

MASTER MAINTENANCE CONTRACT

THIS CONTRACT (the "Contract") is between the State of Ohio ("State"), through its Office of Information Technology, IT Governance Division, with offices at 30 East Broad Street, Columbus, Ohio 43215 and: Solutions Thru Software Ltd. ("Contractor"), with offices at 664 Kingsway Ave. SE, Medicine Hat, Alberta, T1A 2X1

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 the end of the State's June 30, [2011]. Biennium. 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. It is understood that the State can not guarantee funds beyond the States Current Biennium, and contract continuation is dependant upon continued available finances.
- 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

- 2.3 PRICELIST.** The Contractor's pricelist for the maintenance that the Contractor may provide to the State under this Contract is attached as Exhibit I. For convenience, such maintenance services 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. Exhibit I is identified as the following pricelist: EXHIBIT 1 – STS Price List
- 2.4 NOTIFICATION OF 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. No price increase may affect any order for which a purchase order is in effect at the time of the increase.
- 2.5 PAYMENT DUE DATE.** Payments will be due on the 30th day after the later of:
- (a) The date the State actually receives a proper invoice at the office designated in the applicable purchase order to receive it; or
 - (b) The date the State accepts the Deliverable.

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

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



- (a) Name and address of the Contractor as designated in this Contract;
- (b) The Contractor's federal tax identification number as designated in this Contract;
- (c) The Contractor's invoice remittance address as designated in this Contract;
- (d) The purchase order number authorizing the delivery of the Deliverables; and
- (e) A description of the Deliverables, including, as applicable, the time period, serial number, unit price, quantity, and total price of the Deliverables.

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

- 2.7 NON-APPROPRIATION OF FUNDS.** The State's funds are contingent on the availability of lawful appropriations by the Ohio General Assembly. If the Ohio General Assembly fails to continue funding for any payments due hereunder, the order or orders under this Contract that are affected by the lack of funding will terminate as of the date that the funding expires, and the State will have no further obligation to make any payments with respect to the affected order or orders.
- 2.8 OBM CERTIFICATION.** This Contract is subject to Code § 126.07. Any orders under this Contract are void until the Director of the OBM certifies that there is a balance in the appropriation available to pay for the order.
- 2.9 CONTROLLING BOARD AUTHORIZATION.** The State's obligations under this Contract are subject to the Ohio Controlling Board continuing to authorize the State's use of its master maintenance contracts program. If the Ohio Controlling Board fails to authorize or withdraws its authorization for this program, this Contract will terminate immediately, and the Contractor may not take any more orders under it.
- 2.10 TRAVEL EXPENSES.** Any travel that the Contractor requires to perform its obligations under this Contract will be at the Contractor's expense. The State will pay for any additional travel that it requests only with prior written approval. This includes travel to maintain or investigate problems with Hardware and Software related to portions of the Knowledge Testing environment that are out of the scope of the STS maintenance contract and under the authority of the State. Including but not limited to:
- State Web server hardware, software, operating system, and configuration.
 - State Database server hardware, software, operating system and configuration
 - State BASS system hardware, software, operating system and configuration
 - State Network hardware, software, configuration and security
 - State front counter hardware, software, operating system and configuration
- 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 INSURANCE. The Contractor must provide the following insurance coverage at its own expense throughout the term of this Contract:

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

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

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

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

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

3.2 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 Office of Information Technology Contract Management, 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.

3.3 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.

- 3.4 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 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, the Contractor 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.

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

- 3.6 INDEPENDENT STATUS.** The parties will be acting as independent entities. The partners, employees, officers, directors, and agents of one party may only act in the capacity of representatives of that party and not as employees, officers, directors, or agents of the other party and will not be deemed as such for any purpose.

Each party assumes full responsibility for the actions of its partners, employees, officers, directors, and agents while performing under this Contract and will be solely responsible for paying those people. Additionally, each party will be solely responsible for withholding and paying social security and income taxes, making workers' compensation contributions, paying disability benefits, and providing fringe benefits, if any, for its partners, employees, officers, directors, and agents, and neither party may legally bind the other party in any manner.

5 – USE OF INFORMATION & NAME

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

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

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

- (1) Was already in the possession of the Receiving Party without an obligation of confidence;
- (2) Is independently developed by the Receiving Party, provided documentary evidence exists to support the independent development;
- (3) 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.

Except for Confidential Information that the Contractor delivers to the State and that is part 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.

5.2 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 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 Office of Information Technology's 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 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 Office of Information Technology. The Contractor also must pay the revenue share by check. To ensure the payment is credited properly, the Contractor must identify the check as a "Revenue Share" and include the applicable State Term Contract Number, total report amount, and reporting period covered.

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

Department of Administrative Services
Office of Finance
30 East Broad Street, Suite 4060
Columbus, Ohio 43215 – 3414

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

7 - WARRANTIES AND LIABILITIES

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

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

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

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

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

7.2 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 tortious conduct of the Contractor, its employees, agents, or subcontractors. The Contractor also must indemnify the State against any claim of infringement of a copyright, patent, trade secret, or other intellectual property rights based on the State's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where the State has modified the Deliverable and the claim of infringement is based on the modification. The State will give the Contractor notice of any such claim as soon as reasonably practicable. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor will do one of the following four things:

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

7.3 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.

NOTHING IN THIS SECTION DOES LIMITS THE CONTRACTOR'S OBLIGATION TO ACQUIRE IDENTITY THEFT PROTECTION SERVICES UNDER SECTION 5.4 OF THIS CONTRACT.

8 – HARDWARE MAINTENANCE

- 8.1 EQUIPMENT MAINTENANCE.** Except as otherwise provided in this Contract, when equipment maintenance is a Deliverable under this Contract, it will consist of:

Remedial Maintenance Calls: During the regular business hours of 8:00 a.m. to 5:00 p.m., when requested by the State, remedial maintenance service will be done as promptly as practicable to correct malfunctions of any equipment covered by maintenance under this Contract and to restore the equipment to good operating condition. This includes replacing unserviceable parts when necessary. At other times, subject to the availability of Contractor personnel, and when requested by the State, emergency remedial service will be rendered as promptly as practicable at the then-current hourly rates of Contractor.

Preventative Maintenance Inspections: At such times during the regular business hours of Contractor as may be convenient for the State, the Contractor will conduct reasonable, periodic inspections of all equipment covered by maintenance under this Contract. There will be no additional charge for such inspections, and the purpose of these inspections will be to test, clean, lubricate and adjust the equipment, as well as to check its performance, replace unserviceable parts, and take such other actions as may be deemed necessary by Contractor to maintain the equipment in good operating condition. Preventative maintenance service may be performed concurrently with remedial services.

- 8.2 LIMITATIONS AND EXCLUSIONS FOR EQUIPMENT MAINTENANCE.** Equipment maintenance under this Contract will not include:

1. Furnishing ribbons, tapes, or other accessories, supplies or consumable items;
2. Making specification changes;
3. Performing services connected with relocation of the equipments;
4. Adding or removing accessories, attachments or other devices or altering the equipment;
5. Repairing damage or malfunctions or replacing of parts causes by:
 - A. Intentional abuse or negligence of the State;
 - B. Use of operating supplies or other consumable items not meeting the equipments manufacturer's specifications;
 - D. Improper, excessive, extraordinary or abnormal operation of the equipments;
 - E. Acts of third parties;
 - F. Alteration of the equipment by the State or a third party;
 - G. Malfunction of parts not furnished by the equipment manufacturer unless Contractor furnished such parts under this Contract;
 - H. Installation or attachment to the equipment of parts or equipment not furnished or approved by the equipment's manufacturer, unless such parts were furnished by Contractor under this Contract;
 - I. Failure of the State to provide a suitable environment for the equipment;
6. Providing electrical work external to any equipment,

7. Repairing damage due to floods, fires, loss of air conditioning, electrical shortages or other casualty, unless such damage resulted from Contractor's negligence or failure to perform under the Contract,
8. Performing services with respect to equipment that is not a part of the equipment,
9. Painting or refinishing the equipment or furnishing material for such, or
10. Reconditioning the equipment, except as provided in Section 8.6 below.

Repairs and replacements necessitated by any of the items excluded from coverage hereunder will be undertaken by Contractor only on the State's written approval of estimated additional charges, the State's Contract to pay the actual charges, and the State's issuance of a purchase order.

- 8.3 DELIVERABLES LOCATION.** If the State moves any equipment covered by this Contract, the State will notify the Contractor of the relocation. The Contractor then may terminate maintenance for the affected equipment if the Contractor believes the environmental conditions of the new location are not suitable for satisfactory performance or if the new location is out of the Contractor's ordinary operating area. On any such termination, the State will be entitled to a *pro rata* refund of any maintenance fees paid in advance for the affected equipment.
- 8.4 RETAINED OWNERSHIP.** The Contractor will retain title to all replacement parts until such are incorporated into the equipment, at which time title will pass to the State. The Contractor will retain title to all tools and all diagnostic, computer program media it uses. In addition, all Contractor test, diagnostic, and verification information and routines (on media owned by Contractor or the State), maintenance equipment and maintenance materials, information and documentation that are treated as proprietary and confidential by Contractor will be so treated by the State, and such proprietary and confidential items, whether on the premises of the State, or accessible by remote inquiry, will remain the property of Contractor and may be removed, or usage thereof discontinued, as applicable, by Contractor at any time, or the State will destroy the same on written request from Contractor. The State agrees to treat and protect such proprietary and confidential items in a manner consistent with the maintenance of trade secret rights and to take appropriate action by instruction or Contract with its employees who are permitted access to confidential items. Despite the foregoing, Contractor will work with the State at no charge to provide access to such after termination or of this Contract to the extent that the use of such proprietary or confidential tools subsequently prevents the State from getting maintenance through another contractor on commercially reasonable terms.
- 8.5 REMOVAL OF DELIVERABLES.** The State may remove an item of equipment from coverage under the Contract by giving Contractor 30 days advance written notice. After the 30-day notice, the State will not be liable for charges associated with maintenance of the affected equipment. If the State has paid in advance for the maintenance, it will be entitled to a *pro rata* refund for the maintenance fee associated with the affected equipment.
- 8.6 RECONDITIONING/REPLACING** Hardware maintained under this contract will be treated as if under a perpetual warranty. By Definition, a perpetual warranty will mean that it will be the contractor's responsibility to maintain or replace at the contractors expense all equipment covered under this agreement. To minimize the impact on the office, failed equipment will be immediately replaced with new or reconditioned hardware with the system brought back to full operation as soon as possible. Failed equipment will be returned to the contractors service depot for evaluation and if possible repair. At the contractors' reasonable opinion, hardware will be reconditioned or replaced. Reconditioned and replaced hardware will be transferred to State ownership. To meet State requirements for tracking and disposal of CPU's, Solutions will track the asset tags of all computers used in the Automated Testing System. Monitors will not be tracked as security requirements and their value do not require it. Solutions Thru Software will maintain an inventory tracking list of where each computer is located and update the States Asset Management Unit on a quarterly basis. The State may also request an updated copy from STS at any time required. Solutions Thru Software will also remove all hard drives of computers prior to disposal, and will submit the hard drives to the State for destruction at regular intervals.

The contractor will insure that replacement hardware will meet the minimum hardware requirements of the knowledge testing software now and in the future based on the network, security and operating system standards set at the time of purchase. The Contacts for the Asset Management unit will be:

Primary contact:

Randy Hawk

Supervisor, Asset Management Unit/ Inventory Management Services

rhawk@dps.state.oh.us

614-752-7883

Secondary contact

Jeff Shadburn

Chief, Inventory Management Services

jshadburn@dps.state.oh.us

614-466-2890

- 3.7 RESPONSIBILITIES OF THE STATE.** The State will provide Contractor's personnel reasonable access to the Deliverables at mutually agreed upon times to perform maintenance services (including preventive maintenance). The State 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 Deliverables to be serviced and will be provided at no charge to Contractor.

The State will not perform maintenance or repair to the Deliverables during the term of this Contract except simple daily or weekly preventive maintenance on the Deliverables as allowed or reasonably required by Contractor. The State, at Contractor's request, will maintain the service reports issued by Contractor. The State, at its own expense, will establish and maintain an environment consistent with the specifications furnished by Contractor for the Deliverables

9 – Software Maintenance

- 9.1 Software Maintenance.** 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.

1. Contractor will provide maintenance services to those sites designated by the State in the attachments during the term of this Contract.
2. Telephone Support. Contractor will provide reasonable technical telephone consultation concerning the use of any updates, enhancements and corrections to all sites.
3. New Releases. From time to time Contractor may modify or enhance the Deliverables by a new release of the Deliverables. In such case, Contractor shall provide the State with one copy of every new release of the Deliverables listed in the attached schedules, including all modifications, enhancements and documentation.
4. Contractor will correct errors or replace the Deliverables in a reasonably expeditious manner after notification that a Deliverables correction is required. Failure to comply with this requirement will result in deduction from the maintenance rate for each day the Deliverables are inoperative, computed from the initial downtime notification. The deduction for an inoperative period consisting of a partial day will be prorated.

5. Contractor will provide Maintenance for the then-current release and the immediately preceding release of the Deliverables. 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 Deliverables on sixty (60) days written notice.

9.1 SERVICE AVAILABILITY PERIOD. The "Call Window" specified on any attached schedule is the time and days during which the State may notify Contractor that the Deliverables are inoperative and during which Contractor will perform the on-site maintenance, excluding State holidays. All software on a schedule will have the same Call Window. Repairs and replacements necessitated by any of the items excluded from coverage hereunder will be undertaken by Contractor only on the State's written approval of estimated additional charges, the State's Contract to pay the actual charges, and the State's issuance of a purchase order.

The annual maintenance fee will remain fixed during fiscal year 2010 and 2011..

10 - ASSIGNMENT AND SUBCONTRACTING

- 10.1 ASSIGNMENT.** The Contractor may not assign this Contract without the written consent of the State, which the State will not be obligated to provide.
- 10.2 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.

11 – CONSTRUCTION

- 11.1 HEADINGS.** The headings used in this Contract are for convenience only and may not be used in interpreting this Contract.
- 11.2 ENTIRE DOCUMENT.** This Contract, which includes the Contractor's pricelist attached as Exhibit I, quote 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.
- 11.3 BINDING EFFECT.** This Contract will be binding on and benefit the respective successors and assigns of the State and the Contractor.
- 11.4 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.
- 11.5 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.
- 11.6 CONSTRUCTION.** This Contract must be construed in accordance with the plain meaning of its language and neither for nor against the drafting party.

- 11.7 NOTICES.** For any notice under this Contract to be effective, the noticing party must make it in writing and sent it to the address of the other party first appearing above, unless that party has notified the other party, in writing and in accordance with the provisions of this section, of a new mailing address for the receipt of notices. This notice requirement will not apply to any notices that this Contract expressly authorizes to be made orally.
- 11.8 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.
- 11.9 PRIORITY.** If there is any inconsistency or conflict between this document and any provision of anything incorporated by reference, this document will prevail.
- 11.10 DAYS.** When this Contract refers to days, it means calendar days, unless it expressly provides otherwise.

12 - LAW AND COURTS

- 12.1 EEO.** Contractor will comply with all laws of Ohio regarding equal employment opportunity and fair labor and employment practices, including but not limited to Section 125.111 of the Code, and all related Executive Orders of the Governor of Ohio.

Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be submitted to the DAS 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 Equal Opportunity Department web site: <http://www.das.ohio.gov/Eod/AAEEO.htm>

- 12.2 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.
- 12.3 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. In accordance with Executive Order 2007-01S, the Contractor, by signature on this document, certifies: (1) it has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands the Ohio ethics and conflicts of interest laws, and (3) will take no action inconsistent with those laws and this order. The Contractor understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of this Agreement and may result in the loss of other contracts or grants with the State. The Contractor hereby certifies that all applicable parties listed in Division (I)(3) or (J)(3) of Ohio Revised Code Section 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of Ohio Revised Code Section 3517.13.
- 12.4 SECURITY & SAFETY RULES.** When accessing State networks and systems, the Contractor must comply with all applicable 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 applicable to people on those premises.
- 12.5 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.
- 12.6 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

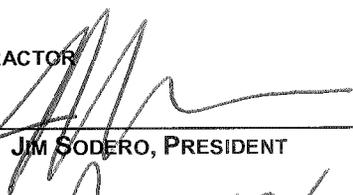
void. Additionally, if this representation proves false on the date of any renewal or extension of the Contract, the renewal or extension will be void.

12.7 Declaration of Material Assistance/Non-Assistance to a Terrorist Organization. In accordance with R.C. 2909.33(C), Contractor certifies that it meets one of the following conditions:

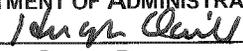
- (a) Contractor has **not** received, nor will receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars (\$100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year; or
- (b) (1) Contractor has received, or will receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars (\$100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year; and

(2) Contractor has either precertified with the Office of Budget and Management, or has completed the attached Declaration of Material Assistance form certifying that Contractor has not provided material assistance to any organization on the Terrorist Exclusion List, as that term is defined in R.C. 2909.21.

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: 

JIM SODERO, PRESIDENT
DATE: June 17/2009

STATE OF OHIO,
DEPARTMENT OF ADMINISTRATIVE SERVICES
BY: 

HUGH QUILL, DIRECTOR
DATE: 6/26/09

Exhibit I

Solutions Thru Software offers the State of Ohio the following “preferred vendor” pricing

Hardware

Testing Unit Kiosks

Testing Unit Kiosks are defined as being a complete and operational Testing Unit, Including:

- Kiosk Cabinet
- Computer
- ELO SAW Touch Display Monitor
- Associated Cabling

\$2280.00

Examiner Consoles

The Examiner Console Computers supplied under the original contract are no longer required with the Web Testing and Bass interface. This application can now be run on existing State Front counter terminals, where it is integrated with the BASS system. A price is included for compatibility with previous contracts and the State is still welcome to purchase units should the need ever reoccur.

Examiner Consoles include:

- Desktop Computer
- LCD Monitor

\$2700.00

Hardware Maintenance

Perpetual maintenance agreement , repaired or replaced at the discretion of STS.

\$62.12/ Month/Machine
(\$745.44/year/machine)

Software

Operating System Licenses

NOTE: The State has requested “Share” licenses between part time offices. Although STS can accommodate this request, we are not able to commit Microsoft to the same agreement for the Windows, Operating System licenses. For this reason the Operating System and Testing Station Software licenses are sold separately. This will result in an overall savings to the State of Ohio.

\$300.00

Testing Station Licenses

One License is required per operational testing station. Sharing for part time offices is allowed as long as the the offices are never operational at the same time. Should the part time offices convert to full time, additional licesnses will be required from STS.

\$700.00

Examiner Console Licenses

One License is required per office. STS grants an unlimited use within each licensed office

\$900.00

Administrative Licenses

One License is required for the State. STS grants an unlimited use within the State.

\$0.00

Software Maintenance

Software maintenance includes all aspects of the Testing station softare developed by STS, including the BASS integration software developed by STS, but specifically does not include the Sever, Database, Networks, Security, or any configurations related to the machines these components are operated from.

\$25.58/Month/Machine
(\$306.96/year/machine)

Installation Costs

Project Management

Fixed cost, one required per installation period

\$30,000.00

Installation

Per site include set up, testing and training

\$2,490.00

Pre Deliver Tasks

Per site include purchasing, software installation and testing

\$1,150.00



June 17th, 2009

Ms. Beth Stalnaker
Acquisition Management
DAS Computer Services/ Acquisitions Management
30 E Broad St.
39th Floor
Columbus, OH, 43215

Re: Automated Knowledge Testing MMA

Ms: Stalnaker

Please find attached a copy of the STS MMA agreement including a modified price list. As per your request, all modification have been made with "Markup" turned on, so you can see the changes I have made.

I apologize this has taken so long, but I have worked at trying to come up with a fee structure that would take our present economic situation in to account, as well as the long-term successful and trusting relationship that has formed between the State of Ohio and Solutions Thru Software. I hope you can appreciate that when budgeting so close to a break even point, it is necessary for an extreme amount of care and due diligence.

As a summary, I believe my diligence has paid off and will provide the State of Ohio a savings of over \$50,000 per year in all future years of our contract.

In the interest of cost savings, Solutions Thru Software has reduced costs in the following ways:

- **Forgiven State Commitments.**
In 2006 STS and the State of Ohio signed an agreement that would allow the State to install a completely new and technology improved Web based Testing System at zero cost, providing the State followed through with 5 years of maintenance contracts at a committed price. Only three of those five years have been completed, however if the State can accept our current offering, STS will remove this requirement and reduce maintenance contract prices effective immediately.
- **Maintained All Pricing for new expenditures.**
Solutions Thru Software has maintained all pricing at year 2000 levels. This pricing is well below our current price structure offered to new clients.



- Offer of Perpetual Maintenance.

Solutions Thru Software is offering to continue maintaining or replacing all hardware, regardless of age, at price that is actually lower than any maintenance offer provided to the State in the past. This Perpetual Maintenance Agreement will allow the State to continue using a proven product line with a reliable track record without need for future planning or budgeting for system replacement. Essentially, we are offering the State of Ohio a knowledge testing system that will be as technologically advanced and reliable in year “n” of the contract, as it was in year one. There should never be a need for the State to go for RFP or budget for hardware replacement again.

Thank you very much for your consideration. I look forward to further discussions.

Yours truly,

A handwritten signature in black ink, appearing to read 'Jim Sodero', with a long horizontal line extending to the right.

Jim Sodero
President
Solutions Thru Software Inc.

Toll Free 1-877 XAMINER (926-4637)

Solutions Thru Software

Quote FY 2009-2010

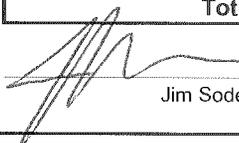
June 12, 2009

Customer	Ohio Department of Public Safety
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Qty	Description	Months	Price/Mon	Price
Annual Hardware and Software Maintenance for Drivers License Automated Testing System July 1, 2009 - June 30, 2010				
Phase 1 Systems Maintenance				
35	Hardware Maintenance	12	\$ 62.12	\$26,090.40
35	Software Maintenance	12	\$ 25.58	\$10,743.60
Phase 2 Systems Maintenance				
178	Hardware Maintenance	12	\$ 62.12	\$132,688.32
178	Software Maintenance	12	\$ 25.58	\$54,638.88
Phase 3 Systems Maintenance				
84	Hardware Maintenance	12	\$ 62.12	\$62,616.96
84	Software Maintenance	12	\$ 25.58	\$25,784.64
Phase 4 Systems Maintenance				
16	Hardware Maintenance	12	\$ 62.12	\$11,927.04
16	Software Maintenance	12	\$ 25.58	\$4,911.36
Phase 5 Systems Maintenance (software maintenance only)				
0	Hardware Maintenance	12	\$ 62.12	\$0.00
5	Software Maintenance	12	\$ 25.58	\$1,534.80
Phase 6 Systems Maintenance (covered by warranty until Oct. 1st, 2006)				
74	Hardware Maintenance	12	\$ 62.12	\$55,162.56
74	Software Maintenance	12	\$ 25.58	\$22,715.04
Phase 7 Systems Maintenance (covered by warranty until August. 1st, 2007)				
76	Hardware Maintenance (76 kiosks)	12	\$ 62.12	\$56,653.44
68	Software Maintenance (60 testing units, 8 office CS)	12	\$ 25.58	\$20,873.28
Phase 8 Systems Maintenance (covered by warranty until December 1st, 2008)				
100	Hardware Maintenance (100 kiosks)	12	\$ 62.12	\$74,544.00
100	Software Maintenance	12	\$ 25.58	\$30,696.00

Total Price	\$591,580.32
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Signed



Jim Sodero, President

Date

June 17/2009

Terms and Conditions

Note: Pricing with previous fee structure would have cost \$641,876.52

Mail: PO Box 789, Medicine Hat, Alberta T1A 7G7
 Courier: 664 Kingsway Ave S.E., Medicine Hat, Alberta T1A 2X1
 Phone (403) 526-6882 email jsodero@sts-mh.com