

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 Ventech Solutions, Inc. ("Contractor"), with offices at 8760 Orion Place, Suite 204, Columbus, Ohio 43240.

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:

Debt Manager Bundle Pricing as of September 30, 2012

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

- 2.4 **NOTIFICATION OF PRICE INCREASES.** If this Contract permits any price increases, the Contractor must notify the State and any affected State agencies of the increase at least 60 days before the effective date of the price increase. The Contractor must notify affected State agencies at their purchase order "bill to" address contained in the applicable purchase orders. This notification must specify, when applicable, the product serial number, location, current price, increased price, and applicable purchase order number.
- 2.5 **Payment Due Date.** Payments will be due on the 30th day after the later of:

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

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

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

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

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

2.7 OHIO PAYMENT CARD. Participating State agencies issuing orders under this Contract may use the Ohio Payment Card. Such purchases may not exceed \$2,500 unless the Office of Budget and Management ("OBM") has authorized the agency to exceed this limit. If OBM increases the dollar limit for payment cards for all State agencies, the State will post notice of that on its Procurement Website. Participating State agencies are required to use the Ohio Payment Card in accordance with OBM's current guidelines for the Ohio Payment Card and the agency's approved plan filed with the OBM. The Contractor may process a payment in the payment card network only upon delivery and acceptance of the applicable Deliverables. For partial deliveries or performance, the Contractor may process a payment for the amount delivered or completed only and not for the entire amount ordered by the ordering agency. Upon completion of the delivery of remaining Deliverables, the Contractor may process a payment request in the payment card network for the remainder of the order. The Contractor should receive payment through its merchant bank within the time agreed upon between the Contractor and its merchant bank. The Contractor should expect normal processing fees from its merchant bank for payment card transactions, which the Contractor may not pass on to the State.

2.8 NON-APPROPRIATION OF FUNDS. The State's funds are contingent on the availability of lawful appropriations by the Ohio General Assembly. If the Ohio General Assembly fails to continue funding for any payments due hereunder, the order or orders under this Contract that are affected by the lack of funding will terminate as of the date that the funding expires, and the State will have no further obligation to make any payments with respect to the affected order or orders.

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

2.10 CONTROLLING BOARD AUTHORIZATION. The State's obligations under this Contract are subject to the Ohio Controlling Board continuing to authorize the State's use of its term contracts program. If the Ohio Controlling Board fails to authorize or withdraws its authorization for this program, this Contract will terminate immediately, and the Contractor may not take any more orders under it.

2.11 TRAVEL EXPENSES. Any travel that the Contractor requires to perform its obligations under this Contract will be at the Contractor's expense. The State will pay for any additional travel that it requests only with prior written approval. The State will pay for all additional travel expenses that it requests in accordance with OBM's travel policy in Rule 126-1-02 of the Ohio Administrative Code (the "Administrative Code").

2.12 TAXES. The State is exempt from all sales, use, excise, and property taxes and will not pay any such taxes. To the extent sales, use, excise, or any similar taxes are imposed on the Contractor in connection with any Deliverable, the Contractor must pay those taxes together with any interest and penalties not successfully disputed with the taxing authority.

- 2.13 **OFFSET.** The State may set off any amounts the Contractor owes to the State under this or other contracts against any payments due from the State to the Contractor under this or any other contracts with the State.

3 - CONTRACT ADMINISTRATION

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

In doing so, the Contractor warrants that:

- (a) The Contractor has provided the dealer with a copy of this Contract, and a duly authorized representative of the dealer has agreed, in writing, to be bound by the terms and conditions in this Contract.
- (b) Such agreement specifically provides that it is for the benefit of the State as well as the Contractor.
- (c) The Contractor will remain liable under this Contract for the services of any dealer and will remedy any breach of the dealer under this Contract.
- (d) Payments under this Contract for the services of any dealer may be made directly to that dealer, and the Contractor will look solely to the dealer for any payments due to the Contractor once the State has paid the dealer.
- (e) To the extent that there is any liability to the State arising from doing business with a dealer that has not signed the agreement required under this section with the Contractor, the Contractor will indemnify the State for such liability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 3.8 EXCUSABLE DELAY.** Neither party will be liable for any delay in its performance under this Contract that arises from causes beyond its reasonable control and without its negligence or fault. The delayed party must notify the other promptly of any material delay in performance and must specify in writing the proposed revised performance date as soon as practicable after notice of delay. For any such excusable delay, the date of performance or delivery will be extended for a period equal to the time lost by reason of the excusable delay. The delayed party also must describe the cause of the delay and what steps it then is taking or will take to remove the cause. The delayed party may not rely on a claim of excusable delay to avoid liability for a delay if the party has not taken commercially reasonable steps to mitigate or avoid the delay.
- 3.9 INDEPENDENT STATUS.** The parties will be acting as independent entities. The partners, employees, officers, directors, and agents of one party may only act in the capacity of representatives of that party and not as employees, officers, directors, or agents of the other party and will not be deemed as such for any purpose. Each party assumes full responsibility for the actions of its partners, employees, officers, directors, and agents while performing under this Contract and will be solely responsible for paying those people. Additionally, each party will be solely responsible for withholding and paying social security and income taxes, making workers' compensation contributions, paying disability benefits, and providing fringe benefits, if any, for its partners, employees, officers, directors, and agents, and neither party may legally bind the other party in any manner.
- 3.10 LOCATION OF SERVICES AND DATA.** As part of this Contract, the Contractor must disclose the following:
- (a) All locations where any services will be performed;
 - (b) All locations where any State data applicable to the Contract will be maintained or made available; and
 - (c) The principal place of business for the Contractor and all its subcontractors.

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

4 - DELIVERY AND ACCEPTANCE

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

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

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

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

5 - INTELLECTUAL PROPERTY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 – TRANSACTION REPORTING

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

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

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

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

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

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

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

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

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

7 - WARRANTIES AND LIABILITIES

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

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

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

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

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

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

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

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

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

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

Software documentation means well written, readily understood, clear, and concise instructions for the software's users as well as a system administrator. The software documentation must provide the users of the software with meaningful instructions on how to take full advantage of all of the capabilities designed for end users. It also means installation and system administration documentation for a system administrator to allow proper control, configuration, and management of the software. Source code means the uncompiled operating instructions. The Contractor must provide the source code in the language in which it was written and must include such commentary or annotations as would allow a competent programmer proficient in the source language to readily interpret the source code and understand the purpose of all routines and subroutines contained within the source code.

7.3 EQUIPMENT WARRANTY. If any computer hardware or other type of electrical equipment ("Equipment") will be a part of any Deliverable, the following warranties apply. The Contractor warrants that the Equipment fully complies with all government environmental and safety standards applicable to the Equipment. The Contractor also warrants for the warranty period described in the next paragraph that the Equipment will perform substantially in

accordance with its user manuals, technical materials, and related writings published by the manufacturer with respect to such Equipment, and that such Equipment will achieve any function described in such writings. The foregoing warranty will not apply to Equipment that the State modifies or damages after title passes to it. The warranty period for all Equipment will be the longer of one year after the State accepts the Equipment or the Contractor's standard warranty period.

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

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

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

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

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

8 - MAINTENANCE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 - ASSIGNMENT AND SUBCONTRACTING

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

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

10 - CONSTRUCTION

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

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

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

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

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

11 - LAW AND COURTS

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

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

- 11.2 **DRUG FREE WORKPLACE.** The Contractor must comply with all Ohio laws regarding maintaining a drug-free workplace and make a good faith effort to ensure that all its employees do not possess and are not under influence of illegal drugs or alcohol or abuse prescription drugs while working on State property.
- 11.3 **OHIO ETHICS LAW AND LIMITS ON POLITICAL CONTRIBUTIONS.** The Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of the Ohio ethics laws. The Contractor hereby certifies that all applicable parties listed in Ohio Revised Code Section 3517.13 are in full compliance with Ohio Revised Code Section 3517.13.
- 11.4 **SECURITY & SAFETY RULES.** When using or possessing State data or accessing State networks and systems, the Contractor must comply with all applicable State rules, policies, and regulations regarding data security and integrity. And when on any property owned or controlled by the State, the Contractor must comply with all security and safety rules, regulations, and policies applicable to people on those premises.
- 11.5 **LAW AND VENUE.** This Contract is governed by and will be construed under Ohio law, and venue for all disputes will lie exclusively with the appropriate court in Franklin County, Ohio.
- 11.6 **UNRESOLVED FINDINGS.** The Contractor represents that it is not subject to an unresolved finding for recovery under Code § 9.24. If this warranty proves false when the parties sign this Contract, the Contract will be void. Additionally, if this representation proves false on the date of any renewal or extension of the Contract, the renewal or extension will be void.
- 11.7 **ANTITRUST.** The State and the Contractor recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by the State. The Contractor therefore assigns to the State all state and federal antitrust claims and causes of action that the Contractor has or acquires relating to the goods and services acquired under this Contract.
- 11.8 **Governing the Expenditure of Public Funds on Offshore Services (EO 2011-12K).** The Contractor affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance

of this Contract. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid for services the Contractor performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided the State in this Contract.

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

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

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

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

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

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

CONTRACTOR

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

BY: 
RAVI KUNDURU
CHAIRMAN, VENTECH SOLUTIONS

BY: 
ROBERT BLAIR, DIRECTOR,
DEPARTMENT OF ADMINISTRATIVE SERVICES

DATE: 01/15/13

DATE: 1-15-13

Exhibit I

| Manufacturer | Manufacturer Part No | Vendor Part No | Description | Unit of Measure | State Price |
|------------------------|----------------------|----------------------|---------------------------|-----------------|----------------|
| FAIR ISAAC CORPORATION | VS450-DEBT-OO Bundle | VS450-DEBT-OO Bundle | Debt Manager Software | 1 | \$6,229,962.00 |
| | | | Product Exective | hour | \$278.00 |
| | | | Product Manager | hour | \$245.00 |
| | | | Product Architect | hour | \$218.00 |
| | | | Product SME Functional | hour | \$195.00 |
| | | | Product SME Technical | hour | \$189.00 |
| | | | Product Analyst | hour | \$170.00 |
| | | | Product Developer Lead | hour | \$185.00 |
| | | | Product Developer | hour | \$140.00 |
| | | | Product Test Lead | hour | \$165.00 |
| | | | Product Quality Assurance | hour | \$135.00 |
| | | | Product Support | hour | \$185.00 |
| | | | Product Specialist I | hour | \$105.00 |
| | | | Product Specialist II | hour | \$145.00 |
| | | | Product Specialist III | hour | \$185.00 |

Exhibit II

End User Terms and Conditions

The parties agree that each End User License Agreement between Reseller and the End User for the Fair Isaac Product (and/or Service) shall require that the End User agree, to all of the following:

- 1) Title to the Fair Isaac Product does not pass to the End User, but remains with Fair Isaac.
- 2) The End User obtains only a non-exclusive, non-sublicenseable limited copyright license to perform and display the object code version of the Fair Isaac Product during the term of the End User Agreement [to be consistent with product license grant] for End User's internal business use only and not for the benefit of any third party, and only within the Territory, and only in accordance with the Fair Isaac Product Documentation for the specific product or service.
- 3) End User shall not transfer or license all or any portion of the Fair Isaac Products to any third party or entity.
- 4) The Fair Isaac Product is acknowledged as highly valuable property of Fair Isaac and contains trade secrets and confidential information owned by Fair Isaac. End User shall observe complete confidentiality with respect to the Fair Isaac Product and all performance data, and End User shall not disclose all or any portion thereof to any third party or entity, except to its employees as required in the course of their employment.
- 5) End User shall not decompile, disassemble or otherwise reverse engineer the Fair Isaac Product or any deliverables. End User shall not be a distributor, Reseller, original equipment manufacturer, sublicensor, aggregator, or remarketer of any kind without Fair Isaac's prior written consent.
- 6) The obligations set forth above shall survive any expiration of the term of the End User License Agreement. End User acknowledges and agrees that Fair Isaac has the right to enforce all licenses and use restrictions.
- 7) Reseller agrees that as between Fair Isaac, it is solely responsible for any representations or warranties made to End User and Reseller shall be responsible (vis a vis Fair Isaac) for all claims from an End User.
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- 12) The following terms and conditions in addition to those set forth in 1-11 above and are specific to the Debt Manager Fair Isaac Product. As used below "Client" means "End User."

Definitions.

"Active Account" means a record of a unique debt on Client's system and in the live database.

"Designated Site" means the following criteria of location, equipment and site of where the Fair Isaac Product will be installed. All updates, changes and modifications of any kind to the following shall be only effective and a part of the End User Agreement by a written amendment signed and executed by all parties and Fair Isaac.

- Platform: _____ ("Designated System")
- Software requires (non-optional) Micro Focus Net Express for the UNIX and Window [others]
- Workstation: Windows XP
- Location of End users physical PC on which the software is installed.
- End User's address as described below:
- [insert address]

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"Software" means all programs, code (which will be delivered in object code form only) specifications, graphical user interface (GUI), including all media of delivery thereof (CD, Tape or other electronic means), including all updates, modifications, releases and enhancements and all software.

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Definitions.

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"Approved Collection Agency(ies)" means a Collection Agency that Client has designated to be eligible to receive placements and that has completed the Fair Isaac Collection Agency certification process. The certification process includes Collection Agency implementation of the standard interface and training. See Exhibit F for the Approved Collection Agency list.

"Client Data" means data housed on Client billing systems, automated collection systems and other internal system which could be used by Fair Isaac for the purposes of system testing, model development, and bug fixing or for providing the PlacementsPlus service.

"Collection Agency(ies)" means companies offering collection services to include attorneys, arbitrators, debt buyers and other entities to which Client directs Accounts to be placed.

"Documentation" means: PlacementsPlus Owner Administration Guide, PlacementsPlus Owner User Guide, PlacementsPlus Agency User Guide and the PlacementsPlus Agency Administrators Guide and other documentation defined and released from time to time.

"Performance Data" means financial and collection activity transaction data that details the account activities and business results achieved on placed Accounts.

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Program Number: 5724-I82

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Program Number: 5724-L01

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- IBM Thin Clients, including the following:
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 - IBM Thin Client for JMS with WebSphere Application Server
 - IBM Resource Adapter for JMS with WebSphere Application Server
 - IBM Thin Client for JAX-RPC with WebSphere Application Server
 - IBM Thin Client for JAX-WS with WebSphere Application Server
 - IBM Thin Admin Client for WebSphere Application Server
 - IBM Thin Client for JPA with WebSphere Application Server
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 - Performance and Analysis Tools: Dynamic Cache Monitor, Tivoli Performance Viewer, Performance Servlet
- Process Server Client
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messages*.properties odc-jsf.jar
org.apache.wsil4j_1.0.0.v200806040330.jar
org.uddi4j_2.0.5.v200805270300.jar
oro-2.0.8.jar
pbportlet.jar
PortalStruts.jar
PortalStrutsCommon.jar
PortalStrutsTags.jar
portlet-bp.jar

portlet-cache.jar
portlet-cv.jar
pznresource.jar
pznquery_src.jar
pznresources.jar
pznruntime.jar
RichTextEditor.ear
RichTextEditor.war
RJBRT.dll
RJBRT.jar
rte.jar sdo_access_beans.jar
sdo_access_beans_6.1.0.jar
sdo_access_beans_p5.1.0.jar
sdo_web.jar
sdo_web_6.1.0.jar
sdo_web_p5.1.0.jar
sdo-property.jar
standard.jar
standard-1.0.2.jar
struts.jar
struts-bean.tld
struts-blank.zip
struts-config_1_0.dtd
struts-config_1_1.dtd
struts-config_1_2.dtd
struts-config_1_3.dtd
struts-cookbook.zip
struts-core-1.3.8.jar
struts-documentation.zip
struts-el.zip
struts-el-1.3.8.jar
struts-examples.zip
struts-extras-1.3.8.jar
struts-faces-1.3.8.jar
struts-faces-example1.zip
struts-faces-example2.zip

Program-unique Terms

License Type - Authorized User License:

Authorized User is a unit of measure by which the Program can be licensed. An Authorized User is a unique person that is given access to the Program. The Program may be installed on any number of computers or servers and each Authorized User may have simultaneous access to any number of instances of the Program at one time. Licensee must obtain separate, dedicated entitlements for each Authorized User accessing the Program in any manner directly or indirectly (for example: via a multiplexing program, device, or application server) through any means. An entitlement for an Authorized User is unique to that Authorized User and may not be shared, nor may it be reassigned other than for the permanent transfer of the Authorized User entitlement to another person.

1) J2C TECHNOLOGY

A) CICS Transaction Gateway for Application Development:

A.1) The Program includes a copy of the LINUX and Microsoft Windows platform versions of CICS Transaction Gateway for Application Development ("CICS TG AD"). Licensee is authorized to install and use such LINUX and Microsoft Windows platform versions of CICS TG AD only for the purposes of internal evaluation or unit testing, which is limited to the testing of code written or generated by a developer to confirm that such code functions as designed. Such LINUX and Microsoft Windows platform versions of CICS TG AD: (i) may be installed on a machine which is separated from the Program; and (ii) are not authorized to be used for any production purpose.

A.2) The J2EE Connector Architecture (JCA) resource adapters supplied with the Program and packaged in the file named 'cicsecl.rar' and the Java client classes supplied with the Program and packaged in the file named 'ctgclient.jar' may be freely distributed by licensed users of the Program. Licensed users who choose to distribute these client classes assume responsibility for the support and maintenance of the distributed classes. IBM's consent to such distribution is on the basis that licensed users of the Program are responsible for ensuring that:

- (i) no 'JAR' or 'RAR' file is modified from its original form;
- (ii) no 'JAR' or 'RAR' file is used other than within a Java environment supported by the Program; and
- (iii) all communication is to a CICS Transaction Gateway at the same or a higher release level than the version of the 'ctgclient.jar' or 'RAR' file

B) IMS:

The Program contains separate JCA 1.5 version of the IMS TM Resource Adapter (also known as IMS Connector for Java). Licensee is authorized to use these resource adapters function solely for the purposes of writing or generating code. However, to unit test any code written or generated with the Program, Licensee must have at least one valid IMS license with the corresponding IMS version. Licensee is not authorized to use the IMS TM Resource Adapters supplied in the Program for production purposes. If Licensee wish to use these IMS TM Resource Adapters for production purposes, refer to the IMS TM Resource Adapter website at www.ibm.com/ims.

2) IBM WEBSHERE PROCESS SERVER COMPONENTS

ADDITIONAL TERMS FOR WEBSHERE PROCESS SERVER: The Program's test runtime environment includes portions of WebSphere Process Server ("WPS Components"). Licensee is authorized to install and use the WPS Components only on the same machine as the remainder of the Program and solely to support the operation of the Program's test runtime environment. If Licensee has obtained a fully licensed version of IBM WebSphere Business Modeler Advanced, Licensee is also authorized to use the Program's test runtime environment (including the WPS Components as permitted in the foregoing) as a managed test environment for use by no more than five (5) Authorized Users under Licensee's IBM WebSphere Business Modeler Advanced license to deploy solely for testing purposes.

ADDITIONAL TERMS FOR WEBSHERE ENTERPRISE SERVICE BUS: The Program's test runtime environment includes an embedded copy of portions of WebSphere Enterprise Service Bus ("WESB Components"). Licensee is authorized to install and use the WESB Components only on the same machine as the remainder of the Program and solely to support the operation of the Program's test runtime environment.

The following additional terms apply to the WebSphere Process Server and WebSphere Enterprise Service Bus Components:

1. Proxy Server Components: Licensee is authorized to use the Proxy Server components and the DMZ Secure Proxy Server components of the Program with non-IBM WebSphere back-end servers. Licensee may be entitled to warranty support for such usage provided the problem is common to both the IBM WebSphere and non-IBM WebSphere back-end servers or, if otherwise, Licensee agree to recreate the problem in an IBM WebSphere environment with the Program. For each Proof of Entitlement to the Program, Licensee is authorized to install and use on any one processor core one copy of the Proxy Server components.

2. SOURCE CODE

Some of the components of the Program may be provided in source code form. Notwithstanding anything to the contrary in this Agreement, support is only provided for the unmodified, binary code versions of these components included in the Program packaging, and not for the source code for these components or for any modifications of such components Licensee may create.

3. SUPPORT INFORMATION

For information on non-IBM supported operating systems or other specific configurations and level of Program components Licensee must have to acquire support for the Programs, please contact Your IBM Sales Representative.

3) IBM WEBSHERE ADAPTERS COMPONENTS

The Program contains the following IBM WebSphere Adapters:

- IBM WebSphere Adapter for JDBC
 - IBM WebSphere Adapter for Flat Files
 - IBM WebSphere Adapter for Email
 - IBM WebSphere Adapter for FTP
 - IBM WebSphere Adapter for IBM i
 - IBM WebSphere Adapter for Lotus Domino
- (collectively, the "technology Adapters")

Licensee is authorized to use the above technology Adapters on the same machine as the Program in association with Licensee's licensed use of the Program. Licensee is also authorized to deploy and run an unlimited number of technology Adapter components on one or more software deployment servers associated with the licensed use of the Program (e.g. IBM WebSphere Enterprise Service Bus, IBM WebSphere Process Server).

The Program contains the following IBM WebSphere Adapters:

- IBM WebSphere Adapter for SAP Software
 - IBM WebSphere Adapter for Siebel Business Applications
 - IBM WebSphere Adapter for PeopleSoft Enterprise
 - IBM WebSphere Adapter for Oracle E-Business Suite
 - IBM WebSphere Adapter for JD Edwards EnterpriseOne
- (collectively, the "business application Adapters").

Licensee is authorized to use the business application Adapter components only on the same machine as the Program and only in association with Licensee's licensed use of the Program. Separate IBM WebSphere Adapter authorization must be acquired to deploy business application Adapter software components to any software deployment server associated with the licensed use of the Program (e.g. IBM WebSphere Enterprise Service Bus, IBM WebSphere Process Server) irrespective of the usage or location of the software deployment server.

With a "per establishment" authorization for a business application Adapter, Licensee is permitted to deploy and run an unlimited number of the business application Adapter components with multiple software deployment servers supported by the business application Adapter, but only on machines owned or leased by the Licensee that are located at a single site and at locations within 50 kilometers (31 miles) of that site. A separate "per-application-instance" authorization is available for each business application Adapter. With a per-application-instance authorization, Licensee is permitted to deploy and run an unlimited number of the business application Adapter components on a single instance of a software deployment server supported by that business application Adapter.

4) LOTUS FORMS COMPONENTS

The Program contains the following IBM Lotus Forms Products:

- IBM Lotus Forms Designer
- IBM Lotus Forms Viewer
- IBM Lotus Forms Server

Notwithstanding anything to the contrary in the license agreements for the Lotus Forms products, Licensee is authorized to use the above Lotus Forms products on a single machine solely for the purpose of testing code written or generated with the Program to confirm that such code functions as designed. Licensee may not use the IBM Lotus Forms products for production purposes.

5) LPEX COMPONENTS

IBM has made certain modifications to the Eclipse Code for the LPEX component, which modifications are referred to as the "Eclipse Platform Classes". The Eclipse Platform Classes were not contributed back to the Eclipse Foundation because they are unique to this Program and its LPEX component. The source code for the Eclipse Platform Classes can be obtained from IBM via an e-mail request to stori@ca.ibm.com.

6) WEBSHERE BUSINESS MONITOR COMPONENTS

Notwithstanding anything to the contrary in the license agreements for the WebSphere Business Monitor product, Licensee is authorized to use the above WebSphere Business Monitor on a single machine solely for the purpose of testing code written or generated with the Program to confirm that such code functions as designed. Licensee may not use the WebSphere Business Monitor for production purposes.

7) RATIONAL APPLICATION DEVELOPER COMPONENTS - ADDITIONAL USAGE RESTRICTIONS

1. Licensee may not use the Program to deploy programs to run on IBM WebSphere Application Server or IBM WebSphere Portal Server unless Licensee has obtained a fully licensed version of IBM Rational Application Developer.
2. The Program includes components of the IBM Rational Application Developer for creating generic web applications (the "Web Tools"). Licensee may not use the Web Tools included in the Program to create web applications that provide functionality beyond the business process automation and/or business integration functionality developed using the Program unless Licensee has obtained a fully licensed version of IBM Rational Application Developer..

8) RATIONAL ASSET MANAGER STANDARD EDITION or ENTERPRISE EDITION COMPONENTS

The Program is accompanied by IBM Rational Asset Manager components. Licensee's use of the RAM components is subject to the terms and conditions of the license agreement which accompany the RAM components, subject to the additional limitations and terms specified in this license.

This is a restricted use RAM license for development associated with Licensee's use of the Program. Licensee's use of RAM is limited to a single developer license; if Licensee requires additional licenses, they must be purchased separately from IBM.

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P/N: CT5K6ML

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audit. The limitation of liability set forth in Section 6 shall not apply to End User's unauthorized use or misappropriation of the Software or Ancillary Programs.

3. INDEMNITY

(a) Indemnity. Subject to the provisions of this Section 3, if an action is brought against End User claiming that Sofuware or Aspect proprietary Equipment, when used in accordance with the Documentation and as permitted under this Agreement in the Territory, infringes a valid patent issued by the United States Patent and Trademark Office or registered copyright or trademark, or misappropriates a trade secret, Aspect shall defend End User at Aspect's expense and pay the damages and costs finally awarded against End User in relation to the infringement or misappropriation action, but only if (i) End User notifies Aspect promptly upon learning that an action has been or might be asserted, (ii) Aspect has sole control over the defense of the action and any negotiation for its settlement or compromise, and (iii) End User fully cooperates in Aspect's defense of such action. Aspect shall have no obligation or liability under this Section 3 if the action results from (i) a modification of such Software or Aspect proprietary Equipment not performed by Aspect or its authorized representative, or any such modifications performed by Aspect for non-standard features or functionality in connection with Professional Services or otherwise at End User's request, (ii) the failure to promptly install a new maintenance release or version of the Sofuware that would have eliminated the actual or alleged infringement or misappropriation, (iii) the use of any non-Aspect product, information, design, specification, instruction, software, data, or material in combination with the Software or Aspect proprietary Equipment where such infringement would not have arisen but for such combination, (iv) Aspect's or its authorized representative's compliance with instructions, designs, plans or specifications furnished by or on behalf of End User, or (v) any patent infringement claim alleging infringement by End User-specific processes or methods created by or on behalf of End User using the Software or Aspect proprietary Equipment and, but for such End User-specific method or process, the patent infringement claim would not have arisen.

(b) Opportunity to Cure. If a covered claim described in Section 3(a) may be or has been asserted, End User shall permit Aspect, at Aspect's option and expense, to (i) secure the right for End User to continue using the Software or Aspect proprietary Equipment, (ii) replace, modify, or create a workaround for the Software or Aspect proprietary Equipment to eliminate the infringement or misappropriation while providing functionally equivalent performance, or (iii) terminate the applicable License and, upon End User's return of the infringing Software or Aspect proprietary Equipment, refund to End User the amount actually paid to Aspect for such Software or Aspect proprietary Equipment, less depreciation based on a five (5) year straight-line depreciation schedule.

(c) THIS SECTION 3 SETS FORTH ASPECT'S SOLE LIABILITY AND END USER'S SOLE REMEDY WITH RESPECT TO ANY INFRINGEMENT CLAIM.

4. OWNERSHIP

All rights, title or interest to any intellectual property with respect to any patent, copyright (including, without limitation, any derivative works), trademark, service mark, trade name, trade secret, semiconductor design, circuit layouts, mask works, inventions, work processes, reports, drawings or other rights in any confidential or non-public information owned or legally held by Aspect, its affiliates, or third-party licensors which are present in or associated with any and all Equipment, Software, Ancillary Programs, Documentation, Service deliverables, or other Aspect Information and proprietary materials, including, without limitation, all computer programs, algorithms, program listings, programming tools, procedures, reports, and drawings (except to the extent that such reports or drawings contain End User specific data or information) ("Aspect Intellectual Property") is and shall remain the exclusive property of Aspect, its affiliates, and/or its third party licensors. To the extent that any right, title or interest in or to any Aspect Intellectual Property may not, by operation of law, automatically vest in Aspect, End User hereby irrevocably transfers, assigns and conveys all right, title, and interest therein to Aspect. End User shall, at Aspect's request and expense, promptly take all such action and execute such further documents and instruments as are necessary to vest full title in the Aspect Intellectual Property in Aspect or its third party licensor(s). End User's limited right to use such Aspect Intellectual Property shall be governed by the licensing and confidentiality provisions of this Agreement which relate to, govern, and/or protect the Software and Ancillary Programs or other deliverables to which such Aspect Intellectual Property is associated. Notwithstanding anything to the contrary contained herein, Aspect reserves the right to seek all legal and equitable rights and remedies available to Aspect against End User for any use by End User of any Aspect Intellectual Property in violation of this Agreement.

5. CONFIDENTIAL INFORMATION

(a) Confidentiality. Each party acknowledges that (i) this Agreement, any Quotation, and the Products and Services to be provided hereunder incorporate confidential and proprietary information developed or acquired by Aspect and (ii) each party may receive or have access to other proprietary or confidential information disclosed and marked as confidential by the disclosing party (collectively, the "Confidential Information"). Notwithstanding the foregoing statement, Confidential Information shall automatically include (without obligation for written notification as set forth above) (i) with respect to Aspect: Products, Documentation, financial data and the results of any benchmark tests performed by End User in connection with the Product(s); and (ii) with respect to End User: personally identifiable or otherwise sensitive information regarding End User's End User(s) which Aspect may receive from or through End User, in the course of either party performing its respective obligations hereunder, provided however that End User shall use commercially reasonable efforts to prevent or minimize disclosure to Aspect of any such personally identifiable or End User-sensitive Confidential Information, except to the extent such disclosure is reasonably necessary in order for Aspect to perform its obligations hereunder. The receiving party shall use the disclosing party's Confidential Information solely to perform its obligations under this Agreement. The receiving party shall take all reasonable precautions necessary to safeguard the confidentiality of the disclosing party's Confidential Information, including without limitation, (i) those taken by the receiving party to protect its own confidential information and (ii) those which the disclosing party may reasonably request from time to time.

(b) Disclosure. The receiving party shall not disclose, in whole or in part, the disclosing party's Confidential Information to any person, except to the receiving party's employees and independent contractors who (i) shall access and utilize the disclosing party's Confidential Information for no purpose or benefit other than to exercise the receiving party's rights and obligations as expressly set forth in this Agreement; and (ii) are under an obligation of confidentiality which is no less restrictive than the provisions contained herein.

(c) Unauthorized Use or Disclosure. The parties acknowledge that any unauthorized use or disclosure of the disclosing party's Confidential Information may cause irreparable damage to the disclosing party. If an unauthorized use or disclosure is discovered, the receiving party shall promptly notify the disclosing party and, at the receiving party's expense, take all steps reasonably necessary to recover the disclosing party's Confidential Information and to prevent its subsequent unauthorized use, disclosure, or dissemination, including availing itself of actions for seizure and injunctive relief. If the receiving party fails to take these steps in a timely and adequate manner, the disclosing party may take them at the receiving party's expense, and the receiving party shall provide the disclosing party with such reasonable cooperation in such actions as the disclosing party may request.

(d) Limitation. The receiving party shall have no confidentiality obligation with respect to any portion of the disclosing party's Confidential Information that (i) is independently developed by the receiving party without breach of this Agreement and such independent development can be demonstrated to the reasonable satisfaction of the other party, (ii) the receiving party lawfully obtained from a third party under no obligation of confidentiality, (iii) is or becomes generally available to the public other than as a result of an act or omission of the receiving party or its agents or representatives, or (iv) the receiving party is compelled to disclose pursuant to legal process provided by a court of competent jurisdiction provided that the receiving party shall notify the disclosing party promptly upon learning that it shall be so compelled and, concurrent

with such required disclosure, takes such actions as the disclosing party may reasonably request to protect the confidential or proprietary nature of such Confidential Information in such proceedings. Notwithstanding anything to the contrary herein, Software and Ancillary Programs shall not be deemed to have been placed in the public domain by Aspect for purposes of this Section 5.

6. LIABILITY

(a) UNDER NO CIRCUMSTANCES SHALL ASPECT, ITS LICENSORS, PARTNERS, SUPPLIERS, SUBCONTRACTORS, OR AGENTS BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES, OR LOST PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON END USER'S CLAIMS OR THE CLAIMS OF ANY THIRD PARTY (INCLUDING WITHOUT LIMITATION CLAIMS FOR LOSS OF DATA, GOODWILL, USE OF MONEY OR USE OF THE PRODUCTS, INTERRUPTION IN USE OR AVAILABILITY OF DATA, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS), ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY OR REMEDY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT, THE FAILURE OF ANY REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE OR OTHERWISE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR THE PERFORMANCE OF ANY OF THE PRODUCTS OR SERVICES.

(b) IN NO EVENT SHALL THE AGGREGATE LIABILITY THAT ASPECT, ITS LICENSORS, PARTNER, SUPPLIERS, SUBCONTRACTORS OR AGENTS MAY INCUR IN ANY ACTION OR PROCEEDING, ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY OR REMEDY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR THE PERFORMANCE OF ANY OF THE PRODUCTS OR SERVICES, EXCEED THE TOTAL AMOUNT THAT END USER ACTUALLY PAID FOR THE SPECIFIC PRODUCT OR SERVICE THAT DIRECTLY CAUSED THE DAMAGE OR LOSS.

7. MISCELLANEOUS

(a) No Agency. The Parties are independent contractors and shall have no right or authority to bind or commit the other party in any way without the other party's express written authorization. Nothing contained herein shall be deemed or construed to create for any purpose an employer/employee, joint venture, partnership, or agency relationship between the Parties.

(b) Force Majeure. Neither party shall be considered in breach of its obligations hereunder due to any failure to perform such obligations arising out of causes beyond the control, and without the fault or negligence, of such party. Such causes shall include, without limitation, acts of God; acts of any governmental authority; fires, unusually severe weather, floods or other natural disasters; acts of terrorism, strikes or labor unrest; and degradation of telecommunications services.

(c) Notice. All notices or approvals required or permitted under this Agreement must be given in writing and signed by the authorized representatives of the Parties hereto. All such notices shall be hand delivered or sent to the Parties' respective addresses first set forth above or to such other address as either party may specify by written notice to the other. No failure or delay by either party to exercise any right or remedy specified herein shall be construed as a current or future waiver of such remedy or right, unless said waiver is in writing.

(d) Amendments. This Agreement may be superseded or modified solely by written agreement signed by the authorized representatives of both parties hereto, which specifically acknowledges the existence of this Agreement and that it is being superseded or modified by the terms of such subsequent written agreement.

(e) Governing law. This Agreement shall be governed by and interpreted in accordance with the internal laws of the Commonwealth of Massachusetts, U.S.A., excluding its conflict of law principles. The parties specifically agree to exclude the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act in the form adopted by a state from governing this Agreement and any transaction between the parties that may be implemented in connection herewith. All provisions of this Agreement that by their nature are intended to survive expiration or termination shall survive.

(f) Export Regulations. End User acknowledges that the Products and all related technical information, documents and materials are subject to certain U.S. regulations, including but not limited to U.S. Foreign Corrupt Practices Act, export controls under U.S. export regulations, regulations regarding antiboycott sanctions or similar governmental order(s) and End User agrees to comply strictly with all applicable requirements of such regulations and orders and further agrees that any export shall only occur within the Territory. End User agrees to indemnify, defend, and hold Aspect harmless, from and against any claim, loss, cost, or other expense resulting from End User's non-compliance with the preceding statement.

(g) Agreement Construction and Interpretation. Aspect and End User have required that this Agreement and all documents relating hereto be drawn up in the English language. (Translation in French: "Aspect et Client avez demandé que cette convention ainsi que tous les documents qui s'y attachent soient rédigés en langue anglaise."). Headings are included in this Agreement for reference purposes only and shall not be used to interpret or construe this Agreement.

hi) Aspect Affiliate. Aspect may grant authority to an Aspect affiliate to act as the agent of Aspect for purposes of issuing Quotations and accepting orders for Products and Services, performing such orders, and issuing invoices under the terms of this Agreement. Aspect reserves the right to contract with third parties for the performance of Aspect's obligations hereunder in certain Territories.

(i) Assignment. End User may not assign any of its obligations, rights or remedies hereunder, in whole or in part, without the express written approval of Aspect; provided, however, that End User shall have the right, upon written notice to Aspect, to assign this Agreement in its entirety to an Affiliate or such other corporate entity which may result from the merger with, consolidation of, or sale of substantially all of End User's assets, provided such Affiliate or entity is located within the Territory, is not a direct competitor of Aspect, and agrees in writing (with a copy provided to Aspect) to assume any outstanding End User obligations which may have been incurred hereunder prior to such transfer and to be bound by the provisions of this Agreement. The specific named assignee shall be deemed to be the End User hereunder as of the effective date of any such authorized assignment.

(j) Restricted Government Rights. The Equipment, Software and Ancillary Programs were developed solely at private expense, contain "restricted computer software" submitted with restricted rights in accordance with the US FAR 52.227-19 (a) through (c) of the Commercial Computer Software License (Dec 2007) Clause and its successors, and in all respects is proprietary data belonging to Aspect and/or its suppliers. For US Department of Defense units, the Equipment, Software and Ancillary Programs is considered commercial computer software in accordance with US DFARS 227.7202-3 and its successors, and use, duplication, or disclosure by the US Government is subject to the restrictions set forth herein.

(k) Severability. If any court of competent jurisdiction determines that any provision of this Agreement is illegal, invalid, or unenforceable, the remaining provisions of this Agreement will remain in full force and effect.

(l) Entire Agreement. The terms set forth herein and in the applicable Quotation constitute the entire agreement between the Parties with respect to End User's use of the Product(s) within the scope of the license(s) granted herein and Aspect's provision of related Services. This Agreement shall override and replace all terms contained in any End User purchase order accepted by Aspect and any separate document between End User and any third-party Product distributor relating to the procurement of Products and/or Services referenced herein. These terms supersede and exclude all prior or contemporaneous proposals, understandings, agreements, negotiations, and representations, whether oral or written, with respect to the subject matter of this Agreement. In the event of any inconsistency between the terms of this Agreement and the applicable Quotation, the terms of this Agreement shall control for purposes of said Quotation. Except as specifically set forth in a mutually executed writing,

orders subsequent to the first order hereunder shall be considered separate agreements between the parties, incorporating the provisions hereof.

Aspect, by its authorized representative:

Signature:-----

Name: _____

Title: _____

Date: _____

End User, by its authorized representative:

Signature: _____

Name: _____

Title:

Date:-----

International Program License Agreement

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Mezinárodní licenční smlouva pro programy Conditions

Internationales d'Utilisation de Logiciel Internationale

Nutzungsbedingungen für Programmpakete Διεθνής

Σύμβαση 8δειας Χρήσης Προγράμματος Perjanjian

Lisensi Program Internasional

Accordo Internazionale di Licenza di Programmi

Wm0i`N4HQro

Tarptautinė programos licencinė sutartis

Międzynarodowa Umowa Licencyjna na Program

Contrato Internacional de Licença de Programa

Международное Лицензионное Соглашение в отношении Программ

Mednarodna licenčna pogodba za program

Acuerdo Internacional de Programas bajo Licencia

Uluslararası Program Lisans Sözleşmesi

Z125-3301-14

International Program License Agreement

Part 1 – General Terms

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- v DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, CLICK ON AN "ACCEPT" BUTTON, OR USE THE PROGRAM; AND
- v PROMPTLY RETURN THE UNUSED MEDIA, DOCUMENTATION, AND PROOF OF ENTITLEMENT TO THE PARTY FROM WHOM IT WAS OBTAINED FOR A REFUND OF THE AMOUNT PAID. IF THE PROGRAM WAS DOWNLOADED, DESTROY ALL COPIES OF THE PROGRAM.

1. Definitions

"Authorized Use" – the specified level at which Licensee is authorized to execute or run the Program. That level may be measured by number of users, millions of service units ("MSUs"), Processor Value Units ("PVUs"), or other level of use specified by IBM.

"IBM" – International Business Machines Corporation or one of its subsidiaries.

"License Information" ("LI") – a document that provides information and any additional terms specific to a Program. The Program's LI is available at www.ibm.com/software/sla. The LI can also be found in the Program's directory, by the use of a system command, or as a booklet included with the Program.

"Program" – the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, files, and modules, 3) audio-visual content (such as images, text, recordings, or pictures), and 4) related licensed materials (such as keys and documentation).

"Proof of Entitlement" ("PoE") – evidence of Licensee's Authorized Use. The PoE is also evidence of Licensee's eligibility for warranty, future update prices, if any, and potential special or promotional opportunities. If IBM does not provide Licensee with a PoE, then IBM may accept as the PoE the original paid sales receipt or other sales record from the party (either IBM or its reseller) from whom Licensee obtained the Program, provided that it specifies the Program name and Authorized Use obtained.

"Warranty Period" – one year, starting on the date the original Licensee is granted the license.

2. Agreement Structure

This Agreement includes Part 1 – General Terms, Part 2 – Country-unique Terms (if any), the LI, and the PoE and is the complete agreement between Licensee and IBM regarding the use of the Program. It replaces any prior oral or written communications between Licensee and IBM concerning Licensee's use of the Program. The terms of Part 2 may replace or modify those of Part 1. To the extent of any conflict, the LI prevails over both Parts.

3. License Grant

The Program is owned by IBM or an IBM supplier, and is copyrighted and licensed, not sold.

IBM grants Licensee a nonexclusive license to 1) use the Program up to the Authorized Use specified in the PoE, 2) make and install copies to support such Authorized Use, and 3) make a backup copy, all provided that

- a. Licensee has lawfully obtained the Program and complies with the terms of this Agreement;

- b. the backup copy does not execute unless the backed-up Program cannot execute;
- c. Licensee reproduces all copyright notices and other legends of ownership on each copy, or partial copy, of the Program;
- d. Licensee ensures that anyone who uses the Program (accessed either locally or remotely) 1) does so only on Licensee's behalf and 2) complies with the terms of this Agreement;
- e. Licensee does not 1) use, copy, modify, or distribute the Program except as expressly permitted in this Agreement; 2) reverse assemble, reverse compile, otherwise translate, or reverse engineer the Program, except as expressly permitted by law without the possibility of contractual waiver; 3) use any of the Program's components, files, modules, audio-visual content, or related licensed materials separately from that Program; or 4) sublicense, rent, or lease the Program; and
- f. if Licensee obtains this Program as a Supporting Program, Licensee uses this Program only to support the Principal Program and subject to any limitations in the license to the Principal Program, or, if Licensee obtains this Program as a Principal Program, Licensee uses all Supporting Programs only to support this Program, and subject to any limitations in this Agreement. For purposes of this Item "f," a "Supporting Program" is a Program that is part of another IBM Program ("Principal Program") and identified as a Supporting Program in the Principal Program's LI. (To obtain a separate license to a Supporting Program without these restrictions, Licensee should contact the party from whom Licensee obtained the Supporting Program.)

This license applies to each copy of the Program that Licensee makes.

3.1 Trade-ups, Updates, Fixes, and Patches

3.1.1 Trade-ups

If the Program is replaced by a trade-up Program, the replaced Program's license is promptly terminated.

3.1.2 Updates, Fixes, and Patches

When Licensee receives an update, fix, or patch to a Program, Licensee accepts any additional or different terms that are applicable to such update, fix, or patch that are specified in its LI. If no additional or different terms are provided, then the update, fix, or patch is subject solely to this Agreement. If the Program is replaced by an update, Licensee agrees to promptly discontinue use of the replaced Program.

3.2 Fixed Term Licenses

If IBM licenses the Program for a fixed term, Licensee's license is terminated at the end of the fixed term, unless Licensee and IBM agree to renew it.

3.3 Term and Termination

This Agreement is effective until terminated.

IBM may terminate Licensee's license if Licensee fails to comply with the terms of this Agreement.

If the license is terminated for any reason by either party, Licensee agrees to promptly discontinue use of and destroy all of Licensee's copies of the Program. Any terms of this Agreement that by their nature extend beyond termination of this Agreement remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

4. Charges

Charges are based on Authorized Use obtained, which is specified in the PoE. IBM does not give credits or refunds for charges already due or paid, except as specified elsewhere in this Agreement.

If Licensee wishes to increase its Authorized Use, Licensee must notify IBM or an authorized IBM reseller in advance and pay any applicable charges.

5. Taxes

If any authority imposes on the Program a duty, tax, levy, or fee, excluding those based on IBM's net income, then Licensee agrees to pay that amount, as specified in an invoice, or supply exemption documentation. Licensee is responsible for any personal property taxes for the Program from the date that Licensee obtains it. If any authority imposes a customs duty, tax, levy, or fee for the import into or the export, transfer, access, or use of the Program outside the country in which the original Licensee was granted the license, then Licensee agrees that it is responsible for, and will pay, any amount imposed.

6. Money-back Guarantee

If Licensee is dissatisfied with the Program for any reason and is the original Licensee, Licensee may terminate the license and obtain a refund of the amount Licensee paid for the Program, provided that Licensee returns the Program and PoE to the party from whom Licensee obtained it within 30 days of the date the PoE was issued to Licensee. If the license is for a fixed term that is subject to renewal, then Licensee may obtain a refund only if the Program and its PoE are returned within the first 30 days of the initial term. If Licensee downloaded the Program, Licensee should contact the party from whom Licensee obtained it for instructions on how to obtain the refund.

7. Program Transfer

Licensee may transfer the Program and all of Licensee's license rights and obligations to another party only if that party agrees to the terms of this Agreement. If the license is terminated for any reason by either party, Licensee is prohibited from transferring the Program to another party. Licensee may not transfer a portion of 1) the Program or 2) the Program's Authorized Use. When Licensee transfers the Program, Licensee must also transfer a hard copy of this Agreement, including the LI and PoE. Immediately after the transfer, Licensee's license terminates.

8. Warranty and Exclusions

8.1 Limited Warranty

IBM warrants that the Program, when used in its specified operating environment, will conform to its specifications. The Program's specifications, and specified operating environment information, can be found in documentation accompanying the Program (such as a read-me file) or other information published by IBM (such as an announcement letter). Licensee agrees that such documentation and other Program content may be supplied only in the English language, unless otherwise required by local law without the possibility of contractual waiver or limitation.

The warranty applies only to the unmodified portion of the Program. IBM does not warrant uninterrupted or error-free operation of the Program, or that IBM will correct all Program defects. Licensee is responsible for the results obtained from the use of the Program.

During the Warranty Period, IBM provides Licensee with access to IBM databases containing information on known Program defects, defect corrections, restrictions, and bypasses at no additional charge. Consult the IBM Software Support Handbook for further information at www.ibm.com/software/support.

If the Program does not function as warranted during the Warranty Period and the problem cannot be resolved with information available in the IBM databases, Licensee may return the Program and its PoE to the party (either IBM or its reseller) from whom Licensee obtained it and receive a refund of the amount Licensee paid. After returning the Program, Licensee's license terminates. If Licensee downloaded the Program, Licensee should contact the party from whom Licensee obtained it for instructions on how to obtain the refund.

8.2 Exclusions

THESE WARRANTIES ARE LICENSEE'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT

NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO LICENSEE. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO LICENSEE.

THESE WARRANTIES GIVE LICENSEE SPECIFIC LEGAL RIGHTS. LICENSEE MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE OR JURISDICTION TO JURISDICTION.

THE WARRANTIES IN THIS SECTION 8 (WARRANTY AND EXCLUSIONS) ARE PROVIDED SOLELY BY IBM. THE DISCLAIMERS IN THIS SUBSECTION 8.2 (EXCLUSIONS), HOWEVER, ALSO APPLY TO IBM'S SUPPLIERS OF THIRD PARTY CODE. THOSE SUPPLIERS PROVIDE SUCH CODE WITHOUT WARRANTIES OR CONDITION OF ANY KIND. THIS PARAGRAPH DOES NOT NULLIFY IBM'S WARRANTY OBLIGATIONS UNDER THIS AGREEMENT.

9. Licensee Data and Databases

To assist Licensee in isolating the cause of a problem with the Program, IBM may request that Licensee 1) allow IBM to remotely access Licensee's system or 2) send Licensee information or system data to IBM. However, IBM is not obligated to provide such assistance unless IBM and Licensee enter a separate written agreement under which IBM agrees to provide to Licensee that type of support, which is beyond IBM's warranty obligations in this Agreement. In any event, IBM uses information about errors and problems to improve its products and services, and assist with its provision of related support offerings. For these purposes, IBM may use IBM entities and subcontractors (including in one or more countries other than the one in which Licensee is located), and Licensee authorizes IBM to do so.

Licensee remains responsible for 1) any data and the content of any database Licensee makes available to IBM, 2) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally-identifiable data), and 3) backup and recovery of any database and any stored data. Licensee will not send or provide IBM access to any personally-identifiable information, whether in data or any other form, and will be responsible for reasonable costs and other amounts that IBM may incur relating to any such information mistakenly provided to IBM or the loss or disclosure of such information by IBM, including those arising out of any third party claims.

10. Limitation of Liability

The limitations and exclusions in this Section 10 (Limitation of Liability) apply to the full extent they are not prohibited by applicable law without the possibility of contractual waiver.

10.1 Items for Which IBM May Be Liable

Circumstances may arise where, because of a default on IBM's part or other liability, Licensee is entitled to recover damages from IBM. Regardless of the basis on which Licensee is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM's entire liability for all claims in the aggregate arising from or related to each Program or otherwise arising under this Agreement will not exceed the amount of any 1) damages for bodily injury (including death) and damage to real property and tangible personal property and 2) other actual direct damages up to the charges (if the Program is subject to fixed term charges, up to twelve months' charges) Licensee paid for the Program that is the subject of the claim.

This limit also applies to any of IBM's Program developers and suppliers. It is the maximum for which IBM and its Program developers and suppliers are collectively responsible.

10.2 Items for Which IBM Is Not Liable

UNDER NO CIRCUMSTANCES IS IBM, ITS PROGRAM DEVELOPERS OR SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:

- a. LOSS OF, OR DAMAGE TO, DATA;
- b. SPECIAL, INCIDENTAL, EXEMPLARY, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR
- c. LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

11. Compliance Verification

For purposes of this Section 11 (Compliance Verification), "IPLA Program Terms" means 1) this Agreement and applicable amendments and transaction documents provided by IBM, and 2) IBM software policies that may be found at the IBM Software Policy website (www.ibm.com/software/policies), including but not limited to those policies concerning backup, sub-capacity pricing, and migration.

The rights and obligations set forth in this Section 11 remain in effect during the period the Program is licensed to Licensee, and for two years thereafter.

11.1 Verification Process

Licensee agrees to create, retain, and provide to IBM and its auditors accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that Licensee's use of all Programs is in compliance with the IPLA Program Terms, including, without limitation, all of IBM's applicable licensing and pricing qualification terms. Licensee is responsible for 1) ensuring that it does not exceed its Authorized Use, and 2) remaining in compliance with IPLA Program Terms.

Upon reasonable notice, IBM may verify Licensee's compliance with IPLA Program Terms at all sites and for all environments in which Licensee uses (for any purpose) Programs subject to IPLA Program Terms. Such verification will be conducted in a manner that minimizes disruption to Licensee's business, and may be conducted on Licensee's premises, during normal business hours. IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

11.2 Resolution

IBM will notify Licensee in writing if any such verification indicates that Licensee has used any Program in excess of its Authorized Use or is otherwise not in compliance with the IPLA Program Terms. Licensee agrees to promptly pay directly to IBM the charges that IBM specifies in an invoice for 1) any such excess use, 2) support for such excess use for the lesser of the duration of such excess use or two years, and 3) any additional charges and other liabilities determined as a result of such verification.

12. Third Party Notices

The Program may include third party code that IBM, not the third party, licenses to Licensee under this Agreement. Notices, if any, for the third party code ("Third Party Notices") are included for Licensee's information only. These notices can be found in the Program's NOTICES file(s). Information on how to obtain source code for certain third party code can be found in the Third Party Notices. If in the Third Party Notices IBM identifies third party code as "Modifiable Third Party Code," IBM authorizes Licensee to 1) modify the Modifiable Third Party Code and 2) reverse engineer the Program modules that directly interface with the Modifiable Third Party Code provided that it is only for the purpose of debugging Licensee's modifications to such third party code. IBM's service and support obligations, if any, apply only to the unmodified Program.

13. General

- a. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.
- b. For Programs IBM provides to Licensee in tangible form, IBM fulfills its shipping and delivery obligations upon the delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Licensee and IBM.
- c. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.
- d. Licensee agrees to comply with all applicable export and import laws and regulations, including U.S. embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users.
- e. Licensee authorizes International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors and IBM Business Partners) to store and use Licensee's business contact information wherever they do business, in connection with IBM products and services, or in furtherance of IBM's business relationship with Licensee.
- f. Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement.
- g. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation: 1) neither party will bring a legal action, regardless of form, for any claim arising out of or related to this Agreement more than two years after the cause of action arose; and 2) upon the expiration of such time limit, any such claim and all respective rights related to the claim lapse.
- h. Neither Licensee nor IBM is responsible for failure to fulfill any obligations due to causes beyond its control.
- i. No right or cause of action for any third party is created by this Agreement, nor is IBM responsible for any third party claims against Licensee, except as permitted in Subsection 10.1 (Items for Which IBM May Be Liable) above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable to that third party.
- j. In entering into this Agreement, neither party is relying on any representation not specified in this Agreement, including but not limited to any representation concerning: 1) the performance or function of the Program, other than as expressly warranted in Section 8 (Warranty and Exclusions) above; 2) the experiences or recommendations of other parties; or 3) any results or savings that Licensee may achieve.
- k. IBM has signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support certain Programs. IBM Business Partners remain independent and separate from IBM. IBM is not responsible for the actions or statements of IBM Business Partners or obligations they have to Licensee.
- l. The license and intellectual property indemnification terms of Licensee's other agreements with IBM (such as the IBM Customer Agreement) do not apply to Program licenses granted under this Agreement.

14. Geographic Scope and Governing Law

14.1 Governing Law

Both parties agree to the application of the laws of the country in which Licensee obtained the Program license to govern, interpret, and enforce all of Licensee's and IBM's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

The United Nations Convention on Contracts for the International Sale of Goods does not apply.

14.2 Jurisdiction

All rights, duties, and obligations are subject to the courts of the country in which Licensee obtained the Program license.

Part 2 – Country-unique Terms

For licenses granted in the countries specified below, the following terms replace or modify the referenced terms in Part 1. All terms in Part 1 that are not changed by these amendments remain unchanged and in effect. This Part 2 is organized as follows:

- v Multiple country amendments to Part 1, Section 14 (Governing Law and Jurisdiction);
- v Americas country amendments to other Agreement terms;
- v Asia Pacific country amendments to other Agreement terms; and
- v Europe, Middle East, and Africa country amendments to other Agreement terms.

Multiple country amendments to Part 1, Section 14 (Governing Law and Jurisdiction)

14.1 Governing Law

The phrase "the laws of the country in which Licensee obtained the Program license" in the first paragraph of 14.1 Governing Law is replaced by the following phrases in the countries below:

AMERICAS

- (1) In Canada: the laws in the Province of Ontario;
- (2) in Mexico: the federal laws of the Republic of Mexico;
- (3) in the United States, Anguilla, Antigua/Barbuda, Aruba, British Virgin Islands, Cayman Islands, Dominica, Grenada, Guyana, Saint Kitts and Nevis, Saint Lucia, Saint Maarten, and Saint Vincent and the Grenadines: the laws of the State of New York, United States;
- (4) in Venezuela: the laws of the Bolivarian Republic of Venezuela;

ASIA PACIFIC

- (5) in Cambodia and Laos: the laws of the State of New York, United States;
- (6) in Australia: the laws of the State or Territory in which the transaction is performed;
- (7) in Hong Kong SAR and Macau SAR: the laws of Hong Kong Special Administrative Region ("SAR");
- (8) in Taiwan: the laws of Taiwan;

EUROPE, MIDDLE EAST, AND AFRICA

- (9) in Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan: the laws of Austria;
- (10) in Algeria, Andorra, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis and Futuna: the laws of France;
- (11) in Estonia, Latvia, and Lithuania: the laws of Finland;
- (12) in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe: the laws of England; and

- (13) in South Africa, Namibia, Lesotho, and Swaziland: the laws of the Republic of South Africa.

14.2 Jurisdiction

The following paragraph pertains to jurisdiction and replaces Subsection 14.2 (Jurisdiction) as it applies for those countries identified below:

All rights, duties, and obligations are subject to the courts of the country in which Licensee obtained the Program license except that in the countries identified below all disputes arising out of or related to this Agreement, including summary proceedings, will be brought before and subject to the exclusive jurisdiction of the following courts of competent jurisdiction:

AMERICAS

- (1) In Argentina: the Ordinary Commercial Court of the city of Buenos Aires;
- (2) in Brazil: the court of Rio de Janeiro, RJ;
- (3) in Chile: the Civil Courts of Justice of Santiago;
- (4) in Ecuador: the civil judges of Quito for executory or summary proceedings (as applicable);
- (5) in Mexico: the courts located in Mexico City, Federal District;
- (6) in Peru: the judges and tribunals of the judicial district of Lima, Cercado;
- (7) in Uruguay: the courts of the city of Montevideo;
- (8) in Venezuela: the courts of the metropolitan area of the city of Caracas;

EUROPE, MIDDLE EAST, AND AFRICA

- (9) in Austria: the court of law in Vienna, Austria (Inner-City);
- (10) in Algeria, Andorra, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, France, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Monaco, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis and Futuna: the Commercial Court of Paris;
- (11) in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe: the English courts;
- (12) in South Africa, Namibia, Lesotho, and Swaziland: the High Court in Johannesburg;
- (13) in Greece: the competent court of Athens;
- (14) in Israel: the courts of Tel Aviv-Jaffa;
- (15) in Italy: the courts of Milan;
- (16) in Portugal: the courts of Lisbon;
- (17) in Spain: the courts of Madrid; and
- (18) in Turkey: the Istanbul Central Courts and Execution Directorates of Istanbul, the Republic of Turkey.

14.3 Arbitration

The following paragraph is added as a new Subsection 14.3 (Arbitration) as it applies for those countries identified below. The provisions of this Subsection 14.3 prevail over those of Subsection 14.2 (Jurisdiction) to the extent permitted by the applicable governing law and rules of procedure:

ASIA PACIFIC

(1) In Cambodia, India, Laos, Philippines, and Vietnam:

Disputes arising out of or in connection with this Agreement will be finally settled by arbitration which will be held in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Center ("SIAC Rules") then in effect. The arbitration award will be final and binding for the parties without appeal and will be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators will be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties will appoint a third arbitrator who will act as chairman of the proceedings. Vacancies in the post of chairman will be filled by the president of the SIAC. Other vacancies will be filled by the respective nominating party. Proceedings will continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator will be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings will be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

(2) In the People's Republic of China:

In case no settlement can be reached, the disputes will be submitted to China International Economic and Trade Arbitration Commission for arbitration according to the then effective rules of the said Arbitration Commission. The arbitration will take place in Beijing and be conducted in Chinese. The arbitration award will be final and binding on both parties. During the course of arbitration, this agreement will continue to be performed except for the part which the parties are disputing and which is undergoing arbitration.

(3) In Indonesia:

Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation, i) neither party will bring a legal action, regardless of form, arising out of or related to this Agreement or any transaction under it more than two years after the cause of action arose; and ii) after such time limit, any legal action arising out of this Agreement or any transaction under it and all respective rights related to any such action lapse.

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration that shall be held in Jakarta, Indonesia in accordance with the rules of Board of the Indonesian National Board of Arbitration (Badan Arbitrase Nasional Indonesia or "BANI") then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third

arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the chairman of the BANI. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English and/or Indonesian language.

EUROPE, MIDDLE EAST, AND AFRICA

- (4) In Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan:

All disputes arising out of this Agreement or related to its violation, termination or nullity will be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of the Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with these rules. The arbitration will be held in Vienna, Austria, and the official language of the proceedings will be English. The decision of the arbitrators will be final and binding upon both parties. Therefore, pursuant to paragraph 598 (2) of the Austrian Code of Civil Procedure, the parties expressly waive the application of paragraph 595 (1) figure 7 of the Code. IBM may, however, institute proceedings in a competent court in the country of installation.

- (5) In Estonia, Latvia, and Lithuania:

All disputes arising in connection with this Agreement will be finally settled in arbitration that will be held in Helsinki, Finland in accordance with the arbitration laws of Finland then in effect. Each party will appoint one arbitrator. The arbitrators will then jointly appoint the chairman. If arbitrators cannot agree on the chairman, then the Central Chamber of Commerce in Helsinki will appoint the chairman.

AMERICAS COUNTRY AMENDMENTS

CANADA

10.1 Items for Which IBM May be Liable

The following replaces Item 1 in the first paragraph of this Subsection 10.1 (Items for Which IBM May be Liable):

- 1) damages for bodily injury (including death) and physical harm to real property and tangible personal property caused by IBM's negligence; and

13. General

The following replaces Item 13.d:

- d. Licensee agrees to comply with all applicable export and import laws and regulations, including those of that apply to goods of United States origin and that prohibit or limit export for certain uses or to certain users.

The following replaces Item 13.i:

- i. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is IBM responsible for any third party claims against Licensee except as permitted by the Limitation of Liability section above for bodily injury

(including death) or physical harm to real or tangible personal property caused by IBM's negligence for which IBM is legally liable to that third party.

The following is added as Item 13.m:

- m. For purposes of this Item 13.m, "Personal Data" refers to information relating to an identified or identifiable individual made available by one of the parties, its personnel or any other individual to the other in connection with this Agreement. The following provisions apply in the event that one party makes Personal Data available to the other:
- (1) General
 - (a) Each party is responsible for complying with any obligations applying to it under applicable Canadian data privacy laws and regulations ("Laws").
 - (b) Neither party will request Personal Data beyond what is necessary to fulfill the purpose(s) for which it is requested. The purpose(s) for requesting Personal Data must be reasonable. Each party will agree in advance as to the type of Personal Data that is required to be made available.
 - (2) Security Safeguards
 - (a) Each party acknowledges that it is solely responsible for determining and communicating to the other the appropriate technological, physical and organizational security measures required to protect Personal Data.
 - (b) Each party will ensure that Personal Data is protected in accordance with the security safeguards communicated and agreed to by the other.
 - (c) Each party will ensure that any third party to whom Personal Data is transferred is bound by the applicable terms of this section.
 - (d) Additional or different services required to comply with the Laws will be deemed a request for new services.
 - (3) Use

Each party agrees that Personal Data will only be used, accessed, managed, transferred, disclosed to third parties or otherwise processed to fulfill the purpose(s) for which it was made available.
 - (4) Access Requests
 - (a) Each party agrees to reasonably cooperate with the other in connection with requests to access or amend Personal Data.
 - (b) Each party agrees to reimburse the other for any reasonable charges incurred in providing each other assistance.
 - (c) Each party agrees to amend Personal Data only upon receiving instructions to do so from the other party or its personnel.
 - (5) Retention

Each party will promptly return to the other or destroy all Personal Data that is no longer necessary to fulfill the purpose(s) for which it was made available, unless otherwise instructed by the other or its personnel or required by law.
 - (6) Public Bodies Who Are Subject to Public Sector Privacy Legislation

For Licensees who are public bodies subject to public sector privacy legislation, this Item 13.m applies only to Personal Data made available to Licensee in connection with this Agreement, and the obligations in this section apply only to Licensee,

except that: 1) section (2)(a) applies only to IBM; 2) sections (1)(a) and (4)(a) apply to both parties; and 3) section (4)(b) and the last sentence in (1)(b) do not apply.

PERU

10. Limitation of Liability

The following is added to the end of this Section 10 (Limitation of Liability):

Except as expressly required by law without the possibility of contractual waiver, Licensee and IBM intend that the limitation of liability in this Limitation of Liability section applies to damages caused by all types of claims and causes of action. If any limitation on or exclusion from liability in this section is held by a court of competent jurisdiction to be unenforceable with respect to a particular claim or cause of action, the parties intend that it nonetheless apply to the maximum extent permitted by applicable law to all other claims and causes of action.

10.1 Items for Which IBM May be Liable

The following is added at the end of this Subsection 10.1:

In accordance with Article 1328 of the Peruvian Civil Code, the limitations and exclusions specified in this section will not apply to damages caused by IBM's willful misconduct ("dolo") or gross negligence ("culpa inexcusable").

UNITED STATES OF AMERICA

5. Taxes

The following is added at the end of this Section 5 (Taxes)

For Programs delivered electronically in the United States for which Licensee claims a state sales and use tax exemption, Licensee agrees not to receive any tangible personal property (e.g., media and publications) associated with the electronic program.

Licensee agrees to be responsible for any sales and use tax liabilities that may arise as a result of Licensee's subsequent redistribution of Programs after delivery by IBM.

13. General

The following is added to Section 13 as Item 13.m:

U.S. Government Users Restricted Rights – Use, duplication or disclosure is restricted by the GSA IT Schedule 70 Contract with the IBM Corporation.

The following is added to Item 13.f:

Each party waives any right to a jury trial in any proceeding arising out of or related to this Agreement.

ASIA PACIFIC COUNTRY AMENDMENTS

AUSTRALIA

5. Taxes

The following sentences replace the first two sentences of Section 5 (Taxes):

If any government or authority imposes a duty, tax (other than income tax), levy, or fee, on this Agreement or on the Program itself, that is not otherwise provided for in the amount payable, Licensee agrees to pay it when IBM invoices Licensee. If the rate of GST changes, IBM may adjust the charge or other amount payable to take into account that change from the date the change becomes effective.

8.1 Limited Warranty

The following is added to Subsection 8.1 (Limited Warranty):

The warranties specified this Section are in addition to any rights Licensee may have under the Competition and Consumer Act 2010 or other legislation and are only limited to the extent permitted by the applicable legislation.

10.1 Items for Which IBM May be Liable

The following is added to Subsection 10.1 (Items for Which IBM May be Liable):

Where IBM is in breach of a condition or warranty implied by the Competition and Consumer Act 2010, IBM's liability is limited to the repair or replacement of the goods, or the supply of equivalent goods. Where that condition or warranty relates to right to sell, quiet possession or clear title, or the goods are of a kind ordinarily obtained for personal, domestic or household use or consumption, then none of the limitations in this paragraph apply.

HONG KONG SAR, MACAU SAR, AND TAIWAN

As applies to licenses obtained in Taiwan and the special administrative regions, phrases throughout this Agreement containing the word "country" (for example, "the country in which the original Licensee was granted the license" and "the country in which Licensee obtained the Program license") are replaced with the following:

- (1) In Hong Kong SAR: "Hong Kong SAR"
- (2) In Macau SAR: "Macau SAR" except in the Governing Law clause (Section 14.1)
- (3) In Taiwan: "Taiwan."

INDIA

10.1 Items for Which IBM May be Liable

The following replaces the terms of Items 1 and 2 of the first paragraph:

1) liability for bodily injury (including death) or damage to real property and tangible personal property will be limited to that caused by IBM's negligence; and 2) as to any other actual damage arising in any situation involving nonperformance by IBM pursuant to, or in any way related to the subject of this Agreement, IBM's liability will be limited to the charge paid by Licensee for the individual Program that is the subject of the claim.

13. General

The following replaces the terms of Item 13.g:

If no suit or other legal action is brought, within three years after the cause of action arose, in respect of any claim that either party may have against the other, the rights of the concerned party in respect of such claim will be forfeited and the other party will stand released from its obligations in respect of such claim.

INDONESIA

3.3 Term and Termination

The following is added to the last paragraph:

Both parties waive the provision of article 1266 of the Indonesian Civil Code, to the extent the article provision requires such court decree for the termination of an agreement creating mutual obligations.

JAPAN

13. General

The following is inserted after Item 13.f:

Any doubts concerning this Agreement will be initially resolved between us in good faith and in accordance with the principle of mutual trust.

MALAYSIA

10.2 Items for Which IBM Is not Liable

The word "SPECIAL" in Item 10.2b is deleted.

NEW ZEALAND

8.1 Limited Warranty

The following is added:

The warranties specified in this Section are in addition to any rights Licensee may have under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods which IBM provides, if Licensee requires the goods for the purposes of a business as defined in that Act.

10. Limitation of Liability

The following is added:

Where Programs are not obtained for the purposes of a business as defined in the Consumer Guarantees Act 1993, the limitations in this Section are subject to the limitations in that Act.

PEOPLE'S REPUBLIC OF CHINA

4. Charges

The following is added:

All banking charges incurred in the People's Republic of China will be borne by Licensee and those incurred outside the People's Republic of China will be borne by IBM.

PHILIPPINES

10.2 Items for Which IBM Is not Liable

The following replaces the terms of Item 10.2b:

- b. special (including nominal and exemplary damages), moral, incidental, or indirect damages or for any economic consequential damages; or

SINGAPORE

10.2 Items for Which IBM Is not Liable

The words "SPECIAL" and "ECONOMIC" are deleted from Item 10.2b.

13. General

The following replaces the terms of Item 13.i:

Subject to the rights provided to IBM's suppliers and Program developers as provided in Section 10 above (Limitation of Liability), a person who is not a party to this Agreement will have no right under the Contracts (Right of Third Parties) Act to enforce any of its terms.

TAIWAN

8.1 Limited Warranty

The last paragraph is deleted.

10.1 Items for Which IBM May Be Liable

The following sentences are deleted:

This limit also applies to any of IBM's subcontractors and Program developers. It is the maximum for which IBM and its subcontractors and Program developers are collectively responsible.

EUROPE, MIDDLE EAST, AFRICA (EMEA) COUNTRY AMENDMENTS

EUROPEAN UNION MEMBER STATES

8. Warranty and Exclusions

The following is added to Section 8 (Warranty and Exclusion):

In the European Union ("EU"), consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the provisions set out in this Section 8 (Warranty and Exclusions). The territorial scope of the Limited Warranty is worldwide.

EU MEMBER STATES AND THE COUNTRIES IDENTIFIED BELOW

Iceland, Liechtenstein, Norway, Switzerland, Turkey, and any other European country that has enacted local data privacy or protection legislation similar to the EU model.

13. General

The following replaces Item 13.e:

- (1) **Definitions** – For the purposes of this Item 13.e, the following additional definitions apply:
 - (a) **Business Contact Information** – business-related contact information disclosed by Licensee to IBM, including names, job titles, business addresses, telephone numbers and email addresses of Licensee's employees and contractors. For Austria, Italy and Switzerland, Business Contact Information also includes information about Licensee and its contractors as legal entities (for example, Licensee's revenue data and other transactional information)
 - (b) **Business Contact Personnel** – Licensee employees and contractors to whom the Business Contact Information relates.
 - (c) **Data Protection Authority** – the authority established by the Data Protection and Electronic Communications Legislation in the applicable country or, for non-EU countries, the authority responsible for supervising the protection of personal data in that country, or (for any of the foregoing) any duly appointed successor entity thereto.
 - (d) **Data Protection & Electronic Communications Legislation** – (i) the applicable local legislation and regulations in force implementing the requirements of EU Directive 95/46/EC (on the protection of individuals with regard to the processing of personal data and on the free movement of such data) and of EU Directive 2002/58/EC (concerning the processing of personal data and the protection of privacy in the electronic communications sector); or (ii) for non-EU countries, the legislation and/or regulations passed in the applicable country relating to the protection of

personal data and the regulation of electronic communications involving personal data, including (for any of the foregoing) any statutory replacement or modification thereof.

- (e) **IBM Group** – International Business Machines Corporation of Armonk, New York, USA, its subsidiaries, and their respective Business Partners and subcontractors.
- (2) Licensee authorizes IBM:
 - (a) to process and use Business Contact Information within IBM Group in support of Licensee including the provision of support services, and for the purpose of furthering the business relationship between Licensee and IBM Group, including, without limitation, contacting Business Contact Personnel (by email or otherwise) and marketing IBM Group products and services (the "Specified Purpose"); and
 - (b) to disclose Business Contact Information to other members of IBM Group in pursuit of the Specified Purpose only.
- (3) IBM agrees that all Business Contact Information will be processed in accordance with the Data Protection & Electronic Communications Legislation and will be used only for the Specified Purpose.
- (4) To the extent required by the Data Protection & Electronic Communications Legislation, Licensee represents that (a) it has obtained (or will obtain) any consents from (and has issued (or will issue) any notices to) the Business Contact Personnel as are necessary in order to enable IBM Group to process and use the Business Contact Information for the Specified Purpose.
- (5) Licensee authorizes IBM to transfer Business Contact Information outside the European Economic Area, provided that the transfer is made on contractual terms approved by the Data Protection Authority or the transfer is otherwise permitted under the Data Protection & Electronic Communications Legislation.

AUSTRIA

8.2 Exclusions

The following is deleted from the first paragraph:

MERCHANTABILITY, SATISFACTORY QUALITY

10. Limitation of Liability

The following is added:

The following limitations and exclusions of IBM's liability do not apply for damages caused by gross negligence or willful misconduct.

10.1 Items for Which IBM May Be Liable

The following replaces the first sentence in the first paragraph:

Circumstances may arise where, because of a default by IBM in the performance of its obligations under this Agreement or other liability, Licensee is entitled to recover damages from IBM.

In the second sentence of the first paragraph, delete entirely the parenthetical phrase:

"(including fundamental breach, negligence, misrepresentation, or other contract or tort claim)".

10.2 Items for Which IBM Is Not Liable

The following replaces Item 10.2b:

b. indirect damages or consequential damages; or

BELGIUM, FRANCE, ITALY, AND LUXEMBOURG

10. Limitation of Liability

The following replaces the terms of Section 10 (Limitation of Liability) in its entirety:

Except as otherwise provided by mandatory law:

10.1 Items for Which IBM May Be Liable

IBM's entire liability for all claims in the aggregate for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this Agreement or due to any other cause related to this Agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault) or of such cause, for a maximum amount equal to the charges (if the Program is subject to fixed term charges, up to twelve months' charges) Licensee paid for the Program that has caused the damages.

The above limitation will not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which IBM is legally liable.

10.2 Items for Which IBM Is Not Liable

UNDER NO CIRCUMSTANCES IS IBM OR ANY OF ITS PROGRAM DEVELOPERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL, EXEMPLARY OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; AND / OR 3) LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES.

10.3 Suppliers and Program Developers

The limitation and exclusion of liability herein agreed applies not only to the activities performed by IBM but also to the activities performed by its suppliers and Program developers, and represents the maximum amount for which IBM as well as its suppliers and Program developers are collectively responsible.

GERMANY

8.1 Limited Warranty

The following is inserted at the beginning of Section 8.1:

The Warranty Period is twelve months from the date of delivery of the Program to the original Licensee.

8.2 Exclusions

Section 8.2 is deleted in its entirety and replaced with the following:

Section 8.1 defines IBM's entire warranty obligations to Licensee except as otherwise required by applicable statutory law.

10. Limitation of Liability

The following replaces the Limitation of Liability section in its entirety:

- a. IBM will be liable without limit for 1) loss or damage caused by a breach of an express guarantee; 2) damages or losses resulting in bodily injury (including death); and 3) damages caused intentionally or by gross negligence.
- b. In the event of loss, damage and frustrated expenditures caused by slight negligence or in breach of essential contractual obligations, IBM will be liable, regardless of the basis on which Licensee is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), per claim only up to the greater of 500,000 euro or the charges (if the Program is subject to fixed term charges, up to 12 months' charges) Licensee paid for the Program that caused the loss or damage. A number of defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one default.
- c. In the event of loss, damage and frustrated expenditures caused by slight negligence, IBM will not be liable for indirect or consequential damages, even if IBM was informed about the possibility of such loss or damage.
- d. In case of delay on IBM's part: 1) IBM will pay to Licensee an amount not exceeding the loss or damage caused by IBM's delay and 2) IBM will be liable only in respect of the resulting damages that Licensee suffers, subject to the provisions of Items a and b above.

13. General

The following replaces the provisions of 13.g:

Any claims resulting from this Agreement are subject to a limitation period of three years, except as stated in Section 8.1 (Limited Warranty) of this Agreement.

The following replaces the provisions of 13.i:

No right or cause of action for any third party is created by this Agreement, nor is IBM responsible for any third party claims against Licensee, except (to the extent permitted in Section 10 (Limitation of Liability)) for: i) bodily injury (including death); or ii) damage to real or tangible personal property for which (in either case) IBM is legally liable to that third party.

IRELAND

8.2 Exclusions

The following paragraph is added:

Except as expressly provided in these terms and conditions, or Section 12 of the Sale of Goods Act 1893 as amended by the Sale of Goods and Supply of Services Act, 1980 (the "1980 Act"), all conditions or warranties (express or implied, statutory or otherwise) are hereby excluded including, without limitation, any warranties implied by the Sale of Goods Act 1893 as amended by the 1980 Act (including, for the avoidance of doubt, Section 39 of the 1980 Act).

IRELAND AND UNITED KINGDOM

2. Agreement Structure

The following sentence is added:

Nothing in this paragraph shall have the effect of excluding or limiting liability for fraud.

10.1 Items for Which IBM May Be Liable

The following replaces the first paragraph of the Subsection:

For the purposes of this section, a "Default" means any act, statement, omission or negligence on the part of IBM in connection with, or in relation to, the subject matter of an Agreement in respect of which IBM is legally liable to Licensee, whether in contract or in tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default.

Circumstances may arise where, because of a Default by IBM in the performance of its obligations under this Agreement or other liability, Licensee is entitled to recover damages from IBM. Regardless of the basis on which Licensee is entitled to claim damages from IBM and except as expressly required by law without the possibility of contractual waiver, IBM's entire liability for any one Default will not exceed the amount of any direct damages, to the extent actually suffered by Licensee as an immediate and direct consequence of the default, up to the greater of (1) 500,000 euro (or the equivalent in local currency) or (2) 125% of the charges (if the Program is subject to fixed term charges, up to 12 months' charges) for the Program that is the subject of the claim. Notwithstanding the foregoing, the amount of any damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable is not subject to such limitation.

10.2 Items for Which IBM is Not Liable

The following replaces Items 10.2b and 10.2c:

- b. special, incidental, exemplary, or indirect damages or consequential damages; or
- c. wasted management time or lost profits, business, revenue, goodwill, or anticipated savings.

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- 3.2. Named User License ("NUL").** When the Software is licensed on a Named User basis, each individual end user must be specifically identified as the sole holder of a NUL. The sharing of the NUL by more than one individual is expressly prohibited. In addition, NUL(s) may not be transferred from one individual to another unless the original end user no longer requires, and is no longer permitted, access to the Software.
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 - 3.12. **Definitions.** "Deployment" means a single installation of one of the following Software modules: Repository, Security Domain, Central Management Server ("CMS") or CMS Cluster. "Project" means one or more Deployments (a) providing the same or substantially similar reports; (b) utilizing the same or a substantially similar custom application interface; or (c) used with applications consisting of related modules or components.
 - 3.13. **Third Party Products.** "Third Party Product" means any product listed on SAP BusinessObjects' Third Party Price List, or otherwise specified as a third party product on the ordering documentation or the SAP BusinessObjects product documentation. If included with the Third Party Product, use thereof is solely governed by the terms and conditions of the shrink-wrap or click-wrap agreement accompanying such Third Party Product ("Third Party End User Agreement"). All Third Party Products are restricted for use solely in conjunction with the particular Software intended by Licensor to be used therewith or with which SAP BusinessObjects provides the Third Party Product, and may not be used with any other SAP BusinessObjects products, or on a stand alone basis
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11. **TERMINATION.** Except where the Software is licensed on a subscription basis or as otherwise specified in an Order Schedule, a Purchase Order or any written SAP BusinessObjects price quotation duly referenced in a Purchase Order, the Software licenses granted hereunder shall be perpetual. If the Software are licensed on a subscription basis and unless the term of the subscription is renewed on or prior to the expiration of the then current term of the Subscription License, the applicable Subscription License shall terminate. Notwithstanding the foregoing, SAP BusinessObjects may immediately terminate this Agreement and any licenses and services provided hereunder if: (i) SAP BusinessObjects notifies you in writing of a breach and such breach is not cured within thirty (30) days; or (ii) you make an assignment for the benefit of creditors or proceedings are commenced by or for you under any bankruptcy, insolvency, or debtor's relief law. Termination shall not relieve you from your obligation to pay fees that remain unpaid and shall not limit either party from pursuing other available remedies. Upon termination by SAP BusinessObjects of this Agreement or any part thereof, SAP BusinessObjects shall have no obligation to refund to you any fees paid by you, and you agree to waive, in perpetuity and unconditionally, any and all claims for refunds. If a Software license is revoked or expired, you must certify in writing to SAP BusinessObjects that you have immediately un-installed and destroyed all copies of the Software within thirty (30) days of such revocation/expiration. The following Sections survive termination of this Agreement: 8(c), 9, 11, 13, 15, and 17.
12. **AUDIT.** During the term of this Agreement and for three (3) years after termination or expiration, SAP BusinessObjects may audit, upon reasonable notice to you and at SAP BusinessObjects' expense, your books and records to determine your compliance with this Agreement. In the event any such audit reveals that you have underpaid SAP BusinessObjects by an amount greater than five percent (5%) of the amounts due SAP BusinessObjects in the period being audited, or that you have knowingly breached any material obligation hereunder, then, in addition to such other remedies as SAP BusinessObjects may have, you shall pay or reimburse to SAP BusinessObjects the cost of the audit.
13. **GENERAL.** Except as otherwise preempted by United States federal law, this Agreement is governed by the laws of the State of New York, United States, without reference to conflict of laws provisions and the United Nations 1980 Convention on Contracts for the International Sale of Goods and any amendments thereto. If any provision of this Agreement is ruled invalid, such invalidity shall not affect the validity of the remaining portions of this Agreement. This Agreement constitutes the entire agreement between you and SAP BusinessObjects, and supersedes any prior agreement, whether written or oral, relating to the subject matter of this Agreement. This Agreement may not be modified except by an instrument in writing duly signed by an authorized representative of each of the parties. If you are acquiring the Software on behalf of an entity, you represent and warrant that you have the legal capacity to bind such entity to this Agreement. All terms of any purchase order or other ordering document submitted by you shall be superseded by this Agreement. In the event you and SAP BusinessObjects have executed a mutually agreed upon a separately Master Software License Agreement ("MSLA") and acquired the Software pursuant to such MSLA, the terms of the MSLA may govern your use of the Software and the terms of this Agreement shall be superseded by the MSLA. The product name for the Software is a trademark or registered trademark of SAP BusinessObjects. Should you have questions concerning this License Agreement, please contact your local SAP BusinessObjects sales office or authorized reseller, or write to: SAP BusinessObjects, Attn: Contracts Department, 3410 Hillview Ave., Palo Alto, CA 94304, USA.
14. **U.S. GOVERNMENT RESTRICTED RIGHTS.** The Software is a "commercial item," as that term is defined at 48 C.F.R. 2.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sept. 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995) (or an equivalent provision, e.g., in supplements of various U.S. government agencies, as applicable), all U.S. Government users acquire the Software with only those rights set forth herein. Manufacturer is SAP BusinessObjects, 3410 Hillview Ave., Palo Alto, CA 94304, USA.
15. **EXPORT CONTROLS.** The use of this Software is subject to the U.S. Export Administration Regulations. You agree to the following: (a) you are not a citizen, national or resident of, and am not under the control of, the government of Cuba, Iran, North Korea, Syria, Sudan nor any other country to which the United States has prohibited export; (b) you will not export or re-export the Software, directly or indirectly, neither to the above mentioned countries nor to citizens, nationals or residents of those countries; (c) you are not listed on the United States Department of Treasury lists of Specially Designated Nationals, Specially Designated Terrorists, and Specially Designated Narcotic Traffickers, nor are you listed on the United States Department of Commerce Table of Denial Orders; (d) you will not export or re-export the Software, directly, or indirectly, to persons on the above mentioned lists; and (e) you will not use the Software for, and will not allow the Software to be used for, any purposes prohibited by United States law, including, without limitation, for the development, design, manufacture or production of nuclear, chemical or biological weapons of mass destruction. For more information, see www.sap.com/company/export.
16. **ORDER TERMS.** Purchase orders conforming to SAP BusinessObjects purchase order requirements may be accepted from qualified companies. All pre-printed terms of any purchase order not approved in writing by SAP BusinessObjects shall have no effect. Payment terms are net-30 days from date of invoice. FOB SAP BusinessObjects facility. SAP BusinessObjects specifically disclaims price guarantees of any kind. You are responsible for payment of all applicable sales, use, consumption, VAT, GST, and other taxes and all applicable export and import fees, custom duties and similar charges, excluding taxes based on SAP BusinessObjects net income.
17. **COUNTRY UNIQUE TERMS.** If you purchased the Software in any territory specified below (the "Local Territory"), this section sets forth specific provisions as well as exceptions to the above terms and condition. To the extent any provision

applicable to the Local Territory (the "Local Provision") set forth below is in conflict with any other term or condition in this agreement, the Local Provision will supersede such other term or condition with respect to any licenses purchased in the Local Territory.

Australia:

a) Limited Warranty and Remedy (Section 8): The following is added:

The warranties specified in this Section are in addition to any rights You may have under the Trade Practices Act 1974 or other legislation and are only limited to the extent permitted by the applicable legislation.

b) Limitation of Liability (Section 9): The following is added:

To the extent permitted by law, where SAP BusinessObjects is in breach of a condition or warranty implied by the Trade Practices Act 1974 or the equivalent State or Territory legislation which cannot be excluded, SAP BusinessObjects' liability is limited, at SAP BusinessObjects' sole election: (i) in case of the Software: (a) (i) to repair or replace the goods, or the supply of equivalent goods, or (ii) payment of the cost of such repair or replacement or of acquiring equivalent goods; and (ii) in case of Support Services: (x) re-supply of the Support Services; or (y) the cost of having the services supplied again. In calculating SAP BusinessObjects' aggregate liability under this Agreement, the amounts paid or the value of any goods or services replaced, repaired, or supplied by SAP BusinessObjects pursuant to this paragraph shall be included.

c) General (Section 13): The following replaces the first sentence of this section:

This Agreement is governed by the laws of the State or Territory in which you acquired the Software, without reference to conflict of laws provisions or the United Nations 1980 Convention on Contracts for the International Sale of Goods and any amendments thereto.

Belgium and France

a) Limitation of Liability (Section 9): The following replaces the terms of this section in its entirety:

Except as otherwise provided by mandatory law:

1. SAP BusinessObjects' liability for any damages and losses that may arise as a result of the performance of its obligations in connection with this Agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if SAP BusinessObjects is at fault), for a maximum amount equal to the charges You paid for the Software that has caused the damages. This limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which SAP BusinessObjects is legally liable.

2. UNDER NO CIRCUMSTANCES IS SAP BUSINESSOBJECTS, OR ANY OF ITS SOFTWARE DEVELOPERS, LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

3. The limitation and exclusion of liability herein agreed applies not only to the activities performed by SAP BusinessObjects but also to the activities performed by its suppliers and Software developers, and represents the maximum amount for which SAP BusinessObjects as well as its suppliers and Software developers, are collectively responsible. This limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which SAP BusinessObjects is legally liable.

b) General (Section 13): The following replaces the first sentence of this section:

This Agreement is governed by the laws of country in which you acquired the Software, without reference to conflict of laws provisions or the United Nations 1980 Convention on Contracts for the International Sale of Goods and any amendments thereto.

Brazil

a) Warranty (Section 8): The following replaces the terms of this section in its entirety:

(a) SAP BusinessObjects warrants to you that: (i) for a period of six (6) months from delivery of the Software, the Software will substantially conform to the functional description set forth in the standard documentation accompanying the Software; and (ii) for a period of six (6) months from delivery the physical media (e.g., CD-ROM), such physical media will be free from defects in materials and workmanship. The above warranties specifically exclude defects resulting from accident, abuse, unauthorized repair, modifications, or enhancements, or misapplication. You understand and agree that the state of the art does not allow the development of bug free of software. As a consequence SAP BusinessObjects cannot warrant that the Software will operate uninterrupted or error free. Delivery of additional copies of, or revisions or upgrades to, the Software, including releases provided under Support Services, shall not restart or otherwise affect the warranty period.

(b) Your exclusive remedy for breach of the above-stated limited warranty shall be, at SAP BusinessObjects' option, either: (i) correction or replacement of the Software with product(s) which conform to the above-stated limited warranty; or (ii) return of the price paid for the Software and termination of this License Agreement with respect to those copies not in compliance. Such remedy shall be provided to you by SAP BusinessObjects only if you give SAP BusinessObjects written notice of any breach of the above-stated limited warranty, within thirty (30) days of delivery of the Software.

(c) LICENSEE UNDERSTANDS AND AGREES THAT THE STATE OF THE ART DOES NOT ALLOW THE DEVELOPMENT OF BUG FREE SOFTWARE AND THAT THE SOFTWARE HAS BEEN DEVELOPED FOR THE USE OF BUSINESS SOFTWARE GENERAL CUSTOMERS. THEREFORE, EXCEPT FOR EXPRESS WARRANTIES STATED IN THIS SECTION 7, SAP BUSINESSOBJECTS AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY (I) OF MERCHANTABILITY, (II) OF FITNESS FOR A PARTICULAR PURPOSE, (III) OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR (IV) AGAINST HIDDEN DEFECTS. SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU, AND YOU MAY HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE OR BY JURISDICTION. LICENSEE ACKNOWLEDGES THAT IN ENTERING INTO THIS AGREEMENT, LICENSEE HAVE RELIED UPON LICENSEE'S OWN EXPERIENCE, SKILL AND JUDGEMENT TO EVALUATE THE SOFTWARE AND THAT LICENSEE HAS SATISFIED ITSELF AS TO THE SUITABILITY OF THE SOFTWARE TO MEET LICENSEE'S REQUIREMENTS.

b) Limitation of Liability (Section 9): the following replaces the terms of this section in its entirety:

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL SAP BUSINESSOBJECTS OR ITS DISTRIBUTORS, SUPPLIERS OR AFFILIATES BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, ANY LOSS OR INACCURACY OF ANY DATA, OR COST OF SUBSTITUTE GOODS, REGARDLESS OF THE THEORY OF LIABILITY (INCLUDING NEGLIGENCE) AND EVEN IF SAP BUSINESSOBJECTS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SAP BUSINESSOBJECTS AND ITS SUPPLIERS' AGGREGATE LIABILITY TO LICENSEE FOR ACTUAL DIRECT DAMAGES FOR ANY CAUSE WHATSOEVER SHALL BE LIMITED TO THE SOFTWARE LICENSE FEES PAID BY LICENSEE FOR THE SOFTWARE OR THE FEES PAID BY LICENSEE FOR THE SERVICE DIRECTLY CAUSING THE DAMAGES. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING ALLOCATION OF RISK IS REFLECTED IN THE FEES CHARGED UNDER THIS LICENSE AGREEMENT. LICENSEE FURTHER ACKNOWLEDGES THAT THE LIMITATIONS OF THIS SECTION ARE AN ESSENTIAL ELEMENT OF THIS AGREEMENT AND THAT IN THE ABSENCE OF SUCH LIMITATIONS THE PRICING AND OTHER TERMS SET FORTH IN THIS AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT.

c) General (Section 13) The following replaces the word "New York":

Brazil

Germany and Austria

a) Warranty (Section 8): The following replaces the terms of this section in its entirety:

SAP BusinessObjects warrants that the Software provides the functionalities set forth in the associated documentation ("Documented Functionalities") for the Limited Warranty Period following receipt of the Software when used on the recommended hardware configuration. Limited Warranty Period means one year if you are a business user and two years if you are not a business user. Non-substantial variation from the Documented Functionalities does not establish any warranty rights. THIS LIMITED WARRANTY DOES NOT APPLY TO SOFTWARE PROVIDED TO YOU FREE OF CHARGE (FOR EXAMPLE, UPDATES, PRE-RELEASE, EVALUATION, OR NFR) OR SOFTWARE THAT HAS BEEN ALTERED BY YOU, TO THE EXTENT SUCH ALTERATION CAUSED A DEFECT. To make a warranty claim, you must return, at SAP BusinessObjects expense, the Software and proof of purchase to the company from whom you obtained it. If the functionalities of the Software vary substantially from the agreed upon functionalities, SAP BusinessObjects is entitled, by way of re-performance and at its own discretion, to repair or replace the Software. If that fails, you are entitled to a reduction of the purchase price or to cancel the purchase agreement.

b) Limitation of Liability (Section 9): the following paragraph is added to this Section:

The limitations and exclusions specified in this Section will not apply to damages caused by SAP BusinessObjects' intentional or by gross negligence. In addition, SAP BusinessObjects shall be responsible up to the amount of the typically foreseeable damages from any damage which has been caused by SAP BusinessObjects or its agents due to the slightly negligent breach of a material contractual duty. This limitation of liability shall apply to all damage claims, irrespective of the legal basis thereof and in particular, to any pre-contractual or auxiliary contractual claims. This limitation of liability shall not, however, apply to any mandatory statutory liability under the product liability act nor to any damage which is caused due to the breach of an express warranty to the extent the express warranty was intended to protect you from the specific damage incurred. This clause shall not be intended to limit liability where the extent of liability is provided by mandatory law.

c) General (Section 13): The following replaces the first sentence of this section:

This Agreement is governed by the laws of country in which you acquired the Software, without reference to conflict of laws provisions or the United Nations 1980 Convention on Contracts for the International Sale of Goods and any amendments thereto.

Italy

a) Limitation of Liability (Section 9): the following replaces the terms of this section in its entirety:

Apart from damages arising out of gross negligence or willful misconduct for which SAP BusinessObjects may not limit its liability, SAP BusinessObjects' liability for direct and indirect damages related to the original or further defects of the Software, or related to the use or

the nonuse of the Software or related to any case whatsoever for breach of the Agreement, shall be limited to the fees paid by you to SAP BusinessObjects for the Software or for the part of the Software upon which the damages were based.

b) General (Section 13): The following replaces the first sentence of this section:

This Agreement is governed by the laws of country in which you acquired the Software, without reference to conflict of laws provisions or the United Nations 1980 Convention on Contracts for the International Sale of Goods and any amendments thereto.

United Kingdom

c) General (Section 13): The following replaces the first sentence of this section:

This Agreement is governed by the laws of England and Wales, without reference to conflict of laws provisions or the United Nations 1980 Convention on Contracts for the International Sale of Goods and any amendments thereto. Notwithstanding any other provision in this Agreement, nothing in this Agreement shall create or confer (whether expressly or by implication) any rights or other benefits whether pursuant to the Contracts Rights of Third Parties) Act 1999 or otherwise in favour of any person not a party hereto.

Please indicate below whether you accept, or do not accept, the terms and conditions of this software license agreement.

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:

8760 Orion Place, Suite 204
(Address)

Columbus, OH 43240
(City, State, Zip)

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

Fair Isaac Corporation
(Name)

1500 Broadway, Suite 1101, New York, NY 10036
(Address, City, State, Zip)

2. Location where services will be performed by Contractor:

8760 Orion Place, Suite 204
(Address)

Columbus, OH 43240
(City, State, Zip)

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

8760 Orion Place, Suite 204
(Name)

Columbus, OH 43240
(Address, City, State, Zip)

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

8760 Orion Place, Suite 204
(Address)

Columbus, OH 43240
(Address, City, State, Zip)

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

Fair Isaac Corporation
(Name)

8760 Orion Place, Suite 204
Columbus, OH 43240
(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: RAVI KUNDURU

Title: CHAIRMAN, VENTECH SOLUTIONS

Date: 01/15/13