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 ITSG Software Limited ("Contractor"), with offices at 34 Anverdo Road, Cobham, Surrey KT11 2LA United Kingdom.

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:

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

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

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

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

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

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

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

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

2.3 **PRICELIST.** The Contractor's pricelist for the products and services that the Contractor may provide to the State under this Contract is attached as Exhibit I. For convenience, those products and services are called "Deliverables" in this Contract. Any custom materials resulting from the Contractor's services also are called "Deliverables" in this Contract. The Contractor may not provide any other Deliverables under this Contract without a prior written amendment to this Contract that both the State and the Contractor have signed. Furthermore, the Contractor may not charge the State greater prices for these Deliverables than the prices on the Exhibit I. If Exhibit I contains or incorporates by reference any terms or conditions other than a description of the scope of license for software, a description of the Contractor's products and services, and the prices for those products and services, those terms or conditions are excluded from this Contract and are of no effect. Exhibit I is identified as the following pricelist:

TSG Software Price List for Tein Migration SErvices and Casegen PC Licences

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 Rule126-1-02 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 WILL BE LIABLE FOR ALL DIRECT DAMAGES DUE TO THE FAULT OR NEGLIGENCE OF THE CONTRACTOR OR ITS BREACH OF ANY PROVISION OF THIS CONTRACT.

8 - MAINTENANCE

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

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

Additionally, the Contractor will make (or obtain a commitment from the third-party licensor to make) maintenance available for the software for at least five years after the warranty period. The Contractor will limit or obtain a

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

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

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

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

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

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

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

8.4 **Equipment Maintenance Standards.** Except in the case of excusable delay, remedial Equipment maintenance by the Contractor will be completed within eight business hours after notification by the State that maintenance is required. In the case of preventative maintenance, the Contractor will perform such in accordance with the manufacturer's published schedule and specifications. If maintenance is not completed within eight hours after notification by the State, the Contractor will be in default. Failure of the Contractor to meet or maintain these

requirements will provide the State with the same rights and remedies as specified elsewhere in this Contract for default, except that the Contractor will only have eight hours to remedy a default. The Contractor will provide adequate staff to provide the maintenance required by this Contract.

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

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

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

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

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

9 - Assignment and Subcontracting

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

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

10 – Construction

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

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

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

10.4 **Amendments – Waiver.** No amendment or modification of this Contract will be effective unless it is in writing and signed by both parties. The failure of either party at any time to demand strict performance by the other party of any of the terms or conditions of this Contract may not be construed as a waiver of any those terms or conditions, and either party may at any time demand strict and complete performance by the other party.

10.5 **Severability.** If a court of competent jurisdiction finds any provision of this Contract to be unenforceable, the remaining provisions of this Contract will remain in full force and affect.

10.6 **Construction.** This Contract must be construed in accordance with the plain meaning of its language and neither for nor against the drafting party.

10.7 **Notices.** For any notice under this Contract to be effective, the noticing party must make it in writing and sent it to the address of the other party first appearing above, unless that party has notified the other party, in writing and in accordance with the provisions of this section, of a new mailing address for the receipt of notices. This notice requirement will not apply to any notices that this Contract expressly authorizes to be made orally.

10.8 **Continuing Obligations.** Any terms, conditions, representations, or warranties contained in this Contract that must survive termination or expiration of this Contract to be fully effective will survive the termination or expiration of the Contract. Additionally, termination or expiration of this Contract will not affect the State's right to continue to use any Deliverable for which it has paid, including licensed material. And no termination or expiration of the Contract will affect the State's right to receive maintenance, warranty work, or other services for which the State has paid.

10.9 **Priority.** If there is any inconsistency or conflict between this document and any provision of anything incorporated by reference, this document will prevail.

10.10 **Days.** When this Contract refers to days, it means calendar days, unless it expressly provides otherwise.

11 - Law and Courts

11.1 **EQUAL EMPLOYMENT OPPORTUNITY**

The Contractor will comply with all state and federal laws regarding equal employment opportunity and fair labor and employment practices, including Ohio Revised Code Section 125.111 and all related Executive Orders.

Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be submitted to the Department of Administrative Services Equal Opportunity Division to comply with the affirmative action requirements. Affirmative Action Verification Forms and approved Affirmative Action Plans can be found by going to the Ohio Business Gateway at: http://business.ohio.gov/efile/

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

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.

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

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

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

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

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

Contractor

By: Pete [signature]

Date: 15 October 2012.

State of Ohio,
Department of Administrative Services
Office of State Purchasing

By: Robert Blair [signature]
Robert Blair, Director,
Department of Administrative Services

Date: 10-26-12

Exhibit I

Product Name	Manufacturer	Manufacturer Part No	Vendor Part No	Description	Unit of Measure	State Price	List Price	Options/License Type	Other Info	URL Product Picture	URL Product Specs/Details	UNSPSC Code
Casegen Enterprise PC License 20 Pack	TSG Software Limited	CE PC 20	CE PC 20	Casegen Enterprise License 20 copies	Each	$322,000		20 PC licenses				
Casegen Enterprise PC License 60 Pack	TSG Software Limited	CE PC 60	CE PC 60	Casegen Enterprise License 60 copies	Each	$460,000		60 PC licenses				
Casegen Enterprise PC License 100 Pack	TSG Software Limited	CE PC 100	CE PC 100	Casegen Enterprise License 100 copies	Each	$605,000		100 PC licenses				
Casegen Enterprise PC License 150 Pack	TSG Software Limited	CE PC 150	CE PC 150	Casegen Enterprise License 150 copies	Each	$835,000		150 PC licenses				
Migration Service for Talon 2000	TSG Software Limited	Talon Mig 2000	Talon Mig 2000	Migration Service for up to 2000 programs	Each	$290,000						
Replacement Run Time Modules for Talon	TSG Software Limited	RTM	RTM	Run time modules purchased in conjunction with Talon Migration Service	Each	$220,000						
Casegen Enterprise Training Course CS2	TSG Software Limited	Case Train Course CS 2	Case Train Course CS	Casegen Enterprise Training Course Customer Site 2 Day	Each	$0900						
Casegen Enterprise Training Course CS3	TSG Software Limited	Case Train Course CS 3	Case Train Course CS	Casegen Enterprise Training Course Customer Site 3 Day	Each	$12200						
Casegen Enterprise Training Course Web Based WB2	TSG Software Limited	Case Train Course Web	Case Train Course W	Casegen Enterprise Training Course Web Based 2 Day	Each	$6100						
Casegen Enterprise Training Course Web Based WB3	TSG Software Limited	Case Train Course Web	Case Train Course W	Casegen Enterprise Training Course Web Based 3 Day	Each	$7200						

[Insert Price list]

Exhibit II

Exhibit II

TSG SOFTWARE LIMITED LICENCE GRANT AND RESTRICTIONS

1. Following signature of this State Term Contract Licensee may order a license for any product or service by issuing a purchase order.

1.1 Under the State Term Contract and following payment of the associated fees, TSG Software Limited hereby grants to Licensee a non-exclusive, non-transferrable license:

2. The rights granted in Clause 1 are expressly restricted by the following:

2.1 Under this State Term Contract no rights of property or title shall pass to Licensee for the PRODUCTS including all copies thereof (whether in machine-readable or printed form and including documentation, translations, compilation, partial copies within modified versions and updates).

2.2 In the case where the product originates from the United States of America, the license to use the product is subject to the then current Export Administration Regulations issued by the U.S. Department of Commerce.

2.3 A license must be obtained from TSG Software Limited for each computer upon which a product is installed. Licensee shall be responsible for installation of products unless undertaken by TSG Software Limited.

2.4 Licensee may change the computer for which product is licensed. Upon such transfer Licensee shall immediately cease use of product on the computer on which product was installed prior to such transfer.

TSG Software Limited

Contract for the Provision of Software Licenses and Conversion Services

This agreement ("**Agreement**") is for the supply of computer system code conversion services (the "**Services**") and is entered into and is effective as at the later of the two signature dates below by and between:

(i) T.S.G Software Limited of 34 Anyards Road, Cobham, Surrey KT11 2LA hereto ("**TSG**"); and

(ii) State of Ohio hereto ("**Client**").

IT IS HEREBY AGREED AS FOLLOWS:

1. TSG undertakes to convert programs held by Client from the format known as CA-Telon TDF source format (the "**Original System(s)**") to pure 100% COBOL-II or PL/1 source code ("**Source Code**") and standard BMS or MFS maps (the "**Deliverable(s)**" with identical functionality to the Original System, where technically possible.

2. Where it is not technically possible for TSG to convert the Original System into Source Code with identical functionality as the Original System, the Party that discovers this fact shall promptly inform the other Party that this is the case and the Parties shall enter into good faith discussions as to how TSG can best replicate such part or parts that cannot be converted with identical functionality and TSG shall liaise with Client until such part(s) is in a form acceptable to Client (acting reasonably)

3. TSG undertakes to provide the Services and the Deliverables and/or any other deliverables agreed by TSG and Client in writing to Client by no later than the delivery date agreed by TSG and Client in writing (the "**Delivery Date(s)**").

4. Where TSG is unable to provide the Deliverables in Source Code (as above), TSG will provide the Services and Deliverables to include any necessary software subroutines or other non-proprietary source code to provide identical functionality as compared to the original System. Where the Deliverables include code other than Source Code, the term "**Deliverables**" shall be construed to include such other code.

5. In addition to the Deliverables above, some code may be provided designated as Licensed Software Components to indicate that the Client has a perpetual Right to Use those Components, under the terms set out in the attached Schedule 3, "**Licence Agreement**"., This code may be supplied as source code or as compiled modules.

6. The Service shall be subject to acceptance by Client, which Client shall give when Client is reasonably satisfied that the Services and/or Deliverables have been provided with reasonable care and skill, conforming in all material respects to their description, are fit for their purpose and of satisfactory quality and in accordance with the acceptance and rejection procedure set out in Schedule 2 attached ("**Acceptance and Rejection Procedure**") ("**Acceptance**").

7. Subroutines, where required, are provided in non-proprietary source code, in Source Code or Assembler, to completely remove proprietary licensing dependence (as interpreted by TSG).

8. This Agreement is made subject to the acceptance of the terms and conditions in Schedule 1 attached (the "**Terms and Conditions**") and such Terms and Conditions form part of this Agreement.

9. The core functionality of the Deliverables must be of at least the same or superior functionality/performance as the Original System. Notwithstanding the provisions of clause 1 of this Agreement, Client acknowledges and accepts that there may be slight variances in the non-core functionality of the Deliverables.

10. TSG are responsible for converting the Original Systems and Client is responsible for testing the Deliverables and providing TSG with details of any problems encountered in accordance with the Acceptance and Rejection Procedure.

11. Also provided within this Agreement are licenses for the Run Time Modules (**RTM**) which replace the functionality of the CA-Telon run time modules and are provided in either Object or Source code form. In addition, a number ofperpetual licences for the **Casegen Enterprise** development tool and generator are included as part of the Deliverables.

12. (a) In consideration of and conditional upon the performance of TSG's obligations to the reasonable satisfaction of Client and the grant of the assignment of all rights by TSG to Client hereunder, Client shall pay the agreed total price of $XXXXX to TSG (the **"Fee"**).

(b) If Client has not rejected the whole or part of the Final Batch within thirty (30) days of delivery of the Final Batch by TSG, an invoice for the Final Payment may be automatically submitted by TSG (and become payable by Client) at the end of such thirty (30) day period. However, if the reason that no Deliverables have been rejected is because Client have not yet completed its testing of the Deliverables, TSG hereby acknowledges and accepts that payment by Client of the Final Payment in these circumstances: (i) does not amount to Acceptance by Client of the Final Batch; and (ii) that it does not amount to an admission by Client that TSG has carried out its obligations contained in this Agreement. In these circumstances, TSG acknowledges and agrees that TSG must still perform its obligations contained in this Agreement, including but not limited to its obligations to adhere to the Acceptance and Rejection Procedure and notwithstanding the foregoing, and without prejudice to any other provision contained in this Agreement, Client hereby reserves the right to take action against TSG for recovery of the whole or any part of the Final Payment until TSG has complied with all its obligations contained in this Agreement.

(c) Client shall only be required to pay the relevant part of the Fee on Client's receipt of an appropriate invoice from TSG.

13. TSG undertakes, warrants and represents that it will endeavour to provide error free Deliverables and warrants that any errors in the Deliverables will be resolved forthwith without charge for a period of one (1) year following the date of their conversion. However, it is the responsibility of Client to identify and diagnose any such error and provide TSG with any requested information about such error.

14. Client acknowledges that TSG cannot provide full system tests of the Deliverables.

15. Should an error in any Deliverable affect other already converted Deliverables, TSG agrees to provide replacements of the offending Deliverable and the affected Deliverables without error as soon as is reasonably possible.

16. TSG accepts that all program source code and copybooks and/or any other material provided to it by Client as part of this Agreement are and shall remain the intellectual property of Client and that confidentiality of the same, (including but not limited to the Original System and/or the Deliverables) will be maintained by TSG staff as if they were employees of Client and they shall not misuse, misappropriate or in any manner disclose such information directly or indirectly to any other person or use such information in any way except as authorised in writing by the Client or required by law.

17. Should there by any conflict between the Terms and Conditions and the provisions of clauses 1 - 16, these clauses shall prevail.

AGREED TO for and on behalf of: TSG Software Limited	ACCEPTED for and on behalf of: Client.
BY: Pete Gri	BY:
NAME: PETER GRIEVES	NAME:
TITLE: DIRECTOR	TITLE:
DATE: 15 OCTOBER 2012.	DATE:

SCHEDULE 1

TERMS AND CONDITIONS

1.

1.1 Our payment language in STS

1.2 We are tax exempt

1.3 Our payment language in STS.

1. PROPRIETARY RIGHTS

With the sole exceptions of the Casegen Enterprise product and the RTM's, ownership of the Deliverables will be transferred to Client on Acceptance of the Deliverables and TSG hereby assigns to Client by way of present assignment of present and future copyright and/or any other intellectual property rights (including without limitation all trade secrets, patents, patentable inventions and confidential and proprietary information) including all extensions and renewals, in perpetuity, throughout the world and in any and all media now known or later developed for any purpose that Client may determine from time to time in its absolute discretion (and the right to licence third parties to do any or all of the above).

2. CLIENT'S OBLIGATIONS

3.1 To allocate sufficient manpower and facilities to provide responses reasonably requested by TSG staff during the period of conversion.

3.2 To use its reasonable endeavours to adhere to the Acceptance and Rejection procedure detailed in Schedule 2 of this Agreement.

3. DISCLAIMER

TSG does not represent or warrant that the software products or converted systems are error free or operate without interruption.

5. WARRANTIES

5.1 TSG undertakes, guarantees, represents and warrants to Client that it has full right, power and authority to enter into this Agreement and to provide the Services including, without limitation, full power and authority to grant the rights relating to the Deliverables and to make the assignment as set out herein and further represents and warrants that it has not made and will not make any Agreement or commitment which would in any way conflict with, or be in contravention of the terms hereof or otherwise adversely affect its performance hereof.

5.2 TSG undertakes that the Services will be performed in accordance with all laws, statutes, regulations and directives and (with the exception of any intellectual property rights contained in the CA-Telon source code) will not infringe the rights of any third party and that the Deliverables shall not be in contravention of any law, statute, directive, regulation or code or contain

viruses, worms, trojan horses or any other contaminant that may be used to access and/or modify, delete or damage any data files or computer programs, applications, software or hardware.

5.3 With the exception of any intellectual property rights in the Original Systems which are owned (and shall be retained) by Client, TSG represents and warrants that it is the sole legal and beneficial owner with full title guarantee of all Deliverables and TSG will (with the exception of any intellectual property rights contained in the CA-Telon source code) be free to assign the copyright and all other intellectual property rights and related rights in such Deliverables to Client pursuant hereto without third party claims, liens, charges or encumbrances of any kind.

5.4 TSG warrants and represents that for a period of twelve (12) months from the date of delivery of the Deliverables, the Deliverables will be of satisfactory quality, fit for their purpose and free from defects under normal use and will comply in all respects with any descriptions or specifications applicable to them. If the Deliverables fail to conform to this warranty Client will be provided with an exact replacement of the Deliverables free of charge.

6. TERMINATION

6.1 Each of the Parties hereto shall be entitled to terminate this Agreement forthwith by notice in writing if the other Party shall commit any material breach of any of its obligations under this Agreement and shall fail to remedy such breach (if capable of remedy) within thirty (30) days after being given notice by the other Party so to do.

6.2 Save where one of the following insolvency events takes place as a result of a bona fide solvent reconstruction or amalgamation, both Parties shall be entitled to terminate this Agreement forthwith by notice in writing if the other Party shall enter into liquidation whether compulsory or voluntary, or if such other Party shall have an administrator appointed or if a receiver, administrative receiver or manager shall be appointed over any part of the assets or undertaking of such other Party.

6.3 In the event of termination of this Agreement in accordance with this paragraph 7 where TSG is in breach of any of the terms of the Agreement, all liabilities of Client shall cease and Client shall be under no liability to make and further the payment of the Fees to the TSG and for the avoidance of doubt, Client shall be at liberty to use any contractual or equitable remedy to pursue TSG for the recovery of any monies it has paid to TSG pursuant to this Agreement.

SCHEDULE 2

ACCEPTANCE AND REJECTION PROCEDURE

Following delivery of the Deliverables by TSG, Client shall test the Deliverables for any faults and test its performance levels in general and, having carried out such testing, shall have the right (but not obligation) and without prejudice to any other rights or remedies available to Client whether under this Agreement or at law either:

to reject all or part of the Deliverables and delay the Delivery Date for such period or periods agreed between TSG and Client (both acting reasonably) during which time TSG shall correct the faults which caused Client's rejection; or

if a significant number of the Deliverables contain faults and/or are not of satisfactory performance levels and TSG fails to rectify such faults within a reasonable period of time to be agreed between the parties, to terminate this Agreement; and shall notify TSG of its decision in connection with the above in writing within five (5) working days (which, for these purposes, shall mean Monday to Friday) of the Delivery Date.

SCHEDULE 3

LICENCE AGREEMENT

TERMS AND CONDITIONS

This software Licence is made by and between TSG and Client as part of this Agreement.

This Licence shall apply to the license by TSG of Licensed Software Components (as hereinafter declared) "**Components**" to Client.

Components

The following Components are for installation on the IBM Mainframe running z/OS:

LIST OF COMPONENTS : TSG Telon Replacement Run Time Modules

Mainframe licence limit (MIPS) : XXXXXX

The following Components are to be installed on PCs running Windows:

LIST OF COMPONENTS : Casegen Enterprise

PC Licence limit (Number of PC's) : XXXXXX

LICENCE GRANT AND RESTRICTIONS

Under this Agreement and following payment of the Fees due, TSG hereby grants to Client a non-exclusive, non-transferrable licence to use the Components in return for the Fees set forth in the Agreement.

The rights granted above are restricted by the following:

Under this Licence Agreement no rights of property or title shall pass to Client for the Components including all copies thereof (whether in machine-readable or printed form and including documentation, translations, compilation, and partial copies within modified versions and updates).

In the case where the Components originate from the United States of America, the licence to use the Components is subject to the then current Export Administration Regulations issued by the U.S. Department of Commerce.

A licence must be obtained from TSG for each computer upon which Component is installed. Client shall be responsible for installation Components unless undertaken by TSG.

Client may change the Computer for which Components is licensed. Upon such transfer Client shall immediately cease use of Components on the Computer on which Licensed Software Component was installed prior to such transfer.

CHANGE OF COMPUTER

Client may use the Components temporarily on a computer other than the licensed Computer for disaster recovery and back-up purposes, or, in the event that the Computer is inoperable. The Computer may be permanently changed with written approval of TSG which shall not be unreasonably withheld. If Client wishes to transfer the Components to a computer for which the applicable then-current Licence Fees for the Component are greater than the then-current Licence Fee for the licensed Component, then Client shall notify TSG of the date of such transfer and forthwith pay to TSG any upgrade fee that may be appropriate. The upgrade fee shall be the difference in Licence Fees detailed above both and as specified in the STS.

SECURITY

Client acknowledges that the Components contains valuable proprietary information and trade secrets and agrees:

To keep the Components confidential;

Not to decompile, modify, translate or reverse-engineer the Components or any material relating thereto;

To use the Components solely for Client's own internal purposes and to limit access to the Components to Client's employees or consultants who are required to use the Components in the furtherance of Client's business;

Not to duplicate or copy the Components or documentation except for copies for archive or emergency back-up purposes and to include notices regarding copyright, trademarks and proprietary rights on any permitted copies and not to removed those from the Components supplied by TSG;

Not to transfer the Components to a different computer, location or site without the prior written consent of TSG.

Client acknowledges the failure to comply with the provisions of this Section shall result in significant harm to TSG and in the event of a breach of this Section, in addition to any other legal or equitable remedies; either party shall be entitled to seek an injunction or other equitable relief against such breach.

Maintenance

Maintenance on the Casegen Enterprise development product and the Telon Replacement Run Time Modules (RTMs) is included for a period of 12 months following the date of this agreement.

Maintenance for the Casegen product for years two and beyond is optional and may be purchased by Client at a cost of $XXXXXX per annum.

Maintenance for the Telon Replacement Run Time Modules (RTMs) for years two and beyond is optional and may be purchased by Client at a cost of $XXXXXX per annum.

The above prices may be subject to an annual increase, which will be no more than 1.5 (one point five) times the annual Consumer prices; price index (CPI).

End of document.

Exhibit III

STANDARD AFFIRMATION AND DISCLOSURE FORM

EXECUTIVE ORDER 2011-12K

Governing the Expenditure of Public Funds on Offshore Services

All of the following provisions must be included in all invitations to bid, requests for proposals, state term schedules, multiple award contracts, requests for quotations, informal quotations, and statements of work. This information is to be submitted as part of the response to any of the procurement methods listed.

By the signature affixed hereto, the Contractor affirms, understands and will abide by the requirements of Executive Order 2011-12K. If awarded a contract, both the Contractor and any of its subcontractors shall perform no services requested under this Contract outside of the United States.

The Contractor shall provide all the name(s) and location(s) where services under this Contract will be performed in the spaces provided below or by attachment. Failure to provide this information may subject the Contractor to sanctions. If the Contractor will not be using subcontractors, indicate "Not Applicable" in the appropriate spaces.

1. Principal location of business of Contractor:

   34 Anyards Road _____ **Cobham Surrey KT11 2 LA**
   (Address) (City, State, Zip)

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

   _____ _____
   (Name) (Address, City, State, Zip)

   _____ _____
   (Name) (Address, City, State, Zip)

2. Location where services will be performed by Contractor:

   34 Anyards Road _____ **Cobham Surrey KT11 2LA**
   (Address) (City, State, Zip)

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

   _____ _____
   (Name) (Address, City, State, Zip)

   _____ _____
   (Name) (Address, City, State, Zip)

3. Location where state data will be stored, accessed, tested, maintained or backed-up, by Contractor:

   34 Anyards Road _____ **Cobham, Surrey KT11 2LA**
   (Address) (Address, City, State, Zip)

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

   _____ _____
   (Name) (Address, City, State, Zip)

   _____ _____
   (Name) (Address, City, State, Zip)

(Name)	(Address, City, State, Zip)
(Name)	(Address, City, State, Zip)
(Name)	(Address, City, State, Zip)

Contractor also affirms, understands and agrees that Contractor and its subcontractors are under a duty to disclose to the State any change or shift in location of services performed by Contractor or its subcontractors before, during and after execution of any Contract with the State. Contractor agrees it shall so notify the State immediately of any such change or shift in location of its services. The State has the right to immediately terminate the contract, unless a duly signed waiver from the State has been attained by the Contractor to perform the services outside the United States.

On behalf of the Contractor, I acknowledge that I am duly authorized to execute this Affirmation and Disclosure form and have read and understand that this form is a part of any Contract that Contractor may enter into with the State and is incorporated therein.

By: _____
Contractor

Print Name: Peter Grieves

Title: Director

Date: 24th October 2012

Final Version (09/11)

REQUEST FOR WAIVER – EXECUTIVE ORDER 2011-12K

Date of Request: March 12, 2012

Name of Contractor: TSG, Software, LTD

Name of Agency Representative: Greg Pennington **Telephone No.:** 644-4363
Email Address: greg.pennington@ohio.gov

Recommended by and Signature of Agency Procurement Officer: [signature] **Date:** March 12, 2012

Acknowledged by and Signature of Director/Executive Director: [signature] **Date:** 4/10/12

Type of Contract:

- ☐ Request for Proposal
- ☐ Request for Quotes
- ☐ Competitively Bid Contract
- ☐ Competitively Selected Contract
- ☑ Other: *Existing Contract*

Nature of service(s) to be performed outside of the United States and the extent to which offshore services may be involved (please explain; additional sheets may be attached):

See attached sheet.

Duration of Contract: June 30, 2013 **Total Contract Cost:** $ 815,000

Justification:

☐ This Contract is an emergency: (Please explain; additional sheets may be attached)

☑ This Contract is necessary: (Please explain; additional sheets may be attached)

See attached sheet. in London England & NY G.P.

DAS Contact Information: All forms should be sent to:
DAS, Office of Legal Services, ATTN: Shelia Smith
30 E. Broad Street, Suite 4099, Columbus, OH 43215
Telephone: 614-644-1773
Email: shelia.smith@das.state.oh.us

DAS Waiver Determination: ☑ Approved ☐ Denied **Date of Determination:** 4/19/12

Request For Waiver –Executive Order 2011-12K

Re: TSG, Software, LTD

Nature of service(s) to be performed outside of the United States and the extent to which offshore services may be involved:

TSG Software, LTD is the vendor that markets CASEGEN. This is proprietary software that replaces TELON software from Computer Associates, (CA). The services necessary to be performed outside of the United States are the conversion and migration services of source code currently using TELON to code that will work with CASEGEN. CASEGEN software is a PC based application, which will be customized and electronically shipped to our customer Agency to install. The conversion, customization and migration effort impacts over 2,000 source code modules and will take a few months to complete. User acceptance testing of the converted CASEGEN product will be performed using data onsite at our customer Agency. No Agency data will be used for development/modification outside Ohio. Once this effort is accomplished and CASEGEN is functioning, the only other services that might be performed offshore are Technical Support for issues or questions, sending of version upgrades and performing training with a WEB-X presentation. These represent incidental costs of the proposed budget.

Justification:

[x] This contract is necessary.

TELON, from Computer Associates, is a developer based Application Code Generator used to modify COBOL code that processes on mainframe computer systems. DAS-OIT provides TELON for exclusive use by the Ohio Department of Job & Family Services (ODJFS). ODJFS uses TELON to modify code for their WELFARE and Child Support Systems. TELON is a "green screen" (old technology) software in use since the early 1980s. Recently, DAS converted many Computer Associates (CA) products to similar IBM products to save money. CA responded with renewal costs for the remaining few products (EASYTRIEVE and TELON), that the State considered excessive. ODJFS is migrating off the EASYTRIEVE product, prior to the end of this fiscal year; the lone CA software would be TELON. CA's quote for TELON and EASYTRIEVE products was $1,665,968 per year for five years. IBM or any other stateside firm did not have a software product to address the functionality of TELON. We researched the issue, talked with numerous firms and end users that migrated from TELON.

DAS is currently paying a third party provider (HP) for the use of their Enterprise License Agreement (ELA) with Computer Associates. This has some element of risk if the conditions to which we can use this ELA are not renewed, the State would pay a significantly higher price to

CA directly. Today (ODJFS has completed migration off of the EASYTRIEVE product) we pay over $67,000 per month ($804,000 annually) to license and use the TELON products alone. Using CASEGEN products, the State would realize a return on investment (ROI) slightly over one year ($265,000 onetime license fee for the CASEGEN Runtime Modules and $550,000 for migration and conversion, including 200 copies of CASEGEN for the PC.

The only additional costs are maintenance of $4,417 per month ($53,000 annually) for the RTMs and $7,084 per month ($85,000 annually) for the CASEGEN software. This represents a considerable savings to the State.

CASEGEN has been tested by ODJFS, their development staff is impressed with its capabilities and time saving processes. CASEGEN is the ONLY product to fully replace TELON and is only marketed by TSG Software. TSG Software is in the process of submitting Ohio State Term Contract information to do business with the State of Ohio.

Five (5) Year Cost Comparison

TELON Licensing/Maintenance	$4,020,000
CASEGEN Conversion/Maintenance	$1,367,000
5 year Cost Savings by converting to CASEGEN	$2,653,000