

To: Robert Blair, Director
Ohio Department of Administrative Services

From: Jim Sutton, Analyst
DAS Enterprise IT Contracting

Re: CTERA State Term Schedule Contract Offer Award

Date: October 25, 2016

Attached are two vendor signed copies of their State Term Schedule contract offer which has been negotiated and agreed upon by DAS Legal and EITC. The vendor CTERA has provided a signed Executive Order, W9 tax information, as well as a signed vendor information form. This State Term Schedule was at the request of DAS with an unknown spend within the next (16) months. By signing the contract documents, you will be awarding a new STS contract to the vendor.

MBE Information: *This vendor is not an MBE and does not have any MBE dealers.*

Procurement Authority: State Term Schedule based on Controlling Board Authority.

Direct questions to Jim Sutton at 614-644-8350 or by email at Jim.Sutton@das.ohio.gov.

Thank you.

 DAS Associate Counsel	<u>10-25-16</u> Date
 Enterprise IT Contracting Supervisor	<u>10-26-16</u> Date
 Enterprise IT Contracting Administrator	<u>10-26-16</u> Date
 Assistant Director / State Chief Information Officer	<u>10/29/16</u> Date

STATE TERM CONTRACT

THIS CONTRACT ("Contract") is between the State of Ohio ("State"), through its Department of Administrative Services, Office of Information Technology, at 30 East Broad Street, 40th Floor, Columbus, Ohio, 43215 and CTERA Networks Ltd. ("Contractor"), with offices at 25 Efal St., Petach Tikvah, Israel, 49511-25.

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. If the manufacturer has no GSA Multiple Award Schedule or SmartBuy contract, 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, 2017. Termination or expiration of this Contract will not limit the Contractor's continuing obligations with respect to Deliverables that the State paid for before termination or limit the State's rights in such.
- 1.2 **CONTRACT RENEWAL.** In the State's sole discretion, it may renew this Contract for a period of one month at the end of each biennium during which this Contract remains in place. Any further renewals will be only by written agreement between the State and the Contractor. Such renewals may be for any number of times for any period not to exceed the time remaining in the State's then-current biennium.

2 - PRICING AND PAYMENT

- 2.1 **CERTIFICATION OF ACCURACY.** By checking one of the following three items, the Contractor certifies that the Contractor's prices under this Contract are:
- The prices at which the Contractor currently offers each product and service to the US Government under the GSA's Multiple Award Schedule program;
 - The prices at which the Contractor currently offers each product and service to the US Government under the GSA's SmartBuy program; or
 - √ The best prices at which the Contractor has generally offered each product and service to its similarly situated, most favored customers in the United States contracting for similar volumes under similar terms and conditions, 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 most favored customer pricing, the State will be entitled to a price decrease any time the Contractor generally sells a product or a service to any of its similarly situated customers in the United States, contracting for similar volumes under similar terms and conditions, for less than the price agreed to between the State and the Contractor under this Contract. Any time the Contractor generally sells a product or provides a service to any similarly situated customer contracting for similar volumes under the same terms and conditions, 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 biannually 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 pricelist.

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 ARM with less than 2500 DMIPS (ARM processor is a Reduced Instruction Set Computer (RISC) processor) or Intel platform with (Cores x GHz) no less than 6 GHz total. 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 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;
 - (f) If the invoice is for a lease, the Contractor also must include the payment number (e.g., 1 of 36); and
 - (g) For time and material services, the invoice must reflect labor hours actually worked and if applicable supplies used;

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 and that have not already been fulfilled by Contractor and accepted by the State, 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 that have not already been fulfilled by Contractor and accepted by the State.
- 2.8 OBM CERTIFICATION.** This Contract is subject to Code § 126.07. Any purchase 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. No purchase orders will be issued under this agreement until the appropriate certification is granted.
- 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. No purchase orders will be issued under this agreement until the appropriate authorization is obtained or after such authorization is withdrawn.
- 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 Rule126-1-02 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.

Section 125.081 of the Ohio Revised Code requires state agencies to set-aside purchases for MBE and Executive Order 2008-13S encourages use of EDGE businesses. Therefore the state encourages the Contractor to purchase goods and services from Ohio certified Minority Business Enterprises (MBE) and Encouraging Diversity, Growth and Equity (EDGE) vendors.

- 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 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, provided there will be no more than two (2) audits per each calendar year.

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. 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
- \$ 5,000 Medical Payments

The Contractor shall, for each policy required by this Contract, provide the State with 30-days prior written notice of cancellation, material change, or non-renewal, except a ten (10) day notice for non-payment of premium. And the Contractor's Commercial General Liability must be primary over any other insurance coverage.

- c. Commercial Automobile Liability (Non-owned & Hired auto liability) insurance with a combined single limit of \$500,000.
- d. Professional Liability insurance covering all staff with a 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 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.

3.9 **Excusable Delay.** Neither party will be liable for any delay in its performance that arises from causes beyond its 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. In the event of any such excusable delay, the date of performance or of 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 is taking to remove the cause. The delayed party must not rely on a claim of excusable delay to avoid liability for a delay if the delayed party has not taken commercially reasonable steps to mitigate or avoid the delay. Things that are controllable by the Contractor's subcontractors will be considered controllable by the Contractor, except for third-party manufacturers supplying commercial items and over whom the Contractor has no legal control.

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.** Subject to Contractor's responsibility to install or setup, 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 either replace the noncomplying Deliverable with a complying Deliverable or correct the problems listed in the letter, or, if neither of the foregoing is commercially feasible, refund to the State any purchase price previously paid therefor. The foregoing remedies constitute Contractor's sole liability and the State's sole remedy, for any noncomplying Deliverables. 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 (by repair or replacement) 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, but solely to the extent necessary for the State's use of the applicable Deliverables in accordance with this Contract.

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, but solely to the extent necessary for the State's use of the applicable Deliverables in accordance with this Contract.

Commercial Software licensed to the State under this Contract shall be subject to the scope of license and other terms and conditions set forth in Contractor's End User License Agreement attached hereto as Exhibit II (the "EULA"), provided that in the event of any conflict between the State's rights set forth in the EULA and the rights set forth in the next paragraph, the provisions of the next paragraph shall prevail.

For Commercial Software, the State will have, during the term of the applicable license, the following 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. *Reserved.*

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

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

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

The disclosure of the Confidential Information of the Disclosing Party in a manner inconsistent with the terms of this provision may cause the Disclosing Party irreparable damage for which remedies other than injunctive relief may be inadequate, and each Receiving Party agrees that in the event of a breach of the Receiving Party's obligations hereunder, the Disclosing Party will be entitled to temporary and permanent injunctive relief to enforce the provisions of this Contract without the necessity of proving actual damages. However, provision does not diminish or alter any right to claim and recover damages.

5.4 CONFIDENTIALITY AGREEMENTS.

When the Contractor performs services under this Contract that require the Contractor's and its subcontractors' personnel to access facilities, data, or systems that the State in its sole discretion deems sensitive, the State may require the Contractor's and its subcontractors' personnel with such access to sign an individual confidential agreement and policy acknowledgements, and have a background check performed before accessing those facilities, data, or

systems. Each State agency, board, and commission may require a different confidentiality agreement or acknowledgement, and the Contractor's and its subcontractors' personnel may be required to sign a different confidentiality agreement or acknowledgement for each agency. The Contractor must immediately replace any of its or its subcontractors' personnel who refuse to sign a required confidentiality agreement or acknowledgment or have a background check performed.

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

6 – TRANSACTION REPORTING

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

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

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

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

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

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

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

Department of Administrative Services
L-3686

Columbus, OH 43260-3686

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

7 - WARRANTIES AND LIABILITIES

- 7.1 **WARRANTIES.** The Contractor warrants that the recommendations, guidance, and performance of the Contractor under this Contract will:
- (a) Be in accordance with the sound professional standards and the requirements of this Contract and without any material defects;
 - (b) Not knowingly infringe on the intellectual property rights of any third party;
 - (c) Be the work solely of the Contractor, unless otherwise provided in this Contract; and

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

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

If any work of the Contractor or any Deliverable fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor must correct such failure with all due speed, not to exceed 30 days, or refund a prorated portion of the amount of the compensation paid for the Deliverable based on a five-year useful life. The Contractor also must indemnify the State for any direct damages and any claims by third parties based on any breach of these warranties. In the event of any such claims by third parties, the State will (1) give the Contractor prompt written notice of any such claim; (2) allow Contractor to solely control the defense or settlement of such claim, upon consultation with and approval of the Office of the State's Attorney General; and (3) provide Contractor with full information, assistance and cooperation and all evidence in the State's possession in the defense and/or settlement of such claim.

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 all material respects in the manner described in the relevant software documentation;
- (b) The Contractor will deliver and maintain relevant and complete software documentation, commentary, and source code;
- (c) 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
- (d) The software and all maintenance will be provided in a professional, timely, and efficient manner and in accordance with the applicable SOW.

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 all material respects in the manner described in its documentation;
- (b) Supply technical bulletins and updated user guides;
- (c) Supply the State with all available updates, improvements, enhancements, and modifications to the Commercial Software and documentation;
- (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.

As the State's entire remedy and Contractor's sole and exclusive liability for any failure by a Commercial Software to conform to any of these warranties, Contractor shall provide the State, during the applicable warranty period described in the next paragraph, with Contractor's Cloud Care support program attached in Exhibit III, at no cost to the State.

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, when required to be delivered in accordance with the terms hereof, 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, under normal use and care in accordance with Contractor's instructions and documentation, will perform substantially in accordance with its user manuals, technical materials, and related writings published by Contractor with respect to such Equipment, and that such Equipment will achieve substantially 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, or that is damaged or rendered unserviceable for one or more of the following: (1) improper or inadequate maintenance by anyone other than Contractor or Contractor's authorized agents, (2) software or interfacing supplied by anyone other than Contractor, (3) modifications, alterations or additions to the Equipment by personnel not certified by Contractor or Contractor's authorized agents to perform such acts, or other unauthorized repair, installation or opening or other causes beyond Contractor's control, (4) unreasonable refusal to agree with engineering change notice programs, (5) negligence by any person other than Contractor or Contractor's authorized agents, (6) misuse, abuse, accident, electrical irregularity, theft, vandalism, fire, water or other peril, (7) damage caused by containment and/or operation outside the environmental specifications for the Equipment, (8) alteration or connection of the Equipment to other systems, equipment or devices (other than those specifically approved by Contractor) without the prior approval of Contractor, or (9) any use that is inconsistent with the user manual supplied with the Equipment. 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 published product specifications, 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, if neither repair nor replacement is reasonably feasible, 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. Any Equipment may only be returned to Contractor with Contractor's prior written approval. Any such approval shall reference a returned material authorization number issued by an authorized Contractor service representative. The Contractor will be responsible for all shipping costs associate with fixing, replacing, or returning any defective equipment, provided, however, that if any allegedly defective Equipment item is not covered by the terms of the above warranties or a warranty claim is made after the applicable warranty period, the cost of the repair by Contractor, including all shipping expenses, shall be reimbursed by the State. The aforementioned constitutes the State's sole and exclusive remedy, and Contractor's sole and exclusive liability, for any failure by any Equipment to meet the above warranties.

- 7.3A TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR THE LIMITED SOFTWARE AND HARDWARE WARRANTIES MADE HEREUNDER, CONTRACTOR MAKES NO OTHER WARRANTIES WITH RESPECT TO ANY DELIVERABLES OR SERVICES AND DISCLAIMS ALL STATUTORY OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE AND ANY WARRANTIES OF NONINFRINGEMENT, NOR DOES CONTRACTOR WARRANT THAT ANY SOFTWARE PROVIDED HEREUNDER WILL BE UNINTERRUPTED OR ERROR FREE.**

- 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 brought by a third party 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, that is finally awarded against the State. This obligation of indemnification will not apply where: (1) the State has modified the Deliverable and the claim of infringement is based on the modification; (2) the combination of the Deliverable with other software, hardware and/or other product not supplied by or on behalf of Contractor, where such claim would not have arisen from the use of the Deliverable standing alone; (3) compliance by Contractor with the State's specifications; (4) the use of the Deliverable in a manner for which they were not designed or authorized for use; (5) where the State continues an activity where such claim would not have arisen but for such activity after having received and had a commercially reasonable time to install modifications from Contractor that would have completely avoided the activity. The State will (1) give the Contractor prompt written notice of any such claim; (2) allow Contractor to solely control the defense or settlement of such claim, upon consultation with and approval of the Office of the State's Attorney General; and (3) provide Contractor with full information, assistance and cooperation and all evidence in the State's possession in the defense and/or settlement of such claim. If a successful claim of

infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed or is likely to be filed, 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 a functionally 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.

The foregoing states the entire liability of Contractor and the State's exclusive remedy for any claim that the Deliverables under this Contract infringe any copyright, patent, trade secret, or other intellectual property rights.

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; PROVIDED HOWEVER THAT NOTWITHSTANDING ANYTHING IN THIS CONTRACT TO THE CONTRARY OR THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITATION OF LIABILITY OR LIMITED REMEDY, THE ENTIRE AGGREGATE LIABILITY OF CONTRACTOR AND ITS EMPLOYEES, AGENTS, SUBCONTRACTORS AND/OR AFFILIATES, ARISING FROM OR RELATING TO THIS CONTRACT OR THE SUBJECT MATTER HEREOF, WHETHER TO THE STATE AND/OR TO ANY OTHER PARTY AND UNDER ANY LEGAL THEORY (WHETHER IN CONTRACT, TORT, INDEMNITY OR OTHERWISE), WILL NOT EXCEED: (I) TWICE THE AMOUNT OF COMPENSATION ACTUALLY PAID TO CONTRACTOR FOR THE PREVIOUS 12 MONTHS IN RESPECT OF THE DELIVERABLES OR SERVICES GIVING RISE TO THE DAMAGES, AND (II) US\$ 1,000,000, WHICHEVER IS HIGHER. THIS LIMITATION OF LIABILITY SHALL NOT APPLY WITH RESPECT TO: I) ANY DEATH OR BODILY INJURY OR DAMAGE, LOSS OR DESTRUCTION OF REAL OR TANGIBLE PROPERTY; AND II) CONTRACTOR'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 7.4 IN RESPECT OF INFRINGEMENT OF A COPYRIGHT, PATENT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS.

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 will provide maintenance during the warranty period at no cost to the State, in accordance with Contractor's Cloud Care support program attached in Exhibit III

Additionally, the Contractor will make (or obtain a commitment from the third-party licensor to make) maintenance in accordance with Contractor's Cloud Care support program attached in Exhibit III available for the software for at least five years after the warranty period, at Contractor's annual fees specified in Contractor's pricelist attached as Exhibit I. 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 substantially in accordance with the manufacturer's published specifications. The Contractor must use commercially reasonable 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, abuse or willful misconduct, if such is not Contractor's fault (and beyond normal wear and tear), damage resulting from improper packing or failure to follow prescribed shipping, installation, use or care instruction (If such is not done by Contractor), failure of electrical power, air conditioning or humidity control, use of supplies not approved by the original manufacturer of the Equipment as describes 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 Reserved.

8.5 Reserved.

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.

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 but which shall not be unreasonably withheld or delayed, except to a wholly owned US subsidiary or any entity acquiring all or substantially all of the shares or assets of the Contractor, whether by way of a merger, a share transaction, an asset transaction, or otherwise. The Contractor shall provide the State with written notice of any such assignment for which the State's consent is not required, within no later than 14 days of the effective date of such assignment.
- 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, and if to the State - Attn. DAS OIT EITC and if to Contractor- Attn. VP Finance, 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 to the extent applicable to foreign companies regarding equal employment opportunity and fair labor and employment practices, including Ohio Revised Code Section 125.111 and all related Executive Orders.

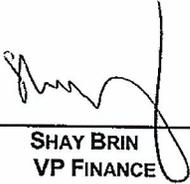
Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be submitted to the Department of Administrative Services Equal Opportunity Division to comply with the affirmative action requirements. Affirmative Action Verification Forms and approved Affirmative Action 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 State issued a waiver to the Contractor in which the requirements of this Order have been waived because the Contractor has a "follow the sun" model that it uses for support services.
- 11.9 **REGISTRATION WITH THE SECRETARY OF STATE. *Reserved.***
- 11.10 **IRS 1075 REQUIREMENTS. *Reserved.***

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:


SHAY BRIN
VP FINANCE

DATE:

9 - OCT - 2016

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

BY:


ROBERT BLAIR, DIRECTOR,
DEPARTMENT OF ADMINISTRATIVE SERVICES

DATE:

10/29/16

CTERA Networks LTD

Exhibit I

Hardware Products:

Manufacturer Part No	Description	State Price
CTERA-EC200.4-1YPCCBDL	0-20 Users, 1 Server, 2TB usable with 1-year Premium Cloud Care (maintenance)	\$1,959
CTERA-EC200.4-3YPCCBDL	0-20 Users, 1 Server, 2TB usable with 3 years Premium Cloud Care (maintenance)	\$2,661
CTERA-EC400.8-1YPCCBDL	21-60 Users, 2 Servers, 6TB usable with 1-year Premium Cloud Care (maintenance)	\$4,538
CTERA-EC400.8-3YPCCBDL	21-60 Users, 2 Servers, 6TB usable with 3 years Premium Cloud Care (maintenance)	\$6,163
CTERA-EC800.16-1YPCCBDL	61-120 Users, 2 Servers, 12TB usable with 1-year Premium Cloud Care (maintenance)	\$9,077
CTERA-EC800.16-3YPCCBDL	61-120 Users, 2 Servers, 12TB usable with 3 years Premium Cloud Care (maintenance)	\$12,327
CTERA-EC800P.32-1YPCCBDL	121-1,000 Users, 2 Servers, 24TB usable with 1-year Premium Cloud Care (maintenance)	\$15,475
CTERA-EC800P.32-3YPCCBDL	121-1,000 Users, 2 Servers, 24TB usable with 3 years Premium Cloud Care (maintenance)	\$21,016

Software Subscriptions:

Manufacturer Part No	Description	State Price
CTERA-EV16-PCCBDL-1YR	26-200 Users, 16TB usable with 1-year Premium Cloud Care (maintenance)	\$3,720
CTERA-EV16-PCCBDL-3YR	26-200 Users, 16TB usable with 3 years Premium Cloud Care (maintenance)	\$10,602
CTERA-EFSS-PCCBDL-1YR	1-Year CTERA Enterprise File Sync & Share User (up to 5 devices per user) with Premium Cloud Care (maintenance)	\$60
CTERA-EFSS-PCCBDL-3YR	3-Year Enterprise File Sync & Share User (up to 5 devices per user) with Premium Cloud Care (maintenance)	\$170
CTERA-EWBU-PCCBDL-1YR	1-Year CTERA Enterprise Workstation Backup (one device per license) with Premium Cloud Care (maintenance)	\$60
CTERA-EWBU-PCCBDL-3YR	3-Year CTERA Enterprise Workstation Backup (one device per license) with Premium Cloud Care (maintenance)	\$170
CTERA-ESRV-PCCBDL-1YR	1-Year CTERA Enterprise Workstation Backup (one device per license) with Premium Cloud Care (maintenance)	\$186
CTERA-ESRV-PCCBDL-3YR	3-Year CTERA Enterprise Workstation Backup (one device per license) with Premium Cloud Care (maintenance)	\$530
CTERA-EPORTAL-PCCBDL-1YR	1-Year CTERA Private Portal with Premium Cloud Care (maintenance)	\$6,200
CTERA-EPORTAL-PCCBDL-3YR	3-Year CTERA Private Portal with Premium Cloud Care (maintenance)	\$17,670

Managed Services:

Manufacturer Part No	Description	State Price
CTERA-EC200.4-MS-1YR	1-Year Managed Services for CTERA EC200 with 2x2TB, consisting of application management and monitoring	\$816
CTERA-EC200.4-MS-3YR	3-Year Managed Services for CTERA EC200 with 2x2TB, consisting of application management and monitoring	\$2,326
CTERA-EC400.8-MS-1YR	1-Year Managed Services for CTERA EC400 with 4x2TB, consisting of application management and monitoring	\$1,824
CTERA-EC400.8-MS-3YR	3-Year Managed Services for CTERA EC400 with 4x2TB, consisting of application management and monitoring	\$5,198
CTERA-EC800.16-MS-1YR	1-Year Managed Services for CTERA EC800 with 4x4TB, consisting of application management and monitoring	\$5,448
CTERA-EC800.16-MS-3YR	3-Year Managed Services for CTERA EC800 with 4x4TB, consisting of application management and monitoring	\$15,527
CTERA-EC800P.32-MS-1YR	1-Year Managed Services for CTERA EC800+ with 8x4TB, consisting of application management and monitoring	\$9,000
CTERA-EC800P.32-MS-3YR	3-Year Managed Services for CTERA EC800+ with 8x4TB, consisting of application management and monitoring	\$25,650
CTERA-EV16-MS-1YR	1-Year Managed Services for CTERA EV16, consisting of application management and monitoring	\$4,680
CTERA-EV16-MS-3YR	3-Year Managed Services for CTERA EV16, consisting of application management and monitoring	\$13,338
CTERA-EFSS-MS-1YR	1-Year Managed Services for File Sync & Share, consisting of application management and monitoring	\$48
CTERA-EFSS-MS-3YR	3-Year Managed Services for File Sync & Share, consisting of application management and monitoring	\$137
CTERA-EWBU-MS-1YR	1-Year Managed Services for Endpoint Backup, consisting of application management and monitoring	\$48
CTERA-EWBU-MS-3YR	3-Year Managed Services for Endpoint Backup, consisting of application management and monitoring	\$137
CTERA-ESRV-MS-1YR	1-Year Managed Services for CTERA Server Backup, consisting of application management and monitoring	\$120
CTERA-ESRV-MS-3YR	3-Year Managed Services for CTERA Server Backup, consisting of application management and monitoring	\$342
CTERA-EPORTAL-MS-1YR	1-Year Managed Services for CTERA Private Portal, consisting of application management and monitoring	\$60,000
CTERA-EPORTAL-MS-3YR	3-Year Managed Services for CTERA Private Portal, consisting of application management and monitoring	\$171,000

Professional Services:

Manufacturer Part No	Description	State Price
CTERA-GATEWAY-INSTALL-ONSITE	CTERA Gateway Onsite or Remote Installation Service	\$2,300
CTERA-EFSS-INSTALL	CTERA File Sync & Share Remote Installation Service	\$20
CTERA-EWBU-INSTALL	CTERA Endpoint Backup Remote Installation Service	\$20
CTERA-ESRV-INSTALL	CTERA Server Backup Remote Installation Service	\$300
CTERA-PORTAL-INSTALL	CTERA Portal Remote Installation Service	\$5,000
CTERA-PROF-SRV-1D	1-Day CTERA Professional Service (excluding expenses)	\$2,000

Exhibit II

END USER LICENSE AND SERVICES AGREEMENT

This End User License Agreement (the "**Agreement**") by and between the individual installing and/or using the Software (as such term is defined below) and any legal entity on whose behalf such individual is acting (collectively, "**You**" or "**you**") and CTERA Networks Ltd. ("**CTERA**"), governs Your use of the object code format of (i) any software or firmware program embedded or included in any hardware product supplied by CTERA or its Authorized Partners (as defined below), and (ii) any software program supplied by CTERA or its Authorized Partners; and (iii) all accompanying manuals and other documentation, and all enhancements, upgrades, and extensions thereto that may be provided by CTERA or its Authorized Partner to You from time to time, unless otherwise indicated by CTERA (the "**Software**").

PLEASE NOTE: BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, OR USING THE SOFTWARE, OR BY CHOOSING THE "I ACCEPT" OPTION LOCATED ON OR ADJACENT TO THE SCREEN WHERE THIS AGREEMENT MAY BE DISPLAYED, YOU INDICATE YOUR ACKNOWLEDGMENT THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO BE BOUND BY AND COMPLY WITH ITS TERMS. YOUR WRITTEN APPROVAL IS NOT REQUIRED FOR THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE SOFTWARE LICENSE TERMS. IF YOU DO NOT AGREE TO THESE SOFTWARE LICENSE TERMS, DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, OR USE THE SOFTWARE AND PROMPTLY RETURN THE SOFTWARE, INCLUDING ALL PACKAGING, MEDIA, DOCUMENTATION, AND PROOF OF PAYMENT, TO THE PARTY FROM WHOM IT WAS OBTAINED FOR A REFUND OF THE AMOUNT PAID, PROVIDED THAT THE RETURN IS MADE WITHIN TEN (10) DAYS OF THE DATE OF PURCHASE.

1. License to Use Software

1.1 Subject to proper payment to CTERA or its authorized reseller, distributor, or any other business partner (the "**Authorized Partner**") and Your compliance with the terms and conditions of this Agreement, CTERA hereby grants You a non-exclusive, non-sublicensable, non-transferable (other than in connection with a consolidation of one or more State agencies) license to install and use the Software, solely for Your internal business needs, in accordance with the terms set forth in this Agreement and in accordance with the user manual, and solely on the CTERA appliance on which CTERA installed the Software, or, for stand-alone Software, solely on a single computer running a validly licensed copy of the operating system for which the Software was designed. Notwithstanding anything to the contrary herein, in the event that You have purchased CTERA's portal software, You may use such software for the

purpose of providing services to Your customers, pursuant to the provisions herein. You agree that, except for the limited, specific license rights granted in this section 1, You receive no license rights to the Software.

1.2 Unless otherwise authorized in writing by CTERA and to the extent otherwise provided in the applicable license for Free Programs (as defined below), You undertake not to (and not to allow third parties to) (1) sublicense, lease, rent, loan, or otherwise transfer the Software to any third party, (2) decompile, disassemble, decrypt, extract or otherwise reverse engineer or attempt to reconstruct or discover any source code of, or any underlying ideas in, the Software (“**Reverse Engineering**”), (3) modify, enhance, supplement, adapt, or prepare derivative works from the Software, (4) allow others to use the Software and use the Software for the benefit of third parties (provided that CTERA’s portal software may be used by You for the benefit of Your customers), (5) develop any other product containing any of the concepts and ideas contained in the Software, (6) remove, obscure, or alter CTERA’s or any third party’s trademarks or copyright or other proprietary rights notices affixed to or contained within or accessed in conjunction with or through the Software, and (7) make unauthorized copies of the Software (except as necessary for backup purposes). If, notwithstanding the prohibition set forth in subsection (2) above, applicable law permits Reverse Engineering, You will, before commencing or permitting any Reverse Engineering (A) inform CTERA of the planned Reverse Engineering, (B) conduct or allow such Reverse Engineering only to achieve interoperability between the Software and other computer programs, (C) request from CTERA the information necessary to achieve such interoperability, (D) provide CTERA ample opportunity to supply the information necessary to achieve interoperability.

1.3 *Reserved.*

2. Intellectual Property

2.1 You acknowledge that CTERA or other third parties own all right, title and interest, including all intellectual property rights, in and to the Software, portions thereof, or software or content provided through or in conjunction with the Software. Except for the license granted in accordance with Section 1 of this Agreement, all rights in and to the Software are reserved, no licenses, implied or otherwise, are granted by CTERA, You are not authorized to use CTERA’s trademarks, service marks, or trade dress, and You agree not to display or use them in any manner.

2.2 *Reserved.*

3. GPL License

The Software makes use of free and open source programs (the “**Free Programs**”), licensed under the following license agreements: The GNU General Public License (GPL), version 2 or later: www.gnu.org/licenses/gpl.html, the GNU Lesser General Public License (LGPL), version 2.1 or

later: www.gnu.org/licenses/lgpl.html, Apache License, Version 2.0 or
later: www.apache.org/licenses/LICENSE-2.0.

Notwithstanding anything to the contrary in this Agreement, You may redistribute the Free Programs and/or modify them under the terms of the corresponding license agreement. The Free Programs are distributed in the hope that they will be useful, but WITHOUT ANY WARRANTY; without even the implied warranty of MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE. To obtain the source code for the Free Programs subject to the terms of the corresponding license agreement, please send a request by mail to: Open Source Requests, CTERA Networks Ltd, Efal 25, Petach Tikva, Israel.

4. *Reserved.*

5. Acceptable Use and Conduct

You shall use the Software in compliance with all applicable laws, ordinances, rules and regulations, shall not violate or attempt to violate CTERA's system or network security, and shall not misuse the Software in any way. You shall be responsible for Your conduct while using the Software.

6. Term and Termination

6.1 This Agreement shall commence on the date CTERA or its Authorized Partner receives from You a purchase order for the Software, and unless earlier terminated pursuant to the terms herein, this Agreement shall terminate on the date agreed upon between CTERA or its Authorized Partner and You in the purchase order.

6.2 CTERA shall have the right to terminate this Agreement at any time due to Your breach of this Agreement by providing You with a written notice. Upon CTERA's termination of this Agreement, You shall not be entitled to any compensation, reimbursement or damages of any kind.

6.3 You shall have the right to terminate this Agreement at any time due to CTERA's breach of this Agreement by providing CTERA with a written notice.

6.4 You agree that, upon termination or expiration of this Agreement for any reason, You will cease using the Software and either destroy all copies of the Software and CTERA documentation or return them to CTERA. The provisions of this Agreement, other than the license granted in section 1 ("License to User Software"), shall survive termination.

7. Disclaimer of Warranties

THE SOFTWARE IS PROVIDED "AS IS". CTERA AND CTERA'S LICENSORS AND AUTHORIZED PARTNERS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE SOFTWARE. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW OR EXPRESSLY SPECIFIED IN THE STATE TERM CONTRACT DATED October 9, 2016 BETWEEN THE STATE OF OHIO ("STATE") AND CTERA (THE "STATE TERM CONTRACT"), CTERA AND ITS

LICENSORS AND AUTHORIZED PARTNERS DISCLAIM ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE. CTERA AND ITS LICENSORS AND AUTHORIZED PARTNERS DO NOT WARRANT THAT THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE, OR FREE OF HARMFUL COMPONENTS. NO ADVICE OR INFORMATION OBTAINED BY YOU FROM CTERA OR FROM ANY THIRD PARTY OR THROUGH THE SOFTWARE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. YOU UNDERSTAND AND AGREE THAT YOU USE THE SOFTWARE, AND ALL THIRD PARTY SOFTWARE OR SERVICES MADE AVAILABLE IN CONJUNCTION WITH OR THROUGH THE SOFTWARE, AT YOUR OWN DISCRETION AND RISK. SOME STATES OR OTHER JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. YOU MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE AND JURISDICTION TO JURISDICTION. THIS SECTION CONSTITUTES A CONTRACT FOR THE BENEFIT OF EACH OF CTERA'S LICENSORS AND AUTHORIZED PARTNERS.

8. Limitation of Liability

YOU HEREBY ACKNOWLEDGE AND AGREE THAT CTERA'S ENTIRE LIABILITY ARISING OUT OF OR IN CONNECTION WITH YOUR USE (FOR CLARIFICATION, INCLUDING ANY INABILITY TO USE) THE SOFTWARE IS SUBJECT TO THE LIMITATIONS OF LIABILITY SET FORTH IN THE STATE TERM CONTRACT. YOU HEREBY ACKNOWLEDGE AND REPRESENT THAT THE SOFTWARE IS NOT INTENDED FOR USE IN CONNECTION WITH ANY INHERENTLY DANGEROUS APPLICATION.

9. *Reserved.*

10. *Reserved.*

11. Miscellaneous Provisions.

11.1 *Reserved.*

11.2 This agreement will be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to any conflict of laws and provisions that would require the application of the laws of any other jurisdiction. The parties hereby expressly reject any application to this Agreement of (a) the United Nations Convention on Contracts for the International Sale of Goods; and (b) the 1974 Convention on the Limitation Period in the International Sale of Goods, as amended by that certain Protocol, done at Vienna on April 11, 1980.

11.3 All disputes arising out of this Agreement will be subject to the exclusive jurisdiction of the competent courts of the state of Ohio, and the parties agree and submit to the personal and exclusive jurisdiction and venue of these courts.

11.4 No amendment or modification of this Agreement 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 Agreement 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.

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

11.6 You may not assign or transfer any of Your rights or obligations under this Agreement to a third party without the prior written consent of CTERA, which shall not be unreasonably withheld or delayed. CTERA may not assign this Agreement without the written consent of the State, which the State will not be obligated to provide but which shall not be unreasonably withheld or delayed, except to a wholly owned US subsidiary or any entity acquiring all or substantially all of the shares or assets of CTERA, whether by way of a merger, a share transaction, an asset transaction, or otherwise. CTERA shall provide the State with written notice of any such assignment for which the State's consent is not required, within no later than 14 days of the effective date of such assignment.

Exhibit III

Contractor SLA – (Cloud Care Support Program)