

**STATE OF OHIO
DEPARTMENT OF ADMINISTRATIVE SERVICES
SOFTWARE
MASTER MAINTENANCE AGREEMENT-FISCAL YEAR
2014 and 2015**

THIS CONTRACT is between the State of Ohio, Department of Administrative Services ("DAS"), General Services Division, Office of State Purchasing, located 4200 Surface Road, Columbus, Ohio, 43228 ("Customer"), and PerkinElmer Health Sciences, Inc. ("Contractor"), located at 710 Bridgeport Avenue, Shelton, CT 06484.

DEFINITIONS

The following terms will have the meanings described below whenever they are used in this Contract:

- A. "Software" is software listed on Attachment A and includes the Equipment's operating system, word processing software, utilities, drivers, communication software and other manufacturer software options that are integrated with Contractor's systems. "Software" does not include compilers, development software or applications unless listed on Attachment A.
- B. An "Error" is a malfunction in the Software, excluding all external factors, that prevents the Software from conforming to applicable manufacturer's specifications.
- C. An "Update" is a software release that manufacturer has made generally to all customers and that replaces or modifies a prior software release to correct errors or omissions.
- D. An "Upgrade" is a software release that the manufacturer has made generally available to all customers that include enhancements, options or new features that improve the Software's performance.
- E. "Equipment" means the hardware and items other than Software listed on Attachment A.
- F. The term "Subscription License", as used in the 'Software Subscription License Agreement' in Attachment G, refers to a non-perpetual, term license agreement with a specified termination or renewal date. The term "Subscription License" does not refer to a cloud or hosted solution (which is not permitted on the State Term Schedule).
- G. The term of this Contract is from **July 1, 2014** ("Commencement Date") to **September 30, 2015** ("Expiration Date").

1. MAINTENANCE SERVICE RESPONSIBILITIES OF CONTRACTOR

For charges stated on any attached schedule (the "Charges"), Contractor will furnish the following service (the "Maintenance") under the terms and conditions of this Contract.

- A. Contractor will provide maintenance services to those sites designated by Customer in the attachments during the term of this Contract.
- B. Telephone Support. Contractor will provide reasonable technical telephone consultation concerning the use of any Updates and Upgrades to all such sites.
- C. New Releases. From time to time Contractor may modify or enhance the Software by a new release of the Software. In such case, Contractor shall provide the Customer one copy of every new release of the Software listed in the attached schedules, including all modifications, enhancements and documentation. Software updates will be provided to Customer as set forth in the Software Support Agreement, attached hereto as Attachment C; new products, modules and add-ons are subject to an additional cost.
- D. In accordance with Contractor's Software Support Agreement attached hereto as Attachment C, Contractor will correct errors or replace the Software in a reasonably expeditious manner after notification that a Software correction is required.
- E. Contractor will provide Maintenance for the then-current release and the immediately preceding release of the Software. Contractor will provide maintenance support for the immediately preceding release for at least six months after a new version is released. After this period Contractor may cancel the Maintenance Services for the immediately preceding release of the Software on sixty (60) days written notice.

2. SERVICE AVAILABILITY PERIOD

- A. The "Call Window" specified on any attached schedule is the time and days during which the Customer may notify Contractor that the Software is inoperative and during which Contractor will perform the on-site maintenance, excluding Customer and Contractor holidays.
- B. All software on a schedule will have the same Call Window.
- C. Repairs and replacements necessitated by any of the items excluded from coverage hereunder will be undertaken by Contractor only on Customer's written approval of estimated additional charges, Customer's Contract to pay the actual charges, and Customer's issuance of a purchase order.
- D. Annual maintenance will continue to be available for a minimum of five years after the effective date of this Contract under the same terms and conditions. The State will have the right to participate in the Licensor's annual maintenance program by giving the Licensor annual notice of its intent to do so or by paying the annual fee for the maintenance on or before the due date for the annual payment, but in no event more than sixty (60) days after the due date unless the State pays interest on the late payment in accord with the applicable provisions of the Ohio Revised Code. If the State fails to pay the annual maintenance fee or materially breaches this Contract, then, unless otherwise agreed, the State may not continue to participate in the maintenance program. The Licensor will bill the State annually for maintenance, 60 days in advance of the due date for the maintenance fees, at the Licensor's then-current rates for maintenance, subject to the limitation on increases provided below.
- E. The annual maintenance fee for the Software will not increase from year to year by more than ten percent over the prior year's annual maintenance fee.

3. RESPONSIBILITIES OF CUSTOMER

- A. Customer will provide Contractor's personnel reasonable access to the Software at mutually agreed upon times to perform maintenance services (including preventive maintenance). Customer will also provide adequate working space and facilities, including heat, light, ventilation, electric current and outlets and the like for use by Contractor personnel. All such facilities will be within a reasonable distance from the Equipment to be serviced and will be provided at no charge to Contractor.
- B. Customer will not perform, attempt to perform, nor cause to be performed, maintenance or repair to the Software during the term of this Contract except simple daily or weekly preventive maintenance on the Software as allowed or reasonably required by Contractor. Customer, at Contractor's request, will maintain the service reports issued by Contractor. Customer, at its own expense, will establish and maintain an environment consistent with the specifications furnished by Contractor for the Software.

4. PAYMENT DUE DATE

- A. Contractor will invoice Customer on the first day of each month (or each quarter or each year as designated on Equipment Schedule) during the term hereof for the unit amount for the Software specified on Attachment E, the Quotation. If the Commencement Date does not fall on the first day of the month, the amount of the first payment will be prorated based on the number of service days remaining in that month.
- B. Payments under this Contract will be due on the 30th calendar day after the later of:
 - 1. The date of actual receipt of a proper invoice in the office designated to receive the invoice, or
 - 2. The date the Service is delivered and accepted.
- C. The date of the warrant is issued in payment will be considered the date payment is made.

5. CONTRACTOR QUARTERLY SALES REPORT

The Contractor must report the quarterly dollar value (in U.S. dollars and rounded to the nearest whole dollar) of the sales under this Contract by calendar quarter (i.e., January-March, April-June, July-September and October-December). The dollar value of the sale is the price paid by the schedule user for the products and services on a schedule contract task or delivery order, as recorded by the Contractor.

The Contractor shall be required to report the quarterly dollar value of sales to the State on a form prescribed by DAS. If no sales occur, the Contractor must show zero. The report must be submitted thirty (30) days following the completion of the reporting period.

The Contractor shall also submit a close - out report within one hundred and twenty (120) days after the expiration of this Contract. The contract expires upon the physical completion of the last, outstanding task or delivery order of the Contract. The close - out 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 "0" sales in the close - out report.

The Contractor must forward the Quarterly Sales Report to the Following address:

Department of Administrative Services
Office of Finance
30 E. Broad St., 40th Floor
Columbus, Ohio 43215

If the Contractor fails to submit sales reports, falsifies sales reports or fails to submit sales reports in a timely manner the State may terminate or cancel this Contract.

6. CONTRACTOR REVENUE SHARE

The Contractor must pay the State a revenue share of the sales transacted under this Contract. The Contractor must remit the revenue share in U.S. dollars within thirty (30) days after the end of the quarterly sales reporting period. The revenue share equals .0075 of the total quarterly sales reported. Contractors must include the revenue share in their prices. The revenue share is included in the award price(s) and reflected in the total amount charged to ordering activities.

The Contractor must remit any monies due as the result of the close - out report at the time the close - out report is submitted to DAS.

The Contractor must pay the revenue share amount due by check. To ensure the payment is credited properly, the Contractor must identify the check as a "Revenue Share" and include the following information with the payment:

Applicable State Term Schedule Number, report amount(s), and reporting period covered.

Contractor must forward the check to the following address:

Department of Administrative Services
Office of Finance
30 E. Broad St., 40th Floor
Columbus, Ohio 43215

Please make check payable to: Treasurer, State of Ohio.

If the full amount of the revenue share is not paid within thirty (30) calendar days after the end of the applicable reporting period, the non-payment constitutes a contract debt to the State. The State may either initiate withholding or setting off of payments or employ the remedies available under Ohio law for the non-payment of the revenue share

If the Contractor fails to pay the revenue share in a timely manner the State may terminate or cancel this Contract.

7. GENERAL WARRANTIES

The Contractor warrants that the recommendations, guidance, and performance of the Contractor under this Contract will: (1) be in accordance with sound professional standards and the requirements of this Contract and without any material defects; (2) unless otherwise provided in Attachment A, be the work of solely of the Contractor; and (3) no Software will infringe on the intellectual property rights of any third party.

Additionally, with respect to the Contractor's activities under this Contract, the Contractor warrants that: (1) the Contractor has the right to enter into this Contract; (2) the Contractor has not entered into any other contracts or employment relationships that restrict that the Contractor's ability to perform the contemplated services; (3) the Contractor will observe and abide by all

applicable laws and regulations, including those of the Customer regarding conduct on any premises under the Customer's control; (4) the Contractor has good and marketable title to any goods delivered under this Contract and in which title passes to the Customer; (5) the Contractor has the right and ability to grant the license granted in any Software in which title does not pass to the Customer (see Software Subscription License Agreement, Attachment G); (6) the Contractor further warrants that the Software will perform in accordance with published specifications.

The warranty regarding professionalism and material defects is a one-year warranty. All other warranties will be continuing warranties. If any portion of the Software fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor will correct such failure with all due speed or will refund the amount of the compensation paid for such portion of the Software. The Contractor will also indemnify the Customer for any direct damages and claims by third parties based on a breach of these warranties. This obligation of indemnification will not apply where the Customer has modified or misused the Software and the claim is based on the modification or misuse.

8. SOFTWARE WARRANTY

On delivery and for ninety (90) days after the date of acceptance of any Software, the Contractor warrants as to all Software developed under this Contract that: (a) the Software will operate on the computer(s) for which the Software is intended in the manner described in the relevant Software documentation, the Contractor's proposal, and Attachment A; (b) the Software installation media will be free of any material defects; (c) the Contractor will maintain relevant and complete Software documentation, commentary, and source code in a secure location; and (d) the Software and all maintenance will be provided in a professional, timely, and efficient manner.

9. SOFTWARE MAINTENANCE

During the term of this Maintenance Agreement, Contractor will correct any material programming errors that are attributable to the Contractor within a reasonable period of time, provided that the Customer notifies the Contractor, either orally or in writing, of a problem with the Software and provides sufficient information for the Contractor to identify the problem.

The Contractor's response to a programming error will depend upon the severity of the problem and shall be in accordance with Contractor's Software Support Agreement attached hereto as Exhibit C.

10. PRINCIPAL PERIOD OF MAINTENANCE

Maintenance will be available nine working hours per weekday, between 8:00 a.m. and 5:00 p.m. Eastern Standard Time. Travel time and expenses related to remedial and preventive maintenance will not be considered billable but will be included in the Contractor's firm, fixed Fee for the Project during the warranty period and a part of the annual maintenance fee during later annual maintenance periods.

11. MAINTENANCE ACCESS

The Contractor will keep the Software in good operating condition any annual maintenance period during which the Customer contracts for continued maintenance and the Customer will provide the Contractor with reasonable access to the Software to perform maintenance. All maintenance that requires the Software to be inoperable must be performed outside the Customer's customary working hours except when the Software is already inoperable. Preventative or scheduled maintenance will be performed at mutually agreeable times, within the parameters of the manufacturer's published schedule.

12. INTEREST ON OVERDUE PAYMENTS

Section 126.30 of the Ohio Revised Code (the "Code") is applicable to this Contract and requires payment if interest on overdue payments for all proper invoices. The interest charge will be at the rate of interest on overdue payments for all proper invoices. The interest charge will be at the rate per calendar month, which equals one-twelfth of the rate per annum prescribed by Section 5703.47 of the Code.

13. INVOICE REQUIREMENTS

Invoices must be submitted to the office designated in the purchase order "bill to address" to receive invoices. A proper invoice must include the following information and/or attached documentation:

- A. Name and address of business concern as designated in this Contract.
- B. Federal Tax Identification Number of business concern as designated in this Contract.
- C. Invoice remittance address as designated in this Contract.
- D. The purchase order number authorizing the delivery of equipment, materials, supplies or services.

E. Description including time period, serial number when applicable, unit price, quantity and total price of equipment, materials, supplies or services actually delivered or rendered as specified in the purchase order. If the invoice is for lease purchase, the payment number, e.g., 1 of 36 must also be indicated.

14. IMPROPER INVOICES

If an invoice contains a defect or impropriety and/or it is not a proper invoice as defined in this section, a written notification and the improper invoice will be sent to the Contractor at the address designated for receipt of purchase orders within 15 calendar days after receipt of the invoice. The notice will contain a description of the defect or impropriety and any additional information necessary to correct the defect or impropriety. If such notification has been sent, the required payment date will be thirty (30) days after receipt of a proper invoice or product acceptance, whichever is later.

15. NON-APPROPRIATION OF FUNDS

Customer's funds are contingent on the availability of lawful appropriations by the Ohio General Assembly. If the Ohio Assembly fails at any time to continue funding for the payments due hereunder, this Contract will terminate as of the date that the funding expires without further obligation of the Customer. Since the current General Assembly cannot commit a future General Assembly to expenditure, if any term of this Contract crosses a State Biennium, this Contract will automatically expire at the end of the current biennium, which is June 30, 2015. The State, however, may renew this Contract in the next biennium, by issuing written notice to the Contractor of the decision to do so. The expiration and renewal procedure will also apply to the end of any subsequent biennium.

16. OBM CERTIFICATION

This Contract is subject to Section 126.07 of the Code, which provides, in part, that orders under this Contract will not be valid unless the Director of the Office of Budget and Management first certifies that there is a balance in the appropriation not already obligated to pay existing obligations.

17. NOTIFICATION OF PRICE INCREASE

Notice of any price increases for Maintenance or other charges, as allowed by this Contract, must be submitted to the purchase order bill to address no later than sixty (60) days before the effective date of the price increase. This notification must specify, when applicable, the product serial number, location, current price, increased price and purchase order number.

18. INDEMNITY

The Contractor will 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 the performance of this Contract, providing such bodily injury or property damage is due to the negligence of the Contractor, its employees, agents, or subcontractors. The Contractor will also indemnify the State against any claim of infringement of a copyright, patent, trade secret, or similar intellectual property rights based on the State's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where the State has modified the Deliverable and the claim of infringement, is based on the modification. The State agrees to give the Contractor notice of any such claim as soon as reasonably practicable. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor will do one, (1) of the following four (4) things:

(1) Modify the Deliverable so that is no longer infringing.

(2) Replace the Deliverable with an equivalent or better item.

(3) Acquire the right for the State to use the infringing Deliverable as it was intended for the State to use under this Contract; or

(4) 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.

19. 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 agrees to 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 agrees not to disclose any Confidential Information to third parties and to use it solely to perform under this Contract.

The State acknowledges that, in connection with this Agreement and its relationship with Contractor, it may obtain information relating to the Software or to Contractor that is of a confidential and proprietary nature ("Confidential Information"). Such Confidential Information may include, but is not limited to, trade secrets, know how, inventions, techniques, processes, programs, schematics, software source documents, data, financial information, and sales and marketing plans or information which the State knows or has reason to know is confidential, proprietary or trade secret information of Contractor. The State shall at all times, both during the term of this Agreement and for a period of at least three (3) years after its termination, keep in trust and confidence all such Confidential Information, and shall not use such Confidential Information other than as expressly authorized by Contractor under this Agreement, nor shall the State disclose any such Confidential Information to third parties without Contractor's prior written consent.

The parties' obligation to maintain the confidentiality of the Confidential Information of the other will not apply where such: (1) was already in the possession of the Receiving Party before disclosure by the Disclosing Party, and was received by the Receiving Party without obligation of confidence; (2) is independently developed by the Receiving Party, provided documentary evidence exists to support the independent development; (3) is or becomes publicly available without breach of this Contract; (4) is rightfully received by the Receiving Party from a third party without 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 disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production. The Receiving Party will return all originals of any Confidential Information and destroy any copies it has made for its own internal use on termination or expiration of this Contract or as requested by the Disclosing Party.

The parties agree that 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 shall be entitled to temporary and permanent injunctive relief to enforce the provisions hereof without the necessity of proving actual damages. This provision shall not, however, diminish or alter any right to claim and recover damages.

20. 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 and its subcontractor with such access to sign a confidentiality agreement and policy acknowledgements, and upon request, have a background check performed by Contractor before accessing those facilities, data, or systems. Each State agency, board, and commission may require a different confidentiality agreement or acknowledgement, and the Contractor and its subcontractor may be required to sign a different confidentiality agreement or acknowledgement for each agency. The Contractor must immediately replace any of its subcontractors' personnel who refuse to sign a required confidentiality agreement or acknowledgment or have a background check performed.

21. LIMITATION OF LIABILITY

NOTWITHSTANDING ANY LIMITATION PROVISIONS CONTAINED IN THE DOCUMENTS AND MATERIALS INCORPORATED BY REFERENCE INTO THIS AGREEMENT, THE PARTIES AGREE AS FOLLOWS:

1. 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 HAD BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
2. THE CONTRACTOR FURTHER AGREES THAT THE CONTRACTOR SHALL BE LIABLE FOR ALL DIRECT DAMAGES DUE TO THE FAULT OR NEGLIGENCE OF THE CONTRACTOR.

22. DELIVERIES

All deliveries shall be F.O.B. Destination.

23. HEADINGS

The headings used in this Contract are for convenience only and will not be used in interpreting this Contract.

24. **ASSIGNMENT**

Neither party will assign this Contract without the prior written consent of the other party.

25. **TAXES**

The Customer is exempt from all State and local taxes, and does not agree to pay any taxes.

26. **EXCUSABLE DELAY (FORCE MAJEURE)**

Neither party to this Contract will be responsible for failure to perform service due to causes beyond its control, including, but not limited to, work stoppages, fires, floods, civil disobediences, riots, rebellions acts of God and similar occurrences.

27. **ENTIRE CONTRACT**

This contract document contains the entire Contract between Contractor and Customer relating to maintenance service on the Software and supersedes any other Contracts, written or oral.

28. **NOTICES**

All notices, requests and other communications pursuant to this Contract will, unless otherwise provided herein, be in writing and will be deemed to have been duly given on the date of service, if served personally, or three days after mailing, if mailed by first class mail, postage prepaid, to the address of the parties set forth in the attached Equipment Schedule.

29. **SEVERABILITY**

If any provision of this Contract is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Contract will remain in full force and effect to the extent that such does not create an absurdity.

30. **EQUAL EMPLOYMENT OPPORTUNITY**

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

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

31. **DRUG FREE WORKPLACE** Contractor agrees to comply with all applicable state and Federal laws regarding drug-free workplace. Contractor will make a good faith effort to ensure its employees, while working on state property, will not possess or be under the influence of illegal drugs or alcohol or abuse prescription drugs in any way.

32. **OHIO ETHICS LAW AND LIMITS ON POLITICAL CONTRIBUTIONS.**

All Contractors who are actively doing business with the State or who are seeking to do business with the State are responsible to review and comply with all relevant provisions of O.R.C. Sections 102.01 to 102.09.

The Contractor, by signature affixed on this document, hereby certifies that all applicable parties listed in O.R.C. Section 3517.13 are in full compliance with O.R.C. Section 3517.13.

If the Contractor accepts a Contract and/or purchase order issued under the Contract without proper certification, the Department of Administrative Services shall deem the Contractor in breach and the Contractor will be subject to all legal remedies available to the Department of Administrative Services up to and including debarment from doing business with the State.

Additional information regarding Contribution Restrictions is available on the Office of Budget & Management's website at: www.obm.ohio.gov.

33. **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, and made known to Contractor in advance. <http://privacy.ohio.gov/OhioPolicies.aspx>

34. **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.

35. **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.
37. **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.
38. **GOVERNING THE EXPENDITURE OF PUBLIC FUNDS ON OFFSHORE SERVICES (EO 2011-12K).** The Contractor affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Contract. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid for services the Contractor performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided the State in this Contract.

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

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

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

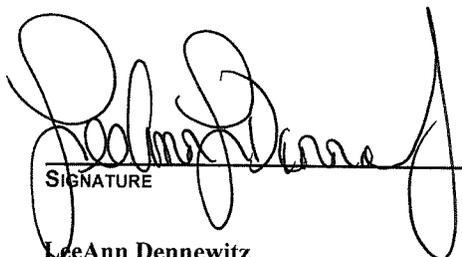
A foreign corporation, not incorporated under the laws of the state of Ohio, but is registered with the Ohio Secretary of State pursuant to Ohio Revised Code Sections 1703.01 to 1703.31, as applicable.

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

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

ACCEPTED BY:

CONTRACTOR



SIGNATURE

LeeAnn Dennewitz

PRINTED NAME

Vice President Americas Diagnostic Sales

Title

August 8, 2014

Date

GDS.Sales@PerkinElmer.com

Email Address

ACCEPTED BY:

THE STATE OF OHIO,
DEPARTMENT OF ADMINISTRATIVE SERVICES
GENERAL SERVICES DIVISION
4200 SURFACE ROAD,
COLUMBUS, OHIO. 43228-1395



SIGNATURE

ROBERT BLAIR, DIRECTOR

9/29/14

Date

ATTACHMENT A

FISCAL YEAR 2014 EQUIPMENT SCHEDULE
TO THE MASTER MAINTENANCE CONTRACT
BETWEEN
THE STATE OF OHIO,
BY THE
DEPARTMENT OF ADMINISTRATIVE SERVICES,
GENERAL SERVICES DIVISION, OFFICE OF STATE PURCHASING
FOR

CUSTOMER

CONTRACTOR

Contact: _____

Contact: Janet Perkins

Phone: _____ Fax: _____

Phone: ⁸⁰⁰⁻⁷⁶²⁻⁴⁰⁰⁰Option 1,2 Fax: 203-944-4901

For:

Coverage Period: 07-01-13 thru 09-30-15

Coverage Amount: \$115,500.00

PerkinElmer Health Sciences, Inc.
Agency, Name/Title of Agency Contact

Agency P.O. Box #: _____

710 Bridgeport Avenue
Address

Shelton, CT 06484
City, State, Zip

PerkinElmer Health Sciences, Inc. , Agrees to provide the remedial and preventative maintenance described in the Master Maintenance Contract for the equipment (the "Equipment") listed below and (Customer") agrees to purchase such maintenance subject to the terms and conditions contained within the Master Maintenance Contract.

Billing Frequency

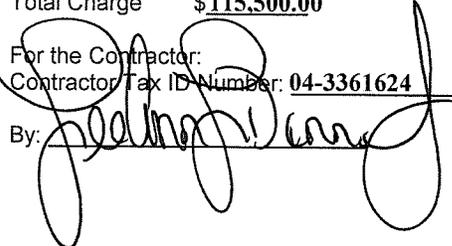
<u>Model Number</u>	<u>Serial Number</u>	<u>Description and Location</u>	<u>Qty</u>	<u>Unit Rate</u>	<u>Amount</u>
<u>N/A</u>	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Total Charge **\$115,500.00**

For the Agency:

For the Contractor:
Contractor Tax ID Number: 04-3361624

By: _____

By: 

ATTACHMENT B
STANDARD AFFIRMATION AND DISCLOSURE FORM
EXECUTIVE ORDER 2011-12K

Governing the Expenditure of Public Funds on Offshore Services

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

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

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

1. Principal location of business of Contractor:

710 Bridgeport Avenue
(Address)

Shelton, CT 06484
(City, State, Zip)

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

N/A
(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

2. Location where services will be performed by Contractor:

520 South Main Street, Suite 2423
(Address)

Akron, OH 44311
(City, State, Zip)

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

N/A
(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

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

520 South Main Street, Suite 2423
(Address)

Akron, OH 44311
(Address, City, State, Zip)

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

N/A
(Name)

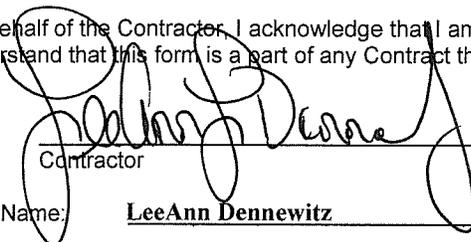
(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

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

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

By: 
Contractor

Print Name: LeeAnn Dennewitz

Title: Vice President Americas Diagnostic Sales

Date: August 8, 2014

ATTACHMENT C

SOFTWARE SUPPORT AGREEMENT



Software Support Agreement

EXECUTIVE SUMMARY

PerkinElmer will supply the services described in Section 2 below ("Scope of Support") to the Customer with respect to the products described in Section 1 below ("PerkinElmer's Software") for which PerkinElmer has granted a license to the Customer pursuant to a software license agreement by and between PerkinElmer and Customer.

1. PERKINELMER'S SOFTWARE

This Support Agreement refers to functionality available within all Specimen Gate® software modules. Support under this agreement is provided for the modules purchased by the Customer. These modules are listed below.

Module	Notes
All Specimen Gate® Software Applications	

2. SCOPE OF SUPPORT

The following are included in the scope of this Agreement (including travel expenses).

- Support services to correct an error which is attributed to PerkinElmer or which affects use of the System
- System recovery services that are required as a result of:
 - User error
 - Network outage or interruption
 - Power outage or interruption
 - Replacement of server or workstation hardware
- Software updates to features previously implemented for the Customer including:
 - Those that fix system errors
 - Improvements, changes or additions to existing features
- Software configuration changes to:
 - Existing cutoff values *
 - Existing punching protocols *
 - Existing cutoff values *
 - Existing demographic entry forms *
 - Existing reports *
 - Existing queries
 - Existing result reporting logic *
 - Existing follow-up protocols *
 - Existing screening models *
- Integration of additional instruments assuming the instrument has previously been integrated into the Customer's system *

* Changes shall follow the PerkinElmer Software Change Request Process.

3. SUPPORT SERVICE TIMES

Support Services will be available from 8:00 AM to 5:00 PM ET, Monday through Friday, except public, bank and other holidays observed by PerkinElmer employees in the United States.

4. SUPPORT SEVERITY LEVELS

PerkinElmer recognizes three (3) severity levels for support issues.

Urgent

A support issue is considered to be Urgent if it meets one of the following conditions:

- System does not allow the Customer to view or enter demographic, result or case data necessary to determine if a sample indicates risk for a disorder
- System produces results that are not equivalent to those expected to be produced as defined in the agreed upon specifications and the results cannot be modified prior to being reported
- System cannot perform a function that is required for results to be reported within the lab's standard turn-around time for a single specimen
- System does not allow an action to be performed in patient follow up
- System presents an error that prevents the completion of an important task and the task cannot be completed by a reasonable workaround or by repeating the task
- System cannot be accessed or used due to:
 - User error
 - Network outage or interruption
 - Power outage or interruption
 - Required replacement of server or workstation hardware

PerkinElmer will acknowledge the receipt of Urgent support issues within four (4) PerkinElmer business hours of receipt of the issue. PerkinElmer business hours are as defined in "Support Service Times" above.

- PerkinElmer will work on Urgent support issues until resolved or as long as useful progress can be made.
- In the event a resolution cannot be provided to an Urgent support issue, PerkinElmer shall work with the Customer to develop a reasonable work around, subject to approval by the Customer.

Moderate

A support issue is considered to be Moderate if it meets one of the following conditions:

- System presents an error. However, results can be reported within the lab's standard turn-around time for a single specimen and actions can be performed within the follow up system by using a reasonable workaround.
- System performance is delayed. However, results can be reported within the standard lab turn-around time for a single specimen and actions can still be performed within the follow up system by using a reasonable workaround.
- System does not allow an individual access to a specific module.

PerkinElmer will work on Moderate support issues until resolved or as long as useful progress can be made.

Minor

A support issue is considered to be Minor if it meets the following condition:

- An error in visual presentation, including misspelling or incorrect order or display of columns.

PerkinElmer will provide solutions to Minor support issues as part of a future software update.



5. SOFTWARE UPDATES

PerkinElmer periodically releases product updates which are provided to the Customer as defined in "Scope of Support" above. These updates will be implemented at the Customer site at a mutually agreed upon time.

New products, modules and add-ons are offered by PerkinElmer to the Customer for an additional fee and are not included in this Agreement.

6. CUSTOMER RESPONSIBILITIES

PerkinElmer's obligation to provide support is contingent upon the Customer complying with the following conditions:

- Paying the mutually agreed upon support or reagent rental fees
- Provide PerkinElmer with sufficient information and resources to correct all support issues
- Obtain PerkinElmer's written permission prior to performing or attempting to perform modifications to the System (PerkinElmer shall not be responsible for maintaining Customer modified portions of the System or for maintaining portions of the System affected by Customer modified portions of the System)
- Comply with PerkinElmer's "Software Deployment Terms and Conditions" regarding support services

7. SUPPORT COMMUNICATION

The Customer shall communicate all support issues by phone, e-mail or via PerkinElmer's support software. Phone numbers, e-mail addresses and internet sites are provided to the Customer separate from this Agreement.

Specimen Gate® is a registered trademark of PerkinElmer, Inc. LifeCycle™ and PatientCare™ are trademarks of PerkinElmer. All other trademarks are property of their respective owners.

All information contained herein is confidential and proprietary to PerkinElmer Life and Analytical Sciences.

The information contained in this document is intended solely for the use of the recipient and contains information that is confidential. Access to this document by anyone else is unauthorized. Reproduction, republication, disclosure, dissemination, transfer or other conveyance of this document is strictly prohibited without the prior written consent of an authorized representative of PerkinElmer.

Software Support Terms and Conditions

The Software Support Terms and Conditions (“Terms and Conditions”) are an exhibit to the Agreement between PerkinElmer Health Sciences, Inc. (“PerkinElmer”) and the party receiving PerkinElmer’s software and/or services under the Agreement (the “Customer”). PerkinElmer will supply the services (the “Services”) described in Section 2 below (“Scope of Support”) to the Customer with respect to the products described in Section 1 below (“PerkinElmer’s Software”) for which PerkinElmer has granted a license to the Customer pursuant to a software license agreement by and between PerkinElmer and Customer.

1. PERKINELMER’S SOFTWARE

These Terms and Conditions refer to functionality available within all Specimen Gate® software modules. Support under these Terms and Conditions is provided for the modules purchased by the Customer. These modules are listed below.

Module	Notes
All Specimen Gate® applications	

2. SCOPE OF SUPPORT

The following Services are included in the Scope of Support (including travel expenses):

- Support services to correct an error which is attributed to PerkinElmer or which affects use of the System
- System recovery services that are required as a result of:
 - User error
 - Network outage or interruption
 - Power outage or interruption
 - Replacement of server or workstation hardware
- Software updates to features previously implemented for the Customer including:
 - Those that fix system errors
 - Improvements, changes or additions to existing features
- Software configuration changes to:
 - Existing cutoff values *
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 - Existing cutoff values *
 - Existing demographic entry forms *
 - Existing reports *
 - Existing queries
 - Existing result reporting logic *
 - Existing follow-up protocols *
 - Existing screening models *
- Integration of additional instruments assuming the instrument has previously been integrated into the Customer’s system *

* Changes shall follow the PerkinElmer Software Change Request Process.

3. SUPPORT SERVICE TIMES

PerkinElmer shall ensure that Support Services will be available from 8:00 AM to 5:00 PM ET, Monday through Friday, except public, bank and other holidays observed by PerkinElmer employees in the United States.

4. SUPPORT SEVERITY LEVELS

PerkinElmer recognizes three (3) severity levels for support issues.

Urgent

A support issue is considered to be Urgent if it meets one of the following conditions:

- System does not allow the Customer to view or enter demographic, result or case data necessary to determine if a sample indicates risk for a disorder
- System produces results that are not equivalent to those expected to be produced as defined in the agreed upon specifications and the results cannot be modified prior to being reported
- System cannot perform a function that is required for results to be reported within the lab's standard turn-around time for a single specimen
- System does not allow an action to be performed in patient follow up
- System presents an error that prevents the completion of an important task and the task cannot be completed by a reasonable workaround or by repeating the task
- System cannot be accessed or used due to:
 - User error
 - Network outage or interruption
 - Power outage or interruption
 - Required replacement of server or workstation hardware

PerkinElmer will acknowledge the receipt of Urgent support issues within four (4) PerkinElmer business hours of receipt of the issue. PerkinElmer business hours are as defined in "Support Service Times" above.

- PerkinElmer will work on Urgent support issues until resolved or as long as useful progress can be made.
- In the event a resolution cannot be provided to an Urgent support issue, PerkinElmer shall work with the Customer to develop a reasonable work around, subject to approval by the Customer.

Moderate

A support issue is considered to be Moderate if it meets one of the following conditions:

- System presents an error. However, results can be reported within the lab's standard turn-around time for a single specimen and actions can be performed within the follow up system by using a reasonable workaround.
- System performance is delayed. However, results can be reported within the standard lab turn-around time for a single specimen and actions can still be performed within the follow up system by using a reasonable workaround.
- System does not allow an individual access to a specific module.

PerkinElmer will work on Moderate support issues until resolved or as long as useful progress can be made.

Minor

A support issue is considered to be Minor if it meets the following condition:

- An error in visual presentation, including misspelling or incorrect order or display of columns.

PerkinElmer will provide solutions to Minor support issues as part of a future software update.

5. SOFTWARE UPDATES

PerkinElmer periodically releases product updates which are provided to the Customer as defined in "Scope of Support" above. These updates will be implemented at the Customer site at a mutually agreed upon time.

New products, modules and add-ons are offered by PerkinElmer to the Customer for an additional fee and are not included in this Agreement.

6. CUSTOMER RESPONSIBILITIES

PerkinElmer's obligation to provide support is contingent upon the Customer complying with the following conditions:

- Paying the mutually agreed upon support or reagent rental fees.
- Provide PerkinElmer with sufficient information and resources to correct all support issues.
- Obtain PerkinElmer's written permission prior to performing or attempting to perform modifications to the System. (PerkinElmer shall not be responsible for maintaining Customer modified portions of the System or for maintaining portions of the System affected by Customer modified portions of the System).

The Customer also agrees to maintain ownership of all hardware and third-party software necessary for supporting Specimen Gate® applications. This includes:

- Hardware assembly and physical installation.
- Always on high-speed remote access to the Customer local area network, software server, instrument workstations, and specified software workstations requiring support.
- Maintenance of sufficient network connectivity and capacity (minimum of 100 mbps).
- Installation and maintenance of the operating system, database software, anti-virus software, and any applicable software license agreements. This includes installing the latest software patches.
- Implementing a disaster recovery process, including a system backup process.
- Administrative access for the Company to the database server, and administrator / DBO level access for SQL Server.
- Power User or administrative access for the Company to specified Specimen Gate workstations.
- A process for distributing updates to individual computers running the software.
- Providing ongoing support by working directly with the hardware or software provider on any warranty or service issue.

7. SUPPORT COMMUNICATION

The Customer shall communicate all support issues by phone, e-mail or via PerkinElmer's support software. Phone numbers, e-mail addresses and internet sites are provided to the Customer separate from these Terms and Conditions.

Specimen Gate® is a registered trademark of PerkinElmer, Inc. LifeCycle™, Screening Center™ and PatientCare™ are trademarks of PerkinElmer. All other trademarks are property of their respective owners.

All information contained herein is confidential and proprietary to PerkinElmer Life and Analytical Sciences.

The information contained in this document is intended solely for the use of the recipient and contains information that is confidential. Access to this document by anyone else is unauthorized. Reproduction, republication, disclosure, dissemination, transfer or other conveyance of this document is strictly prohibited without the prior written consent of an authorized representative of PerkinElmer.

ATTACHMENT D
SOFTWARE CHANGE REQUEST PROCESS

Software Change Request Process

For the purposes of this Software Change Request Process document, the “Company” refers to PerkinElmer Health Sciences, Inc. and the “Customer” refers to the party receiving the Company’s software and/or services.

During the deployment and support of software projects, functionality may be requested that must go through the Software Change Request Process. Functionality requests that must go through this process are those of the following types:

- A request for functionality that has not been previously agreed to by both parties in writing.
- A request to change or remove functionality that has been previously agreed to by both parties in writing.

The following steps should be followed for software change requests:

1. The request is initiated by the Customer or a support request is determined by the Company’s software team to be a change request.
2. The Company and Customer define and mutually agree to the requirements of the request.
3. The Company will produce a response within twenty (20) business days upon receipt of the request. This response will either be:
 - a. Acknowledgement that the request is covered as part of a Software Support Agreement.
 - b. Acknowledgement that the request cannot be fulfilled and the reason it cannot be fulfilled.
 - c. Acknowledgement that the request can be fulfilled including the cost and estimated timeline for completion.
4. The request will be scheduled upon receipt of a mutually signed response document or purchase order.
5. Within ten (10) days of the implementation of the requested change, the Customer will validate the change and sign an acceptance document (template to be provided by the Company) stating the request is complete and accepted.

**ATTACHMENT E
QUOTATION**



Quotation

Genetic Screening Customer Care Phone: 1-800-762-4000 Opt.1, Opt.2
 Mail Location 270 Fax: (203) 944-4914
 710 Bridgeport Avenue
 Shelton, CT 06484-4794

To: ROSE PERKINS QUOTE NO.: 20648537
 STATE OF OHIO QUOTE VALID TO: 09/30/2015
 DEPARTMENT OF ADMINSTRATIVE SERVICE QUOTE DATE: 12/19/2013
 IT PROCUREMENT SERVICES PAY. TERMS: Due Upon Receipt
 8995 E MAIN ST FREIGHT TERMS: FOB Factory - Prepay & Add
 REYNOLDSBURG OH 43068 ULTIMATE DEST.: UNITED STATES OF AMERICA

TELEPHONE NO. 614-466-3605
 FAX NO. 1-614-485-1057
 YOUR REFERENCE

ITEM	MATERIAL	DESCRIPTION	QTY/EA	UNIT PRICE	TOTAL
1	5003-0340	Neonatal Software Support Service	1	115,500.00	115,500.00
Total Net Price in USD:					115,500.00
<p>SPECIMEN GATE ANNUAL MAINTENANCE FEE FOR COVERAGE PERIOD OF OCTOBER 1, 2014 THROUGH SEPTEMBER 30, 2015</p>					
<p>_____ JANET PERKINS</p>					

SEND PURCHASE ORDERS TO:
 PerkinElmer Health Sciences, Inc.
 Genetic Screening Customer Care
 Mail Location 270
 710 Bridgeport Ave.
 Shelton, CT 06484-4794
 Phone: 1-800-762-4000 Opt.1, Opt.2 SALES REPRESENTATIVE: JANET PERKINS
 Fax: (203) 944-4904 PREPARED BY:

**ATTACHMENT F
CERTIFICATION OF GOOD STANDING**

**United States of America
State of Ohio
Office of the Secretary of State**

I, Jon Husted, do hereby certify that I am the duly elected, qualified and present acting Secretary of State for the State of Ohio, and as such have custody of the records of Ohio and Foreign business entities; that said records show PERKINELMER HEALTH SCIENCES, INC., a Delaware corporation, having qualified to do business within the State of Ohio on March 27, 2001 under License No. 1219603 is currently in GOOD STANDING upon the records of this office.



*Witness my hand and the seal of the
Secretary of State at Columbus, Ohio
this 20th day of April, A.D. 2012*

Jon Husted

Ohio Secretary of State

Validation Number: V2012110A53B10

**ATTACHMENT G
SOFTWARE SUBSCRIPTION LICENSE AGREEMENT**

SOFTWARE SUBSCRIPTION LICENSE AGREEMENT

THESE SOFTWARE SUBSCRIPTION LICENSE TERMS ARE APPLICABLE TO THE SPECIMEN GATE® SOFTWARE APPLICATIONS LICENSED BY WALLAC OY (A PERKINELMER COMPANY).

YOU SHOULD NOT USE, INSTALL OR DISPOSE OF THIS SOFTWARE UNLESS:

- YOU ARE THE LICENSEE OF THE SOFTWARE, OR AN AUTHORIZED USER OF THE LICENSEE, AND
- YOU ACCEPT THE LICENSE TERMS SET FORTH BELOW.

THESE LICENSE TERMS ARE LEGALLY BINDING ON YOU AND SET FORTH YOUR SPECIFIC RIGHTS AND OBLIGATIONS WITH RESPECT TO THE SOFTWARE. YOU HAVE NO RIGHTS TO INSTALL, USE OR DISPOSE OF THE SOFTWARE, OR ANY COPY THEREOF, UNLESS YOU HAVE PURCHASED A LICENSE TO THE SOFTWARE OR ARE AN AUTHORIZED USER OF A PROPERLY LICENSED ENTITY AND THEN YOUR RIGHTS ARE SOLELY AS SET FORTH IN THIS LICENSE AGREEMENT.

IF YOU DO NOT ACCEPT THE LICENSE TERMS SET FORTH BELOW, YOU SHOULD NOT INSTALL OR USE THE SOFTWARE, OR PROVIDE IT TO ANYONE ELSE, BUT SHOULD IMMEDIATELY RETURN IT, AND ALL MATERIALS PROVIDED WITH IT, TO LICENSOR AT THE ADDRESS SET FORTH IN SECTION 1 BELOW.

1. DEFINITIONS

The term "Agreement" shall refer to this subscription license agreement.

The term "Effective Date" shall refer to the date of purchase by Licensee of a new subscription license to the Software.

The term "Licensor" shall refer to Wallac Oy (a PerkinElmer, Inc. company), having its primary place of business at Mustionkatu 6, 20760, Turku, Finland, owner of the copyright, or authorised licensor of, the Software.

The term "Licensee" shall refer to the entity or person which has directly licensed the Software from Licensor.

The term "Associated Company" shall refer to a company, which is a holding company of, or a subsidiary or a co-subsiary of the Licensee or the Licensor, as applicable.

The term "Server" means a single or multiple central processing unit ("CPU"), owned or leased by Licensee which is located on Licensee's site or the site of a Licensee Associated Company, to which other CPUs can electronically link in order to access data and software resident on the Server.

The term "Computer" means a single CPU, owned or leased by Licensee which is located on Licensee's site or the site of a Licensee Associated Company, and which is not used as a Server for any other CPUs. The term "Computer" does not include a laptop or any other portable processing or storage unit.

The term "Network" means a group of CPUs electronically linked to a single Server and capable of accessing data and software from that Server.

The term "Software" shall refer to the machine-readable object code version of the software for which Licensee has purchased a license, as identified in the applicable purchase order or license sale agreement, together with such software updates, enhancements, and remedial code (collectively, the "New Releases"), customized features, and such user and technical documentation, and related technical materials, in each case which may be provided to Licensee or to which Licensee may be provided access by or on behalf of Licensor at the time of the initial license sale and/or from time to time thereafter. The term "Server Software" shall refer to the portion of the Software which is installed and operates on a Network Server. The term "Client Software" shall refer to the portion of the Software which is installed and operates on a Network Computer. The term "Software" does not include source code for all or any portion of the Software.

2. LICENSE

2.1 Grant. Subject to the other terms and conditions of this Agreement, and contingent upon Licensee remaining current in its payment obligations to Licensor, Licensor hereby grants to Licensee a non-exclusive, non-transferable, non-assignable, time-limited license to:



- (i) install one copy of the Server Software on a Network Server,
- (ii) make and install copies of the Client Software on an unlimited number of Computers provided such Computers are within the same Network;
- (iii) use the Software solely on its Network solely for Licensee's internal business purposes and not for any other purpose or on behalf of any third party;
- (iv) make that number of additional copies of the Software reasonably required by Licensee solely for archival or backup purposes; and
- (v) authorize contractors, consultants and employees of Licensee and Licensee Associated Companies to use Licensee Software which has been installed on Computers, solely on behalf of Licensee for Licensee's internal business purposes and subject to the other terms and conditions of this Agreement.

2.2 Restrictions on License. Licensee may not:

- (i) use the Software or any portion thereof for commercial timesharing, rental, networking, service bureau use or other shared, hosted or common use;
- (ii) transfer, sell, assign, sub-license, rent or otherwise convey the Software or the license to use the Software to any third party without Licensor's prior written consent;
- (iii) alter, modify, reverse engineer, disassemble, decompile or otherwise attempt to derive the source code of the Software, or authorize any third party to do any of the foregoing, except to the extent such prohibition may be limited by law, and then only to the most limited extent of such prohibition and any such source code shall be subject to the terms of this Agreement which are applicable to Licensee's possession and use of Licensor's Software and Intellectual Property;
- (iv) alter, obscure, remove, interfere with or add to any of the trade marks, trade names, markings or notices including (without limitation) any copyright notice or other proprietary legend affixed to or contained in the Software or its packaging; or
- (v) copy any portion of the Software except as expressly authorized under Section 2.1.

2.3 Third Party Components. Except as otherwise provided in writing, the license rights to the Software granted herein include a license to any third party code contained in the Software. Licensee acknowledges and agrees that the owners and/or licensors of any third party code contained in the Software shall be deemed third party beneficiaries hereunder with respect to such code owned or licensed by such parties.

2.4 No Source Code. For avoidance of doubt, Licensee acknowledges and agrees that Licensee is not entitled to receive, have access to, discover, or use the source code of the Software except to the extent such restriction is prohibited by law, and then only subject to the terms of this Agreement applicable to the Software and Licensor's Intellectual Property.

3. ADDITIONAL COVENANTS, UNDERTAKINGS AND REPRESENTATIONS OF LICENSEE

3.1 Compliance Policies and Certification. Licensee shall adopt and enforce such internal policies, procedures and monitoring mechanisms as are necessary to ensure that the Software is used only in accordance with the terms of this Agreement and shall take all steps necessary to ensure that no person or entity will have unauthorised access to the Software. Upon Licensor's reasonable request, which shall be delivered on no more than a quarterly basis, Licensee shall provide signed statements verifying its compliance with this Agreement. Licensor shall also have the right, upon reasonable notice and on no more than an annual basis, to inspect Licensee's facilities to verify Licensee's compliance.

3.2 Independent Choice. Licensee represents that it has independently verified that the Software is appropriate for the purposes for which Licensee intends to use the Software, and that Licensee did not rely upon any skill or judgment of Licensor in such selection. Licensee assumes the entire risk related to its use of the Software.

3.3 Liability for Users and Use. Licensee agrees that it shall be solely liable for the proper training of all of its employees, agents, consultants or contractors, with respect to (a) the Software, its proper operations, and authorized uses and output, including without limitation, informing such persons as to the contractual and legal restrictions on use and copying of the Software set forth herein, and (b) the accurate interpretation, gathering, creation, disclosure, dissemination and other use of the output, data and/or reports which may be provided, distributed or stored by the Software.

3.4 Compliance with Laws. Licensee agrees to comply with all applicable international and national laws that apply to the Software and the use thereof, including but not limited to the U.S. Export Administration Regulations as well as end-user, end-use and country destination restrictions issued by applicable governments.



3.5 Indemnification by Licensee. Licensee will hold harmless and indemnify Licensor, its Associated Companies, and their respective directors, employees and agents, from and against any and all losses, claims, damages, costs, charges, expenses, liabilities, demands, proceedings and actions, which any of such entities may sustain or incur, or which may be brought or established against such entity which relate to Licensee's breach of the license terms of Section 2, the representations, undertakings and covenants in this Section 3, the terms protecting Licensor's or a third party's intellectual property or confidential information in Section 4, or Licensee's responsibilities with respect to the Data as set forth in Section 8.

4. INTELLECTUAL PROPERTY

4.1 Ownership. The Software is only licensed to Licensee. Licensee acknowledges and agrees that Licensee acquires only the right to use the Software (and only for the subscription term and in compliance with the terms of this Agreement) and does not acquire any rights of ownership in or to the same. For avoidance of doubt, with the exception of the limited license rights granted to Licensee hereunder, Licensor or its suppliers retain all right, ownership and interest in and to the Software, including, without limitation, all intellectual property rights embodied by or reflected in the same. Any unauthorized use or copying of the Software shall constitute a material breach of Licensee's copyright in the Software, the license terms of this Agreement, and the laws and regulations governing proprietary rights. Without limiting the foregoing, Licensee acknowledges and agrees that selling or otherwise distributing copies of all or part of the Software code is theft of Licensor property. Licensor represents that, as of the Effective Date, Licensor is not aware of any third party claims that the Software or any portion thereof infringes a third party intellectual property right.

4.2 Confidentiality Obligations. Licensee understands and agrees that the Software includes, embodies and/or reflects proprietary information, trade secrets and other confidential information of Licensor. Licensee shall maintain the Software, and all information and data contained therein or any portion thereof in strict confidence and shall not publish, communicate or disclose, or permit to be published, communicated or disclosed, to third parties such information and data without Licensor's prior written consent. Licensee agrees to take all appropriate steps to ensure that persons having access to the Software shall refrain from any unauthorised reproduction or disclosure of the Software or any portion thereof.

5. LIMITED WARRANTY AND REMEDIES

5.1 Warranty Period. The warranties set forth in this Section 5 shall be effective for a period of thirty (30) days commencing on the earlier of (a) the date that Licensee first uses the Software, or any portion thereof, in live production, or (b) sixty (60) days following the Effective Date. The warranty shall not extend to any renewal term of this subscription license.

5.2 Limited Warranties. Licensor warrants that, during the warranty period, (a) the Software installation media shall be free of material defects in materials under normal use, and (b) the Software will perform substantially in accordance with its user documentation. The foregoing warranties shall not apply where defects in the media or Software are attributable to (a) improper use or installation of the Software or media, (b) modification, alteration or other change made to the Software or media by Licensee or a third party, (c) abuse, misuse or external elements (such as water, electrical charges, etc.), (d) use of the Software or media outside of its authorized operating environment or with third party equipment or software not approved by Licensor, or (e) use of the Software other than as authorized under this Agreement or for purposes not covered by its user documentation. The foregoing warranties shall also apply only to the initial delivery of Software hereunder and shall not apply to any New Releases, customized features, or additional copies of the Software, which may be provided to Licensee hereunder. **Licensor expressly does not warrant that the functions contained in the Software will meet Licensee's requirements, are suitable for a particular purpose or that the operation of the Software will be uninterrupted or error free.**

5.3 Exclusion and Disclaimer of Warranties. With the exception of the express warranties set forth in Section 5.3, the Software and the media on which it is delivered are provided "AS IS," without further warranty of any kind, whether statutory, implied or contractual. Without limiting the foregoing, and subject only to the express warranties set forth in Section 5.2, Licensor expressly disclaims and excludes any warranty of any kind, including, without limitation the implied warranties of merchantability, fitness for a particular purpose, freedom from infringement, and warranties implied through custom of trade or otherwise.

5.4 Exclusive Remedies. Licensor will replace any defective installation media without charge if the defective media is returned to Licensor within the warranty period. If Client reports a material defect in the Software within the warranty period, Licensor shall, at its option, correct such defect, or provide Client a reasonable procedure to circumvent the defect, or, at



Licensor's sole option, accept a return of the defective Software and refund to Licensee the net license fees paid for the same. The foregoing shall be Licensor's sole and exclusive liability and Licensee's sole and exclusive remedy with respect to any defect in the Software.

6. TECHNICAL SUPPORT SERVICES; NEW RELEASES

Licensor shall provide support services to Licensee at no additional charge during the subscription term pursuant to Licensor's then current support services terms and conditions. Such standard support shall not include any customized services or technical consulting or support services outside the scope of Licensor's standard support offering. Licensor may, in its sole discretion but without obligation to do so, develop New Releases for the Software which it will make available to Licensee to the extent made generally available to other customers receiving support services.

7. LIMITATION OF LIABILITY

Under no circumstances and under no contractual or legal theory, or in equity, shall Licensor, its Associated Companies, suppliers or resellers, or any employees, directors or agents thereof, be liable to Licensee or any other party for any indirect, special, incidental, punitive or consequential damages of any character including, without limitation, loss of goodwill, business profits, business interruption, equipment failure or malfunction, costs of cover or replacement goods, loss of information or any and all other pecuniary damages or losses, whether or not such damages or losses were foreseeable and whether or not any remedy hereunder fails of its essential purpose. In no event shall Licensor's direct damages, under any theory of law, contract, or equity exceed in the aggregate the greater of (i) \$10,000 or (ii) the amount paid by Licensee for the Software during the subscription term in which the claim arose for the specific Software or services giving rise to the claim; provided that if the subscription term is a multiyear term, then the amount in (ii) above shall be deemed to be that portion of the Software license fee attributable to one year of the subscription term.

8. OWNERSHIP AND LIABILITY FOR DATA

As between the parties, all data entered into the Software database by Licensee (the "Data") shall be and remain the sole property of Licensee. Licensee shall be solely responsible and liable for the safeguarding, storage, access rules, transmission, disclosure, dissemination and use of the Data. At Licensee's request, Licensor shall provide reasonable assistance to Licensee in establishing certain safeguards to access in the Software, but Licensor does not warrant or represent that the Software provides protection against, and Licensor expressly disclaims any liability for, any improper access to, or for any improper use, disclosure, transmission or other dissemination of, the Data. Nothing in this Agreement shall be construed so as to transfer any ownership or other rights in the Software (or in any configuration data, database structure, logic, or other data embedded in the Software or provided by Licensor with the Software or at any time thereafter) to Licensee.

9. TERM OF LICENSE

This Agreement is effective from the Effective Date and shall continue for a period of one (1) year (unless otherwise mutually agreed in writing by the parties) provided that Licensee uses the Software in compliance with this Agreement and stays current in its payments hereunder. Thereafter, this Agreement shall automatically renew for successive one year terms unless either party notifies the other of its intent not to enter into the next renewal term which notice shall be in writing and delivered on or before (a) 60 days prior to the expiration of the then current term, or (b) 30 days following Licensor's invoicing Licensee for the applicable renewal fee for next renewal term, whichever is later. Any breach of this Agreement by Licensee, including any failure to make timely payments, shall result in an automatic and immediate termination of this Agreement including the license to the Software. In the event of such termination Licensee will (i) discontinue all use of the Software; (ii) return to Licensor all tangible copies or partial copies of the Software or any portion thereof; (iii) destroy all electronic copies of the Software, including those which may be contained in any computer memory or data storage apparatus; (iv) destroy all applicable configuration files (.ini extension or otherwise), and all databases created or used by the Software (v) certify to Licensor in writing within one week after the termination of this Agreement that Licensee has complied with the terms of this Section. The provisions of Sections 2.3, 3.3, 3.5, 4, 5.3, 5.4, 7, 8, 9 and 10 shall survive any termination of this Agreement and shall remain in full force and effect.



10. MISCELLANEOUS

10.1 Complete Agreement; Construction. This Agreement sets forth the rights and obligations of Licensee and Licensor with respect to Licensee's possession and use of the Software, and supersedes all prior agreements, commitments, representations, writings and discussions between them, whether written or oral, with respect to the same. This agreement cannot and shall not be modified by purchase orders or other documentation submitted unilaterally by either party, but may only be amended by an express written agreement signed by authorized representatives of both parties. No party shall be deemed to have waived any right, power or privilege under this Agreement or any provision hereof unless such waiver shall have been duly executed in writing and acknowledged by the party to be charged with such waiver. No waiver of a breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies permitted under this Agreement shall be taken and construed and cumulative. If any provision of this Agreement or its application to any person or circumstance is adjudged invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement or the application of such provision to other persons or circumstances shall not be affected thereby; provided, however, that if any provision or application hereof is invalid or unenforceable, then a suitable and equitable provision shall be substituted therefore in order to carry out, so far as may be valid and enforceable, the intent and purpose of this Agreement including the invalid or unenforceable provision. The captions of the sections of this Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

10.2 Jurisdiction. For licensees located in the United States or Canada, this Agreement will be governed by the laws of the Commonwealth of Massachusetts, USA regardless of any conflict of law principle. Any claim or dispute between the parties hereto pertaining to or arising out of this Agreement (including, without limitation, the interpretation, performance or breach of any provision of this Agreement) shall be subject to the jurisdiction of the courts in the Commonwealth of Massachusetts, USA.

For licensees located in the European Union or otherwise outside of the United States or Canada, this Agreement will be governed by the laws of England and Wales, regardless of any conflict of law principle. Any claim or dispute between the parties hereto pertaining to or arising out of this Agreement shall be resolved exclusively by arbitration pursuant to the arbitration rules of the International Chamber of Commerce. The location of the arbitration proceedings shall be London, England and the language of the arbitration shall be English.

Licensee shall reimburse Licensor for all fees, costs and expenses including, without limitation, attorneys' fees, costs and expenses incurred by Licensor in taking court action to obtain equitable relief in order to protect intellectual property rights in and ownership of the Software.

Should Licensee have any questions concerning this Agreement, Licensee should contact Licensor by writing to Wallac Oy, General Counsel, P.O.Box 10, 20101, Turku, Finland.