

STATE TERM CONTRACT

THIS CONTRACT ("Contract") is between the State of Ohio ("State"), through its Department of Administrative Services, General Office of Information Technology, 30 East Broad Street, 40th Floor, Columbus, Ohio, 43215 and Truven Health Analytics Inc. ("Contractor"), with offices at 777 E. Eisenhower Parkway, Ann Arbor, MI, 48108.

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

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

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

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

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

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

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

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

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

Please refer to the document titled Truven Health Analytics Inc, State Term Schedule - Price list;
File name: 4 Truven Health - Price List 101613.xlsx

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 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.

2.8 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.

2.9 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.

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

2.11 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.

2.12 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. 3.8.1 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.

3.8.2 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>

3.8.3 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.

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

- (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

BY: 
Pete McCartney
SVP State Government

DATE: 12-9-14

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

BY: 
ROBERT BLAIR, DIRECTOR,
DEPARTMENT OF ADMINISTRATIVE SERVICES

DATE: 12-18-14

Exhibit I

Truven Health Analytics Inc. – Price List

Product Name	Manufacturer	Manufacturer Part No	Vendor Part No	Description	Unit of Measure	State Price	LI
Bundled Decision Analyst	Truven Health Analytics	2014 - Bundled Decision Analyst (Minimum)	2014 - Bundled Decision Analyst (Minimum)	Annual Software License (9/1/2013 - 12/31/2014)	Minimum	\$ 226,700.00	
Bundled Decision Analyst	Truven Health Analytics	2014 - Bundled Decision Analyst (First 1M)	2014 - Bundled Decision Analyst (First 1M)	Annual Software License (9/1/2013 - 12/31/2014)	Covered Life	\$ 0.3537	
Bundled Decision Analyst	Truven Health Analytics	2014 - Bundled Decision Analyst (> 1M)	2014 - Bundled Decision Analyst (> 1M)	Annual Software License (9/1/2013 - 12/31/2014)	Covered Life	\$ 0.2811	
Bundled Net Effect	Truven Health Analytics	2014 - Bundled Net Effect (Minimum)	2014 - Bundled Net Effect (Minimum)	Annual Software License (9/1/2013 - 12/31/2014)	Minimum	\$ 27,204.00	
Bundled Net Effect	Truven Health Analytics	2014 - Bundled Net Effect (First 1M)	2014 - Bundled Net Effect (First 1M)	Annual Software License (9/1/2013 - 12/31/2014)	Covered Life	\$ 0.0907	
Bundled Net Effect	Truven Health Analytics	2014 - Bundled Net Effect (> 1M)	2014 - Bundled Net Effect (> 1M)	Annual Software License (9/1/2013 - 12/31/2014)	Covered Life	\$ 0.0725	
Bundled MEG	Truven Health Analytics	2014 - Bundled MEG (Minimum)	2014 - Bundled MEG (Minimum)	Annual Software License (9/1/2013 - 12/31/2014)	Minimum	\$ 20,403.00	
Bundled MEG	Truven Health Analytics	2014 - Bundled MEG (First 1M)	2014 - Bundled MEG (First 1M)	Annual Software License (9/1/2013 - 12/31/2014)	Covered Life	\$ 0.0544	
Bundled MEG	Truven Health Analytics	2014 - Bundled MEG (> 1M)	2014 - Bundled MEG (> 1M)	Annual Software License (9/1/2013 - 12/31/2014)	Covered Life	\$ 0.0363	
Bundled DCGs	Truven Health Analytics	2014 - Bundled DCGs (Minimum)	2014 - Bundled DCGs (Minimum)	Annual Software License (9/1/2013 - 12/31/2014)	Minimum	\$ 47,380.00	
Bundled DCGs	Truven Health Analytics	2014 - Bundled DCGs (First 1M)	2014 - Bundled DCGs (First 1M)	Annual Software License (9/1/2013 - 12/31/2014)	Covered Life	\$ 0.0748	
Bundled DCGs	Truven Health Analytics	2014 - Bundled DCGs (> 1M)	2014 - Bundled DCGs (> 1M)	Annual Software License (9/1/2013 - 12/31/2014)	Covered Life	\$ 0.0698	
Bundled SURS	Truven Health Analytics	2014 - Bundled SURS (Minimum)	2014 - Bundled SURS (Minimum)	Annual Software License (9/1/2013 - 12/31/2014)	Minimum	\$ 36,272.00	
Bundled SURS	Truven Health Analytics	2014 - Bundled SURS (First 1M)	2014 - Bundled SURS (First 1M)	Annual Software License (9/1/2013 - 12/31/2014)	Covered Life	\$ 0.0997	
Bundled SURS	Truven Health Analytics	2014 - Bundled SURS (> 1M)	2014 - Bundled SURS (> 1M)	Annual Software License (9/1/2013 - 12/31/2014)	Covered Life	\$ 0.0635	
Bundled DataProbe	Truven Health Analytics	2014 - Bundled DataProbe (Minimum)	2014 - Bundled DataProbe (Minimum)	Annual Software License (9/1/2013 - 12/31/2014)	Minimum	\$ 27,204.00	
Bundled DataProbe	Truven Health Analytics	2014 - Bundled DataProbe (First 1M)	2014 - Bundled DataProbe (First 1M)	Annual Software License (9/1/2013 - 12/31/2014)	Covered Life	\$ 0.0816	
Bundled DataProbe	Truven Health Analytics	2014 - Bundled DataProbe (> 1M)	2014 - Bundled DataProbe (> 1M)	Annual Software License (9/1/2013 - 12/31/2014)	Covered Life	\$ 0.0363	
Bundled Patient Profiling	Truven Health Analytics	2014 - Bundled Patient Profiling (Minimum)	2014 - Bundled Patient Profiling (Minimum)	Annual Software License (9/1/2013 - 12/31/2014)	Minimum	\$ 9,068.00	
Bundled Patient Profiling	Truven Health Analytics	2014 - Bundled Patient Profiling (First 1M)	2014 - Bundled Patient Profiling (First 1M)	Annual Software License (9/1/2013 - 12/31/2014)	Covered Life	\$ 0.0725	
Bundled Patient Profiling	Truven Health Analytics	2014 - Bundled Patient Profiling (> 1M)	2014 - Bundled Patient Profiling (> 1M)	Annual Software License (9/1/2013 - 12/31/2014)	Covered Life	\$ 0.0635	
Bundled PPA	Truven Health Analytics	2014 - Bundled PPA (Minimum)	2014 - Bundled PPA (Minimum)	Annual Software License (9/1/2013 - 12/31/2014)	Minimum	\$ 9,068.00	
Bundled PPA	Truven Health Analytics	2014 - Bundled PPA (First 1M)	2014 - Bundled PPA (First 1M)	Annual Software License (9/1/2013 - 12/31/2014)	Covered Life	\$ 0.0816	
Bundled PPA	Truven Health Analytics	2014 - Bundled PPA (> 1M)	2014 - Bundled PPA (> 1M)	Annual Software License (9/1/2013 - 12/31/2014)	Covered Life	\$ 0.0816	
Standalone DataProbe	Truven Health Analytics	2014 - Standalone DataProbe (Minimum)	2014 - Standalone DataProbe (Minimum)	Annual Software License (9/1/2013 - 12/31/2014)	Minimum	\$ 54,408.00	
Standalone DataProbe	Truven Health Analytics	2014 - Standalone DataProbe (First 1M)	2014 - Standalone DataProbe (First 1M)	Annual Software License (9/1/2013 - 12/31/2014)	Covered Life	\$ 0.1995	
Standalone DataProbe	Truven Health Analytics	2014 - Standalone DataProbe (> 1M)	2014 - Standalone DataProbe (> 1M)	Annual Software License (9/1/2013 - 12/31/2014)	Covered Life	\$ 0.1542	
Standalone MEG	Truven Health Analytics	2014 - Standalone MEG (Minimum)	2014 - Standalone MEG (Minimum)	Annual Software License (9/1/2013 - 12/31/2014)	Minimum	\$ 49,874.00	
Standalone MEG	Truven Health Analytics	2014 - Standalone MEG (First 1M)	2014 - Standalone MEG (First 1M)	Annual Software License (9/1/2013 - 12/31/2014)	Covered Life	\$ 0.1250	
Standalone MEG	Truven Health Analytics	2014 - Standalone MEG (> 1M to 3M)	2014 - Standalone MEG (> 1M to 3M)	Annual Software License (9/1/2013 - 12/31/2014)	Covered Life	\$ 0.0544	
Standalone MEG	Truven Health Analytics	2014 - Standalone MEG (> 3M to 5M)	2014 - Standalone MEG (> 3M to 5M)	Annual Software License (9/1/2013 - 12/31/2014)	Covered Life	\$ 0.0453	
Standalone MEG	Truven Health Analytics	2014 - Standalone MEG (> 5M to 10M)	2014 - Standalone MEG (> 5M to 10M)	Annual Software License (9/1/2013 - 12/31/2014)	Covered Life	\$ 0.0272	
Standalone MEG	Truven Health Analytics	2014 - Standalone MEG (> 10M)	2014 - Standalone MEG (> 10M)	Annual Software License (9/1/2013 - 12/31/2014)	Covered Life	\$ 0.0091	
Standalone Risk Adjusted MEG	Truven Health Analytics	2014 - Standalone Risk Adjusted MEG (Minimum)	2014 - Standalone Risk Adjusted MEG (Minimum)	Annual Software License (9/1/2013 - 12/31/2014)	Minimum	\$ 97,254.00	
Standalone Risk Adjusted MEG	Truven Health Analytics	2014 - Standalone Risk Adjusted MEG (First 1M)	2014 - Standalone Risk Adjusted MEG (First 1M)	Annual Software License (9/1/2013 - 12/31/2014)	Covered Life	\$ 0.1995	
Standalone Risk Adjusted MEG	Truven Health Analytics	2014 - Standalone Risk Adjusted MEG (> 1M to 3M)	2014 - Standalone Risk Adjusted MEG (> 1M to 3M)	Annual Software License (9/1/2013 - 12/31/2014)	Covered Life	\$ 0.1242	
Standalone Risk Adjusted MEG	Truven Health Analytics	2014 - Standalone Risk Adjusted MEG (> 3M to 5M)	2014 - Standalone Risk Adjusted MEG (> 3M to 5M)	Annual Software License (9/1/2013 - 12/31/2014)	Covered Life	\$ 0.1025	
Standalone Risk Adjusted MEG	Truven Health Analytics	2014 - Standalone Risk Adjusted MEG (> 5M to 10M)	2014 - Standalone Risk Adjusted MEG (> 5M to 10M)	Annual Software License (9/1/2013 - 12/31/2014)	Covered Life	\$ 0.0689	
Standalone Risk Adjusted MEG	Truven Health Analytics	2014 - Standalone Risk Adjusted MEG (> 10M)	2014 - Standalone Risk Adjusted MEG (> 10M)	Annual Software License (9/1/2013 - 12/31/2014)	Covered Life	\$ 0.0508	
Administrative	Truven Health Analytics	2014 - Administrative	2014 - Administrative	IT Professional Services (9/1/2013 - 12/31/2014)	Hour	\$ 67.54	
Project Manager	Truven Health Analytics	2014 - Project Manager	2014 - Project Manager	IT Professional Services (9/1/2013 - 12/31/2014)	Hour	\$ 199.39	
Senior Consultant	Truven Health Analytics	2014 - Senior Consultant	2014 - Senior Consultant	IT Professional Services (9/1/2013 - 12/31/2014)	Hour	\$ 198.92	
Senior Programmer	Truven Health Analytics	2014 - Senior Programmer	2014 - Senior Programmer	IT Professional Services (9/1/2013 - 12/31/2014)	Hour	\$ 198.92	
Consultant	Truven Health Analytics	2014 - Consultant	2014 - Consultant	IT Professional Services (9/1/2013 - 12/31/2014)	Hour	\$ 136.55	
Senior Data Management Consultant	Truven Health Analytics	2014 - Senior Data Management Consultant	2014 - Senior Data Management Consultant	IT Professional Services (9/1/2013 - 12/31/2014)	Hour	\$ 198.92	
Data Management Consultant	Truven Health Analytics	2014 - Data Management Consultant	2014 - Data Management Consultant	IT Professional Services (9/1/2013 - 12/31/2014)	Hour	\$ 136.55	
Programmer	Truven Health Analytics	2014 - Programmer	2014 - Programmer	IT Professional Services (9/1/2013 - 12/31/2014)	Hour	\$ 136.55	
Database Tech Analyst	Truven Health Analytics	2014 - Database Tech Analyst	2014 - Database Tech Analyst	IT Professional Services (9/1/2013 - 12/31/2014)	Hour	\$ 198.92	
Database Processor	Truven Health Analytics	2014 - Database Processor	2014 - Database Processor	IT Professional Services (9/1/2013 - 12/31/2014)	Hour	\$ 117.21	
DBA	Truven Health Analytics	2014 - DBA	2014 - DBA	IT Professional Services (9/1/2013 - 12/31/2014)	Hour	\$ 221.96	
Data Communications Expert	Truven Health Analytics	2014 - Data Communications Expert	2014 - Data Communications Expert	IT Professional Services (9/1/2013 - 12/31/2014)	Hour	\$ 221.96	
Installation Consultant	Truven Health Analytics	2014 - Installation Consultant	2014 - Installation Consultant	IT Professional Services (9/1/2013 - 12/31/2014)	Hour	\$ 221.96	
Analyst	Truven Health Analytics	2014 - Analyst	2014 - Analyst	IT Professional Services (9/1/2013 - 12/31/2014)	Hour	\$ 117.21	
User Support	Truven Health Analytics	2014 - User Support	2014 - User Support	IT Professional Services (9/1/2013 - 12/31/2014)	Hour	\$ 117.21	

Exhibit II

STS CONTRACT TERMS AND CONDITIONS: LIST OF EXCEPTIONS

We respectfully request the State's consideration of the additions and changes to the State Term Contract listed below.

Section 3.5: The last sentence should convey the following. **“Nothing in this contract requires the Contractor to accept an order from a Political Subdivision.”** All wording after this sentence should be omitted.

Section 5.2: We request the addition of the following language after the first paragraph in Section 5.2:

The foregoing provision does not apply to computer software or programming materials, user manuals, manuals or other documents created by Contractor that describe its internal policies, staffing, operating procedures, or systems, or any other records, papers, files, materials, or medial of any kind that are identified and designated by Contractor as trade secret or Proprietary Information of Contractor.

Section 5.1: We request additional clarification be added to Section 5.1 to address COTS solutions:

Patents, copyrights or other intellectual property owned or created by Contractor outside of this Contract shall remain the property of Contractor, and that ownership or other rights shall not be affected in any way by this Contract. Except as expressly set forth in the Contract, no right or license in and to such intellectual property is or shall be deemed to be conveyed or assigned to the State. Instead, the State shall own final deliverables customized and developed exclusively for them as part of the Services under the Contract, exclusive of any intellectual property including software, copyrights, or patents.

Further, the immediately preceding paragraph or section shall not restrict Contractor from performing similar services for other entities or from using, disclosing or otherwise employing in its business any ideas, concepts, know-how, methods, techniques, processes, skills, adaptations and similar knowledge with which the Contractor has become acquainted or which it has learned during the normal course of performing the Services, and the State shall not assert against the Contractor any prohibition or restraint from so doing.

Section 7.5(b): We request 7.5(b) to be replaced in its entirety with the following:

TO THE EXTENT PERMITTED BY LAW, CONTRACTOR'S LIABILITY WHICH MAY ARISE OUT OF OR IN CONNECTION WITH A PRODUCT OR SERVICE AND/OR THIS CONTRACT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WILL BE LIMITED TO AN AMOUNT EQUAL TO TWO TIMES THE FEES PAID BY THE STATE FOR THAT PRODUCT OR SERVICE FOR THE TWELVE MONTH PERIOD PRIOR TO THE DATE OF THE INCIDENT (OR THE FIRST SUCH INCIDENT IN THE CASE OF A SERIES).

Exhibit III

**STANDARD AFFIRMATION AND DISCLOSURE FORM
EXECUTIVE ORDER 2011-12K**

Governing the Expenditure of Public Funds on Offshore Services

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

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

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

1. Principal location of business of Contractor:

(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: _____

Title: _____

Date: _____

Exhibit IV
Services Agreement

THIS SERVICES AGREEMENT (“Agreement”) is dated as of _____ by and between Truven Health Analytics Inc., a Delaware corporation (“Truven Health”), with its principal place of business at 777 E. Eisenhower Parkway, Ann Arbor, Michigan 48108, and _____, a _____ (“Customer”), with its principal place of business at _____.

WHEREAS, Truven Health provides decision support services for managing the cost and quality of healthcare; and

WHEREAS, Customer desires to purchase such services from Truven Health;

NOW, THEREFORE, in consideration of the promises contained in this contract, Truven Health and the Customer agree to the following:

1. **DEFINITIONS.** The following terms, as used herein and in the exhibits hereto, shall have the following meanings:

- a. “Customer Data” means any and all claims, eligibility, absenteeism, clinical and other similar health care data and information in the original form submitted by or on behalf of Customer to Truven Health.
- b. “Data Source” means a servicer, administrator or other entity that is a source of Customer Data.
- c. “Initial Database” means the production and development of a database as described in Exhibit A.
- d. “Ongoing Integrated Information Services” means the integrated information services described in Exhibit B or one or more Service Schedules.
- e. “Services” means the integrated information services described in Exhibits A and B or one or more Service Schedules.
- f. “Service Schedule” means a description of services and/or products that is mutually agreed to in writing by Truven Health and Customer and made a part of Exhibits A and B.
- g. “Service Term” means the term for performance of Services under this Agreement, as specified in Exhibits A and B.

- h. “System” means the data, databases and all other tangible and intangible information used, developed or provided by Truven Health pursuant to the Agreement, including without limitation, operating systems, application programs, applications, database systems and Third Party Licensor products, together with all related specifications, documentation, methodologies, techniques, ideas and formulas and any enhancements, formatting and modifications thereto.
- i. “Third Party Licensor” means any third party vendor from whom Truven Health has acquired, or may acquire, the right to license, sublicense or distribute software, data, documentation or other information for use in or in connection with the System.

2. **SERVICE TERM.** The Service Term shall commence on the date indicated in Exhibit A and continue until the earlier of (i) termination date specified in Exhibit B or (ii) termination pursuant to the provisions below. Any changes in the terms or conditions of the Services Schedule for a renewal term shall be mutually agreed upon in writing, in an amendment to this Agreement or new Services Schedule, effective upon expiration of the then-current Service Term.

3. **TERMINATION.**

- a. **Termination for Default.** If either party defaults in the observance or performance of any material obligation in this Agreement and such default is not

cured or corrected within 30 days after written notice thereof from the aggrieved party, the aggrieved party may, at its option, terminate this Agreement in whole or in part by written notice to the other party.

b. Termination in the Event of Business Discontinuation. Either party shall have the right to terminate this Agreement by written notice if the other party (i) files or has filed against it a petition in bankruptcy which has not been dismissed within 60 days of filing, (ii) makes a general assignment for the benefit of creditors or (iii) appoints a receiver for all *or substantially all of its assets*.

c. Responsibilities on Termination.

i. *Customer Responsibilities* - In the event of any termination of this agreement in whole or in part, Customer shall pay Truven Health all amounts incurred but unpaid through and including the effective date of termination, including the pro rata portion of all amortized fees. In addition, upon termination, expiration or cancellation of this Agreement, Customer shall also return or cause to be returned to Truven Health all Truven Health Proprietary Information (as defined in Section 5.a.) that is in its possession or control.

ii. *Truven Health Responsibilities* - Upon termination of this Agreement for any reason or otherwise upon Customer's prior written request, Truven Health will destroy all source data, or at Customer's prior written request return all source data to Customer or a Data Source in the same format submitted to Truven Health or via other specified format/method agreed to by both parties; provided however that As part of Truven Health's periodic data source maintenance, Truven Health will destroy and upon request provide certification to the destruction thereof of all source data. (Typically this will involve only source data containing information greater than 36 months old.) Requests by Customer for Truven Health to maintain source data more than 36 months old will result in additional charges to Customer.

4. CHARGES.

a. *Fees and Expenses.* See Sections 2.5 and 2.6 of the State Term Schedule. charges for optional services and expenses shall be billed as incurred and due and payable on net 30-day terms.

b. 1) Taxes and other Charges. See Section 2.12 of the State Term Schedule. **OWNERSHIP AND CONFIDENTIALITY.**

a. *Ownership.* Customer acknowledges and agrees that all data, databases, software, reports, analyses, studies, tangible and intangible information, operating systems, application programs and database systems, together with all related specifications, documentation, designs, processes, procedures, methodologies, applications, techniques, ideas, formulas, and any enhancements, formatting and modifications thereto, used, developed or provided by Truven Health under or in connection with this Agreement (collectively, "Truven Health Proprietary Information") are proprietary to Truven Health and title thereto shall remain the sole and exclusive property of Truven Health; provided, however, that Customer owns all raw data and shall own final deliverables customized and developed exclusively for Customer as part of the Services, exclusive of the Truven Health Proprietary Information. The immediately preceding clause shall not restrict Truven Health from performing similar services for other entities or from using, disclosing or otherwise employing in its business any ideas, concepts, know-how, methods, techniques, processes, skills, adaptations and similar knowledge with which Truven Health has become acquainted or which it has learned during the normal course of performing the Services, and Customer shall not assert against Truven Health any prohibition or restraint from so doing.

b. *Confidentiality.* Customer shall keep all Truven Health Proprietary Information confidential and shall not reproduce, duplicate, reveal, publish, transfer or disclose any Truven Health Proprietary Information to anyone other than its employees or contractors with a "need to know" in the ordinary course and scope of their employment. Customer agrees to take at least the same precautions and measures to safeguard the secrecy and confidentiality of, and proprietary rights to, the Truven Health Proprietary Information as it would with its own proprietary information and agrees not to disclose such Truven Health Proprietary Information to any third party without Truven Health's prior written consent, which consent shall not be unreasonably withheld. Truven Health's written consent to any access by a third party to the Truven Health Proprietary Information shall also be conditioned upon execution by such third party of a

confidentiality and non-disclosure agreement in a form acceptable to Truven Health.

This Section shall not be construed to restrict the use or disclosure of information that (i) has been previously published or is now or becomes public knowledge through no act or omission of Customer; (ii) at the time of disclosure to Customer, is already in the possession of, or known to, Customer; (iii) is independently developed by Customer not in violation of this Agreement; (iv) is made available to Customer as a matter of right by any person or entity other than Truven Health, or (v) is required by law to be disclosed pursuant to applicable law, order or regulation provided prompt notice of the same is given to Truven Health. The foregoing exceptions to the confidentiality provisions do not confer any license or other rights to Customer for any of the information referenced in such exceptions.

Customer agrees that any violation of the provisions of this Section may cause irreparable harm to Truven Health. Accordingly, in addition to any other remedies available to Truven Health at law or in equity, Truven Health shall be entitled to seek an injunction or other decree of specific performance with respect to any violation or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages.

c. Confidentiality of Customer Data. Subject to the terms and conditions of this Agreement, Truven Health shall keep the Customer Data confidential and not disclose to anyone other than its employees, affiliates, and subcontractors, or the Customer, without Customer's written consent (i) the identity of any employee, beneficiary, patient or other individual for whom Customer Data is submitted to Truven Health, or (ii) Customer Data that is individually identifiable to Customer or a Data Source as its source. Truven Health agrees to require all of its employees, affiliates, and subcontractors who have access to any Customer Data to adhere to these confidentiality obligations. In the event that Customer requests that Truven Health disclose Customer Data to a third party, the parties agree to use the form attached as Exhibit D. Truven Health may use the Customer Data both during the term of this Agreement and thereafter as follows: Upon mutual agreement, Customer may grant to Truven Health a perpetual, irrevocable, nonexclusive, royalty-free, nontransferable license to use, disclose, distribute, license, copy, display and

demonstrate all Customer Data, in a de-identified format for inclusion in Truven Health's MarketScan® databases. For the purpose of the preceding sentence, the term "de-identified" shall mean information that satisfies the requirements set forth in 45 CFR Section 164.514(b), as amended. In connection with use of the Customer Data in its MarketScan databases, Truven Health agrees to follow the confidentiality provisions set forth herein. Truven Health certifies that it is in compliance with applicable laws, with respect to privacy and data security relative to Customer Data and that it has implemented and currently maintains an effective information security program to protect Customer Data, which program includes administrative, technical, and physical safeguards.

5. CUSTOMER REPRESENTATIONS, WARRANTIES AND COVENANTS. The Customer represents, warrants and covenants that:

a. Dedicated Personnel and Resources. Customer shall designate a key person or persons to coordinate the delivery by Truven Health of the Services. Should the assignment of the dedicated person change, the Customer shall inform Truven Health. In addition, Customer shall take all steps and contribute all resources necessary for successful delivery of the Services.

b. Customer Data. Customer shall provide, or, if applicable, cause its Data Sources to timely provide, all necessary Customer Data in the formats and layouts, and compliant with other specifications, required by Truven Health, free of confidentiality and other claims inconsistent with the purposes in this Agreement. Customer shall be solely responsible for ensuring the delivery to Truven Health of all Customer Data in compliance with the terms of this Agreement..

c. Trademarks. During the term of this Agreement and thereafter, Customer agrees not to use the mark *Truven Health Analytics Inc.*, or any other mark owned by Truven Health, alone or with other wording and designs, or any mark similar thereto, in connection with any goods or services identical, related or similar to the Truven Health products or *Truven Health services*. Customer shall not modify or delete the service mark *Truven Health Analytics Inc.* or any other proprietary legend placed by Truven Health on its products or used in connection with the Services.

d. Third Party Requirements. Customer agrees that the System and other Truven Health Proprietary Information may include, other Third Party Licensor products, and that no Third Party Licensor makes any warranty to Customer regarding the System or other Truven Health Proprietary Information., Customer shall comply with and be bound by all provisions and agreements required by other Third Party Licensors as are contained herein, and if applicable, attached hereto as part of Exhibit C. Customer's rights to use the Third Party Licensor products terminate if Customer fails to comply with any such obligations. The Third Party Licensors shall be third party beneficiaries of this Agreement to the extent permitted by applicable law for the purposes of enforcing their rights and Customer's obligations regarding the Third Party Licensor products.

e. Reporting Requirements. Customer agrees to comply with the reporting requirements specified in Exhibit B.

7. LIMITED WARRANTY AND LIMITATION ON DAMAGES.

Truven Health warrants that the System will perform substantially in accordance with the documentation. Truven Health warrants that it will perform the Services consistent with generally accepted industry standards. The Services may require use of data or information compiled from third party sources that Truven Health does not control and whose information has not been independently investigated or verified. Customer shall rely solely upon its business judgment in drawing conclusions from and making recommendations and taking action based on the Services and the deliverables provided pursuant thereto. Accordingly, except as expressly provided in this Agreement, TRUVEN HEALTH MAKES NO WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, AS TO THE PRODUCTS AND SERVICES TO BE PROVIDED INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR USE FOR A PARTICULAR PURPOSE.

8. LIMITATION ON LIABILITY.

Anything herein to the contrary notwithstanding, Truven Health's aggregate liability to Customer from any and all causes relating to the subject matter of this Agreement, except for a violation of Truven Health's confidentiality obligations under 5.c. above,

a breach of protected health information by Truven Health, and any indemnity provisions contained in the State Term Schedule, shall be limited to general money damages in an amount not to exceed the fees paid by Customer under the applicable Service Schedule. IN NO EVENT SHALL TRUVEN HEALTH BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR SIMILAR DAMAGES EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. No action arising out of this Agreement may be brought by Customer more than two (2) years after the cause of action has accrued or two years after the termination of the applicable Service Schedule, whichever is earlier.

9. INDEMNIFICATION. See Section 7.4 of the State Term Schedule.

10. MISCELLANEOUS.

a. Captions Not Determinative. Titles and paragraph headings herein are for convenient reference and are not a substantive part of this Agreement. The State can only pay for damages as may be determined by a court of competent jurisdiction.

b. Exhibits. All Exhibits to this Agreement are incorporated in this Agreement by reference and made a part hereof. In the event of a conflict between the terms and conditions of the base Agreement and an Exhibit, those of the Exhibit shall govern.

c. Entire Agreement. See Section 10.2 of the State Term Schedule.

d. Modification. See Section 10.4 of the State Term Schedule.

e. Notices. See Section 10.7 of the State Term Schedule.

f. Governing Law. See Section 11.5 of the State Term Schedule.

h. Assignment. See Section 9.1 of the State Term Schedule.

i. Successors. See Section 10.3 of the State Term Schedule. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of Truven Health and Customer as it is upon Truven Health or Customer, as the case may be.

j. Force Majeure. See Section 3.8 of the State Term Schedule.

k. Survival. See Section 10.8 of the State Term Schedule. Notwithstanding anything contained in this Agreement to the contrary, the obligations created by Sections 5

(Ownership and Confidentiality), and 9 (Indemnification) shall survive any termination of this Agreement.

l. Independent Contractor. See Section 3.9 of the State Term Schedule.

n.

o. Compliance with Laws and Regulations. The American Recovery and Reinvestment Act, 42 USC 300jj et seq. ("ARRA"), enacted on February 17, 2009, requires federal agencies to establish rules and regulations regarding the privacy and security of various forms of health data including protected health information, electronic health records, and personal health records, among other matters. Truven Health will ensure that Truven Health's products and Services provided hereunder are compliant with ARRA and such related rules and regulations, to the extent applicable, as well as all other applicable state and federal laws, rules, regulations and orders ("Legal Requirements") as are in effect during the term hereof. Customer will also ensure that it will comply with applicable Legal Requirements in effect during the term hereof. As a result, the parties agree to amend the Agreement as necessary to comply with applicable Legal Requirements.

IN WITNESS WHEREOF, each party hereto has signed this Agreement as of the date first written above by its duly authorized representative.

Truven Health Analytics Inc.

By: _____

Name: _____

Title: _____
Duly Authorized

Date: _____

Customer

By: _____

Name: _____

Title: _____
Duly Authorized

Date: _____

Exhibit C

Third Party License Provisions and Agreements

American Medical Association

Pursuant to Truven Health Analytics Inc.'s ("Truven Health") CPT License Agreement for Domestic Distribution with The American Medical Association ("AMA"), as it may now or hereafter be amended, Truven Health is authorized to distribute and sublicense to Customer **Physicians' Current Procedural Terminology, Fourth Edition**, a coding system of nomenclature and five-digit codes for reporting of physician services, and/or ICD-9 (collectively, "CPT"), as part of the System, provided that Customer is bound by certain terms and conditions. Customer's rights to use the CPT terminate if Customer fails to comply with any of the material terms and conditions thereof.

The terms and conditions set forth in this Agreement that apply to the System generally also apply to the CPT.

The following are the additional terms and conditions that apply to the CPT:

1. The provision of an updated version of CPT in the System is dependent upon continuing contractual relations with the AMA.

2. The Agreement is nontransferable, nonexclusive, and for the sole purpose of internal use by Customer, and only within the United States.
3. The CPT license is granted in consideration for a license fee and other consideration.
4. Customer is prohibited from using CPT or information contained therein in any public electronic bulletin board, or public computer-based information system (including the Internet and World Wide Web unless otherwise expressly provided in the Agreement and subject to the terms thereof).
5. Customer is prohibited from publishing, translating, or transferring possession of the System or a copy or portion of it. Contractor agrees that it will permit the transfer of fully paid licenses in the event the State merges or consolidates state entities.
6. Customer is prohibited from creating derivative works based on CPT and selling, leasing or licensing it or otherwise making the System or any portion thereof available to any unauthorized party.
7. Customer may only make copies of the System for back up, disaster recovery, or archival purposes.
8. CPT is copyrighted by the AMA and all notices of proprietary rights, including trademark and copyright in CPT must appear on all permitted back-up or archival copies made by the user; any printout or other output from the Electronic Media that contains any portion of CPT (other than that which would constitute fair use, internal reports and claim forms for specific patients and external reports distributed outside of your entity containing less than twenty (20) CPT codes and/or descriptions) will display the following:

CPT only © 2011 American Medical Association. All Rights Reserved.

The year specified in the copyright notices must conform to future CPT updates.
9. Customer shall require that anyone who has authorized access to the System (including consultants and contractors who perform services for Customer) complies with the provisions of this Agreement.
10. Except as otherwise expressly provided in the Agreement, the System is provided “as is” without any warranty from or liability to Truven Health or the AMA, including, without limitation, liability for consequential or special damages or lost profits for sequence, accuracy or completeness of data, or that it will meet Customer’s requirements; Truven Health’s and AMA’s sole responsibility is to use reasonable efforts to provide corrections to or a replacement of the System; AMA disclaims any liability for any consequences due to use, misuse or interpretation of information contained or not contained in CPT.
11. The CPT license terminates in the event of default by Customer under the Agreement, subject to any applicable cure period.
12. In the event that a provision is determined to violate any law or is unenforceable the remainder of the Agreement shall remain in full force and effect.
13. This product includes CPT which is commercial technical data and/or computer data bases and/or commercial computer software and/or commercial computer software documentation, as applicable which were developed exclusively at private expense by the American Medical Association, 515 North State Street, Chicago, Illinois 60610. U.S. Government rights to use, modify, reproduce, release, perform, display, or disclose these technical data and/or computer data bases and/or computer software and/or computer software documentation are subject to the limited rights restrictions of DFARS 252.227-7015 (b) (2) (June 1995) and/or subject to the restrictions of DFARS 227.7202-1(a) (June 1995) and DFARS 227.7202-3(a) (June 1995), as applicable for U.S. Department of Defense procurements and the limited rights restrictions of FAR 52.227-14 (June 1987) and/or subject to the restricted rights provisions of FAR 52.227-14 (June 1987) and FAR 52.227-19 (June 1987), as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurements.

14. The responsibility for any content of any “*National Correct Coding Policy*” included in this product is with the Centers for Medicare and Medicaid Services, formerly known as the Health Care Financing Administration, and no endorsement by the AMA is intended or should be implied. The AMA disclaims responsibility for any consequences or liability attributable to or related to any use, nonuse or interpretation of information contained in this product.

Exhibit V HANDLING OF THE STATE'S DATA

1. State and Federal Data Privacy Requirements

Because the privacy of individuals' personally identifiable information (PII) and State Sensitive Information, generally information that is not subject to disclosures under Ohio Public Records law, (SSI) is a key element to maintaining the public's trust in working with the State, all systems and services shall be designed and shall function according to the following fair information practices principles. To the extent that personally identifiable information in the system is "protected health information" under the HIPAA Privacy Rule, these principles shall be implemented in alignment with the HIPAA Privacy Rule. To the extent that there is PII in the system that is not "protected health information" under HIPAA, these principles shall still be implemented and, when applicable, aligned to other law or regulation. All parties to this agreement specifically agree to comply with state and federal confidentiality and information disclosure laws, rules and regulations applicable to work associated with this RFP including but not limited to:

- * United States Code 42 USC 1320d through 1320d-8 (HIPAA);
- * Code of Federal Regulations, 42 CFR 431.300, 431.302, 431.305, 431.306, 435.945, 45 CFR 164.502 (e) and 164.504 (e);
- * Ohio Revised Code, ORC 173.20, 173.22, 1347.01 through 1347.99, 2305.24, 2305.251, 3701.243, 3701.028, 4123.27, 5101.26, 5101.27, 5101.572, 5112.21, and 5111.61; and
- * Corresponding Ohio Administrative Code Rules and Updates.
- * Systems and Services must support and comply with the State's security operational support model which is aligned to NIST 800-53 Revision 3.

1.1. Protection of State Data

Protection of State Data. To protect State Data as described in this agreement, in addition to its other duties regarding State Data, Contractor will:

- * Maintain in confidence any personally identifiable information ("PI") and State Sensitive Information ("SSI") it may obtain, maintain, process, or otherwise receive from or through the State in the course of the Agreement;
- * Use and permit its employees, officers, agents, and independent contractors to use any PI/SSI received from the State solely for those purposes expressly contemplated by the Agreement;
- * Not sell, rent, lease or disclose, or permit its employees, officers, agents, and independent contractors to sell, rent, lease, or disclose, any such PI/SSI to any third party, except as permitted under this Agreement or required by applicable law, regulation, or court order;
- * Take all commercially reasonable steps to (a) protect the confidentiality of PI/SSI received from the State and (b) establish and maintain physical, technical and administrative safeguards to prevent unauthorized access by third parties to PI/SSI received by Contractor from the State;
- * Give access to PI/SSI of the State only to those individual employees, officers, agents, and independent contractors who reasonably require access to such information in connection with the performance of Contractor's obligations under this Agreement;
- * Upon request by the State, promptly destroy or return to the State in a format designated by the State all PI/SSI received from the State;

- * Cooperate with any attempt by the State to monitor Contractor's compliance with the foregoing obligations as reasonably requested by the State from time to time. The State shall be responsible for all costs incurred by Contractor for compliance with this provision of this subsection;
- * Establish and maintain data security policies and procedures designed to ensure the following:
 - a) Security and confidentiality of PI/SSI;
 - b) Protection against anticipated threats or hazards to the security or integrity of PI/SSI; and
 - c) Protection against the unauthorized access or use of PI/SSI.

1.1.1. Disclosure

Disclosure to Third Parties. This Agreement shall not be deemed to prohibit disclosures in the following cases:

- * Required by applicable law, regulation, court order or subpoena; provided that, if the Contractor or any of its representatives are ordered or requested to disclose any information provided by the State, whether PI/SSI or otherwise, pursuant to court or administrative order, subpoena, summons, or other legal process, Contractor will promptly notify the State (unless prohibited from doing so by law, rule, regulation or court order) in order that the State may have the opportunity to seek a protective order or take other appropriate action. Contractor will also cooperate in the State's efforts to obtain a protective order or other reasonable assurance that confidential treatment will be accorded the information provided by the State. If, in the absence of a protective order, Contractor is compelled as a matter of law to disclose the information provided by the State, Contractor may disclose to the party compelling disclosure only the part of such information as is required by law to be disclosed (in which case, prior to such disclosure, Contractor will advise and consult with the State and its counsel as to such disclosure and the nature of wording of such disclosure) and Contractor will use commercially reasonable efforts to obtain confidential treatment therefore;
- * To State auditors or regulators;
- * To service providers and agents of either party as permitted by law, provided that such service providers and agents are subject to binding confidentiality obligations; or
- * To the professional advisors of either party, provided that such advisors are obligated to maintain the confidentiality of the information they receive.

1.2. Handling the State's Data

The Contractor must use due diligence to ensure computer and telecommunications systems and services involved in storing, using, or transmitting State Data are secure and to protect that data from unauthorized disclosure, modification, or destruction. "State Data" includes all data and information created by, created for, or related to the activities of the State and any information from, to, or related to all persons that conduct business or personal activities with the State. To accomplish this, the Contractor must adhere to the following principles:

- * Apply appropriate risk management techniques to balance the need for security measures against the sensitivity of the State Data.
- * Ensure that its internal security policies, plans, and procedures address the basic security elements of confidentiality, integrity, and availability.
- * Maintain plans and policies that include methods to protect against security and integrity threats and vulnerabilities, as well as detect and respond to those threats and vulnerabilities.
- * Maintain appropriate identification and authentication processes for information systems and services associated with State Data.
- * Maintain appropriate access control and authorization policies, plans, and procedures to protect system assets and other information resources associated with State Data.
- * Implement and manage security audit logging on information systems, including computers and network devices.

1.3. Contractor Access to State Networks Systems and Data

The Contractor must maintain a robust boundary security capacity that incorporates generally recognized system hardening techniques. This includes determining which ports and services are required to support access to systems that hold State Data, limiting access to only these points, and disable all others.

To do this, the Contractor must:

- * Use assets and techniques such as properly configured firewalls, a demilitarized zone for handling public traffic, host-to-host management, Internet protocol specification for source and destination, strong authentication, encryption, packet filtering, activity logging, and implementation of system security fixes and patches as they become available.
- * Use two-factor authentication to limit access to systems that contain particularly sensitive State Data, such as personally identifiable data.
- * Assume all State Data and information is confidential for State operations, and the Contractor's security policies, plans, and procedure for the handling, storage, backup, access, and, if appropriate, destruction of that data must be commensurate to this level of sensitivity unless the State instructs the Contractor otherwise in writing.
- * Employ appropriate intrusion and attack prevention and detection capabilities. Those capabilities must track unauthorized access and attempts to access the State's Data, as well as attacks on the Contractor's infrastructure associated with the State's data. Further, the Contractor must monitor and appropriately address information from its system tools used to prevent and detect unauthorized access to and attacks on the infrastructure associated with the State's Data.
- * Use appropriate measures to ensure that State Data is secure before transferring control of any systems or media on which State Data is stored. The method of securing the State Data must be appropriate to the situation and may include erasure, destruction, or encryption of the State Data before transfer of control. The transfer of any such system or media must be reasonably necessary for the performance of the Contractor's obligations under this Contract.
- * Have a business continuity plan in place that the Contractor tests and updates at least annually. The plan must address procedures for response to emergencies and other business interruptions. Part of the plan must address backing up and storing data at a location sufficiently remote from the facilities at which the Contractor maintains the State's Data in case of loss of that data at the primary site. The plan also must address the rapid restoration, relocation, or replacement of resources associated with the State's Data in the case of a disaster or other business interruption. The Contractor's business continuity plan must address short- and long-term restoration, relocation, or replacement of resources that will ensure the smooth continuation of operations related to the State's Data. Such resources may include, among others, communications, supplies, transportation, space, power and environmental controls, documentation, people, data, software, and hardware. The Contractor also must provide for reviewing, testing, and adjusting the plan on an annual basis.
- * Not allow the State's Data to be loaded onto portable computing devices or portable storage components or media unless necessary to perform its obligations under this Contract properly. Even then, the Contractor may permit such only if adequate security measures are in place to ensure the integrity and security of the State Data. Those measures must include a policy on physical security for such devices to minimize the risks of theft and unauthorized access that includes a prohibition against viewing sensitive or confidential data in public or common areas.
- * Ensure that portable computing devices must have anti-virus software, personal firewalls, and system password protection. In addition, the State's Data must be encrypted when stored on any portable computing or storage device or media or when transmitted from them across any data network.
- * Maintain an accurate inventory of all such devices and the individuals to whom they are assigned.

1.4. Portable Devices, Data Transfer and Media

Any encryption requirement identified in this Supplement means encryption that complies with National Institute of Standards Federal Information Processing Standard 140-2 as demonstrated by a valid FIPS certificate number. Any sensitive State Data transmitted over a network, or taken off site via removable

media must be encrypted pursuant to the State's Data encryption standard ITS-SEC-01 Data Encryption and Cryptography.

The Contractor must have reporting requirements for lost or stolen portable computing devices authorized for use with State Data and must report any loss or theft of such to the State in writing as quickly as reasonably possible. The Contractor also must maintain an incident response capability for all security breaches involving State Data whether involving mobile devices or media or not. The Contractor must detail this capability in a written policy that defines procedures for how the Contractor will detect, evaluate, and respond to adverse events that may indicate a breach or attempt to attack or access State Data or the infrastructure associated with State Data.

To the extent the State requires the Contractor to adhere to specific processes or procedures in addition to those set forth above in order for the Contractor to comply with the managed services principles enumerated herein, those processes or procedures are set forth in this agreement.

1.5. Limited Use; Survival of Obligations.

Contractor may use PI/SSI only as necessary for Contractor's performance under or pursuant to rights granted in this Agreement and for no other purpose. Contractor's limited right to use PI/SSI expires upon conclusion, non-renewal or termination of this Agreement for any reason. Contractor's obligations of confidentiality and non-disclosure survive termination or expiration for any reason of this Agreement.

1.6. Disposal of PI/SSI.

Upon expiration of Contractor's limited right to use PI/SSI, Contractor must return all physical embodiments to the State or, with the State's permission; Contractor may destroy PI/SSI. Upon the State's request, Contractor shall provide written certification to the State that Contractor has returned, or destroyed, all such PI/SSI in Contractor's possession.

1.7. Remedies

If Contractor or any of its representatives or agents breaches the covenants set forth in these provisions, irreparable injury may result to the State or third parties entrusting PI/SSI to the State. Therefore, the State's remedies at law may be inadequate and the State shall be entitled to seek an injunction to restrain any continuing breach. Notwithstanding any limitation on Contractor's liability, the State shall further be entitled to any other rights or remedies that it may have in law or in equity.

1.8. Prohibition on Off-Shore and Unapproved Access

The Contractor shall comply in all respects with U.S. statutes, regulations, and administrative requirements regarding its relationships with non-U.S. governmental and quasi-governmental entities including, but not limited to the export control regulations of the International Traffic in Arms Regulations ("ITAR") and the Export Administration Act ("EAA"); the anti-boycott and embargo regulations and guidelines issued under the EAA, and the regulations of the U.S. Department of the Treasury, Office of Foreign Assets Control, HIPPA Privacy Rules and other conventions as described and required in this Supplement.

The Contractor will provide resources for the work described herein with natural persons who are lawful permanent residents as defined in 8 U.S.C. 1101 (a)(20) or who are protected individuals as defined by 8 U.S.C. 1324b(a)(3). It also means any corporation, business association, partnership, society, trust, or any other entity, organization or group that is incorporated to do business in the U.S. It also includes any governmental (federal, state, local), entity.

The State specifically excludes sending, taking or making available remotely (directly or indirectly), any State information including data, software, code, intellectual property, designs and specifications, system logs, system data, personal or identifying information and related materials out of the United States in any manner, except by mere travel outside of the U.S. by a person whose personal knowledge includes technical data; or transferring registration, control, or ownership to a foreign person, whether in the U.S. or abroad, or disclosing (including oral or visual disclosure) or transferring in the United States any State article to an embassy, any agency or subdivision of a foreign government (e.g., diplomatic missions); or disclosing (including oral or visual disclosure) or transferring data to a foreign person, whether in the U.S. or abroad.

It is the responsibility of all individuals working at the State to understand and comply with the policy set forth in this document as it pertains to end-use export controls regarding State restricted information.

Where the Contractor is handling confidential employee or citizen data associated with Human Resources data, the Contractor will comply with data handling privacy requirements associated with HIPAA and as further defined by The United States Department of Health and Human Services Privacy Requirements and outlined in <http://www.hhs.gov/ocr/privacysummary.pdf>

It is the responsibility of all Contractor individuals working at the State to understand and comply with the policy set forth in this document as it pertains to end-use export controls regarding State restricted information.

Where the Contractor is handling confidential or sensitive State, employee, citizen or Ohio Business data associated with State data, the Contractor will comply with data handling privacy requirements associated with the data HIPAA and as further defined by The United States Department of Health and Human Services Privacy Requirements and outlined in <http://www.hhs.gov/ocr/privacysummary.pdf>.

1.9. Background Check of Contractor Personnel

Contractor agrees that (1) it will conduct 3rd party criminal background checks on Contractor personnel who will perform Sensitive Services (as defined below), and (2) no Ineligible Personnel will perform Sensitive Services under this Agreement. "Ineligible Personnel" means any person who (a) has been convicted at any time of any criminal offense involving dishonesty, a breach of trust, or money laundering, or who has entered into a pre-trial diversion or similar program in connection with a prosecution for such offense, (b) is named by the Office of Foreign Asset Control (OFAC) as a Specially Designated National, or (b) has been convicted of a felony.

"Sensitive Services" means those services that (i) require access to Customer/Consumer Information, (ii) relate to the State's computer networks, information systems, databases or secure facilities under circumstances that would permit modifications to such systems, or (iii) involve unsupervised access to secure facilities ("Sensitive Services").

Upon request, Contractor will provide written evidence that all of Contractor's personnel providing Sensitive Services have undergone a criminal background check and are eligible to provide Sensitive Services. In the event that Contractor does not comply with the terms of this section, the State may, in its sole and absolute discretion, terminate this Contract immediately without further liability.

2. Contractor Responsibilities Related to Reporting of Concerns, Issues and Security/Privacy Issues

2.1. General

If over the course of the agreement a security or privacy issue arises, whether detected by the State, a State auditor or the Contractor, that was not existing within an in-scope environment or service prior to the commencement of any Contracted service associated with this agreement, the Contractor must:

- * notify the State of the issue or acknowledge receipt of the issue within two (2) hours;
- * within forty-eight (48) hours from the initial detection or communication of the issue from the State, present an potential exposure or issue assessment document to the State Account Representative and the State Chief Information Security Officer with a high level assessment as to resolution actions and a plan;
- * within four (4) calendar days, and upon direction from the State, implement to the extent commercially reasonable measures to minimize the State's exposure to security or privacy until such time as the issue is resolved; and
- * upon approval from the State implement a permanent repair to the identified issue at the Contractor's cost; and

2.2. Actual or Attempted Access or Disclosure

If the Contractor determines that there is any actual, attempted or suspected theft of, accidental disclosure of, loss of, or inability to account for any PI/SSI by Contractor or any of its subcontractors (collectively "Disclosure") and/or any unauthorized intrusions into Contractor's or any of its subcontractor's facilities or secure systems (collectively "Intrusion"), Contractor must immediately:

- * Notify the State within two (2) hours of the Contractor becoming aware of the unauthorized Disclosure or Intrusion;
- * Investigate and determine if an Intrusion and/or Disclosure has occurred;
- * Fully cooperate with the State in estimating the effect of the Disclosure or Intrusion's effect on the State and fully cooperate to mitigate the consequences of the Disclosure or Intrusion;
- * Specify corrective action to be taken; and
- * Take corrective action to prevent further Disclosure and/or Intrusion.

2.3. Unapproved Disclosures and Intrusions: Contractor Responsibilities

Contractor must, as soon as is reasonably practicable, make a report to the State including details of the Disclosure and/or Intrusion and the corrective action Contractor has taken to prevent further Disclosure and/or Intrusion. Contractor must, in the case of a Disclosure cooperate fully with the State to notify the effected persons as to the fact of and the circumstances of the Disclosure of the PI/SSI. Additionally, Contractor must cooperate fully with all government regulatory agencies and/or law enforcement agencies having jurisdiction to investigate a Disclosure and/or any known or suspected criminal activity.

- * Where the Contractor identifies a potential issue in maintaining an "as provided" State infrastructure element with the more stringent of an Agency level security policy (which may be Federally mandated or otherwise required by law), identifying to Agencies the nature of the issue, and if possible, potential remedies for consideration by the State agency.
- * If over the course of delivering services to the State under this Statement of Work for in-scope environments the Contractor becomes aware of an issue, or a potential issue that was not detected by security and privacy teams the Contractor is to notify the State within two (2) hour. This notification shall not minimize the more stringent Service Level Agreements pertaining to security scans and breaches contained herein, which due to the nature of an active breach shall take precedence over this notification. Dependent on the nature of the issue the State may elect to contract with the Contractor under mutually agreeable terms for those specific resolution services at that time or elect to address the issue independent of the Contractor.

2.4. Security Breach Reporting and Indemnification Requirements

- * In case of an actual security breach that may have compromised State Data, the Contractor must notify the State in writing of the breach within two (2) hours of the Contractor becoming aware of the breach and fully cooperate with the State to mitigate the consequences of such a breach. This includes any use or disclosure of the State data that is inconsistent with the terms of this Contract and of which the Contractor becomes aware, including but not limited to, any discovery of a use or disclosure that is not consistent with this Contract by an employee, agent, or subcontractor of the Contractor.

- * The Contractor must give the State full access to the details of the breach and assist the State in making any notifications to potentially affected people and organizations that the State deems are necessary or appropriate. The Contractor must document all such incidents, including its response to them, and make that documentation available to the State on request.
- * In addition to any other liability under this Contract related to the Contractor's improper disclosure of State data, and regardless of any limitation on liability of any kind in this Contract, the Contractor will be responsible for acquiring one year's identity theft protection service on behalf of any individual or entity whose personally identifiable information is compromised while it is in the Contractor's possession. Such identity theft protection must provide coverage from all three major credit reporting agencies and provide immediate notice through phone or email of attempts to access the individuals' credit history through those services.

EXHIBIT VI

Business Associate Agreement Template

BUSINESS ASSOCIATE AGREEMENT

THIS AGREEMENT is entered into this ____ day of _____, _____, by and between [Name of Business Associate] (referred to as "Business Associate") and the [Agency and Department Name] (referred to as "Agency"), [define term/duration of the agreement. Example: "for length of underlying agreement."]

WHEREAS, Agency will make available and/or transfer to Business Associate confidential, personally identifiable health information in conjunction with [describe function to be performed by BA on behalf of CEI] and

WHEREAS, such information may be used or disclosed only in accordance with the privacy regulations [45 CFR §§ 164.502(e); 164.504(e)] and the security regulations [45 CFR §§ 164.308; 164.314] issued pursuant to the Health Insurance Portability and Accountability Act [42 USC §§ 1320 - 1320d-8], relevant amendments effected by the American Recovery and Reinvestment Act of 2009 [Pub. L. 111-5, §§ 13400 *et seq.*] and the terms of this Agreement, or more stringent provisions of the law of the State of Ohio;

NOW THEREFORE, the parties agree as follows:

1. Definitions.

1.1. Protected Health Information ("PHI") means individually identifiable information relating to the past, present or future physical or mental health or condition of an individual, provision of health care to an individual, or the past, present or future payment for health care provided to an individual, as more fully defined in 45 CFR § 164.501, and any amendments thereto, received from or on behalf of the Agency.

1.2. Unsecured PHI is PHI that is not rendered unusable, unreadable or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of the U.S. Department of Health and Human Services.

1.3. Business Associate shall have the meaning given to such term in 45 CFR § 160.103.

1.4. Individual means the person who is the subject of the PHI, as defined in 45 CFR § 160.103, and includes the person's personal representative.

1.5. Privacy Rule means the Standards for Privacy of Individually Identifiable Health Information found at 45 CFR Parts 160 and Part 164, Subparts A and E, and any amendments thereto.

2. Copy of Privacy Practices. If applicable, Agency shall provide to the Business Associate a copy of the current Notice of Privacy Practices and any relevant information on changes to or agreed upon restrictions relating to legal permissions for the use or disclosure of PHI.

3. Permitted Use. The Business Associate agrees that it shall not receive, create, use or disclose PHI except as follows:

3.1. Covered Functions. See Exhibit II of the State Term Schedule.

3.2. Disclosure Restrictions. If necessary for the proper management and administration of the Business Associate or to carry out legal responsibilities of the Business Associate. PHI may only be disclosed to another person/entity for such purposes if:

- 3.2.1. Disclosure is required by law; or
- 3.2.2. Where the Business Associate obtains reasonable assurances from the person to whom disclosure is made that the PHI released will be held confidentially and only may be used or further disclosed as required by law or for the purposes of the disclosure; and person/entity agrees to notify Business Associate of any breaches of confidentiality in a timely fashion and in writing. Documentation needs to follow the same standards and time frames as item 6 below.

3.3. Data Aggregation. To permit the Business Associate to provide data aggregation services relating to the health care operations of Agency. Aggregation is defined as combining PHI received from multiple Business Associates to produce data analysis that relates to the operation of the respective Covered Entities.

- 4. **Minimize Use of PHI.** The Business Associate agrees that it will not request, use or release more than the minimum necessary amount of PHI to accomplish the purpose of the use, disclosure or request.
- 5. **Business Associate Safeguards.** The Associate will use appropriate safeguards to prevent any unauthorized use or disclosure of PHI and shall implement the administrative, physical and technical safeguards that reasonably protect the confidentiality, integrity and availability of the PHI that it creates, receives, maintains or transmits on behalf of the Agency. The Associate will use all appropriate safeguards under 45 CFR 164 Subpart C including those identified as addressable. The Associate will comply with 74 FR 19006 Guidance Specifying the Technologies and Methodologies That Render PHI Unusable, Unreadable, or Indecipherable to Unauthorized Individuals for Purposes of the Breach Notification Requirements under Section 13402 of Title XIII. With regard to electronic PHI not covered by the Guidance published at 74 FR 19006, the Associate will protect electronic PHI at rest and in transit through encryption that complies with State of Ohio IT Standard, ITS-SEC-01 Data Encryption and Cryptography.
- 6. **Unauthorized Disclosure and Incident Reporting and Remediation and Privacy and Security Breach Notification.**

6.1. Incident Reporting.

6.1.1. Business Associate shall report to Covered Entity the following:

- 6.1.1.1. Any use or disclosure of PHI which is not in compliance with the terms of this Agreement or applicable law of which it becomes aware; and

Any security incident of which it becomes aware. For purposes of this Agreement, "security incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. Provided, however, that the parties agree that Business Associate need not report to Covered Entity the ongoing existence of common, persistent low risk security threats, including without limitation "pings" and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, to the extent such activity does not result in unauthorized access to, or use or disclosure of, Covered Entity's PHI.

6.1.1.2.

- 6.1.2. Within 24 hours of discovery of a suspected reportable incident as described in 6.1.1 above, Business Associate shall notify Covered Entity of the existence and nature of the incident as understood at that time. Business Associate shall immediately investigate the incident and within 72 hours of discovery shall provide Covered Entity, in writing, a report describing the results of Business Associate's investigation, including:

- 6.1.2.1. What data elements were involved, the extent of the data involved in the incident, and the identification of affected individuals, if applicable;

- 6.1.2.2. A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI, or to have been responsible for the incident;
- 6.1.2.3. A description of where the PHI is believed to have been improperly transmitted, sent, or utilized, if applicable;
- 6.1.2.4. A description of the probable causes of the incident;
- 6.1.2.5. A description of the proposed plan for preventing similar future incidents, including ongoing risk remediation plan approval; and
- 6.1.2.6. Whether the Associate believes any federal or state laws requiring notifications to individuals are triggered.

6.1.3. Reporting and other communications made to the Covered Entity under this section must be made to the agency's HIPAA privacy officer at:

- [office name]
- [phone]
- [email address]
- [address]

6.2. Business Associate Mitigation. In addition, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement, and report its mitigation activity back to the agency. Business Associate shall preserve evidence.

6.3. Coordination. Business Associate will coordinate with the agency to determine additional, specific actions that will be required of the Business Associate for mitigation of the Breach, which may include notification to the individuals, entities or other authorities. Notifications, if any, will be made at the direction of the agency.

6.4. Incident costs. Business Associate shall bear all reasonable costs associated with the incident. This may include, but not be limited to, costs associated with notifying affected individuals. It also may include the cost of investigation, remediation, and assistance to individuals including services such as a standard level of identity-theft protection service that includes credit-monitoring such as AllClear ID's standard service with credit monitoring or other comparable service available to Ohio agencies under state term schedules.

7. Agency Indemnification. Business Associate hereby indemnifies Agency and agrees to hold Agency harmless from and against any and all losses, expense, damage or injury that Agency may sustain as a result of, or arising out of, Business Associate, or its agent's or subcontractor's, unauthorized use or disclosure of PHI.

8. Business Associate Insurance. The Business Associate shall carry comprehensive general liability insurance ; See Section 3 of the State Term Schedule.[]

9. Subcontractor Obligations. Business Associate shall ensure that all of its subcontractors and agents are bound, in writing, by the same restrictions and obligations contained herein, including but not limited to the obligation to implement reasonable and appropriate safeguards to protect the information, whenever the subcontractor creates, receives, maintains, or transmits PHI on behalf of the Business Associate. .

10. Access to PHI. Business Associate shall make all PHI and related information maintained by Business Associate or its agents or subcontractors available as soon as practicable following a request for PHI, but within fifteen (15) days, to the extent necessary to fulfill the following obligations:

10.1. Inspection and Copying. Make the PHI maintained by Associate or its agents or subcontractors in Designated Record Sets available to Agency for inspection and copying to

enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.524 and consistent with Section 13405 of the HITECH Act.

10.2. Accounting. To account for disclosures of PHI in accordance with the provisions of the Privacy Rule, including, but not limited to 45 CFR § 164.528 and the HITECH Act; and shall make all PHI in its possession available to Agency as soon as practicable following a request for PHI, but within fifteen (15) days, to fulfill Agency's obligation to amend PHI and related information in accordance with 45 CFR § 164.526, and shall, as directed by Agency, incorporate any amendments or related statements into the information held by the Business Associate and any subcontractors or agents.

11. Compliance and HHS Access. The Business Associate shall make available to the agency and to the Secretary of the U.S. Department of Health and Human Services any and all internal practices, documentation, books, and records related to the use and disclosure of PHI received from the agency, or created or received by the Business Associate on behalf of the agency. Such access is for the purpose of determining the agency's compliance with HIPAA, regulations promulgated by the United States Department of Health and Human Services, and any amendment thereto. Any non-compliance by the Business Associate with the terms of this Agreement or the privacy and security regulations shall be a breach of this Agreement if the Business Associate knew of the breach and failed to take immediate and reasonable steps to cure the non-compliance. The Business Associate agrees that Agency has the right to immediately terminate this Agreement and seek relief, if Agency determines that the Business Associate has violated a material term of the Agreement.

12. Ownership and Destruction of Information. The PHI and any related information created or received from or on behalf of Agency is and shall remain the property of the Agency. The Business Associate agrees that it acquires no title in or rights to the information except as otherwise agreed to by the parties. Upon termination of this Agreement, Business Associate agrees, at the option of Agency, to return or securely destroy all PHI created or received from or on behalf of Agency following 74 FR 19006 Guidance Specifying the Technologies and Methodologies That Render PHI Unusable, Unreadable, or Indecipherable to Unauthorized Individuals for Purposes of the Breach Notification Requirements under Section 13402 of Title XIII. The Business Associate agrees that it will not retain any copies of PHI except as required by law. If PHI is destroyed, the Business Associate agrees to provide Agency with appropriate documentation or certification evidencing such destruction. If return or destruction of all PHI and all copies of PHI is not feasible, the Business Associate agrees to extend the protections of this Agreement to such information for as long as it is maintained and to limit further uses and disclosures to those which make return or destruction infeasible. Termination of this Agreement shall not affect any of its provisions that, by wording or nature, are intended to remain effective and to continue in operation.

13. Termination. Notwithstanding any term or condition in the underlying agreement, the State may terminate the underlying agreement if at any time it determines that the Associate has violated a material term of this Business Associate Agreement. In the alternative, the State may, at its sole discretion, take any action provided in the underlying agreement, may suspend the Agreement, or may allow Associate a reasonable period of time to cure before termination, when such action is determined to be in the State's best interest. Upon suspension of the agreement, the State may, at its sole discretion, require the Associate to comply with the requirements of the above Ownership and Destruction of Information paragraph, in the same manner as though the agreement had been terminated. This paragraph shall in no way alter, amend, limit or change the terms and conditions in the underlying agreement as they relate to performance of the underlying agreement, and shall solely relate to violation of the terms of the Business Associate Agreement.

Termination. Any non-compliance by the Business Associate with the terms of this Agreement, or of the privacy and security regulations, shall be a breach of this Agreement if the Business Associate knew of the breach and failed to take immediate and reasonable steps to cure the non-compliance. The Business Associate agrees that the State has the right to immediately terminate this agreement, and seek relief, if the State determines that the Business Associate has violated a material term of the agreement.

- 14. Survivorship.** The obligations to safeguard the confidentiality, privacy and security of PHI imposed herein shall survive the termination of this Agreement.
- 15. Injunctive Relief.** Notwithstanding any rights or remedies under this Agreement or provided by law, Agency retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of PHI by the Business Associate, any of its subcontractors or agents, or any third party who has received PHI from the Business Associate.
- 16. Binding Effect.** Subject to the limitations on assignment provided elsewhere in this Agreement, the Agreement shall be binding on the parties and their successors, but neither party may assign the Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld. This Agreement will be binding upon and inure to the benefit of the respective successors and assigns of the State and the Associate.
- 17. Ambiguities, Strict Performance and Priorities.** Any ambiguities in this Agreement shall be resolved in favor of an interpretation that promotes compliance with HIPAA, regulations promulgated thereunder and HITECH. Any conflicts in the security and privacy terms and conditions of this agreement with those in the underlying agreement shall be interpreted to favor of the terms and conditions that promote greater degree of security and privacy. The parties agree that any modifications to those laws shall modify the obligations of the parties hereunder without the need for formal amendment of the Agreement. Any other amendments to this Agreement shall not be effective without the written agreement of both parties. This Agreement will be construed in accordance with the plain meaning of its language and neither for nor against the drafting party. The headings in this Agreement are for convenience only and will not affect the interpretation of any of the Agreement terms and conditions. If at any time either party fails to demand strict performance by the other party of any of the terms of this Agreement, such failure will not be construed as a waiver of any such term, and either party may at any time demand strict and complete performance by the other party.
- 18. Notice.** For any notice under this Agreement to be effective the notice must be made in writing and sent to the address of the appropriate contact provided in the Agreement.
- 19.** Notwithstanding section 6 of this Agreement, any notice to the other party pursuant to this Agreement shall be deemed provided if sent by first class United States mail, postage prepaid, as follows:

To Agency:

[Agency Site/Department Name]
[Agency Site/Department Address]
[Agency Site/Department Phone]

To Business Associate:

[Business Associate Name]
[Business Associate Address]
[Business Associate Phone]

IN WITNESS WHEREOF, the parties hereto agree to the foregoing,

[Business Associate Name Here]

For Ohio Dep. [Agency Name]

Representative

Representative

Title

Title

Date: _____

Date: _____