

## 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 Northwoods Consulting Partners, Inc. ("Contractor"), with offices at 5815 Wall Street, Dublin, Ohio, 43017.

### 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, 2015**. 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:

**Northwoods Consulting Partners, Inc. Price List, effective July 1, 2013**

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

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

- 2.5 **Payment Due Date.** Payments will be due on the 30th day after the later of:

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

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

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

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

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

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

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

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

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

**2.11 TRAVEL EXPENSES.** Any travel that the Contractor requires to perform its obligations under this Contract will be at the Contractor's expense. The State will pay for any additional travel that it requests only with prior written approval. The State will pay for all additional travel expenses that it requests in accordance with OBM's travel policy in Rule126-1-02 of the Ohio Administrative Code (the "Administrative Code").

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

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

### **3 - CONTRACT ADMINISTRATION**

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

In doing so, the Contractor warrants that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**3.8 EXCUSABLE DELAY.** Neither party will be liable for any delay in its performance under this Contract that arises from causes beyond its reasonable control and without its negligence or fault. The delayed party must notify the other promptly of any material delay in performance and must specify in writing the proposed revised performance date as soon as practicable after notice of delay. For any such excusable delay, the date of performance or delivery will be extended for a period equal to the time lost by reason of the excusable delay. The delayed party also must describe the cause of the delay and what steps it then is taking or will take to remove the cause. The delayed party may not rely on a claim of excusable delay to avoid liability for a delay if the party has not taken commercially reasonable steps to mitigate or avoid the delay.

### **3.9 INDEPENDENT CONTRACTOR ACKNOWLEDGEMENT**

3.9.1 It is fully understood and agreed that Contractor is an independent contractor and is not an agent, servant, or employee of the State of Ohio or the Ohio Department of Administrative Services. Contractor declares that it is engaged as an independent business and has complied with all applicable federal, state, and local laws regarding business permits and licenses of any kind, including but not limited to any insurance coverage, workers' compensation, or unemployment compensation that is required in the normal course of business and will assume all responsibility for any federal, state, municipal or other tax liabilities. Additionally, Contractor understands that as an independent contractor, it is not a public employee and is not entitled to contributions from DAS to any public employee retirement system.

3.9.2 Contractor acknowledges and agrees any individual providing personal services under this agreement is not a public employee for purposes of Chapter 145 of the Ohio Revised Code. Unless Contractor is a "business entity" as that term is defined in ORC. 145.037 ("an entity with five or more employees that is a corporation, association, firm, limited liability company, partnership, sole proprietorship, or other entity engaged in business") Contractor shall have any individual performing services under this agreement complete and submit to the ordering agency the Independent Contractor/Worker Acknowledgement found at the following link:

<https://www.opers.org/forms-archive/PEDACKN.pdf#zoom=80>

3.9.3 Contractor's failure to complete and submit the Independent/Worker Acknowledgement prior to commencement of the work, service or deliverable, provided under this agreement, shall serve as Contractor's certification that contractor is a "Business entity" as the term is defined in ORC Section 145.037.

**Initial if Contractor is a "business entity" and will not submit the Independent Contractor/Worker Acknowledgement to the ordering agency**

**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  
Office of Finance  
30 East Broad Street, 39<sup>th</sup> Floor  
Columbus, OH 43215

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.

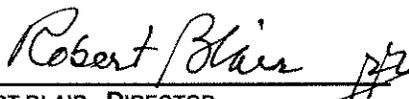
CONTRACTOR

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

BY:



BY:

  
ROBERT BLAIR, DIRECTOR,  
DEPARTMENT OF ADMINISTRATIVE SERVICES

DATE:

03/12/2014

DATE:

03.17.14

**Exhibit I**

Product Name	Vendor Part No	Description	Unit of Measure	State Price	
<b>SOFTWARE</b>					
Compass Appointments	SW-APT-U1	Compass Appointments is a software application that assists in the client flow process of a human services agency and allows agencies to have a central repository for all calendars. Compass Appointments automates client check-in, eliminates paper appointment schedules, organizes phone interviews, consolidates scheduling calendars and balances the assignment of appointments among case workers. It even automatically notifies case workers of their scheduled appointments.	1-5	\$2,000.00	
Compass Appointments	SW-APT-U2		6-25	\$1,000.00	
Compass Appointments	SW-APT-U3		26-100	\$700.00	
Compass Appointments	SW-APT-U4		101-500	\$675.00	
Compass Appointments	SW-APT-U5		501-1000	\$650.00	
Compass Appointments	SW-APT-U6		1001+	\$625.00	
Compass Appointments CO (Calendar Only)	SW-ACO-U1		1-25	\$250.00	
Compass Appointments CO (Calendar Only)	SW-ACO-U2		26-100	\$225.00	
Compass Appointments CO (Calendar Only)	SW-ACO-U3		100+	\$200.00	
Compass Appointments Kiosk Software	SW-APK-W1		Compass Appointments Kiosk is an add-on module to Compass Appointments. It allows for the client to self check-in.	Workstation	\$4,000.00
Compass Appointments Lobby Software	SW-APL-D1	Compass Lobby is an add-on module to Compass Appointments. It provides visual displays of the queues for the client to monitor while waiting in the lobby.	Display	\$4,000.00	
Compass Capture Scan Station	SW-CAP-W1	Compass Capture is an intuitive and easy-to-use application providing the ability to scan and index documents instantly.	1st	\$4,000.00	
Compass Capture Scan Station	SW-CAP-W2		2-5	\$2,800.00	
Compass Capture Scan Station	SW-CAP-W3		6+	\$1,600.00	
Compass Capture Self Scan Kiosk Software	SW-CAP-W4		Workstation	\$8,000.00	
Compass Capture Desktop	SW-CAP-U1		1-5	\$2,000.00	
Compass Capture Desktop	SW-CAP-U2		6-25	\$1,000.00	
Compass Capture Desktop	SW-CAP-U3		26-100	\$700.00	
Compass Capture Desktop	SW-CAP-U4		101-500	\$675.00	
Compass Capture Desktop	SW-CAP-U5		501-1000	\$650.00	
Compass Capture Desktop	SW-CAP-U6		1001+	\$625.00	
Compass Pilot	SW-PLT-U1		Compass Pilot, the case manager desktop, serves as the control center where case managers will be able to perform many of their routine tasks without switching from software program to software program, and also provides a number of productivity-enhancing features that leverage the capabilities of Compass Software™ and other systems.	1-5	\$0.00
Compass Pilot	SW-PLT-U2			6-25	\$0.00
Compass Pilot	SW-PLT-U3			26-100	\$0.00
Compass Pilot	SW-PLT-U4	101-500		\$0.00	
Compass Pilot	SW-PLT-U5	501-1000		\$0.00	
Compass Pilot	SW-PLT-U6	1001+		\$0.00	
Compass Documents	SW-DOC-U1	Compass Documents allows users to retrieve documents from the document repository without opening the repository application.	1-5	\$350.00	
Compass Documents	SW-DOC-U2		6-25	\$275.00	
Compass Documents	SW-DOC-U3		26-100	\$200.00	
Compass Documents	SW-DOC-U4		101-500	\$150.00	
Compass Documents	SW-DOC-U5		501-1000	\$125.00	
Compass Documents	SW-DOC-U6		1001+	\$100.00	

Compass People	SW-PPL-U1	Compass People allows the agency to locally manage their client data that has been imported from their state case management system. They may add additional clients to a case, who may not be known to the state.	1-5	\$425.00
Compass People	SW-PPL-U2		6-25	\$350.00
Compass People	SW-PPL-U3		26-100	\$275.00
Compass People	SW-PPL-U4		101-500	\$225.00
Compass People	SW-PPL-U5		501-1000	\$200.00
Compass People	SW-PPL-U6		1001+	\$175.00
Compass Tasks	SW-TSK-U1	Compass Tasks is a powerful workflow product that allows routing, tracking, and alerting for not only document-driven processes but for virtually any work item the agency chooses.	1-5	\$425.00
Compass Tasks	SW-TSK-U2		6-25	\$350.00
Compass Tasks	SW-TSK-U3		26-100	\$275.00
Compass Tasks	SW-TSK-U4		101-500	\$225.00
Compass Tasks	SW-TSK-U5		501-1000	\$200.00
Compass Tasks	SW-TSK-U6		1001+	\$175.00
Compass Pilot Link	SW-PLK-C1	Compass Pilot Link allows for retrieval of images with a quick keystroke.	1-25	\$4,000.00
Compass Pilot Link	SW-PLK-C2		26-50	\$6,000.00
Compass Pilot Link	SW-PLK-C3		51-100	\$9,500.00
Compass Pilot Link	SW-PLK-C4		101-250	\$14,000.00
Compass Pilot Link	SW-PLK-C5		251-500	\$21,000.00
Compass Pilot Link	SW-PLK-C6		501-1000	\$30,000.00
Compass Pilot Link	SW-PLK-C7		1001+	\$37,500.00
Compass Connect for Ohio CRISe and SETS	SW-DTX-C1	Compass Data Extractor "scrapes" data from case management systems to extract basic client information needed to properly classify documents.	1-25	\$2,800.00
Compass Connect for Ohio CRISe and SETS	SW-DTX-C2		26-50	\$4,000.00
Compass Connect for Ohio CRISe and SETS	SW-DTX-C3		51-100	\$6,400.00
Compass Connect for Ohio CRISe and SETS	SW-DTX-C4		101-250	\$9,600.00
Compass Connect for Ohio CRISe and SETS	SW-DTX-C5		251-500	\$14,400.00
Compass Connect for Ohio CRISe and SETS	SW-DTX-C6		501-1000	\$20,000.00
Compass Connect for Ohio CRISe and SETS	SW-DTX-C7		1001+	\$25,600.00
Compass Connect for Data Migration	SW-DTM-C1	Compass Data Migrator migrates data from the data extract into the database for use to properly classify documents.	1-25	\$2,800.00
Compass Connect for Data Migration	SW-DTM-C2		26-50	\$4,000.00
Compass Connect for Data Migration	SW-DTM-C3		51-100	\$6,400.00
Compass Connect for Data Migration	SW-DTM-C4		101-250	\$9,600.00
Compass Connect for Data Migration	SW-DTM-C5		251-500	\$14,400.00
Compass Connect for Data Migration	SW-DTM-C6		501-1000	\$20,000.00
Compass Connect for Data Migration	SW-DTM-C7		1001+	\$25,600.00
Compass Plug-in for Laserfiche	SW-PLF-U1	The Compass Plug-in for Laserfiche is the intergration of Compass Documents and the Laserfiche document repository.	1-25	\$5,500.00
Compass Plug-in for Laserfiche	SW-PLF-U2		26-50	\$8,750.00
Compass Plug-in for Laserfiche	SW-PLF-U3		51-100	\$13,500.00
Compass Plug-in for Laserfiche	SW-PLF-U4		101-250	\$21,000.00
Compass Plug-in for Laserfiche	SW-PLF-U5		251-500	\$29,500.00
Compass Plug-in for Laserfiche	SW-PLF-U6		501-1000	\$39,000.00
Compass Plug-in for Laserfiche	SW-PLF-U7		1001+	\$42,750.00
Compass Plug-in for OnBase	SW-POB-U1	The Compass Plug-in for OnBase is the intergration of Compass Documents and the OnBase document repository.	1-25	\$8,000.00
Compass Plug-in for OnBase	SW-POB-U2		26-50	\$13,000.00
Compass Plug-in for OnBase	SW-POB-U3		51-100	\$20,500.00

Compass Plug-in for OnBase	SW-POB-U4		101-250	\$31,500.00
Compass Plug-in for OnBase	SW-POB-U5		251-500	\$44,500.00
Compass Plug-in for OnBase	SW-POB-U6		501-1000	\$58,500.00
Compass Plug-in for OnBase	SW-POB-U7		1001+	\$64,000.00
Compass Plug-in for FileNet P8	SW-PFN-U1	The Compass Plug-in for FileNet P8, P9, P10, P11, P12, P13, & P14 is the intergration of Compass Documents and the FileNet document repository.	1-25	\$12,000.00
Compass Plug-in for FileNet P9	SW-PFN-U2		26-50	\$19,500.00
Compass Plug-in for FileNet P10	SW-PFN-U3		51-100	\$30,750.00
Compass Plug-in for FileNet P11	SW-PFN-U4		101-250	\$47,250.00
Compass Plug-in for FileNet P12	SW-PFN-U5		251-500	\$66,750.00
Compass Plug-in for FileNet P13	SW-PFN-U6		501-1000	\$87,750.00
Compass Plug-in for FileNet P14	SW-PFN-U7		1001+	\$96,000.00
Compass Balance	SW-BAL-C1		Compass Balance automates the process of balancing caseloads and evenly distributing work, which results in improving accuracy rates.	1-25
Compass Balance	SW-BAL-C2	26-50		\$15,000.00
Compass Balance	SW-BAL-C3	51-100		\$28,000.00
Compass Balance	SW-BAL-C4	101-250		\$52,000.00
Compass Balance	SW-BAL-C5	251-500		\$96,000.00
Compass Balance	SW-BAL-C6	501-1000		\$176,000.00
Compass Balance	SW-BAL-C7	1001+		\$320,000.00
Compass eQuil Broker Service	SS-EBS-A1	Compass Transfer Broker Service for eQuil is a set of software applications and services that provides the ability to quickly and easily extract document files and metadata from an Electronic Document Management (EDM) system and electronically transfer this data to the eQuil DDU submission system that has been implemented by ODJFS.	1-25	\$1,000.00
Compass eQuil Broker Service	SS-EBS-A2		26-50	\$2,000.00
Compass eQuil Broker Service	SS-EBS-A3		51-100	\$3,000.00
Compass eQuil Broker Service	SS-EBS-A4		101-150	\$4,000.00
Compass eQuil Broker Service	SS-EBS-A5		151+	\$5,000.00
Compass Forms	SW-FRM-U1	Compass Forms allows users to digitally complete forms and immediately file them into an electronic document management system. The forms can be endorsed with a digital signature, and converted to an unalterable format for permanent storage.	1-5	\$2,000.00
Compass Forms	SW-FRM-U2		6-25	\$1,000.00
Compass Forms	SW-FRM-U3		26-100	\$700.00
Compass Forms	SW-FRM-U4		101-500	\$675.00
Compass Forms	SW-FRM-U5		501-1000	\$650.00
Compass Forms	SW-FRM-U6		1001+	\$625.00
Compass Forms Center Manager	SW-FCM-Y1	Compass Forms Center Manager allows for the design and management of user forms.	Server Module	\$8,000.00
Compass Connect for Print Streams	SW-PSP-U1	Print Stream Processor captures print data electronically and directs it to an Electronic Document Management System, eliminating the need to print a document and then scan it.	1-5	\$500.00
Compass Connect for Print Streams	SW-PSP-U2		6-25	\$250.00
Compass Connect for Print Streams	SW-PSP-U3		26-100	\$180.00
Compass Connect for Print Streams	SW-PSP-U4		101-500	\$155.00
Compass Connect for Print Streams	SW-PSP-U5		501-1000	\$125.00
Compass Connect for Print Streams	SW-PSP-U6		1001+	\$88.00
Compass Forms Ad-Hoc Pricing	SW-FAH-U1	Forms Ad-Hoc Pricing (1-5 Users)	1-5	\$1,000.00
Compass Forms Ad-Hoc Pricing	SW-FAH-U2	Forms Ad-Hoc Pricing (6-25 Users)	6-25	\$500.00
Compass Forms Ad-Hoc Pricing	SW-FAH-U3	Forms Ad-Hoc Pricing (26-100 Users)	26-100	\$350.00
Compass Forms Ad-Hoc Pricing	SW-FAH-U4	Forms Ad-Hoc Pricing (101-500 Users)	101-500	\$337.50
Compass Forms Ad-Hoc Pricing	SW-FAH-U5	Forms Ad-Hoc Pricing (501-1000 Users)	501-1000	\$325.00
Compass Forms Ad-Hoc Pricing	SW-FAH-U6	Forms Ad-Hoc Pricing (1001+ Users)	1001+	\$312.50
Compass Cash Receipts	SW-FCR-	Cash Receipts is an add-on module to	1-25	\$2,800.00

	C1	Compass Forms. It automates the process of cash collections.		
Compass Cash Receipts	SW-FCR-C2		26-50	\$4,000.00
Compass Cash Receipts	SW-FCR-C3		51-100	\$6,400.00
Compass Cash Receipts	SW-FCR-C4		101-250	\$9,600.00
Compass Cash Receipts	SW-FCR-C5		251-500	\$14,400.00
Compass Cash Receipts	SW-FCR-C6		501-1000	\$20,000.00
Compass Cash Receipts	SW-FCR-C7		1001+	\$25,600.00
OnBase Workflow Standard Processes	SW-ASP-U1	Agency Standard Processes include the following processes: <ul style="list-style-type: none"> <li>• New Mail Process/Documents Received Process</li> <li>• Follow-Up Tickler Process</li> <li>• Case Document Notifications Process</li> <li>• Deleted Documents Process</li> <li>• Case Reassignment Process</li> <li>• Workflow Distribution Process</li> <li>• Orphan Collector Process</li> </ul>	1-20	\$250.00
OnBase Workflow Standard Processes	SW-ASP-U2		21-50	\$200.00
OnBase Workflow Standard Processes	SW-ASP-U3		51-100	\$150.00
OnBase Workflow Standard Processes	SW-ASP-U4		101-300	\$120.00
OnBase Workflow Standard Processes	SW-ASP-U5		301-1,000	\$90.00
OnBase Workflow Standard Processes	SW-ASP-U6		1001+	\$50.00
Compass Plug-in for Laserfiche Workflow	SW-PLW-U1	The Compass Plug-in for Laserfiche Workflow is the intergration of Compass Tasks and Laserfiche.	1-25	\$5,500.00
Compass Plug-in for Laserfiche Workflow	SW-PLW-U2		26-50	\$8,750.00
Compass Plug-in for Laserfiche Workflow	SW-PLW-U3		51-100	\$13,500.00
Compass Plug-in for Laserfiche Workflow	SW-PLW-U4		101-250	\$21,000.00
Compass Plug-in for Laserfiche Workflow	SW-PLW-U5		251-500	\$29,500.00
Compass Plug-in for Laserfiche Workflow	SW-PLW-U6		501-1000	\$39,000.00
Compass Plug-in for Laserfiche Workflow	SW-PLW-U7		1001+	\$42,750.00
Compass Plug-in for OnBase Workflow	SW-POW-U1	The Compass Plug-in for OnBase Workflow is the intergration of Compass Tasks and OnBase.	1-25	\$8,000.00
Compass Plug-in for OnBase Workflow	SW-POW-U2		26-50	\$13,000.00
Compass Plug-in for OnBase Workflow	SW-POW-U3		51-100	\$20,500.00
Compass Plug-in for OnBase Workflow	SW-POW-U4		101-250	\$31,500.00
Compass Plug-in for OnBase Workflow	SW-POW-U5		251-500	\$44,500.00
Compass Plug-in for OnBase Workflow	SW-POW-U6		501-1000	\$58,500.00
Compass Plug-in for OnBase Workflow	SW-POW-U7		1001+	\$64,000.00
Compass Plug-in for FileNet P8 Workflow	SW-PFW-U1	The Compass Plug-in for FileNet P8 Workflow is the intergration of Compass Tasks and OnBase.	1-25	\$12,000.00
Compass Plug-in for FileNet P8 Workflow	SW-PFW-U2		26-50	\$19,500.00
Compass Plug-in for FileNet P8 Workflow	SW-PFW-U3		51-100	\$30,750.00
Compass Plug-in for FileNet P8 Workflow	SW-PFW-U4		101-250	\$47,250.00
Compass Plug-in for FileNet P8 Workflow	SW-PFW-U5		251-500	\$66,750.00

Compass Plug-in for FileNet P8 Workflow	SW-PFW-U6		501-1000	\$87,750.00
Compass Plug-in for FileNet P8 Workflow	SW-PFW-U7		1001+	\$96,000.00
OnBase Worklow IM Application Process	SW-IMA-Y1	IM (Income Maintenance) Application Process is an add-on module to Agency Standard Processes. This work process application will track the application received date and the 30-day eligibility determination requirement in order to notify case workers when the 30-day period is about to expire.	Agency	\$8,000.00
OnBase Worklow PRC Application Process	SW-PRC-Y1	PRC Application Process is an add-on module to Agency Standard Processes. After a PRC application has been scanned into the system it will be given a set number of days in which it must be acted on.	Agency	\$4,000.00
OnBase Worklow Review & Adjustment Process	SW-RAP-Y1	Review & Adjustment Process is an add-on module to Agency Standard Processes. The features of this workflow allow workers to track reviews requested by either party as well as reviews initiated automatically in accordance with state and federal requirements.	Agency	\$8,000.00
OnBase Worklow Emancipation Process	SW-EMN-Y1	Emancipation Application Process is an add-on module to Agency Standard Processes. This work process provides a central tracking and reporting function to prompt workers for each step in the process according to established time limits for each step.	Agency	\$8,000.00
Connect - CoPilot (1-100)	SW-CON-U1		1-100	\$2,000.00
Connect - CoPilot (101-500)	SW-CON-U2		101-500	\$1,500.00
Connect - CoPilot (501+)	SW-CON-U3		501+	\$1,000.00
Data Plug-In for SMI	SW-DPS-Y1			\$20,000.00
Batch Scanning	SW-BAT-W1			\$4,000.00
Offline Document Viewer (1st Client)	SW-ODV-W1		1	\$4,000.00
Offline Document Viewer (2-5 Clients)	SW-ODV-W2		2-5	\$1,600.00
Offline Document Viewer (6-25 Clients)	SW-ODV-W3		6-25	\$1,000.00
Offline Document Viewer (26-100 Clients)	SW-ODV-W4		26-100	\$720.00
Offline Document Viewer (101+ Clients)	SW-ODV-W5		101+	\$400.00

#### PROFESSIONAL SERVICES

Professional Services - Base Rate	PS-BAS-H1		Hourly	\$190.00
Professional Services - Project Management	PS-PMT-H1	Professional Services - Project Management	Hourly	\$225.00
Professional Services - Discovery	PS-DIS-H1	Professional Services - Discovery	Hourly	\$225.00
Professional Services - Installation	PS-INS-H1	Professional Services - Installation	Hourly	\$205.00
Professional Services - Training	PS-TRN-H1	Professional Services - Training	Hourly	\$215.00
Professional Services - Rollout Support	PS-ROL-H1	Professional Services - Rollout Support	Hourly	\$205.00
Professional Services - Custom Software Development	PS-CSD-H1	Professional Services - Custom Software Development	Hourly	\$215.00

Professional Services - Custom Documentation	PS-DOC-H1	Professional Services - Custom Documentation	Hourly	\$215.00
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**MAINTENANCE SERVICES**

Compass Software Support - Silver Level	MS-SVR-A1	Compass Software Maintenance	Annual	20%
Compass Software Support - Gold Level	MS-GLD-A1	Northwoods OnSite Maintenance Plan	Annual	24%
Compass Software Support - Platinum Level	MS-PLT-A1		Annual	30%
1st Additional Environment Support			Annual	3%
Additional Environment Support (2+)			Annual	2%
Hourly Maintenance Rate	MS-HRM-H1	Maintenance Rate	Hourly	\$195.00

**TRAINING**

TPOC Training - Full Compass Suite	TR-TPF-F1	The Technical Point of Contact course is designed to provide participants with a thorough understanding of system administration and maintenance tasks related to the Compass Software suite.	Fixed	\$1,500.00
TPOC Training - Appointments Only	TR-TPA-F1		Fixed	\$500.00
TPOC Training - Imaging Only	TR-TPD-F1		Fixed	\$1,000.00
TPOC Road Show Training - Full Compass Suite	TR-TRF-F1		Fixed	\$9,000.00
TPOC Road Show Training - Full Compass Suite	TR-TRF-F2		Fixed	\$15,000.00
TPOC Road Show Training - Appointments Only	TR-TRA-F1		Fixed	\$3,000.00
TPOC Road Show Training - Appointments Only	TR-TRA-F2		Fixed	\$5,000.00
TPOC Road Show Training - Imaging Only	TR-TRD-F1		Fixed	\$6,000.00
TPOC Road Show Training - Imaging Only	TR-TRD-F2		Fixed	\$10,000.00

**PRINTED USER MANUALS**

Printed User Manual - End User	PD-END-F1	Printed User Manual - End User	Fixed	\$60.00
Printed User Manual - Administrator	PD-ADM-F1	Printed User Manual - Administrator	Fixed	\$60.00

**Exhibit II**

Compass Software Support & Software End User License Agreement attached.



**IMPORTANT - READ CAREFULLY**

This Compass® Software End User License Agreement ("EULA") is made and entered into this \_\_\_ day of \_\_\_\_\_, 201\_\_\_, by and between Northwoods Consulting Partners, Inc., an Ohio corporation with its principal offices at 5815 Wall Street, Dublin, Ohio 43017, USA, (the Licensor, hereinafter "Northwoods"), and the company, person or entity executing this Agreement as the "Licensee" in the space provided below (hereinafter "Licensee"):

Licensee's Name: \_\_\_\_\_  
Licensee's Address: \_\_\_\_\_  
\_\_\_\_\_

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and intending to be legally bound, the parties hereto agree as follows:

**1. LICENSE.**

- a. Software licensed, not sold, for use pursuant to the EULA ("Software"):
  - 1) Compass-branded Software modules with respect to which Licensee properly submits a written purchase order to, and pays Software license fees to, Northwoods or its authorized solution provider. All such modules listed on Northwoods' invoices submitted to Licensee shall, upon payment in full of the Software license fees, automatically be deemed to be added to the Software described in this EULA, whether or not the parties actually amend this EULA.
  - 2) All "Upgrades or Enhancements" to the Software described in paragraph (1) above that Licensee properly obtains pursuant to the terms of a Software Maintenance Agreement between Licensee and Northwoods or its authorized solution provider. Subject to payment in full of the Software license fees, Northwoods grants to Licensee a perpetual (except as herein provided), non-exclusive, non-assignable (except as herein provided), limited license to the Software detailed in subsection (a) above, in machine-readable object code form only, solely for use by Licensee internally, and only for capturing, storing, processing and accessing Licensee's own data, and not for use for the processing of third-party data as a service bureau, application service provider or otherwise. Licensee shall not make any use of the Software in any manner not expressly permitted by this EULA. Northwoods agrees that it will permit the transfer of fully paid licenses in the event the Licensee merges or consolidates state entities. Northwoods understands that, the Licensee may use the Software to process data on behalf of other Ohio State agencies (the "Agencies") for such Agency's own internal business purpose. The Licensee may allow its third party contractors to use the Software solely in accordance with the terms and conditions of this Agreement to provide services for the Licensee's internal business purpose.
- b. Licensee acknowledges that each module of the Software is licensed for a specific type of use, such as concurrently or on a specified workstation or by a specified individual and that the Software controls such use. Use of software or hardware that reduces the number of clients directly accessing or utilizing the Software (sometimes called "multiplexing" or "pooling" software or hardware) does not reduce the number of Software licenses required. The required number of Software licenses would equal the number of distinct inputs to the multiplexing or pooling software or hardware. Licensee is prohibited from using any software other than the Software Client modules or Software API modules to access the Software or any data stored in the Software database for any purpose other than generating reports or statistics regarding system utilization, unless Northwoods has given its prior written consent to Licensee's use of such other software and Licensee has paid to Northwoods Software license fees with respect to such access to the Software or data stored in the Software database in accordance with Northwoods' licensing policies applicable to the Software modules that provide access to the Software application modules and data stored in the Software database.
- c. Licensee shall be entitled to use one (1) production copy of each Software module licensed. In addition, Licensee shall be entitled to license: one (1) additional copy of each Software module licensed for customary remote disaster recovery purposes ("Disaster Recovery System"); and one (1) additional copy of each Software module licensed to be used exclusively in a non-production environment and solely for the purposes of experimenting, development, integrating and testing the Software and training Licensee's employees on the Software ("Test System"). Northwoods reserves the right to further define the permitted use(s) and/or restrict the use(s) of the Test System. **NORTHWOODS MAKES NO WARRANTIES WITH RESPECT TO ANY SOFTWARE USED IN ANY NON-PRODUCTION SYSTEM AND PROVIDES THE SOFTWARE "AS IS."** Licensee's sole recourse in the event of any dissatisfaction with any Software used in any non-production system is to stop using such Software and return it to Northwoods. Licensee shall not make additional copies of the Software.
- d. Licensee agrees: (1) not to remove, obscure, make illegible, or alter any Northwoods, Compass or other proprietary notices, trademarks, logos, or copyrights in the Software from any packaging or documentation; (2) not to distribute, reproduce, sell, transfer, rent, lease or sub-license the Software or documentation to any third party; (3) not to alter or modify the Software; (4) not to reverse engineer, disassemble, decompile or

- attempt to derive source code from the Software, or prepare derivative works therefrom; and (5) not to publish to a third party any results of benchmark tests run on the Software without Northwoods' prior, written consent.
  - e. Licensee may not assign, transfer or sublicense all or part of this EULA without the prior written consent of Northwoods unless such occurs as a result of a merger as described in Section 1.b.
  - f. Licensee may not make any use of the Disaster Recovery System in a production environment concurrently with the operation of any other copy of the Software in a production environment.
  - g. From time to time Northwoods may make "beta" copies of prospective new versions of the Software or of potential new software modules ("Beta Software") available for Licensee's use in the Test System and Licensee may elect to license and use the Beta Software in the Test System. **LICENSEE ACKNOWLEDGES AND UNDERSTANDS THAT ANY BETA SOFTWARE IS A PRE-RELEASE VERSION ONLY, IS STILL UNDERGOING TESTING AT NORTHWOODS AND IS NOT A NORTHWOODS COMMERCIALY RELEASED PRODUCT.** Except for the provisions of Section 5(a), (b) and (c) and Section 7 of this EULA, which shall not apply with respect to any Beta Software, Licensee acknowledges and agrees that all Beta Software delivered in accordance with this paragraph shall be considered to be "Software" for all purposes of this EULA. Notwithstanding anything to the contrary, as to any Beta Software, this EULA and the limited license granted hereby will terminate on the earliest of: (a) ten (10) days after the date of delivery by either party to the other party of written notice of termination of the beta testing period for such Beta Software; or (b) the date of Northwoods' commercial release of the final version of such Beta Software for licensing to its end users generally. Upon expiration or other termination of such period, Licensee immediately shall discontinue any and all use of the Beta Software and related documentation and remove or permit Northwoods to deactivate the Beta Software. The termination of this EULA, as to any Beta Software, shall not affect the continuation of this EULA as to any other Software that has been licensed and is in use by Licensee in accordance with the terms of this EULA.
  - h. From time to time Licensee may elect to evaluate certain Compass® software modules that it has not licensed and does not currently use in its production environment ("Evaluation Software"), for the purpose of determining whether or not to purchase a production license of such Software modules. Evaluation Software is licensed for Licensee's use in Licensee's Test System. Except for the provisions of Section 5(a), (b) and (c) and Section 7 of this EULA, which shall not apply with respect to any Evaluation Software, Licensee acknowledges and agrees that all Evaluation Software delivered in accordance with this paragraph shall be considered to be "Software" for all purposes of this EULA. Notwithstanding anything to the contrary, as to any Evaluation Software, this EULA and the limited license granted hereby will terminate on the earliest of: (a) thirty (30) days after the date such Software is activated for use in Licensee's Test System; or (b) immediately upon the delivery of written notice to such effect to Licensee. Upon expiration or other termination of such period, Licensee immediately shall either (y) discontinue any and all use of the Evaluation Software and related documentation and remove or permit Northwoods to deactivate the Evaluation Software; or (z) deliver payment in full of the license price that has been agreed upon for such Software to Northwoods (if Licensee purchases licenses for Software directly from Northwoods) or to Northwoods' authorized solution provider (if Licensee purchases licenses for Software through such authorized solution provider), and confirm in writing to Northwoods that such Evaluation Software is added as additional Software licensed for Licensee's use in its production environment and Licensee's Test System under this EULA. The termination of this EULA as to any Evaluation Software shall not affect the continuation of this EULA as to any other Software that has been licensed and is in use by Licensee in accordance with the terms of this EULA.
  - i. Upon expiration or other termination of any period of use of any Beta Software or of any Evaluation Software that Licensee elects not to purchase a license for use in Licensee's production environment under this EULA, Licensee agrees that it will provide to Northwoods remote access to Licensee's systems on which such Beta Software or such Evaluation Software is installed for the limited purpose of permitting Northwoods to deactivate such Software.
- 2. OWNERSHIP.** Northwoods owns the Software, including, without limitation, any and all worldwide intellectual property rights, copyrights, patents, trade secrets, trademarks and proprietary and confidential information rights in or associated with the Software. The Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. No ownership rights in the Software are transferred to Licensee. Licensee agrees that nothing in this EULA or associated documents gives it any right, title or interest in the Software, except for the limited express rights granted in this EULA.
- 3. INSTALLATION.** Licensee may retain Northwoods or the Northwoods authorized solution provider through which Licensee orders the Software to provide installation services. If Northwoods is retained, the parties will enter into a separate Purchase Agreement or other contract governing the procurement and performance of such services. Unless otherwise provided for in the Purchase Agreement or other contract, Licensee is responsible for hardware and non-licensed software for the installation, operation and support of the Software.

4. **LICENSEE OBLIGATIONS.** Licensee acknowledges and agrees that it is solely responsible for the operation, supervision, management and control of the Software, including but not limited to providing training for its personnel, instituting appropriate security procedures and implementing reasonable procedures to examine and verify all output before use. In addition, Licensee is solely responsible for its data, its database and for maintaining suitable backups of the data and database to prevent data loss in the event of any hardware or software malfunction.
5. **LIMITED WARRANTY.**
- a. For a period of sixty (60) days from the date of first installation of the Software at Licensee's site, Northwoods warrants to Licensee that the media on which the Software is distributed are free from defects in materials and in workmanship.
- b. 1) For a period of sixty (60) days from the Maintenance Commencement Date (as defined below), Northwoods warrants to Licensee that the Software, when properly installed and properly used, will operate substantially in accordance with the user documentation published by Northwoods related to the Software that is included with the Software, including user manuals, and that relates to the functional, operational or performance characteristics of the Software ("Documentation"). The terms of this warranty shall not apply to, and Northwoods shall have no liability for, any non-conformity related to any Software that has been: (i) modified by Licensee or a third party; (ii) used in combination with equipment or software other than that which is consistent with the Documentation; or (iii) misused or abused. Northwoods does not warrant that the functions contained in the Software will meet Licensee's requirements or that the operation of the Software will be uninterrupted or error free.
- 2) For purposes of this warranty, the term "Maintenance Commencement Date" as to any Software means the first date that: (i) a copy of the Software has been delivered to Licensee (either by shipment of media containing the Software, downloading of the Software onto Licensee's systems in connection with the installation of the Software, or the Software being made available for download by Licensee from a web site identified to Licensee); and (ii) license codes or a Software certificate necessary for Licensee to activate the Software for use have been delivered to Licensee or made available for download by Licensee.
- c. Licensee's sole and exclusive remedy for a breach of the express limited warranties under paragraph (a) or (b) shall be as follows. Provided that, within the applicable 60-day period, Licensee notifies Northwoods in writing of the non-conformity, Northwoods will either: (1) repair or replace the non-conforming media or Software, which in the case of the Software may include the delivery of a commercially reasonable workaround for the non-conformity; or (2) if Northwoods determines that repair or replacement of the non-conforming media or Software is not commercially practicable, then terminate this EULA with respect to the Software associated with the non-conforming media or with respect to the non-conforming Software, in which event, upon compliance by Licensee with its obligations under Section 9, Northwoods will refund any portion of the Software license fees paid prior to the time of such termination with respect to such Software.
- d. NORTHWOODS AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE. LICENSEE SPECIFICALLY ASSUMES RESPONSIBILITY FOR THE SELECTION OF THE SOFTWARE TO ACHIEVE ITS BUSINESS OBJECTIVES.
- e. No oral or written information given by Northwoods, its agents, or employees shall create any additional warranty. No modification or addition to this warranty is authorized unless it is set forth in writing, references this EULA, and is signed on behalf of Northwoods by a corporate officer.
6. **LIMITATION OF LIABILITY.** IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OR OTHER PECUNIARY LOSS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY USE OR INABILITY TO USE THE SOFTWARE, EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES. NORTHWOODS AND ITS SUPPLIERS ARE NOT RESPONSIBLE FOR ANY COSTS INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA OR INFORMATION, THE COST OF RECOVERING SUCH DATA OR INFORMATION, THE COST OF SUBSTITUTE SOFTWARE, OR CLAIMS BY THIRD PARTIES.
7. **MAINTENANCE.** Licensee may purchase software support services from Northwoods or the Northwoods authorized solution provider through which Licensee has ordered the Software pursuant to the terms of a separate Software Support Agreement.
8. **INVOICES AND PAYMENTS.** See Sections 2.5 and 2.6 of the State Term Schedule. **AUDIT RIGHTS.** Northwoods may audit the records of Licensee to ensure compliance with the terms of this EULA. Northwoods, or its authorized solution provider, will notify Licensee in writing at least ten (10) business days prior to any such audit. Licensee will cooperate by providing access to any books, computers, records, or other information that relate or may be related to use of the Licensed Software. Any such audit will be conducted during Licensee's regular business hours at Licensee's offices and will not interfere unreasonably with Licensee's business activities. If an audit reveals unauthorized use, reproduction, distribution or other exploitation of the Licensed Software, then Licensee will promptly reimburse the underpaid license fees, any associated fees for Maintenance and Support, and any other such rights and remedies as Northwoods may have.
9. **TERMINATION.** Northwoods may terminate this EULA immediately and any license to use the Software will automatically terminate without notice if Licensee fails to comply with any provision of this EULA. Upon termination of this EULA for any reason, including, but not limited to, those specified in this Section 10 or in Sections 5 or 8, Licensee shall immediately: (a) discontinue any and all use of the Software and related documentation; (b) return the Software and any related documentation to Northwoods; and (c) certify in writing to Northwoods that Licensee has completed the preceding actions. The obligations of Licensee under the preceding sentence and all disclaimers of warranties and limitations of liability set forth in this EULA shall survive any termination.
10. **DISCLAIMER OF AGENCY.** This EULA does not constitute a partnership agreement, nor does it authorize Northwoods or the Licensee to serve as the legal representative or agent of the other. Neither party hereto will have any right or authority to assume, create, or incur any liability or any obligation of any kind, express or implied, against, in the name of, or on behalf of the other party.
11. **SEVERABILITY.** See Section 10.5 of the State Term Schedule. **NOTICE.** All notices, requests or other communications required to be given pursuant to this EULA shall be in writing, shall be addressed to the recipient party at its principal place of business or to such other address as the recipient party may direct in writing, and shall be personally delivered or sent by certified or registered U.S. mail, return receipt requested, or by prepaid commercial overnight courier. All notices, requests or other communications delivered as specified herein shall be deemed to have been given and received on the date personally delivered or on the date deposited in the U.S. mail or with the commercial overnight courier.
12. **GOVERNING LAW.** See Section 11.5 of the State Term Schedule. **JURISDICTION.** See Section 11.5 of the State Term Schedule. **ENTIRE AGREEMENT.** The state term schedule and this EULA (including the exhibits and schedules attached hereto) constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, documents and proposals, oral or written, between the parties with respect thereto. This EULA may be amended or modified only by an agreement in writing signed by each of the parties and may not be modified by course of conduct.
13. **U.S., STATE AND LOCAL GOVERNMENT END USERS.** The terms and conditions of this EULA shall pertain to the Government's use and/or disclosure of the Software, and shall supersede any conflicting contractual terms or conditions. By accepting the terms of this EULA and/or the delivery of the Software, the Government hereby agrees that the Software qualifies as "commercial" computer software within the meaning of ALL federal, state and local acquisition regulation(s) applicable to this procurement and that the Software is developed exclusively at private expense. If this license fails to meet the Government's needs or is inconsistent in any respect with federal, state or local law, the Government agrees to return this Software to Northwoods. In addition to the foregoing, where DFARS is applicable, use, modification, reproduction, release, display, or disclosure of the Software or documentation by the Government is subject solely to the terms of this EULA, as stated in DFARS 227.7202, and the terms of this EULA shall supersede any conflicting contractual term or conditions.



## COMPASS® SOFTWARE SUPPORT AGREEMENT

This Compass® Software Support Agreement ("Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 201\_\_\_, by and between Northwoods Consulting Partners, Inc., an Ohio corporation with its principal offices at 5815 Wall Street, Dublin, Ohio 43017, USA, (the Licensor, hereinafter "Northwoods"), and the company, person or entity executing this Agreement as the "Licensee" in the space provided below (hereinafter "Licensee"):

Licensee's Name: \_\_\_\_\_  
Licensee's Address: \_\_\_\_\_

### RECITALS:

WHEREAS, Licensee has licensed the specified software from Northwoods pursuant to the terms of an End User License Agreement (as the same may be amended or modified from time to time, hereinafter referred to as the "EULA"); and  
WHEREAS, Licensee desires to obtain, and Northwoods is willing to provide, technical support services for the specified software and the delivery of generally released upgrades and enhancements with respect to such software from Northwoods; and  
WHEREAS, Licensee has been advised of the various support offerings provided by Northwoods and has elected to purchase:

Silver Level of Support	_____	<b>Please initial in the space next to the support offering(s) you have chosen</b>
Gold Level of Support	_____	
Platinum Level of Support	_____	
Additional environment support	_____	

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and intending to be legally bound, the parties hereto agree as follows:

1. **DEFINED TERMS.** The following terms shall have the meanings set forth below for all purposes of this Agreement:
  - a. "**Consumable Items**" includes all materials that can be used up and must be replenished. Examples of Consumable Items include, but are not limited to: printer, toner, scanner lamps, rollers, glass, cleaning sheets, data tapes, CDs, DVDs, etc.
  - b. "**Covered Hardware**" is defined as hardware (1) purchased through Northwoods, as detailed on Northwoods' invoices that Licensee has properly paid, and (2) installed and configured by Northwoods.
  - c. "**Covered Software**" means (1) the current released version of the Commercial Off-The-Shelf ("COTS") Compass® software licensed by Licensee from Northwoods under the EULA, as detailed on Northwoods' invoices that the Licensee has properly paid; (2) at any time after Northwoods has delivered to Licensee a new version of such computer software as a Patch, Upgrade and/or Fix under this Agreement, the released version of such computer software last released prior to the current released version; provided that the Covered Software will not include any prior released version of such computer software that has been superseded for more than two (2) years (as determined from the date that Northwoods first announced publicly, through its web site or otherwise, the general release of the next later version of such computer software) by any later released version of such computer software; and (3) the current released version of the COTS Document Management Software ("Covered DMS Software") of which Northwoods is a Reseller that is (a) licensed by Licensee through Northwoods, as detailed on Northwoods' invoices that the Licensee has properly paid and (b) installed and/or configured by Northwoods.
  - d. "**Covered Database**" or "**Covered Database Software**" means the database software or the index data and/or image data stored in the database that is (1) purchased through Northwoods as detailed on Northwoods' invoices that Licensee has properly paid, and (2) installed and configured by Northwoods.
  - e. "**Covered Operating System**" (sometimes abbreviated "OS") is the software program that, after being initially loaded into the computer by a boot program, manages all the other programs in a computer and that is (1) purchased through Northwoods, as detailed on Northwoods' invoices that Licensee has properly paid, and (2) installed and configured by Northwoods.
  - f. "**Covered Third Party Applications**" means any third party software that is (1) licensed by Licensee through Northwoods, as detailed on Northwoods' invoices that the Licensee has properly paid and (2) installed and configured by Northwoods.
  - g. "**Documentation**" means electronic on-line material, including user manuals, provided by Northwoods for the Covered Software and that relate to the functional, operational or performance characteristics of the Covered Software.
  - h. "**Error**" or "**Problem**" when used in the context of the Covered Software operation shall mean a demonstrable instance of adverse and incorrect operation of the Covered Software that impacts Licensee's ability to utilize a function of the Covered Software: (1) as provided for in the current Documentation published by Northwoods; or (2) that was available prior to the report of the Error or Problem.
  - i. "**EULA**" is defined in the Recitals to this Agreement.
  - j. "**Onsite Services**" are Support Services provided by Northwoods on behalf of Licensee at a Licensee-designated physical location other than the Northwoods offices or location.
  - k. "**Patch(es), Upgrade(s) and Fix(es)**" means any and all new versions, improvements, modifications, upgrades, updates, fixes and additions to the Covered Software that Northwoods commercially releases to its end users generally during the term of this Agreement to correct deficiencies or enhance the capabilities of the Covered Software,

together with updates of the Documentation to reflect such new versions, improvements, modifications, upgrades, fixes or additions; provided, however, that the foregoing shall not include new, separate product offerings, new modules, re-platformed software, new business process consulting, workflow changes or new functionality.

- l. "**Support Services**" means all professional services provided under this Agreement by Northwoods, subject to the Support Level actually purchased by Licensee, as noted in the Recitals to this Agreement.

### 2. SUPPORT SERVICES.

#### a. Silver Level.

1) **Remote Support of the Covered Software.** Northwoods shall: (1) use its commercially reasonable efforts to remotely correct any properly reported Error(s) in the Covered Software that are confirmed by Northwoods, in the exercise of its commercially reasonable judgment; (2) use its commercially reasonable efforts to remotely correct any properly reported Error(s) (non-conformity to functional specifications mutually agreed upon by Northwoods and Licensee) in any configurations of the Covered Software that are created by Northwoods or any integrations of the Covered Software with other applications, software or hardware that are configured or created by Northwoods, which are confirmed by Northwoods, in the exercise of its commercially reasonable judgment; and (3) upon the request of Licensee, provide remote technical support and assistance and advice related to the operation and use of the Covered Software by Licensee in a production environment, plus any additional, non-production environment(s) for which Licensee has elected to pay for additional environment support, or any problems with any of the foregoing. Northwoods shall undertake to confirm any reported defect(s) described in this clause promptly after receipt of proper notice from Licensee in accordance with Northwoods' current defect reporting procedures. Northwoods shall perform services in an effort to correct confirmed Errors in the Covered Software, or in configurations or integrations created by Northwoods, promptly after making such confirmation.

2) **Support Center Access.** Support Services generally will be available during the hours of 8:00 a.m. to 8:00 p.m., Eastern Time, Monday through Friday, excluding Northwoods' holidays, or as otherwise provided by Northwoods to its end users purchasing continuing Support Services in the normal course of its business, either by telephone or through a remote control connection to the end-user client or server computer. Licensee acknowledges and agrees that Northwoods requires on-line access to the Covered Software installed on Licensee's systems in order for Northwoods to provide remote Support Services hereunder. Accordingly, Licensee shall install and maintain, at Licensee's sole cost and expense, properly functioning and appropriate industry standard communications software approved by Northwoods; and Licensee shall establish and maintain, at Licensee's sole cost and expense, an adequate secure or dedicated connection with Northwoods to facilitate Northwoods' remote Support Services.

3) **Patches, Upgrades and Fixes.** Northwoods will provide to Licensee, according to Northwoods' then current policies, all Patches, Upgrades and Fixes to the Covered Software released by Northwoods during the term of this Agreement. Northwoods will use its best efforts to remotely install on behalf of Licensee any such Patches, Upgrades, and Fixes but, to the extent the Patch, Upgrade, and/or Fix cannot be installed by Northwoods remotely, Licensee may request the necessary Onsite Services in accordance with Section 2(a)(4) below. Licensee acknowledges and agrees that Northwoods has the right, at any time, to change the specifications and operating characteristics of the Covered Software, and Northwoods' policies respecting Patches, Upgrades and Fixes and the release thereof to end users. Any Patches, Upgrades and Fixes to the Covered Software and Documentation shall remain proprietary to Northwoods and/or its suppliers, shall be the sole and exclusive property of Northwoods and/or its suppliers, and shall be subject to all of the restrictions, limitations and protections of the EULA. All applicable rights to patents, copyrights, trademarks, other intellectual property rights, applications for any of the foregoing, and/or trade secrets in the Covered Software, Documentation, and any Patches, Upgrades and Fixes are and shall remain the exclusive property of Northwoods and/or its suppliers.

4) **Onsite Services.** Upon the reasonable request of Licensee, and submission of a purchase order for such services agreeing to pay for such services on a time and materials basis at state term schedule rates for such services, Northwoods may provide Onsite Services at Licensee's facilities in connection with the correction of any Error(s) involving the Covered Software that is not functioning in either a production environment or non-production environment(s) for which Licensee has elected to pay fees for additional environment support.

- b. **Gold Level.** Gold Level Support includes everything outlined in Section 2(a) (Silver Level) above, plus the following:

1) **Remote Support of Covered Database(s).** Northwoods will provide remote, first line of support and troubleshooting for the support of any Covered Database. If, in the sole discretion of Northwoods, the issue requires escalation to the software manufacturer, Northwoods will act as a liaison between Licensee and the software manufacturer for support and troubleshooting.

2) **Remote Covered Operating System Support.** Northwoods will provide remote, first line of support and troubleshooting for the support of any Covered Operating System. If, in the sole discretion of Northwoods, the issue requires escalation to the

- software manufacturer, Northwoods will act as a liaison between Licensee and the software manufacturer for support and troubleshooting.
- 3). **Remote Support of Covered Third Party Applications.** Northwoods will provide remote, first line of support and troubleshooting for the support of any Covered Third Party Applications. If, in the sole discretion of Northwoods, the issue requires escalation to the software manufacturer, Northwoods will act as a liaison between Licensee and the software manufacturer for support and troubleshooting.
  - 4). **Remote Support of Covered Hardware.** Northwoods will provide remote, first line of support and troubleshooting for the support of any Covered Hardware. If, in the sole discretion of Northwoods, the issue requires escalation to the hardware manufacturer, Northwoods will act as a liaison between Licensee and the hardware manufacturer for support and troubleshooting.
  - 5). **OnSite Services.** Upon the reasonable request of Licensee, and submission of a purchase order for such services agreeing to pay for such services on a time and materials basis at Northwoods state term schedule rates for such services, Northwoods may provide Onsite Services at Licensee's facilities in connection with the correction of any Error(s) involving the Covered Software that is not functioning in a production environment or non-production environment(s) for which Licensee has elected to pay fees for additional environment support.
- c. **Platinum Level.** Platinum Level Support includes everything outlined in Sections 2(a) (Silver Level) and 2(b) (Gold Level) above, plus the following:
- 1) **Onsite Services.** Northwoods will provide first line remote support and troubleshooting for all Covered Software, Covered Database Software, Covered Operating Systems, Covered Third Party Applications, and Covered Hardware. Should Northwoods be unable to successfully resolve the issue remotely, however, Northwoods will, in its sole discretion, provide one or more support professionals to provide Onsite Services for Licensee to actively resolve the issue. Onsite Services do not include installation, set up, or testing of new equipment, operator training or re-training, or replacement of Consumable Items. Onsite Services generally will be available during the hours of 8:00 a.m. to 5:00 p.m., in the time zone of Licensee, Monday through Friday, excluding Northwoods holidays.
  - 2) **Onsite Response Time.** Northwoods or Northwoods' appointed Agents or Subcontractors will use best efforts to provide timely response to all calls for service from Licensee. For purposes of this Agreement, timely response will be defined as a Northwoods consultant arriving at the Licensee's designated site within four (4) business operating hours (excluding travel time)(8:00am to 5:00pm in the time zone of Licensee, Monday through Friday, excluding Northwoods holidays) of Northwoods' determination that onsite support is required to address the Licensee's issues. This determination will be made by Northwoods exercising reasonable commercial discretion. Exceptions to the 4-hour on-site response time include any unforeseen events prohibiting Northwoods from meeting the response time that are reasonable and beyond the control of Northwoods.
  - 3) **Patches, Upgrades and Fixes.** To the extent that there are major Patches, Upgrades or Fixes to the Covered Software that cannot be installed by Northwoods remotely, and upon request of Licensee, Northwoods will make available up to one (1) major Patch, Upgrade or Fix per year to Licensee, will provide all professional services hours and resources necessary for such installation, and will train up to two (2) of Licensee's System Administrators on the new functionality of any such installation.
  - 4) **Server Health Checks.** Northwoods will conduct remote server checks on the memory capacity and general operation of Licensee's servers on a periodic (not less than monthly) basis and will communicate to Licensee's System Administrator concerns over the health of Licensee's servers.
  - 5) **Annual Assessment.** Licensee will receive a scheduled, annual visit by Northwoods' support manager or designee to assess Licensee's satisfaction with Northwoods' responsiveness to Licensee's needs and to respond to questions concerning the Compass® Software Support Agreement.
- d. **Exclusions.** Northwoods is not responsible for providing, or obligated to provide, Support Services or Patches, Upgrades and Fixes under this Agreement: (i) in connection with any Errors or Problems that result in whole or in part from any alteration, revision, change, enhancement or modification of any nature of the Covered Software, including any configuration of the Covered Software that was not undertaken by or authorized in writing in advance by Northwoods; (ii) in connection with any Error if Northwoods has previously provided corrections for such Error, which correction Licensee chose not to implement; (iii) in connection with any Errors or problems that have been caused by defects, alterations, revisions, changes, enhancements or modifications in the database, operating system, third party software (other than third party software bundled with the Software by Northwoods), hardware or any system or networking utilized by Licensee; (iv) if the Covered Software or related software or systems have been subjected to abuse, misuse, improper handling, accident or neglect; (v) if any party other than Northwoods has provided any services in the nature of Support Services to Licensee with respect to the Covered Software; (vi) in connection with any Errors or Problems that occur in any non-production environment, unless Licensee has elected to pay for additional environment support. Any upgrades, support, or troubleshooting requested for a non-production environment for which Licensee has not paid additional environment fees is available at the sole discretion of Northwoods and Northwoods reserves the right to bill for any such request on a time and materials basis at state term schedule rates; (vii) where applicable, in connection with any hardware systems, operating systems, database systems, network operating systems, hardware drivers, or any software or hardware unless specifically "covered" by this Agreement and by the relevant Support Level pursuant to the defined terms hereinabove; or (viii) in connection with any Covered Hardware, Covered Database Software, Covered Operating Systems, Covered Third Party Applications, and Covered DMS Software for which the manufacturer has ceased providing support. Further, except as otherwise explicitly provided for elsewhere, Northwoods is not responsible for end user training or retraining, preventative support visits by Northwoods technicians, forms creation services of any type, business process consulting, workflow lifecycle creation or modification, services to bring the system back to working order after changes have been made by anyone other than Northwoods to the system or supporting systems, to the desktop image, to hardware, new operating systems, or repairs or adjustments necessitated by the moving of hardware. The exclusions outlined in this section are applicable to all levels of Software Support.
3. **LICENSEE'S RESPONSIBILITIES.**
    - a. **Operation of the Covered Software.** Licensee acknowledges and agrees that it is solely responsible for the operation, supervision, management and control of the Covered Software, including but not limited to providing training for its personnel, instituting appropriate security procedures and implementing reasonable procedures to examine and verify all output before use. In addition, Licensee is solely responsible for its data, its database, and for maintaining suitable backups of the data and database to prevent data loss in the event of any hardware or software malfunction. Northwoods shall have responsibility and liability for data loss due to the negligence of Northwoods. Northwoods shall have no responsibility or liability for Licensee's selection or use of the Covered Software or any hardware, third party software or systems.
    - b. **Licensee's implementation of Error Corrections and Patches, Upgrades and Fixes.** In order to maintain the integrity and proper operation of the Covered Software, Licensee agrees to implement, in the manner instructed by Northwoods, all Error corrections and Patches, Upgrades and Fixes. Licensee's failure to implement any Error corrections or Patches, Upgrades and Fixes of the Covered Software as provided in this Section 3(b) shall relieve Northwoods of any responsibility or liability whatsoever for any failure or malfunction of the Covered Software, as modified by a subsequent Error correction or Patch, Upgrade and Fix, but in no such event shall Licensee be relieved of the responsibility for the payment of fees and charges otherwise properly invoiced during the term hereof.
    - c. **System Administrator.** Licensee agrees to provide at least one (1) "System Administrator" responsible for the administration, supervision, management, and control of the Covered Software. Licensee also agrees that all Covered Software support incidents raised by Licensee's personnel will be reported to the System Administrator, who will provide the initial research, investigation, and troubleshooting into the support incident. In the event the support incident can be resolved without Northwoods, the System Administrator will provide the support resolution to Licensee personnel. If, after initial research and investigation into a support question, the System Administrator determines there is an Error or Problem with the Covered Software, the System Administrator will report the Error or Problem to Northwoods. Licensee agrees that all communications regarding Covered Software Errors and Problems will be between the System Administrator and Northwoods.
    - d. **Notice and Documentation of Errors.** Licensee shall give prompt notice of any Errors in the Covered Software discovered by Licensee, or otherwise brought to the attention of Licensee, in accordance with Northwoods' then current defect reporting procedures. Proper notice may include, without limitation, prompt telephonic or written notice to Northwoods of any alleged Error. If Northwoods requests, Licensee agrees to provide written documentation of Errors to substantiate them and to assist Northwoods in the detection and correction of said Errors.
    - e. **Access to Premises and Systems.** Licensee shall provide reasonable access to and use of Licensee's premises, computer hardware, peripherals, Covered Software, and any other software as Northwoods deems necessary to diagnose and correct any Errors or to otherwise provide Support Services. In addition, Licensee acknowledges and agrees that a third party service provider may be retained by Northwoods to provide Error corrections or other Support Services directly to Licensee and, accordingly, Licensee shall provide the same access directly to such service provider. Such right of access and use shall be provided at no cost or charge to Northwoods or the third party service provider.
    - f. **Network Infrastructure.** Licensee agrees to maintain all required network infrastructure to ensure persistent connectivity between Licensee's workstations and servers. This includes necessary networking hardware and associated software configuration and security settings.
    - g. **Back-ups.** Licensee agrees to perform daily back-ups of all application related systems, databases, and data files and to maintain current back-up copies of other pertinent systems and data files.
  4. **FEES, PAYMENTS, CURRENCY AND TAXES.**
    - a. **Annual Support Fees.** Licensee shall pay to Northwoods annual support fees in the amounts invoiced by Northwoods.
      - 1) **Initial Software.** The invoice that will be provided pursuant to this Agreement shall set forth the aggregate invoice amounts for initial annual support fees for each Covered Software module(s) initially licensed, and for all Covered Software modules initially licensed in the aggregate. Licensee shall be required to submit a purchase

- order for this Agreement, in the amount of the initial annual support fees due hereunder, simultaneously with Licensee's submission of its purchase order for the license of the Covered Software under the EULA.
- 2) **Additional Software.** Northwoods shall invoice Licensee for annual support fees for all Covered Software modules that Licensee additionally licenses under the EULA promptly upon acceptance of Licensee's purchase order for the purchase of Support Services for such Covered Software.
  - 3) **Renewal Periods.** Northwoods shall invoice Licensee for annual support fees for renewal terms at least sixty (60) days prior to the end of the then-current term.
  - 4) **Time and Materials Charges.** Notwithstanding anything to the contrary, if Licensee requests: (1) Support Services that Northwoods is not obligated to provide based on the level of support purchased by Licensee, and Northwoods agrees to provide such requested Support Services notwithstanding the provisions of Section 2(d), then Licensee agrees that such Support Services shall not be covered by the annual support fees under Section 4(a). Licensee agrees to pay for such Support Services at Northwoods' state term schedule rates. Northwoods shall invoice Licensee for all time and materials charges hereunder.
- b. **Payments; Remedies.** See Sections 2.5 and 2.6 of the State Term Schedule.
  - c. **Taxes and Governmental Charges.** See Section 2.12 of the State Term Schedule.
  - d. **Support Fee Increases.**
    - 1) **Silver Level.** Northwoods will increase annual support fees for each renewal term, provided that such increase will not exceed, in the aggregate, the greater of (A) the annual support fee for the immediately preceding renewal term increased by the percentage increase in the Consumer Price Index (CPI) (as published by the United States Department of Labor, Bureau of Labor Statistics) for the 12-month period preceding the renewal date, or (B) the annual support fee for the immediately preceding renewal term increased by three and one-half percent (3 ½%).
    - 2) **Gold Level.** For a period of three (3) years following the execution of this Agreement, provided Licensee remains current on its payments at the Gold Level, Northwoods will not increase the support fees payable under this Agreement. At the end of the initial three (3) year term, and every three (3) years thereafter, Northwoods will increase the support fee in an amount that is the greater of (A) the annual support fee for the immediately preceding renewal term increased by the percentage increase in the Consumer Price Index (CPI) (as published by the United States Department of Labor, Bureau of Labor Statistics) for the 12-month period preceding the renewal date, or (B) the annual support fee for the immediately preceding renewal term increased by three and one-half percent (3 ½%).
    - 3) **Platinum Level.** For a period of five (5) years following the execution of this Agreement, provided Licensee remains current on its payments at the Platinum Level, Northwoods will not increase the support fees payable under this Agreement. At the end of the initial five (5) year term, and every five (5) years thereafter, Northwoods will increase the support fee in an amount that is the greater of (A) the annual support fee for the immediately preceding renewal term increased by the percentage increase in the Consumer Price Index (CPI) (as published by the United States Department of Labor, Bureau of Labor Statistics) for the 12-month period preceding the renewal date, or (B) the annual support fee for the immediately preceding renewal term increased by three and one-half percent (3 ½%).
5. **LIMITED WARRANTY.**
- a. **Limited Warranty of Services.** Northwoods warrants that the Support Services shall be performed in a good and workmanlike manner and substantially according to industry standards. In order to assert any claim that any Support Services fail to conform to this limited warranty, Licensee must notify Northwoods in writing of such claim within thirty (30) days after the date the alleged non-conforming Services are accepted. If, after such timely notice from Licensee, the Support Services in question are determined not to conform to this limited warranty, Northwoods' sole obligation, and Licensee's sole remedy, shall be for Northwoods to use commercially reasonable efforts to re-perform the nonconforming Support Services in an attempt to correct the nonconformity. If Northwoods is unable to correct such nonconformity after a reasonable period of time, Licensee's sole and exclusive remedy shall be termination of this Agreement in accordance with Section 7(b)(3)(B). This warranty specifically excludes non-performance issues caused as a result of any circumstances described in Section 2(d), incorrect data or incorrect procedures used or provided by Licensee or a third party, or failure of Licensee to perform and fulfill its obligations under this Agreement or the EULA.
  - b. **No Warranty of Patches, Upgrades and Fixes.** The EULA shall govern any limited warranty or disclaimer relating to Patches, Upgrades and Fixes of the Covered Software provided to Licensee under this Agreement, and no warranty is given under this Agreement with respect to Patches, Upgrades and Fixes.
  - c. **DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 5(a), NORTHWOODS MAKES NO WARRANTIES OR REPRESENTATIONS REGARDING ANY SUPPORT SERVICES, ANY SOFTWARE OR ANY PATCHES, UPGRADES AND FIXES PROVIDED UNDER THIS AGREEMENT. NORTHWOODS DISCLAIMS AND EXCLUDES ANY AND ALL OTHER EXPRESS, IMPLIED AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF GOOD TITLE, WARRANTIES AGAINST INFRINGEMENT, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES THAT MAY BE DEEMED TO ARISE FROM ANY COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. NORTHWOODS DOES NOT WARRANT THAT ANY SUPPORT SERVICES, SOFTWARE OR PATCHES, UPGRADES AND FIXES PROVIDED WILL SATISFY LICENSEE'S REQUIREMENTS OR ARE WITHOUT DEFECT OR ERROR, OR THAT THE OPERATION OF ANY SOFTWARE OR PATCHES, UPGRADES AND FIXES WILL BE UNINTERRUPTED. NORTHWOODS DOES NOT ASSUME ANY LIABILITY WHATSOEVER WITH RESPECT TO ANY THIRD PARTY HARDWARE, FIRMWARE, SOFTWARE OR SERVICES.
6. **LIMITATIONS OF LIABILITY.** NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST SAVINGS, BUSINESS INTERRUPTION DAMAGES OR EXPENSES, LOSSES RESULTING FROM ERASURE, DAMAGE, DESTRUCTION OR OTHER LOSS OF FILES, DATA OR PROGRAMS OR THE COST OF RECOVERING SUCH INFORMATION, OR OTHER PECUNIARY LOSS, EVEN IF THE PARTIES HAVE BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITIES OF SUCH DAMAGES OR LOSSES. NORTHWOODS FURTHER AGREES IT SHALL BE LIABLE FOR ALL DIRECT DAMAGES DUE TO THE FAULT OR NEGLIGENCE OF NORTHWOODS.
  7. **TERM, RENEWAL AND TERMINATION.**
    - a. **Term.** Subject to the early termination provisions of Section 7(b), the initial term of this Agreement (the "initial Term") shall commence on the day that Northwoods issues to Licensee license codes for the Covered Software modules licensed by Licensee under the EULA and shall expire on the first anniversary of such date. Except as otherwise provided in Section 7(c)(3) below, Northwoods will provide notice of renewal in the form of an invoice no less than sixty (60) days before the end of the term. Upon payment of the invoice by Licensee, the Agreement will automatically renew for consecutive one (1) year terms.
    - b. **Early Termination.**
      - 1) **Automatic.** This Agreement shall terminate automatically, without any other further action on the part of either of the parties, immediately upon any termination of the EULA.
      - 2) **By Northwoods for Cause.** Northwoods shall be entitled to give written notice to Licensee of any breach by Licensee or other failure by Licensee to comply with any material term or condition of the EULA or this Agreement, specifying the nature of such breach or non-compliance and requiring Licensee to cure the breach or non-compliance. If Licensee has not cured, or commenced to cure (if a cure cannot be performed within the time period set forth below), the breach or non-compliance within (A) in the case of non-payment, any breach of Section 1 of the EULA, or any breach of Section 3 of this Agreement, ten (10) calendar days after receipt of such written notice, or (B) in the case of any other breach or non-compliance, thirty (30) business days after receipt of such written notice, Northwoods shall be entitled, in addition to any other rights it may have hereunder, or otherwise at law or in equity, to immediately terminate this Agreement.
      - 3) **By Licensee.**
        - A) **For Convenience.** Licensee may terminate this Agreement at any time, for any reason, upon not less than sixty (60) days advance written notice to Northwoods.
        - B) **For Cause.** Licensee shall be entitled to give written notice to Northwoods of any breach by Northwoods or other failure by Northwoods to comply with any material term or condition of this Agreement, specifying the nature of such breach or non-compliance and requiring Northwoods to cure the breach or non-compliance. If Northwoods has not cured, or commenced to cure (if a cure cannot be performed within the time period set forth below), the breach or non-compliance within twenty (20) business days after receipt of written notice, Licensee shall be entitled, in addition to any other rights it may have under this Agreement, or otherwise at law or in equity, to immediately terminate this Agreement; and thereafter, so long as Licensee has complied in all material respects with its obligations under the EULA and this Agreement, and is current on all payment obligations under the EULA and this Agreement, Licensee shall be entitled to a refund from Northwoods of the "unused portion of the annual support fees" for the then-current term of this Agreement. For these purposes, the "unused portion of the annual support fees" shall mean that portion of the annual support fees paid by Licensee with respect to the term of this Agreement during which such termination of this Agreement is effective, equal to the total of such annual support fees multiplied by a fraction, the numerator of which shall be the number of calendar months during the then-current term of this Agreement that remain until the end of such then-current term, commencing with the calendar month after the calendar month in which such termination is effective, and the denominator of which shall be the total number of calendar months in such then-current term determined without regard to such termination.
        - C) **Non-Renewal.** Licensee may elect not to renew this Agreement at the end of the then-current term of this Agreement by written notice to Northwoods on or prior to the date payment is due under Section 4(c)(1) of Northwoods' invoice for annual support fees for the next succeeding renewal term of this Agreement.
    - c. **Effect of Termination.**
      - 1) **Payments.** Notwithstanding any termination of this Agreement, Licensee shall be obligated to pay Northwoods for (A) all Support Services provided on a time and materials basis in accordance with this Agreement at any time on or prior to the effective date of termination; (B) all annual support fees due with respect to any period commencing prior to the effective date of termination; and *Survival of Obligations.* The termination of this Agreement will not discharge or otherwise affect any pre-termination obligations of either party existing under the Agreement at the

time of termination. The provisions of this Agreement which by their nature extend beyond the termination of the Agreement will survive and remain in effect until all obligations are satisfied, including, but not limited to, Sections 2(a)(3) and 2(c)(3) (as they relate to title and ownership), Section 4(d), Section 5(c), Section 6, Section 7, Section 9 and Section 10. No action arising out of this Agreement, regardless of the form of action, may be brought by Licensee more than one (1) year after the date the action accrued.

2) **Reinstatement of Agreement.** In the event of the termination of this Agreement by Licensee under Section 7(b)(3)(C) (Non-Renewal), Licensee may at any time after the effective date of such termination elect to reinstate this Agreement in accordance with this Section 7(c)(3). To obtain reinstatement, Licensee shall deliver written notice to such effect to Northwoods, together with payment in full of: (A) annual support fees, based upon Northwoods' Annual Support Fee Schedule in effect as of the time of such reinstatement, for all periods (as determined under Section 7(a) as if the Agreement had not been terminated under Section 7(b)(3)(C)) that have elapsed from the effective date of such termination through the effective date of such reinstatement; and (B) an amount equal to one hundred percent (100%) of the annual support fee, based upon Northwoods' Annual Support Fee Schedule in effect as of the time of such reinstatement, for the renewal term of this Agreement commencing on the effective date of such reinstatement. Any reinstatement under this Section 7(c)(3) shall be effective as of the first business day after Northwoods has received the notice of reinstatement and all payments required to be made hereunder in connection with such reinstatement. The renewal term commencing with the effective date of this Agreement shall be for a period ending on the first annual anniversary of such effective date; and thereafter the term of this Agreement shall be renewed: (i) at the end of such first renewal term, for a period of one year; and (ii) thereafter, annually on a year by year basis.

EXCEPT AS EXPRESSLY PROVIDED BY THIS SECTION 7(c)(3), LICENSEE SHALL HAVE NO RIGHT TO REINSTATE THIS AGREEMENT FOLLOWING THE TERMINATION THEREOF FOR ANY REASON.

8. **FORCE MAJEURE.** See Section 3.8 of the State Term Schedule.
9. **NOTICES.** Unless otherwise agreed to by the parties in a writing signed by both parties, all notices required under this Agreement shall be deemed effective: (a) when sent and made in writing by either (1)(A) registered mail, (B) certified mail, return receipt requested, or (C) overnight courier, in any such case addressed and sent to the address set forth herein and to the attention of the person executing this Agreement on behalf of that party or that person's successor, or to such other address or such other person as the party entitled to receive such notice shall have notified the party sending such notice of; or (2) facsimile transmission appropriately directed to the attention of the person identified as the appropriate recipient and at the appropriate address under (a)(1) above, with a copy following by one of the other methods of notice under (a)(1) above; or (b) when personally delivered and made in writing to the person and address identified as appropriate under (a)(1) above.

10. **GENERAL PROVISIONS.**

- a. **Jurisdiction.** See Section 11.5 of the State Term Schedule.
- b. **Interpretation.** Headings used in this Agreement are for reference and convenience purposes only and shall not in any way limit or affect the meaning or interpretation of any of the terms hereof. All defined terms in this Agreement shall be deemed to refer to the masculine, feminine, neuter, singular or plural, in each instance as the context or particular facts may require. Use of "hereunder," "herein," "hereby" and similar terms refer to this Agreement.
- c. **Waiver.** See Section 10.4 of the State Term Schedule.
- d. **Integration.** The state term schedule and this Agreement, including any and all exhibits and schedules referred to herein or therein, sets forth the entire agreement and understanding between the parties pertaining to the subject matter and merges all prior discussions between them on the same subject matter. Neither of the parties shall be bound by any conditions, definitions, warranties, understandings or representations with respect to the subject matter other than as expressly provided in this Agreement. This Agreement may only be modified by a written document signed by duly authorized representatives of the parties. This Agreement shall not be supplemented or modified by any course of performance, course of dealing or trade usage. Variance from or addition to the terms and conditions of this Agreement in any purchase order or other written notification or documentation, from Licensee or otherwise, will be of no effect unless expressly agreed to in writing by both parties. This Agreement will prevail over any conflicting stipulations contained or referenced in any other document.
- e. **Binding Agreement and Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. Northwoods may assign this Agreement or its rights or obligations under this Agreement, in whole or in part, to any other person or entity. Licensee may not assign this Agreement or its rights or obligations under this Agreement, in whole or in part, to any other person or entity without the prior written consent of Northwoods which shall not be unreasonably withheld. Any change in control of Licensee resulting from an acquisition, merger or otherwise shall constitute an assignment under the terms of this provision. Any assignment made without compliance with the provisions of this Section 10(e) shall be null and void and of no force or effect.
- f. **Severability.** See Section 10.5 Independent Contractor See new Section 3.9 of the State Term Schedule Export. Licensee agrees to comply fully with all relevant regulations of

the U.S. Department of Commerce and all U.S. export control laws, including but not limited to the U.S. Export Administration Act, to assure that the Patches, Upgrades and Fixes are not exported in violation of United States law.

- g. **Injunctive Relief.** The parties to this Agreement recognize that a remedy at law for a breach of the provisions of this Agreement relating to confidential information and intellectual property rights will not be adequate for Northwoods' protection and, accordingly, Northwoods shall have the right to obtain, in addition to any other relief and remedies available to it, specific performance or injunctive relief to enforce the provisions of this Agreement.

IN WITNESS WHEREOF, the undersigned, authorized representatives of the parties have duly executed this Compass® Software Support Agreement.

On behalf of Licensee:

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Printed Name Title

On behalf of Northwoods:

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Printed Name Title

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.

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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:

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State, Zip)

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

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

2. Location where services will be performed by Contractor:

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State, Zip)

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

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

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

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address, City, State, Zip)

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

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

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: CHRISTOPHER T. CARLSON

Title: CVP/COO

Date: 03/12/2014