directly to desktop.

(viii) SHRM e-Learning (Available to Gold and Platinum level customers)

SHRM e-Learning is an online educational environment that delivers just-in-time training to HR professionals through a series of HR-related mini-courses. SHRM e-Learning courses are facilitated by leading industry experts and presentations range from 60 to 90 minutes in length.

(ix) Interactive Forms (Available to Platinum level customers)

Instant access to a comprehensive and easy-to-use library of HR and Employment & Payroll Tax forms and instructions. Ordering Activity can access, fill out, save, print, and maintain over 730 HR forms and 2500 Payroll forms.

(x) Service Packs (Available to all Support Agreement customers)

Contractor Support Services entitles all Ordering Activities who purchase a support agreement to the latest available product version upgrades, updates and enhancements, and documentation released during the agreement period, available on CD or downloadable from the Contractor customer portal. Protecting Ordering Activity's investment is where Contractor's coverage begins as an Ordering Activity embarks on its journey to increased knowledge and improved business performance. This service feature entitles Ordering Activity to the latest available product releases, updates/patches and legislative updates for the Workforce Payroll™ module. For many products, the latest support releases (service packs) or legislative updates are posted on the customer portal for Ordering Activity to download and install. Ordering Activity must sign up for email alerts to get notified of the release of new service packs on the Contractor customer portal.

(xi) Knowledge Base (Available to all Support Agreement customers)

Accessed by our customers thousands of times per month, this online database currently contains thousands of answers to questions about Contractor products. Type in a question and the knowledge base suggests a solution. It is tightly integrated with Contractor's Global Support case management system and captures the real-world experience of its support engineers. The knowledge base is constantly updated. When Contractor's support engineers encounter and resolve new situations, they can automatically submit new solutions to the knowledge base.

(xii) Frequently Asked Questions (Available to all Support Services customers)

Conveniently organized and continuously populated from the knowledge base, FAQs truly represent those issues that customers ask about most. Before querying the knowledge base, try the FAQs to find your answers or get ahead of issues you may not be aware of.

(xiii) eCase management (Available to all Support Agreement customers)

For Ordering Activity's convenience, Contractor gives Ordering Activity direct access to Contractor's electronic case management system. Ordering Activity may make its own notes to help explain what it is encountering. Ordering Activity's case is formally assigned a number and subject to all the normal tracking and routing mechanisms. Cases are reviewed Monday-Friday, during the business hours of the applicable Contractor support center, excluding Contractor holidays. Should Ordering Activity require assistance outside the described hours, it may telephone its Contractor support center.

(xiv) Documentation (Available to all Support Agreement customers)

Online access to documentation for most of Contractor' products, for example:

- Installation guides
- Configuration guides
- Database administrators guides
- User guides
- System administrators guides
- Database views reference guides.

(xv) Customer Forums (Available to all Support Agreement customers)

Customer forums provide a unique opportunity to connect with other Contractor customers and to benefit from their real-world experiences. Organized by product platform and using threaded messaging, the Forums allow Ordering Activity to post questions to other forum visitors — or provide advice to someone else's query. A chance to go beyond simple product "how to," many customers have commented on how the forums have helped them gain a broader understanding of how to leverage their Contractor applications.

(xvi) Remote Support (Available to all Support Agreement customers)

A web-based screen-sharing application that enables Contractor to support Ordering Activity by empowering Contractor support representatives to remotely view Ordering Activity's user's computer. By connecting through the Internet or via intranets and extranets, support representatives will work in real time with Ordering Activity's users and quickly escalate to desktop sharing, which features mutual mouse and keyboard control and whiteboard capability.

**Per-event Software Service.**

Ordering Activities seeking support outside their service coverage period or Services that are not covered by your Support service or Ordering Activities without a Support Agreement on Active Product will be charged at the current Contractor hourly rate.

	Software/Equipment
	Phone Support
Day and Time (local time)	Minimum hours
Monday-Friday 8:00 a.m.-5:00 p.m.	2
Monday-Thursday 5:01 p.m.-7:59 a.m.	4
Friday-Monday 5:01 p.m.-7:59 a.m.	8

Conditions:

1. Time billed is minimum billable hours and then one hour increments.
2. The 8:00 a.m.- 5:00 p.m. minimum billable hours apply to software support calls received prior to 5:00 p.m. local time Monday-Friday.
3. The response time for customers without a support agreement is within two business days.
4. Customers with a Support Agreement receive a 50 percent reduction from the minimum amount of hours.
5. Per-event rates are not discountable.

**CONTRACTOR EQUIPMENT / HARDWARE SUPPORT SERVICE POLICIES**

The following Contractor Support Services Policies shall apply to all Equipment / Hardware Support Services purchased by Ordering Activity:

**Depot Exchange Service.**

The premium hardware service option: Contractor ships a replacement unit on an advance exchange basis by next-business day delivery where available if request is received prior to 2:00 p.m. Contractor recommends that Depot Exchange customers procure the appropriate number of spare units to maintain adequate coverage while a unit is out of service.

How it works:

- Ordering Activity contacts Contractor to troubleshoot the problem. If unable to resolve the issue, Ordering Activity is issued a Return Material Authorization (RMA) Case number to return the unit to Contractor for repair.
- Ordering Activity installs its own spare unit from its inventory.
- Contractor ships a replacement unit on an advance exchange basis by next-business day delivery where available if request is received prior to 2:00 p.m.
- Upon receipt of replacement, Ordering Activity sends the terminal needing service back to the Contractor Equipment Services Center.

Availability: Currently ONLY available in Australia, Canada, China, Mexico, New Zealand, and United States.

Conditions:

- Batching (defined as 2 or more terminals) voids the turn-around time.
- Ordering Activity will be charged Contractor' current time and materials rate for the installation (professional services) of any software or firmware upgrades, if available, and if requested.
- Equipment Support Services do NOT include the replacement of "consumables." In addition, Depot Support Services do NOT include the repair of damages, and Ordering Activity will not attempt to return damaged Product, resulting from:
  1. Any cause external to the Products including, but not limited to, electrical work, fire, flood, water, wind, lightning, transportation, or any act of God;
  2. Ordering Activity's failure to continually provide a suitable installation environment (as indicated in Contractor's published installation guidelines) including, but not limited to, adequate electrical power;
  3. Ordering Activity's improper use, relocation, packaging, refinishing, management or supervision of the Product(s) or other failure to use Products in accordance with Contractor' published specifications;
  4. Ordering Activity's use of the Products for purposes other than those for which they are designed or the use of accessories or supplies not approved by Contractor;
  5. Government imposed sanctions, rules, regulations or laws preventing the shipment of the Products; or
  6. Ordering Activity's repair, attempted repair or modification of the Products.
- Terminals are warranted for 90 days from date of shipment.

This service includes access to equipment service packs / firmware updates available on the Contractor customer portal. Ordering Activity must sign up for email alerts to get notified of the release of new service packs on the Contractor customer portal.

#### **Depot Exchange Service.**

This service was designed for those Ordering Activities who keep their own inventory of spare terminals and options.

How it works:

- Ordering Activity contacts Contractor to troubleshoot the problem. If unable to resolve the issue, Ordering Activity is issued a Return Material Authorization (RMA) Case number to return the unit to Contractor for repair.
- Ordering Activity installs its spare unit from its inventory.
- Ordering Activity sends the terminal needing service back to the Contractor Equipment Services Center.
- Upon receipt of product, Contractor shall repair the product within ten (10) business days and return to you by regular surface transportation.

Availability: NOT available in Australia, China and New Zealand.

Conditions:

- Batching (defined as 2 or more terminals) voids the turn-around time.
- Ordering Activity will be charged Contractor's current time and materials rate for the installation (professional services) of any software or firmware upgrades, if available, and if requested.
- Equipment Support Services do NOT include the replacement of "consumables." In addition, Depot Support Services do NOT include the repair of damages, and Ordering Activity will not attempt to return damaged Product, resulting from:
  1. Any cause external to the Products including, but not limited to, electrical work, fire, flood, water, wind, lightning, transportation, or any act of God;
  2. Ordering Activity's failure to continually provide a suitable installation environment (as indicated in Contractor' published installation guidelines) including, but not limited to, adequate electrical power;
  3. Ordering Activity's improper use, relocation, packaging, refinishing, management or supervision of the Product(s) or other failure to use Products in accordance with Contractor' published specifications;
  4. Ordering Activity's use of the Products for purposes other than those for which they are designed or the use of accessories or supplies not approved by Contractor;
  5. Government imposed sanctions, rules, regulations or laws preventing the shipment of the Products; or
  6. Ordering Activity's repair, attempted repair or modification of the Products.
- Repairs are warranted for 90 days from date of shipment.

This service includes access to equipment service packs / firmware updates available on the Contractor customer portal. Ordering Activity must sign up for email alerts to get notified of the release of new service packs on the Contractor customer portal.

#### **Per-event Repair Service**

Per-event rates apply to Ordering Activities without an equipment support agreement. The Contractor Equipment Services center will attempt to repair any repairable defective item within 15 business days after receipt at the current Per-event pricing. The product will be returned by regular surface transportation.

How it works:

- Ordering Activity contacts Contractor to get a Return Material Authorization (RMA) Case number to return the unit to Contractor for repair.
- Ordering Activity installs its spare unit from its inventory
- Ordering Activity sends the terminal needing service back to the Contractor Equipment Services Center.
- Upon receipt of product, Contractor shall repair the product within fifteen (15) business days and return to the customer by regular surface transportation.

Conditions:

- Batching (defined as 2 or more terminals) voids the turn-around time.
- Ordering Activity will be charged Contractor's current time and materials rate for the installation (professional services) of any software or firmware upgrades, if available, and if requested.
- Equipment Support Services do NOT include the replacement of "consumables." In addition, Depot Support Services do NOT include the repair of damages, and Ordering Activity will not attempt to return damaged Product, resulting from:
  1. Any cause external to the Products including, but not limited to, electrical work, fire, flood, water, wind, lightning, transportation, or any act of God;
  2. Ordering Activity's failure to continually provide a suitable installation environment (as indicated in Contractor' published installation guidelines) including, but not limited to, adequate electrical power;
  3. Ordering Activity's improper use, relocation, packaging, refinishing, management or supervision of the Product(s) or other failure to use Products in accordance with Contractor' published specifications;
  4. Ordering Activity's use of the Products for purposes other than those for which they are designed or the use of accessories or supplies not approved by Contractor;
  5. Government imposed sanctions, rules, regulations or laws preventing the shipment of the Products; or
  6. Ordering Activity's repair, attempted repair or modification of the Products.

- Repairs are warranted for 90 days from date of shipment.

This service does NOT include access to equipment service packs / firmware updates.

## **KNOWLEDGEPASS EDUCATION SUBSCRIPTION**

The following terms shall apply to Ordering Activity's purchase of the Contractor KnowledgePass Education Subscription if specified on the Order Form:

(a) Scope: The KnowledgePass Education Subscription is only available to Ordering Activities who are licensing Contractor's Workforce Central Software products and who are maintaining such products under a support plan with Contractor. The KnowledgePass Education Subscription provides access via the internet to certain educational offerings provided by Contractor (the "KnowledgePass Content"), including:

- i. Hands-on Guided Practices ;
- ii. Tutorials;
- iii. Concept movies;
- iv. Job Aids in \*pdf form;
- v. Training Kits (downloadable zip files of modifiable learning content);
- vi. Information Webinars; and
- vii. Train-the-Trainer Resource Center (which is only available to customers who purchase one of Contractor' Train-the Trainer Programs) which includes:
  - Instructor Guide
  - Student Guide
  - Job Aids
  - Database files

The content of these offerings are subject to change by Contractor without notice.

(b) Term of Subscription: The KnowledgePass Education Subscription shall run co-terminously with Ordering Activity's Software Support, and shall renew for additional one (1) year terms provided Ordering Activity renews its KnowledgePass Education Subscription as provided below.

(c) Payment: Ordering Activity shall pay the annual subscription charge for the initial term of the KnowledgePass Education Subscription in accordance with the payment terms on the Order Form. Contractor will send Ordering Activity a renewal invoice for renewal of the KnowledgePass Education Subscription at least forty five (45) days prior to expiration of the then current term. KnowledgePass Education Subscription shall renew for an additional one (1) year term if Ordering Activity pays such invoice before the end of the initial term or any renewal term.

(d) Limitations: Ordering Activity recognizes and agrees that the KnowledgePass Content is copyrighted by Contractor. Ordering Activity is permitted to make copies of the KnowledgePass Content provided in \*pdf form solely for Ordering Activity's internal use and may not disclose such KnowledgePass Content to any third party other than Ordering Activity's employees. Ordering Activity may not edit, modify, revise, amend, change, alter, customize or vary the KnowledgePass Content without the written consent of Contractor, provided that Ordering Activity may download and modify contents of Training Kits solely for Ordering Activity's internal use.

(e) Train-the-Trainer Program (TTT): Certification under the Train-the-Trainer Program is valid only for the point release of the Software for which the TTT Program is taken, and covers only the Ordering Activity employee who completes the TTT Program.

## **KRONOS WEBTA SUPPORT POLICIES AND SERVICES**

- The current Gold Support standard policies and maintenance services for the Kronos webTA family of products are listed below unless the Ordering Activity has different agreements in their existing contracts governing their maintenance support services. In the absence of a specific maintenance support services contract between Contractor and the Ordering Activity the maintenance support services listed in this document prevail.
- Kronos webTA customers are only eligible to receive Gold Support. Kronos Gold Plus, Platinum and Plus Programs are not available under webTA support and maintenance agreements.

### **Product Coverage**

For each product installation in the Kronos webTA family of products, Ordering Activity's must purchase the same software support service type for all Kronos webTA software products. The Kronos webTA family of products is sold to entities within the U.S. Federal Government.

The Supported Product List for the Kronos webTA family of products is as follows:

- Kronos webTA – time, attendance & leave management
- Kronos webLM – labor, project & activities tracking & costing
- Kronos webTA Services – interoperability, interfacing, SOA, API
- Kronos webTA Mobile – mobile access to webTA & webLM
- Kronos webTA Mobile Supervisor – mobile access to webTA & webLM
- Kronos webTA Report Server – web based reporting server
- Kronos webTA Reports – web based webTA reporting, analytics, OLAP
- Kronos webTA Smart-time – suggestion based time, attendance & leave
- Kronos webTA Console – dash board information views
- Kronos webTA Guide – service enabled on line training module

## Kronos webTA Family of Products

Contractor through Kronos only provides maintenance service support for the current version (for example, 4.x.x) and the immediate prior supported version and release (for example, 3.8.x) of the Software for a maximum of 24 months. Resolution of an issue may require that a customer upgrade to the current release or version of the Software.

Contractor through Kronos defines Version, Release, and Service Pack as follows –

- Version: A software product upgrade that includes major new features or functionality.
- Release: A software product upgrade that includes minor new features or functionality.
- Service Pack: One or more defect repairs bundled into a single update. Service Packs are cumulative - Service Pack "N" will, at minimum, include all of the changes delivered in Service Pack N-1.

*Note: the software product hierarchy is: Version, Release, Service Pack*

## Support Exclusions

Support service does not include service to the Software resulting from, or associated with:

1. Any cause external to the Software including, but not limited to, electrical work, fire, flood, water, wind, lightning and transportation, or any act of God; or
2. Ordering Activity's failure to continually provide a suitable installation environment as specified in Kronos' specifications; or
3. Ordering Activity's improper use, management or supervision of the Software or other failure to use the Software in accordance with Kronos' specifications; or
4. Ordering Activity's repair, attempted repair or modification of the Software without prior authorization from Contractor; or
5. Ordering Activity's use of the Software for purposes other than those for which they are designed or the use of accessories or supplies not approved by Contractor; or
6. Ordering Activity's computer or operating system malfunctions; or
7. Services required for application programs and/or conversions from products or software not supplied by Contractor through Kronos; or
8. If a client alters the database in any manner on their own without partnering with Contractor then the maintenance support and warranties are no longer valid; or
9. Re-programming, including reconfiguration of the Software or the rebuilding of Ordering Activity's database.
10. Contractor through Kronos will support or implement Software under the currently supported releases of 3<sup>rd</sup> party vendor infrastructure products (database, operating, and application software) only.

In addition to the Support exclusions above the following Services are NOT covered by your Kronos Support Service Agreement and are subject to the current Kronos Professional Service rates.

1. Configuration Changes, Reprogramming, New Programming such as, but not limited to, Work Rules, Pay Rules, Accrual Rules, Profiles, pay plans, work schedules, accounting structures, workflows, role definitions, and interfaces . Creating New Business Rules
  - a. Terminal Programming and Cold Start
  - b. Pay Period Changes
2. IT related maintenance
  - a. Unsupported Operating System, Database, or Software
  - b. Database Software upgrades
  - c. Middleware upgrades
  - d. Performance related issues caused by non application events
  - e. SSO Requirements
  - f. Load Balancing
  - g. Monitor/management tools
  - h. Internet security consulting/firewall integration
  - i. API/XML consulting
  - j. Web Services consulting
  - k. IT process review (backup, refresh, etc.)
  - l. VMWare (Virtual Machine)
  - m. All hardware (other than Kronos hardware)
3. Programming, modifying, implementing, training or troubleshooting the following:
  - a. Data integration interfaces
  - b. Custom Reports
  - c. Custom Application extensions
4. Editing templates and creating new templates
5. Installing or reinstalling Applications such as, but not limited to:
  - a. Adding a workstation
  - b. Moving the Kronos application
  - c. Reinstalling following a hard drive crash
  - d. System Restoration after hardware failure
  - e. Virus Protection and Spyware
6. Database Administration Maintenance or Services such as, but not limited to:
  - a. Database maintenance scripts
  - b. Writing or customizing database scripts for data reporting and/or retrieval
  - c. Performance Tuning
  - d. Sizing
  - e. Load balancing
  - f. Data warehouse, data mart, cloud computing, data mashing consulting

- g. Disaster Recovery (other catastrophic failure)
- h. Database backup strategy and/or setup
- 7. Establishing a Non-Production Environment such as, but not limited to:
  - a. Test environments, i.e., application servers, database servers
  - b. Demonstration environment
  - c. Training environment
- 8. Troubleshooting Environmental Issues such as, but not limited to:
  - a. Operating System
  - b. Network Issues
  - c. Firewalls
  - d. Servers
  - e. Workstations
  - f. Alternate sign on processes, such as single sign on or eAuthentication
- 9. Custom Reports or Custom Application Extensions
- 10. Implementation or configuration services related to upgrading product such as, but not limited to:
  - a. Software implementation
  - b. Porting custom software (i.e., reports)
  - c. Change management
  - d. Training
  - e. New functionality deployment
  - f. Application interfaces
- 11. Service to Kronos modified software is not provided, unless otherwise specified on the applicable Statement of Work and Purchase Order for such modified software.
- 12. Importing new data or developing additional interfaces
- 13. Load balancing configuration
- 14. Virtual server configuration

#### **Support Discontinuance - End of Service Life**

Contractor through Kronos may discontinue support for the Software upon 30 days written notice to Ordering Activity, or at the anniversary date of the relevant support agreement, whichever is longer. If such support is discontinued during the initial or any renewal term of the relevant support agreement, the remaining value of the agreement will be left as a credit on the account to be applied against any future invoices.

Contractor through Kronos would no longer provide any type of support for the discontinued Software - no calls accepted, and no patches, bug fixes or changes in any form will occur no matter the Ordering Activity issue. The Ordering Activity is eligible to receive the next version or release of the Software as long as they are current on their maintenance support services payment and their current Software is not yet discontinued.

If the Ordering Activity's current Software has been discontinued and the client is current on their maintenance, but the Ordering Activity has not upgraded to the new version or release by the date of discontinuance of support, then the Ordering Activity will have to purchase new licenses of the Software. Contractor through Kronos would provide a credit toward the purchase new licenses by the unused portion of their maintenance payment.

If the Ordering Activity does not remain current on their maintenance support services before the discontinuance of support, then they will not receive the next version or release of the Software until they reinstate their licenses of the Software. The Ordering Activity must become current on their maintenance and upgrade to the new version or release before the discontinuance of support date to avoid having to purchase new licenses of the Software.

If the Ordering Activity did not remain current on their maintenance support services and did not become current on their maintenance supports services before the discontinuance of support, then they will not receive the next version or release of the Software until they purchase new licenses of the Software.

#### **Reinstatement of Support Services**

In the event that Ordering Activity allows Software or Equipment support services to lapse or if Ordering Activity did not originally purchase Software or Equipment support services and wishes to reinstate or procure such services, Ordering Activity must pay the list price for the Support service for such lapsed or un-procured time period, plus a twenty per cent (20%) reinstatement fee in addition to the current support fee for the support option being purchased by Ordering Activity.

#### **Gold Support Service Coverage Period**

Contractor through Kronos provides maintenance support services to their customers during regular business hours. Regular business hours are defined as weekdays, Monday through Friday, between 9 a.m. and 5 p.m. Eastern Time, except on Kronos holidays and Federal holidays.

Non-business hours support is available with a 3-day notice from the customer that they will need non-business hours support. Non-business hours are defined as weekday support between the hours of 5 p.m. and 9 a.m. Eastern Time, during any 24-hour period of a Kronos holiday, Federal holiday and on weekends. Non-business support will include additional services fees above the then current annual maintenance fee.

Contractor through Kronos will provide on-call Tier 2 and Tier 3 help desk support to diagnose and correct Kronos webTA system problems and bug fixes to the initial configured as tested, accepted, and deployed baseline release. The primary means of support is a 24-hour web interface to a sophisticated request tracking system. Support requests can be submitted at <https://kronosfederal.com/support> or by calling our toll-free number. Support requests are automatically forwarded to the appropriate support staff.

### Priority Based Support

Contractor through Kronos provides support on a "priority" basis. As such, customers with the most critical request(s) will be serviced first. Kronos webTA Support has set up the following guidelines to assess the priority of each service request:

1. High Priority: These items are further defined as either a Blocker issue or a Critical issue and can be marked as such in the ticketing system. A critical customer issue with no available workaround where the system or a module may be down, experiencing major system degradation, data corruption or other related factors resulting in the customer not being able to process their payroll such as:
  - a. Blocker Issues
    - i. Production is down and unable to sign-off Time Cards
    - ii. Actual totals are not accurate
    - iii. Unable to access a critical application function
    - iv. No workaround is available.
  - b. Critical Issues
    - i. Crashes of the system
    - ii. Loss of data
    - iii. Severe memory leak
2. Medium Priority: An issue to be marked as Major in the ticketing system. This is a serious customer issue which impacts ability to utilize the product effectively such as:
  - a. Intermittent or inconsistent functionality results or data accuracy
  - b. Data display inaccuracies or inconsistencies
  - c. System performance is inconsistent or fluctuates
  - d. A workaround is available.
3. Low Priority: Non-critical problems that are marked as either Minor or Trivial and are generally Use and Usability issues and or "how to" questions such as:
  - a. Minor Issues
    - i. How do I set up a holiday pay rule?
    - ii. How do I run a report?
    - iii. How often should database maintenance be executed?
    - iv. A workaround is available on the customer portal.
  - b. Trivial Issues
    - i. Misspells
    - ii. Misaligned text
    - iii. Other cosmetic problems

### Response Time

Response time shall mean from the time the case priority is set by Kronos' webTA Support Center until a Kronos support representative contacts the Ordering Activity to begin service. Contractor through Kronos utilizes a priority based support focus. Ordering Activity's will be serviced during regular business hours in accordance with the following guidelines:

1. High Priority – 1 hour
2. Medium Priority – 4 hours
3. Low Priority – 8 hours
4. All response times are business hours.

### Critical Outages

Kronos Support will provide continuous effort on all high priority events through either bug identification, the development of a workaround or problem resolution. If this effort goes beyond regular hours, the case may be passed to a non-business hour's team or to the mission critical support engineer on duty. *On-going continuous effort may also be dependent on the customer's ability to provide a resource to work with the Kronos Support engineer during this period. Support outside the scope of the services agreement is billable.*

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**SERENA SOFTWARE, INC.**

**SERENA SOFTWARE, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

---

**DEFINITIONS**

**“Concurrent User”** means an employee of Ordering Activity who has been designated as a user within a group of authorized users of the Software and accesses the Software at any given point in time, either directly or through an application.

**“Instance”** means a single occurrence of initialization or execution of the Software on one Server.

**“Licensed Capacity”** means the maximum permitted use of the Software based on capacity-based pricing metrics identified in the Order Instrument, including, without limitation, Concurrent Users, Named Users, Seats, Instances and Servers.

**“Maintenance”** means the maintenance and technical support services for the Software identified in the Order Instrument and provided by Contractor pursuant to this Attachment A.

**“Named User”** means a single employee of Ordering Activity who has been designated as an authorized user of the Software and accesses the Software using a single computer at any given point in time, either directly or through another application.

**“Order Instrument”** means (a) a purchase order, credit card order or other document that has sufficient details for Contractor to fulfill Ordering Activity’s order and has been accepted by Contractor; (b) a Purchase Authorization Letter that has been signed or otherwise accepted by Ordering Activity and accepted by Contractor (“PAL”); or (c) a Software license schedule that has been signed by Ordering Activity and Contractor (“Software License Schedule”).

**“Seat”** means a single employee of Ordering Activity who has been authenticated by Ordering Activity’s LDAP server and accesses the Software at any given point in time, either directly or through an application.

**“Server”** means a single server on which an Instance of the Software is installed.

**“Software”** means Serena’s software products, in object code form, that are commercially available at the time of Ordering Activity’s order and identified on the Order Instrument, and any modifications, corrections and updates provided by Serena in connection with Maintenance.

**“Territory”** means the country identified in the PAL or Software License Schedule or, if not identified, the country in which Ordering Activity acquired the Software.

**“User Documentation”** means the user’s guide, installation guides, and/or on-line documentation that is applicable to the Software. User Documentation does not include marketing materials or responses to requests for proposals.

**GRANT OF LICENSE AND USE OF SOFTWARE**

**License Grant.** Subject to the terms and conditions of this Attachment A, Contractor grants to Ordering Activity a perpetual, non-exclusive license to use the Software within the Territory, in accordance with the User Documentation and in compliance with the authorized Licensed Capacity.

**Usage Rights.** Ordering Activity may only use the Software and/or the User Documentation for its internal business operations and to process Ordering Activity’s data. Ordering Activity shall not (a) permit any third parties or non-licensed entities to use the Software or the User Documentation; (b) permit any Concurrent User, Named User, or Seat to use or access the Software from a location outside of the Territory; (c) process or permit to be processed any data that is not Ordering Activity’s data; (d) use the Software in the operation of a service bureau or hosted or subscription service; (e) sublicense, rent, or lease the Software or the User Documentation to a third party; or (f) perform, publish, or release to any third parties any benchmarks or other comparisons regarding the Software or User Documentation. Ordering Activity shall not make simultaneous use of the Software on multiple, partitioned, or virtual computers without first procuring the number of licenses to be simultaneously used by the Ordering Activity. Ordering Activity shall not permit a third party outsourcer to use the Software to process data on Ordering Activity’s behalf without Contractor’s prior written consent.

Notwithstanding anything to the contrary in the Usage Rights section of this Attachment A, Ordering Activity may use the Software to process data on behalf of other Ohio State Agencies (the “Agencies”) for such Agency’s own internal business purpose. Customer may allow its third party contractors (collectively the “Contractors”) to use the Software solely in accordance with the terms and conditions of this Attachment A to provide services to Ordering Activity and Ordering Activity’s internal business purpose. Ordering Activity shall be responsible for such Contractor’s compliance with the terms and conditions of this Attachment A.

**License Keys.** The Software will contain one or more license keys to enable the functionality of the Software. Ordering Activity may only access and use the Software with license keys issued by Contractor, and shall not attempt to modify, tamper with, reverse engineer, reverse compile, or disassemble any license key. If Contractor issues a new license key for the Software, Ordering Activity shall not use the previous license key to enable the Software. At Ordering Activity’s request, Contractor will reissue a replacement license key to enable the Software in accordance with the original Order Instrument, provided that the request is made during a Maintenance period, Ordering Activity certifies that

all evidence of the original license key has been deleted and destroyed and Ordering Activity is in compliance with the terms of this Attachment A.

**Archival Copies.** Ordering Activity may make one copy of the Software for back-up and archival purposes only. Ordering Activity may make a reasonable number of copies of the User Documentation for Ordering Activity's internal use. All copies of Software and User Documentation must include all copyright and similar proprietary notices appearing on or in the originals. Copies of the Software may be stored offsite provided that all persons having access to the Software are subject to Ordering Activity's obligations under this Attachment A and Ordering Activity takes reasonable precautions to ensure compliance with these obligations. Contractor reserves the right to revoke permission to reproduce copyrighted and proprietary material if it reasonably believes that Ordering Activity has failed to comply with its obligations.

**Licensed Capacity.** Contractor licenses Software based on Licensed Capacity for different types of usage, including, without limitation, Concurrent Users, Named Users, Seats, Servers, and such other types of usage as described in this Attachment A. A Concurrent User license allows multiple Concurrent Users to share access to and use the Software, provided that the number of Concurrent Users accessing the Software at any point in time does not exceed the total number of licensed Concurrent Users. A Named User license allows a single employee of Ordering Activity to access and use the Software using a single computer at any point in time. A Seat license allows a single employee of Ordering Activity who has been authenticated by Ordering Activity's LDAP server to access and use the Software, provided that the number of employees of Ordering Activity accessing the Software at any point in time does not exceed the total number of licensed Seats. A Server license allows for a single Instance of the Software to be accessed and used on the applicable server. If an application accessing the Software is a multiplexing, database, or web portal application that permits users of such application to access the Software or data processed by the Software, a separate Named User or Seat license, as applicable, will be required for each user of the application. Regardless of usage type, Ordering Activity shall immediately notify Contractor in writing of any increase in use beyond the Licensed Capacity and provide Contractor with such information as may be reasonably requested by Contractor to verify Ordering Activity's use and deployment of the Software. Any additional Licensed Capacity must be licensed pursuant to an Order Instrument and this Attachment A, and additional Software license and Maintenance fees shall be based on Contractor's then-current Ohio STS price.

**Third Party Software.** Ordering Activity acknowledges that software provided by third party vendors ("Third Party Software") may be embedded in or delivered with the Software. The terms of this Attachment A shall apply to Ordering Activity's use of such Third Party Software. All Third Party Software vendors shall be deemed third party beneficiaries under this Attachment A. Ordering Activity may only use the Third Party Software with the Software, and may not use the Third Party Software on a stand-alone basis or use or integrate it with any other software or device.

## TITLE

**Title.** Contractor retains all right, title and interest in and to the Software and User Documentation and all copies, improvements, enhancements, modifications and derivative works of the Software and User Documentation, including, without limitation, all patent, copyright, trade secret, trademarks and other intellectual property rights. Ordering Activity agrees that it will not, and shall not authorize others to, copy (except as expressly permitted herein), make modifications to, translate, disassemble, decompile, reverse engineer, otherwise decode or alter, or create derivative works based on the Software or User Documentation. Except to the extent required for Ordering Activity's use the Software as provided herein, Contractor grants no express or implied rights under this license to any of Serena's patents, copyrights, trade secrets, trademarks or other intellectual property rights.

## LIMITED WARRANTY

**Performance Warranty.** Contractor warrants that the Software, as delivered by Contractor and when used in accordance with the User Documentation and the terms of this Agreement, will substantially perform in accordance with the User Documentation for a period of ninety (90) days from the date of initial delivery of the Software. If the Software does not operate as warranted and Ordering Activity has provided written notice of the non-conformity to Contractor within the ninety (90) day warranty period, Contractor shall at its option (a) repair the Software; (b) replace the Software with software of substantially the same functionality; or (c) refund the applicable license and Maintenance fees received by Serena for the nonconforming Software. The foregoing warranty specifically excludes defects in or non-conformance of the Software resulting from (a) use of the Software in a manner not in accordance with the User Documentation; (b) modifications or enhancements to the Software made by or on behalf of Ordering Activity by a third party; (c) combining the Software with products, software or devices not provided by Serena; or (d) computer hardware malfunctions, unauthorized repair, accident, or abuse.

**Disclaimers.** THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, AND SERENA EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND STATUTORY WARRANTIES OF NON-INFRINGEMENT. CONTRACTOR DOES NOT WARRANT THAT THE SOFTWARE OR MAINTENANCE SHALL MEET ORDERING ACTIVITY'S REQUIREMENTS OR THAT USE OF THE SOFTWARE SHALL BE UNINTERRUPTED OR ERROR FREE. THE REMEDIES SET FORTH IN THIS SECTION ARE ORDERING ACTIVITY'S REMEDIES AND CONTRACTOR'S LIABILITY REGARDING FAILURE OF ANY SOFTWARE TO FUNCTION OR PERFORM AS WARRANTED IN THIS SECTION.

## MAINTENANCE

**Maintenance Period.** If Ordering Activity elects to purchase Maintenance with the Software, the Maintenance period shall commence upon the initial delivery of the Software and continue for a period of one year thereafter, unless otherwise stated in an Order Instrument. The Maintenance period may, at Ordering Activity's option, be renewed pursuant to a subsequent Order Instrument and, upon Contractor's acceptance of the Order Instrument. Prior to such renewal, Contractor may, upon ten (10) business days written notice, require Ordering Activity to provide a report on Ordering Activity's use and deployment of the Software. Such report shall be certified by an officer of Ordering Activity and shall specify, with respect to the Software: (a) the type and amount of Licensed Capacity; (b) the version; and (c) the Serena license serial number. Contractor shall issue an annual renewal notice to Ordering Activity at least ninety (90) days prior to the expiration of

the then-current Maintenance period. Maintenance fees shall be based on the then-current Ohio STS price. Ordering Activity may not decrease the Licensed Capacity covered by Maintenance during a Maintenance period. Ordering Activity may not decrease the Licensed Capacity covered by Maintenance at the beginning of a Maintenance period unless otherwise negotiated between the parties at the beginning of such Maintenance period.

**Support Coordinators.** Maintenance shall consist of support services provided by Contractor through Serena to one designated support coordinator of Ordering Activity (and one backup coordinator) per Ordering Activity location, by telephone, facsimile, email and World Wide Web site. Support is available during normal business hours in the applicable location within the Territory, Monday through Friday, excluding nationally observed holidays. Emergency support is available outside of these hours via pager service accessible through the main support telephone number.

**Additional Licensed Capacity.** In the event that Ordering Activity purchases additional Licensed Capacity for the Software prior to the annual anniversary date of the Maintenance period, Ordering Activity agrees to pay applicable Maintenance fees based on Contractor's then-current Ohio STS Maintenance rates. Maintenance fees shall apply from the effective date of such additional Licensed Capacity and continue for a period of one year thereafter, unless the parties agree in writing that Maintenance for the additional Licensed Capacity will be coterminous with Maintenance for Ordering Activity's existing Licensed Capacity.

**New Releases.** During a current Maintenance period, Contractor through Serena shall provide Ordering Activity with one copy of any new release of the Software, which may include generally available error corrections, modifications, maintenance patch releases, enhancements (unless priced separately by Contractor and generally not included with new licenses for the Software at that time), and revised User Documentation, if applicable. Notwithstanding the foregoing, stand-alone error corrections that are not part of a new release will not be independently supported but will be incorporated into the next release of the Software. If Ordering Activity installs a new release of the Software, Ordering Activity may continue to use the previous version of the Software for up to ninety (90) days in order to assist Ordering Activity in the transition to the new release. Once Ordering Activity completes its transition to the new release of the Software, Ordering Activity shall discontinue use of the previous version of the Software.

**Supported Releases.** Contractor through Serena will continue to support the immediately preceding release of the Software for a period of twelve (12) months following the earlier of (a) the discontinuance of the Software or (ii) the date that a new release of the Software becomes generally available, provided that Ordering Activity has paid applicable Maintenance Ohio STS fees and incorporated all Maintenance patch releases issued by Serena for the release of the Software.

**Reinstatement of Maintenance.** If Ordering Activity allows Maintenance to expire, Ordering Activity may, at a later date, renew Maintenance by paying the following: (a) if Ordering Activity has installed the current release of the Software but has failed to pay the applicable Ohio STS renewal fee on or before the ninetieth (90th) day following expiration of the Maintenance period, annual Maintenance fees at Contractor's then-current Ohio STS rates, plus Contractor's then-current reinstatement Ohio STS fee as stated in the Contractor's Ohio STS price list; or (b) if Ordering Activity has not installed the current release of the Software or has failed to pay the applicable Ohio STS renewal fee by the ninetieth (90th) day following expiration of the Maintenance period, annual Maintenance fees at Contractor's then-current Ohio STS rates, plus Contractor's then-current Ohio STS license update fee for the current release of the Software as stated in the Contractor's Ohio STS price list.

## SOFTWARE PRODUCT SPECIFIC TERMS

**Serena® Business Manager ("SBM") (formerly TeamTrack®).** The Software is licensed on the basis of Servers, Named Users, Concurrent Users, and Seats. A Server license allows execution of a single Instance of the Software on a single server. Named User, Concurrent User and Seat licenses are for use on a single server unless otherwise specified in writing by the parties. Each SBM Seat allows each designated Seat to use and participate in all activities and functionality of Serena Business Manager that pertain to workflow applications to which the Seat has been granted access at runtime, including the workflow, workflow roles, transition items, sending and receiving notifications, creating reports, and creating dashboards. A Seat is required for each managed administrator of Serena Business Manager. Ordering Activity may transfer Named User or Seat licenses to accommodate personnel changes, provided that such transfers do not result in sharing of Named User or Seat licenses. Ordering Activity may change from time to time the employees and on-site support contractor personnel who are designated to use the Software under a Named User or Seat license, provided that the number of users does not exceed the total number of licensed Named Users or Seats, as applicable.

**Serena® Project Portfolio Management ("PPM", formerly Serena Mariner®).** The Software is licensed on the basis of database Instances and Named Users, where Named User licenses are specific to one database Instance. In conformance with such licensing, Mariner provides Ordering Activity with the ability to deploy contents to three destinations for each database Instance: (a) a test version; (b) a production version; and (c) a development/staging version.

**Serena® Release Vault (formerly Dimensions® Deploy).** The Software is licensed based upon platforms (agents) and number of systems to which it will be deployed. Ordering Activity is authorized to use only the following features of the Software: Version Management, Projects, Build Management, Deployment, Ant and Cruise Control Integrations, Baseline Creation, Design Parts, Request Management, the Dimensions Windows client, the Dimensions web client, the Dimensions Windows Explorer add-in, the Dimensions administration console, all agents (except z/OS and z/Linux), all APIs, and web services.

**Serena Release Manager Bundle.** Includes Serena® Release Vault, Serena® Release Control, and Serena® Release Automation.

**Serena® Release Control (formerly Application Release Management/ARM).** Serena Release Control is licensed on the basis of MIPS, Endpoints and Seats. The Server Module includes ten (10) Seat licenses. Ordering Activity's Release Control MIPS capacity shall be equal to or greater than Ordering Activity's licensed MIPS capacity of ChangeMan ZMF. License Grant. Subject to the terms and conditions of this Attachment A, Contractor grants Ordering Activity a perpetual, non-exclusive license to use and modify the Release Control Software in accordance with the User Documentation, and in compliance with the authorized Licensed Capacity. Contractor also grants to Ordering

Activity a license to perform and deploy the Release Control Software solely as incorporated within Serena's software product known as Serena Business Manager, and solely for Ordering Activity's internal business operations. Ordering Activity may not sell, rent, lease, or otherwise distribute or disclose the Software or any modification thereof to any third party whatsoever. Title. To the extent that Ordering Activity modifies the Release Control Software or creates a derivative work of such, Contractor grants Ordering Activity a non-exclusive, non-transferable license to use such modification or derivative work at no additional charge, subject to such limitations set forth above and in this Attachment A. An "Endpoint" is a single, physical, or virtual, or cloud server and Endpoints are licensed in packs of ten (10) Endpoints. The foregoing is a form of Licensed Capacity and if Ordering Activity uses Release Control to deploy to Endpoints, Ordering Activity is required to license such from Contractor. If Ordering Activity exceeds ten (10) Seat licenses of Release Control, additional Seat licenses of Release Control must be licensed from Contractor.

**Serena® Service Manager ("SSM") Seat.** Each SSM Seat license allow each designated SSM Seat to use and participate in all activities and functionality of Serena Business Manager that pertain to workflow applications to which the SSM Seat has been granted access at runtime, including the workflow, workflow roles, transition items, sending and receiving notifications, creating reports, and creating dashboards. Each SSM Seat license purchased includes one SBM Connect for Sharepoint User license. Notwithstanding, Ordering Activity is not authorized to access the Service Request Center functionality that is installed with SSM.

**Serena® Service Manager ("SSM") Content Seat.** Each SSM Content Seat license allows for a single Ordering Activity employee or on-site support contractor employee who has been designated by Ordering Activity to use Ordering Activity's existing SBM license to fully access the application content contained in the SSM solution file; otherwise, Ordering Activity's existing SBM users are authorized solely to submit and update tickets in the SSM application. Each SSM Content Seat license purchased includes one SBM Connect for Sharepoint Seat license.

**Serena Service Manager ("SSM") Content Concurrent:** Each SSM Content Concurrent license allows for an authorized Ordering Activity employee who has been designated by Ordering Activity to use Ordering Activity's existing SBM license to fully access the application content contained in the SSM solution file; otherwise, Ordering Activity's existing SBM users are authorized solely to submit and update tickets in the SSM application. Each SSM Content Concurrent license purchased includes one SBM Connect for Sharepoint license.

Ordering Activity is not authorized to access the Service Request Center functionality that is installed with SSM. If at any time Ordering Activity accesses or uses Service Request Center, Ordering Activity shall promptly notify Contractor and may be required to pay additional license fees to Contractor at Contractor's current Ohio STS price.

**Serena® Service Request Center ("SRC").** Ordering Activity is authorized to use the number of Seats it has licensed of Service Request Center. Notwithstanding, Ordering Activity is not authorized to access or use the Serena Service Manager ("SSM") functionality which is installed with SRC.

**Development Manager Full User.** Development Manager Full User license includes one (1) Serena Business Manager Seat and one (1) Dimensions CM Named User license.

**Development Manager Full Concurrent User.** Includes three (3) Serena Business Manager Seats and one (1) Dimensions CM Concurrent User license.

**Development Manager Process User.** Includes one (1) Serena Business Manager Seat.

**Development Manager Process Concurrent User.** Includes three (3) Serena Business Manager Seats.

**Development Manager Starter Package:** includes ten (10) Develop Manager Full Users, ten (10) Deployment End-points, and Quality Center Connector.

**Serena® ChangeMan® ZMF Client Pack.** Each seat of the ChangeMan ZMF Client Pack allows one ZDD license and one Eclipse Plug-In License.

Requirements Manager Named User license includes one (1) SBM Named User (for existing Ordering Activities with SBM Named User installs) or one (1) SBM Seat, as applicable, one (1) Dimensions RM Named User license, and one (1) Prototype Composer Professional Named User license.

Requirements Manager Concurrent User includes one (1) SBM Concurrent User (for existing Ordering Activities with SBM Concurrent User installs) or four (4) SBM Seats, as applicable, one (1) Dimensions RM Concurrent User license, and one (1) Prototype Composer Professional Concurrent User license.

Requirements Control Concurrent User license includes one (1) SBM Concurrent User (for existing Ordering Activities with SBM Concurrent User installs) or four (4) SBM Seats, as applicable, one (1) Dimensions RM Concurrent User ("Dim RM") license, and one (1) Prototype Composer Professional Concurrent User ("PC") license. Requirements Control users are allowed to use Dimensions RM (on RM Browser) and Prototype Composer solely to read, propose changes to and comment on existing requirements, as well as propose new requirements. If Ordering Activity uses Dim RM and PC for any other use other than as stated above, Ordering Activity may be required to pay additional license fees to Contractor.

**Serena Demand Manager Content:** Demand Manager Content license is licensed on the basis of Concurrent Users and Seats. Each Demand Manager Content license allows a Ordering Activity employee who has been designated by Ordering Activity to use Ordering Activity's existing SBM license to fully access the application content contained in the Demand Manager solution file; otherwise, Ordering Activity's existing SBM users are authorized solely to submit and update tickets in the Demand Manager application. The foregoing authorized

use is a form of Licensed Capacity and that use of features other than those set forth above may require Ordering Activity to pay additional license fees to Contractor.

**Authorized Use of Products.** Ordering Activity acknowledges that the authorized use for each Software product set forth in this Section is a form of Licensed Capacity and that other features and/or Applications other than those set forth above in each Software product may be unavailable unless they are purchased at the then-current Ohio STS price.

## **EXHIBIT A – SERENA MAINFRAME**

### **1. Definitions.**

“**CEC**” means the Central Electronic Complex, and includes CPUs, memory, channels, controllers, power supplies within the hardware, and direct access storage devices.

“**CPU**” means an individual central processing unit for a computing device that contains a control unit that extracts instructions from memory and decodes and executes the instructions.

“**Licensed Capacity**” means the maximum permitted use of the Software based on capacity-based pricing metrics identified in the Order Instrument, including, without limitation, CECs and MIPS.

“**Licensed Configuration**” means the type of hardware platform, operating system, database, location, and other configuration information identified in the Order Instrument.

“**Mainframe Software**” means Software that is designated by Serena to operate on a mainframe computer (e.g., ChangeMan® SSM, ChangeMan® ZDD, ChangeMan® ZMF, StarTool®, Comparex® and Dimensions™ z/OS), commercially available at the time of Ordering Activity's order and identified in the Order Instrument, and any modifications, corrections, and updates thereto provided by Serena as part of Maintenance.

“**MIPS**” means Millions of Instructions Per Second and is an industry rating given to a CEC based upon the CPUs contained within the CEC. MIPS are measured not only by the CEC executing the Mainframe Software (the “Executing CEC”), but also any additional CECs that (a) are coupled into or accessing the Executing CEC and (b) have access to a direct access storage device in which the Mainframe Software is installed. The number of MIPS attributable to each CEC shall be determined by the then-current Gartner Group Rating Guide or another industry standard selected by Serena.

**2. License Grant.** Subject to the terms and conditions of the Attachment A, Contractor grants to Ordering Activity a perpetual, non-exclusive license to use the Mainframe Software within the Territory, in accordance with the User Documentation, and in compliance with the authorized Licensed Capacity and the authorized Licensed Configuration. All terms and conditions of the Attachment A shall apply to the licensing of Mainframe Software.

**3. Licensed Capacity.** The Licensed Capacity is based on the total MIPS and/or CPUs within the CECs in which the Mainframe Software has been installed and/or is operating, and is not limited to one or more logical partitions or other measure of sub-capacity applicable to the licensed CPUs within the CEC(s). The license granted herein does not permit Ordering Activity to install or use the Software on a CEC that is coupled within a base or parallel sysplex environment unless the Licensed Capacity includes the total MIPS capacity of the sysplex environment. Ordering Activity may order additional Licensed Capacity under this Attachment A at Contractor's then-current Ohio STS price. If at any time Ordering Activity exceeds its Licensed Capacity (i.e., the total MIPS or CPUs within the CECs in which the Mainframe Software has been installed and/or is operating exceeds the applicable number of MIPS or CPUs authorized under the Licensed Capacity), then Ordering Activity shall immediately notify Contractor in writing of the increase in use beyond the Licensed Capacity. Any additional Licensed Capacity must be licensed pursuant to an Order Instrument and this Attachment A, and Ordering Activity may purchase additional capacity by paying the Ohio STS rates for additional licenses and maintenance fees.

**4. Usage Rights.** Ordering Activity shall have the right to use the Mainframe Software only on the CECs designated by type, capacity rating, serial number, and location in the Order Instrument. Ordering Activity acknowledges that the Mainframe Software may contain codes to restrict the use of the Mainframe Software to one or more designated CECs. The foregoing provisions are in addition to those set forth in this Attachment A.

**5. Relocation of Mainframe Software.** Ordering Activity may relocate the Mainframe Software from one CPU to another CPU, provided that Ordering Activity (a) gives prior written notice to Contractor, including the location and the make, model, and serial numbers of each CPU within the CECs; (b) does not otherwise change the Licensed Configuration or exceed the then-current Licensed Capacity in connection with such relocation; (c) agrees in writing to uninstall and discontinue all use of the Mainframe Software with the originally licensed CPU and upon Contractor's request provides a signed written statement of such; and (d) is current on Maintenance with respect to such relocated Mainframe Software.

**6. Limited Warranty.** Subject to the terms and conditions of this Attachment A, Contractor warrants that the Mainframe Software will substantially perform in accordance with the User Documentation for a period of six (6) months from the date of delivery of the Mainframe Software.

**7. Maintenance Period.** Ordering Activity is required to purchase initial Maintenance, which will commence upon delivery of the Mainframe Software and continue for the period specified in the Order Instrument. If no period is specified, the initial Maintenance period will be one year. Contractor through Serena shall issue an annual renewal notice to Ordering Activity at least ninety (90) days prior to the expiration of the then current Maintenance period. Ordering Activity may renew Maintenance by issuing subsequent Order Instruments. Ordering Activity shall, at

least ninety (90) days prior to every annual anniversary date of the initial Order Instrument, or within thirty (30) days of Serena's written request (which shall not exceed two requests during each calendar year), deliver to Serena a written mainframe software usage in a form satisfactory to Serena and certified by an officer of Ordering Activity, setting forth: (a) the total MIPS capacity of the Executing CECs and other CECs as described in Exhibit A, Section 1 Definitions; (b) the identification of the CPU(s) within the CECs, including the make, model, and serial number of each CPU within the CECs; and (c) the make and model number of each mainframe computer comprising all or part of the CEC(s), and (d) the location of the CECs. Maintenance fees shall be based on the then-current Ohio STS price.

**8. Reinstatement of Maintenance.** If Ordering Activity's Maintenance has expired, Ordering Activity may reinstate Maintenance by paying the following, based on Ordering Activity's Licensed Capacity and Contractor's then current Ohio STS Maintenance fees: (a) the annual Ohio STS Maintenance fee for the new Maintenance period; (b) Ohio STS Maintenance fees for the period commencing from the date of expiration of prior Maintenance to the start of the new Maintenance period; and (c) if Ordering Activity has increased its Licensed Capacity, the license upgrade Ohio STS fee for the then current release of the Mainframe Software.

**9. License Keys.** Prior to and as a condition to the issuance of any license key by Contractor through Serena, or within thirty (30) days of Serena's written request (which shall not exceed two requests during any calendar year), Ordering Activity shall provide Serena with a copy of the CPU matrix display for each CPU within the CEC(s) in which the Software will be executing. The CPU matrix display is obtained by issue the following console command in z/OS: "D M=CPU".

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**SOFTWARE AG USA, INC.**

**SOFTWARE AG USA, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

---

**LICENSE GRANT**

Contractor hereby grants to Ordering Activity a nontransferable, non-sublicensable, nonexclusive, limited internal use license during the License Term to use the Contractor computer software product(s) identified its task or delivery order (the "Software"), together with all Documentation accompanying such Software. "Documentation" shall mean the user manuals delivered to Ordering Activity.

The Software may be used only by the Ordering Activity (and by the State of Ohio Computer Center ("SOCC") (or its successor) on the Ordering Activity's behalf) to process Ordering Activity's data for Ordering Activity's internal operations. The Software may also be accessed (whether onsite at the Ordering Activity's (or SOCC's) facility or remotely) and used by Ordering Activity's third party contractors (and SOCC's third party contractors) providing staff augmentation services solely for the benefit of Ordering Activity, provided such contractors are under an obligation of non-disclosure and agree to conform to the obligations of the Ordering Activity hereunder. However, unless Contractor provides its prior written consent which Contractor may withhold in its sole discretion, Ordering Activity may not outsource the operation or maintenance of the systems on which the Software is installed to a third party contractor or permit a third party contractor to install the Software at the contractor's facility, whether as part of an outsourcing arrangement or otherwise. Unless Contractor provides its prior written consent, which Contractor may withhold in its sole discretion, Ordering Activity shall not: (a) permit any other party (including any other State agency or political subdivision) to use the Software; (b) use the Software to process or cause or permit third parties to process the data of any other party (including any other Ohio agency or political subdivision); or (c) use the Software in the operation of a service bureau or similar arrangement for the sale or leasing of computer or information services.

Unless Contractor provides its prior written consent, which Contractor may withhold in its sole discretion, Ordering Activity shall not sell, lease, assign, sublicense, or otherwise transfer the Software to any other party (including any other State agency or political subdivision). Notwithstanding the foregoing, upon reasonable notice to Contractor, Ordering Activity may assign the Software to a successor State agency (or political subdivision, as the case may be) pursuant to a consolidation or reorganization of Ordering Activity.

**SCOPE OF USE**

Ordering Activity may reproduce the number of copies of the Software specified in the task or delivery order and may reproduce the Documentation as reasonably necessary for use at Ordering Activity's facility (or at SOCC's facility). Contractor licenses the Software for the licensed capacity specified in the applicable task or delivery order. For Software licensed under the applicable task or delivery order by Processor Core, Licensee may use the Software on physical machine(s) with a capacity greater than that licensed provided that use of the Software on all Processor Cores, physical or virtual, to which the Software is assigned does not exceed the total number of Processor Cores licensed. At no time will Ordering Activity permit the Software to be used in excess of the usage specified under these terms, including, without limitation, the task or delivery order.

Ordering Activity will keep records of each copy reproduced, where located (including the make and model of the machines on which the Software is installed and the utilization of the Software on such machines), and the number of the authorized users of each copy and provide such records to Contractor upon request.

Ordering Activity may make one copy of the Software for archival purposes. The use of such an archival copy shall be limited to (a) testing of Ordering Activity's disaster recovery procedures, and (b) a period subsequent to the occurrence of an actual disaster during which Ordering Activity cannot operate the Software because of such disaster. At no time may use of the Software, including the archival copy, exceed the usage specified under these terms, including, without limitation, the task or delivery order.

Ordering Activity has the right to independently develop interfaces to the Software strictly for its use in conjunction with its licensed use of the Software; provided, however, that Ordering Activity shall perform all such development without misappropriating, infringing, or otherwise violating any patent, copyright, trade secret, or other United States or international intellectual property right of Contractor and without using, examining, or otherwise referencing any Contractor source code. Such Ordering Activity-developed software interfaces shall be the property of Ordering Activity. For the avoidance of doubt, the parties acknowledge and agree that this Section shall in no way be construed as granting Ordering Activity any rights in or to Contractor's source code or as otherwise expanding the specific license rights granted to Ordering Activity.

**TERM**

The licenses granted hereunder shall endure for a perpetual term (the "License Term").

**PROPRIETARY RIGHTS**

All right, title and interest in and to the Software, Documentation, and all other related materials provided to Ordering Activity, and all intellectual property rights therein, remain the sole and exclusive property of Software AG. Ordering Activity agrees not to (a) disassemble, reverse engineer, or reverse compile the Software in whole or in part; (b) modify, adapt, alter, translate, or create derivative works from the Software; (c) merge the Software with other software; or (d) otherwise use, provide access to, or copy the Software or Documentation except as expressly allowed herein. Ordering Activity shall not remove any copyright notice or other proprietary markings from the Software,

Documentation, or any other related materials provided to Ordering Activity, and shall reproduce any copyright notice or other proprietary markings on all copies thereof.

**MAINTENANCE**

**Definitions**

- a. Business Day. "Business Day" shall mean the days from Monday to Friday excluding the federal public holidays.
- b. Business Hour. "Business Hour" shall mean the hours from 8.00am to 5.00pm on a Business Day.
- d. Error. "Error" shall mean any verifiable and reproducible failure of the Software to substantially conform to the specifications for such Software. Notwithstanding the foregoing, "Error" shall not include any such failure that is caused by: (i) the use or operation of the Software with any other software or code or in an environment other than that intended or recommended in the Documentation, (ii) modifications to the Software not made or approved by Global Support in writing, or (iii) any bug, defect, or error in third-party Software used with the Software.
- e. Error Correction. "Error Correction" shall mean either a modification or addition to or deletion from the Software having the effect that such Software substantially conforms to the then current specifications, or a procedure or routine that, when exercised in the regular operation of the Software, eliminates any material adverse effect on the Ordering Activity caused by an Error. An Error Correction may be a correction, workaround, fix, or service pack.
- f. Global Support. "Global Support" shall mean Contractor through Manufacturer's Global Support organization providing the support and maintenance services for the respective Ordering Activity.
- i. Update. "Update" shall mean additional or replacement code or Documentation for the Software that is provided to remedy an Error.

**Service Description**

Support Service comprises the following services:

- Twenty-four (24) hour access to Contractor through Manufacturer's Support Portal including access for authorized technical contacts to Contractor through Manufacturer's request reporting system for browsing and submitting trouble tickets, online access to new product information, documentation, knowledge center, and information on available Software fixes.
- 9x5 (9 hours a day; 5 days a week) telephone support during Business Hours. The respective telephone number is available in the Support Portal. If not provided in local language, telephone support is provided in English language.
- 24x7 (24 hours a day; 7 days a week) telephone support for Crisis cases. 24x7 telephone support is provided in English language only.
- Unlimited number of authorized technical contacts of the Ordering Activity entitled to access Support Portal.
- Information on new features, events, and Contractor application articles.

**Processing Ordering Activity Requests**

Ordering Activity requests will be received by Global Support and will be documented in the Support Portal for further processing. The Ordering Activity will be given a reference processing number for future reference.

Severity Level	Crisis	Critical	Standard
<b>Definition</b>	Customer's problem has a severe business impact. Customer is unable to use the Software, resulting in a major impact on customer's operations. Work cannot reasonably continue.	Customer's problem has a significant business impact; however, operations can continue in a restricted fashion. The Software is usable but severely limited. There is no acceptable workaround available. Customer is experiencing a significant loss of service.	Customer's problem has some business impact. The Software is usable and causes only minor inconvenience. It may be a minor Error, documentation Error, or incorrect operation of the application, which does not significantly impede the operation of a system.
<b>Reaction Time</b>	1 Business Hour: call-back or electronic reply	4 Business Hours: call-back or electronic reply	1 Business Day: call-back or electronic reply
<b>Reporting (timeframe)</b>	daily reporting (unless otherwise agreed with Global Support on a case-by-case basis)	as agreed with Global Support on a case- by-case basis	as agreed with Global Support on a case by-case basis
<b>Reaction Measure</b>	customer is provided with a timeline for Error Correction	customer is provided with a timeline for Error Correction	information about publication date of the Software release that will solve the issue indication that changes/ enhancements are being handled in accordance with Software AG's strategy
<b>Required Effort</b>	economically justifiable effort within standard scope of resources	reasonable effort within standard scope of resources	reasonable effort within standard scope of resources

It is recommended that Crisis requests are reported by telephone to obtain best possible service in crisis situations. The reaction time is the time the Ordering Activity gets in contact with a Contractor support representative. Global Support is not obliged to solve the Ordering Activity's issue within the reaction time.

**Tools and Processes**

Global Support uses the following processes and tools to solve or find a workaround to the Ordering Activity's issues:

- Fault diagnosis/analysis for Contractor products:
- Evaluation of Ordering Activity data supplied (including diagnostic information)
- Classification of the reported situation as product issue, user issue or third-party issue
- Research in Contractor through Manufacturer's Support Knowledge Center

- Reproduction of the error situation (if possible)
- Coordination with Contractor's product development

Results and/or solutions or workarounds will be provided via one of the following media:

- Telephone
- Support Portal
- E-mail
- Data carriers

#### Remote Diagnosis

Global Support may perform remote diagnosis to facilitate issue analysis. In such case, Global Support will access Ordering Activity's environment via a Remote Online Diagnostic Tool for purposes of diagnosis and analysis only.

Remote access to Ordering Activity's environments will occur during Business Hours at the times agreed between the Ordering Activity and Global Support.

#### Software and Documentation Updates

- Global Support provides:
- New versions of Licensed Contractor products
- Updates of Licensed Software containing error corrections
- Documentation updates for the Software

Information regarding availability of Software and Documentation updates is available in the Support Portal.

#### **Services not covered by Product Support and Maintenance Service**

The provision of the following services is not part of support and maintenance and must be purchased separately:

- Application of Fixes
- Application of Initial Natural Program Load (INPL)
- Transfer of Diagnostic Information
- Execution of Programs
- Fix/analysis of Job Control Language (JCL)
- File/Field Modifications
- Database Monitoring
- Database Services
- Performance Analysis
- Tuning Services
- Migration Services
- Health Check
- Security Services
- Installation of Software and/or patches
- On-site Support
- Hardware Support
- Training of Employees
- Individual Amendments/Enhancements of the Software

#### **Ordering Activity Responsibilities**

The services to be performed are subject to the following conditions:

- The Software is installed at the Ordering Activity's site.
- The Ordering Activity provides appropriate tools to enable remote access for Global Support (e.g. Interactive Problem Control System (IPCS), Time Sharing Option (TSO), Terminal-Emulation, Netviewer).
- The Ordering Activity establishes appropriate security measures to ensure that Global Support's access is restricted to permissible areas.
- The Ordering Activity has installed the currently supported release levels of the Software.
- The Ordering Activity uses hardware, operating system software and database software that comply with the specifications of the currently supported release levels of the Software; the currently supported release levels of the Software can be identified on the Support Portal.
- The Ordering Activity provides Global Support with sufficient information and assistance as requested by Global Support regarding the Ordering Activity's environment (including appropriate computing time) and all necessary information on the error. The Ordering Activity provides Global Support with specific third party expertise relevant to the Ordering Activity's environment, if applicable.
- The Ordering Activity provides Global Support with information on any used software tools upon Global Support's request.
- The Ordering Activity provides Global Support with diagnostic information such as traces, dumps, parameters, etc. upon Global Support's request.

#### **WARRANTIES**

Contractor warrants that for a period of ninety (90) days from the date of delivery (the "Warranty Period"), the Software, when properly used, will operate substantially in accordance with the specifications contained in the Documentation. Contractor, in its sole discretion, will use

reasonable commercial efforts to correct, provide a workaround for, or replace (each such action a "Remedy") any reproducible error in the Software, at Contractor's cost and expense, provided written notice itemizing such error is given to Contractor during the Warranty Period.

This warranty shall not apply to the degree that the reproducible error occurs because (a) the affected Software has not been used in accordance with the Documentation; (b) the affected Software has been altered, modified, merged, or converted by Ordering Activity; (c) of the malfunctioning of Ordering Activity's hardware or software; or (d) the affected Software, or a portion thereof, has become inoperative due to any other causes beyond the control of Contractor.

CONTRACTOR DOES NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR ERROR FREE, THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL FUNCTION WITH OTHER SOFTWARE, HARDWARE, OR WITHIN A SYSTEM, OR THAT CONTRACTOR' EFFORTS, THE ASSOCIATED SERVICES, OTHER SERVICES PROVIDED HEREUNDER, THE SOFTWARE, THE DOCUMENTATION, OR OTHER MATERIALS SUPPLIED HEREUNDER WILL FULFILL ANY OF ORDERING ACTIVITY'S PARTICULAR PURPOSES OR NEEDS.

**THE WARRANTIES SET FORTH ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, STATUTORY, AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF ACCURACY, QUIET ENJOYMENT, NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.**