

STATE TERM 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: EC America, Inc. ("Contractor"), with offices at 203 Perry Parkway, Suite 6, Gaithersburg, MD, 20877.

BACKGROUND

The State recognizes that it is sometimes advantageous to do business with some manufacturers under a State term contract rather than through a competitive bidding or proposal process. In such cases, the State may enter into a contract with the manufacturer provided that the manufacturer offers its products and ancillary services at the same prices that the manufacturer offers those products and services to the US Government under the GSA's Multiple Award Schedule program or SmartBuy program. Or if the manufacturer has no contract under the GSA's Multiple Award Schedule program or SmartBuy program, the State will accept the pricing the manufacturer offers to its distributors. Further, if the manufacturer has no GSA Multiple Award Schedule or SmartBuy contract and no distributors, the State may accept the prices that the manufacturer offers to its most favored customers for each product or service.

The State also recognizes that some manufacturers work primarily through dealers for various reasons, including offering customers better support through dealers that have a local presence in a service area. Because of this, the State may sometimes agree to work directly with a manufacturer's dealers.

However, if the Contractor is not the manufacturer of the products or services under this Contract, the Contractor must submit a letter from the manufacturer that assures the State that the Contractor is an authorized dealer in the manufacturer's products or services. The letter also must assure the State that the Contractor will have sufficient quantities of the offered products for the duration of the Contract to meet the State's needs under the Contract during the initial term and any extensions. Further, the letter must identify each of the manufacturer's product and service that the Contractor will supply under this Contract. The letter also must contain an assurance of the availability through the dealer of repair services and spare parts for products covered by this Contract for five years from the date of purchase. It also must contain an assurance that software maintenance will be available under the terms of this Contract either from the dealer or the manufacturer for six years from the date of acceptance. (This assurance is not necessary for PC and PC-based server software with a perpetual license fee of less than \$10,000.00 per copy.) The dealer must submit the letter, signed by an authorized representative of the manufacturer, with the executed copies of this Contract.

This Contract establishes terms and conditions under which State agencies (including any board, instrumentality, commission, or other political body) and Ohio political subdivisions, such as counties, municipalities, and townships, may acquire the Contractor's products or services at the pricing identified below. This Contract, however, only permits such; it is not a requirements contract and does not obligate any State agency or political subdivision to acquire the Contractor's products or services.

TERMS AND CONDITIONS

1 - TERM

- 1.1 TERM.** This Contract is effective on the date the State's duly authorized representative executes it, as evidenced by the date appearing with the representative's signature, below. Unless this Contract is terminated or expires without renewal, it will remain in effect until the end of the State's current fiscal biennium, which is June 30, 2009. Termination or expiration of this Contract will not limit the Contractor's continuing obligations with respect to Deliverables that the State paid for before termination or limit the State's rights in such.
- 1.2 CONTRACT RENEWAL.** In the State's sole discretion, it may renew this Contract for a period of one month at the end of each biennium during which this Contract remains in place. Any further renewals will be only by



written agreement between the State and the Contractor. Such renewals may be for any number of times for any period not to exceed the time remaining in the State's then-current biennium.

2 - PRICING AND PAYMENT

2.1 CERTIFICATION OF ACCURACY. By checking one of the following three items, the Contractor certifies that the Contractor's prices under this Contract are:

- X The prices at which the Contractor currently offers each product and service to the US Government under the GSA's Multiple Award Schedule program;
- The prices at which the Contractor currently offers each product and service to the US Government under the GSA's SmartBuy program; or
- The best prices at which the Contractor has offered each product and service to its most favored customers within one year before the date the Contractor executed this Contract or adds the product or service to this Contract, whichever is later.

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

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

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

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

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

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

2.3 PRICELIST. The Contractor's pricelist for the products and services that the Contractor may provide to the State under this Contract is attached as Exhibit I. For convenience, those products and services are called "Deliverables" in this Contract. Any custom materials resulting from the Contractor's services also are called "Deliverables" in this Contract. The Contractor may not provide any other Deliverables under this Contract without a prior written amendment to this Contract that both the State and the Contractor have signed. Furthermore, the Contractor may not charge the State greater prices for these Deliverables than the prices on the Exhibit I. If Exhibit I contains or incorporates by reference any terms or conditions other than a description of the scope of license for software, a description of the Contractor's products and

services, and the prices for those products and services, those terms or conditions are excluded from this Contract and are of no effect. Exhibit I is identified as the following pricelist:

EC America Consolidated Pricelist 8-6-7 STS.xls

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

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

2.5 PAYMENT DUE DATE. Payments will be due on the 30th day after the later of:

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

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

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

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

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

2.7 OHIO PAYMENT CARD. Participating State agencies issuing orders under this Contract may use the Ohio Payment Card. Such purchases may not exceed \$2,500 unless the Office of Budget and Management ("OBM") has authorized the agency to exceed this limit. If OBM increases the dollar limit for payment cards for all State agencies, the State will post notice of that on its Procurement Website. Participating State agencies are required to use the Ohio Payment Card in accordance with OBM's current guidelines for the

Ohio Payment Card and the agency's approved plan filed with the OBM. The Contractor may process a payment in the payment card network only upon delivery and acceptance of the applicable Deliverables. For partial deliveries or performance, the Contractor may process a payment for the amount delivered or completed only and not for the entire amount ordered by the ordering agency. Upon completion of the delivery of remaining Deliverables, the Contractor may process a payment request in the payment card network for the remainder of the order. The Contractor should receive payment through its merchant bank within the time agreed upon between the Contractor and its merchant bank. The Contractor should expect normal processing fees from its merchant bank for payment card transactions, which the Contractor may not pass on to the State.

- 2.8 NON-APPROPRIATION OF FUNDS.** The State's funds are contingent on the availability of lawful appropriations by the Ohio General Assembly. If the Ohio General Assembly fails to continue funding for any payments due hereunder, the order or orders under this Contract that are affected by the lack of funding will terminate as of the date that the funding expires, and the State will have no further obligation to make any payments with respect to the affected order or orders.
- 2.9 OBM CERTIFICATION.** This Contract is subject to Code § 126.07. Any orders under this Contract are void until the Director of the OBM certifies that there is a balance in the appropriation available to pay for the order.
- 2.10 CONTROLLING BOARD AUTHORIZATION.** The State's obligations under this Contract are subject to the Ohio Controlling Board continuing to authorize the State's use of its term contracts program. If the Ohio Controlling Board fails to authorize or withdraws its authorization for this program, this Contract will terminate immediately, and the Contractor may not take any more orders under it.
- 2.11 TRAVEL EXPENSES.** Any travel that the Contractor requires to perform its obligations under this Contract will be at the Contractor's expense. The State will pay for any additional travel that it requests only with prior written approval. The State will pay for all additional travel expenses that it requests in accordance with OBM's travel policy in Rule 126-1-02 of the Ohio Administrative Code (the "Administrative Code").
- 2.12 TAXES.** The State is exempt from all sales, use, excise, and property taxes and will not pay any such taxes. To the extent sales, use, excise, or any similar taxes are imposed on the Contractor in connection with any Deliverable, the Contractor must pay those taxes together with any interest and penalties not successfully disputed with the taxing authority.
- 2.13 OFFSET.** The State may set off any amounts the Contractor owes to the State under this or other contracts against any payments due from the State to the Contractor under this or any other contracts with the State.

3 - CONTRACT ADMINISTRATION

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

In doing so, the Contractor warrants that:

- (a) The Contractor has provided the dealer with a copy of this Contract, and a duly authorized representative of the dealer has agreed, in writing, to be bound by the terms and conditions in this Contract.
- (b) Such agreement specifically provides that it is for the benefit of the State as well as the Contractor.
- (c) The Contractor will remain liable under this Contract for the services of any dealer and will remedy any breach of the dealer under this Contract.

- (d) Payments under this Contract for the services of any dealer may be made directly to that dealer, and the Contractor will look solely to the dealer for any payments due to the Contractor once the State has paid the dealer.
- (e) To the extent that there is any liability to the State arising from doing business with a dealer that has not signed the agreement required under this section with the Contractor, the Contractor will indemnify the State for such liability.

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

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

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

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

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

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

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

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

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

- (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.

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

dismissed within 60 days. And the State may terminate this Contract or any order under it if the Contractor violates any law or regulation while performing under this Contract or if it appears to the State that the Contractor's performance is substantially endangered through no fault of the State. In all of the foregoing cases, the termination will be for cause.

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

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

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

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

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

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

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

3.10 LOCATION OF SERVICES AND DATA. As part of this Contract, the Contractor must disclose the following:

- (a) All locations where any services will be performed;
- (b) All locations where any State data applicable to the Contract will be maintained or made available; and
- (c) The principal place of business for the Contractor and all its subcontractors.

The Contractor may not change any location where any services are performed to a location outside the country of the original location or change any location where the data is maintained or made available to any other location outside the country of the original location without prior written approval of the State, which the State will not be obligated to provide.

4 - DELIVERY AND ACCEPTANCE

4.1 ACCEPTANCE. The acceptance procedure for Deliverables will be an informal review by the agency acquiring the Deliverables to ensure that each Deliverable meets the warranties in this Contract. The State will have up to 30 days after installation to do this. The State will not issue a formal letter of acceptance, and passage of 30 days will imply acceptance, though the State will issue a notice of noncompliance if a Deliverables does not meet the warranties in this Contract.

If the State issues a noncompliance letter, the Contractor will have 30 days to correct the problems listed in the letter. If the Contractor fails to do so, the Contractor will be in default without a cure period. If the State has issued a noncompliance letter, the Deliverable will not be accepted until the State issues a letter of acceptance indicating that each problem noted in the noncompliance letter has been cured. If the problems have been fixed during the 30-day period, the State will issue the acceptance letter within 15 days after all defects have been fixed.

4.2 TITLE. Title to any Deliverable will pass to the State only on acceptance of the Deliverable, and all risk of loss will remain with the Contractor until title to the Deliverable passes to the State.

4.3 DELIVERIES. The Contractor must make all deliveries F.O.B. destination.

5 - INTELLECTUAL PROPERTY

5.1 COMMERCIAL MATERIAL. As used in this section, "Commercial Material" means anything that the Contractor or a third party has developed at private expense and that is commercially available in the marketplace, subject to intellectual property rights, and readily susceptible to copying through duplication on magnetic media, paper, or other media. Examples include the written reports, books, pictures, videos, movies, computer programs, source code, and documentation.

Any Commercial Material that the Contractor intends to deliver as a Deliverable must have the scope of the license granted in such material disclosed in an Exhibit to this Contract, if that scope of license is different than the scope of license contained in this section for Commercial Materials.

Except for Commercial Material that is software ("Commercial Software"), if the Commercial Material is copyrighted and published material, then the State will have the rights permitted under the federal copyright laws for each copy of the Commercial Material delivered to it by the Contractor.

Except for Commercial Software, if the Commercial Material is patented, then the State will have the rights permitted under the federal patent laws for each copy of the Commercial Material delivered to it by the Contractor.

For Commercial Software, the State will have the following, perpetual rights, subject to the next paragraph. The State may:

- (1) Use and copy the Commercial Software for use in or with the computer or computers for which it was acquired, including use at any State installation to which such computer or computers may be transferred;
- (2) Use or copy the Commercial Software for use with a backup computer for disaster recovery and disaster recovery testing purposes or if any computer for which it was acquired is inoperative;
- (3) Reproduce the Commercial Software for archival, image management, and backup purposes;
- (4) Modify, adapt, and combine the Commercial Software with other computer software, provided that the modified, combined, and adapted portions of the derivative software incorporating any of the Commercial Software will be subject to same restrictions on use;
- (5) Disclose to and reproduce the Commercial Software for use on behalf of the State by support service contractors or their subcontractors, subject to the same restrictions on use; and
- (6) Use or copy the Commercial Software for use with a replacement computer.

In the case of any other scope of license (e.g., MIPs, tier, concurrent users, enterprise, site, or otherwise), the foregoing will apply except as expressly modified by the applicable license description, which must be incorporated as part of Exhibit I. If the Contractor provides greater license rights in an item included in Exhibit I to its general customer base for the Software's list price, those additional license rights also will be provided to the State without additional cost or obligation. No license description may reduce the rights in items 1 through 6 above; it may only define the extent of use, if the use is other than a CPU license.

The State will treat any Commercial Software as Confidential Information, in accordance with the requirements of the Confidential Information section of this Contract, if the Commercial Software is clearly and conspicuously labeled as confidential or secret.

5.2 CUSTOM DELIVERABLES. All custom work done by the Contractor and covered by this Contract will belong to the State, with all rights, title, and interest in all intellectual property that comes into existence through the Contractor's work under this Contract being assigned to the State. Additionally, the Contractor waives any shop rights, author rights, and similar retained interests in any such custom developed materials. The Contractor must provide the State with all assistance reasonably needed to vest such rights of ownership in the State. However, the Contractor will retain ownership of all tools, methods, techniques, standards, and other development procedures, as well as generic and preexisting shells, subroutines, and similar material incorporated in any custom Deliverable ("Pre-existing Materials").

The Contractor grants the State a worldwide, non-exclusive, royalty-free, perpetual license to use, modify, sell, and otherwise distribute all Pre-existing Materials that are incorporated in any custom-developed Deliverable. The Contractor may not include in any custom Deliverable any intellectual property unless such has been created under this Contract or qualifies as Pre-existing Material. If the Contractor wants to incorporate any Pre-existing materials in a custom Deliverable, the Contractor must disclose that desire to the State and obtain written approval from the State for doing so in advance. On the request of the Contractor, the State will incorporate any proprietary notice that Contractor may reasonably want for any Pre-existing Materials included in a custom Deliverable in all copies the State makes of that Deliverable.

Subject to the limitations and obligations of the State with respect to Pre-existing Materials, the State may make all custom Deliverables available to the general public without any proprietary notices of any kind.

5.3 CONFIDENTIALITY. The State may disclose to the Contractor written material or oral or other information that the State treats as confidential ("Confidential Information"). Title to the Confidential Information and all related materials and documentation the State delivers to the Contractor will remain with the State. The Contractor must treat such Confidential Information as secret if it is so marked, otherwise identified as such,

or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of the public, other contractors or potential contractors with the State, or individuals or organizations about whom the State keeps information. The Contractor may not disclose any Confidential Information to third parties and must use it solely to perform under this Contract.

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

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

- (1) Was already in the possession of the Receiving Party without an obligation of confidence;
- (2) Is independently developed by the Receiving Party, provided documentary evidence exists to support the independent development;
- (3) 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 or necessary for the proper use or maintenance of a Deliverable, the Receiving Party must return all originals of any Confidential Information and destroy any copies it has made on termination or expiration of this Contract.

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

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

6 – TRANSACTION REPORTING

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

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

The Contractor must remit any amount due as the result of a quarterly or closeout report at the time the quarterly or closeout report is submitted to the 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, unless otherwise provided in this Contract; and
- (d) Be merchantable and fit for the particular purpose for which the Deliverables were acquired.

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

- (a) The Contractor has the right to enter into this Contract;
- (b) The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Contract;

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

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

7.2 SOFTWARE WARRANTY. If Exhibit I includes work to develop custom software as a Deliverable, then on delivery and for one year after the date of acceptance of any Deliverable that includes custom software, the Contractor warrants that:

- (a) The software will operate on the computer(s) for which the software is intended in the manner described in the relevant software documentation;
- (b) The software will be free of material defects;
- (c) The Contractor will deliver and maintain relevant and complete software documentation, commentary, and source code;
- (d) The source code language used to code the software is readily available in the commercial market, widely used and accepted for the type of programming involved, and support programming in the language is reasonably available in the open market; and
- (e) The software and all maintenance will be provided in a professional, timely, and efficient manner.

For Commercial Software developed by the Contractor or licensed from a third party, the Contractor represents and warrants that it either has the right or has obtained a binding commitment from the third party licensor to make the following warranties and commit to the following maintenance obligations. During the warranty period described in the next paragraph, the Contractor must:

- (a) Maintain or cause the third-party licensor to maintain the Commercial Software so that it operates in the manner described in its documentation;
- (b) Supply technical bulletins and updated user guides;
- (c) Supply the State with all updates, improvements, enhancements, and modifications to the Commercial Software and documentation and, if available, the commentary and the source code;
- (d) Correct or replace the software and remedy any material programming error that is attributable to the Contractor or the third-party licensor; and
- (e) Maintain or obtain a commitment from the third-party licensor to maintain the Commercial Software so that it will properly operate in conjunction with changes in the operating environment for which it was designed.

For Commercial Software designed for mainframe platforms and for Commercial Software designed for PC or PC-based servers and costing more than \$10,000.00 per license or per copy, the warranty period will be the longer of one year after acceptance or the licensor's standard warranty period. For Commercial Software designed for PC or PC-based servers and costing less than \$10,000.00 per license or per copy, the warranty period will be the longer of three months after acceptance or the licensor's standard warranty period. For PC and PC-based servers, the warranty will not include updates, improvements, enhancements, or modifications to the Commercial Software and documentation, if such are not provided as part of the licensor's standard warranty or license fee.

Software documentation means well written, readily understood, clear, and concise instructions for the software's users as well as a system administrator. The software documentation must provide the users of the software with meaningful instructions on how to take full advantage of all of the capabilities designed for end users. It also means installation and system administration documentation for a system administrator

to allow proper control, configuration, and management of the software. Source code means the uncompiled operating instructions. The Contractor must provide the source code in the language in which it was written and must include such commentary or annotations as would allow a competent programmer proficient in the source language to readily interpret the source code and understand the purpose of all routines and subroutines contained within the source code.

7.3 EQUIPMENT WARRANTY. If any computer hardware or other type of electrical equipment ("Equipment") will be a part of any Deliverable, the following warranties apply. The Contractor warrants that the Equipment fully complies with all government environmental and safety standards applicable to the Equipment. The Contractor also warrants for the warranty period described in the next paragraph that the Equipment will perform substantially in accordance with its user manuals, technical materials, and related writings published by the manufacturer with respect to such Equipment, and that such Equipment will achieve any function described in such writings. The foregoing warranty will not apply to Equipment that the State modifies or damages after title passes to it. The warranty period for all Equipment will be the longer of one year after the State accepts the Equipment or the Contractor's standard warranty period.

If any Equipment does not meet the above warranties during the applicable warranty period, the Contractor must fix the nonconforming Equipment so it performs substantially in accordance with its user manuals, technical materials, and related publications, replace the Equipment, or grant the State a refund equal to the amount it paid for the Equipment. The Contractor must either fix or replace the Equipment or refund the purchase price to the State with all due speed, not to exceed seven days in the case of a fix or a replacement or 30 days in the case of a refund. The Contractor will be responsible for all shipping costs associate with fixing, replacing, or returning any defective equipment.

7.4 INDEMNITY. The Contractor must indemnify the State against all liability or expense resulting from bodily injury to any person (including injury resulting in death) or damage to property arising out of its performance under this Contract, provided such bodily injury or property damage is due to the negligence 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.

7.5 LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS CONTRACT OR ANYTHING INCORPORATED BY REFERENCE INTO THIS CONTRACT, THE PARTIES AGREE AS FOLLOWS:

- (a) NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAVE BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
- (b) THE CONTRACTOR WILL BE LIABLE FOR ALL DIRECT DAMAGES DUE TO THE FAULT OR NEGLIGENCE OF THE CONTRACTOR OR ITS BREACH OF ANY PROVISION OF THIS CONTRACT.

8 - MAINTENANCE

8.1 SOFTWARE MAINTENANCE. If this Contract involves any custom software as a Deliverable, then during the warranty period, the Contractor must correct any material programming errors that are attributable to the Contractor within a reasonable time, provided the State notifies the Contractor, either orally or in writing, of a problem with the software and provides sufficient information to identify the problem. The Contractor's response to a programming error will depend upon the severity of the problem. In the case of programming errors that slow the processing of data by a small degree, render minor and non-critical functions of the System inoperable or unstable, or require users or administrations to employ workarounds to fully use the software, the Contractor must respond to requests for resolution within four business hours and begin working on a proper solution within one business day, dedicating the resources of one qualified programmer full-time to fixing the problem. In the case of any defects with more significant consequences, including those that render key functions of the software inoperable or significantly slow data processing, the Contractor must respond within two business hours of notification and, if requested, provide on-site assistance and dedicate all available resources to resolving the problem.

For Commercial Software other than PC or PC-based server software costing less than \$10,000.00 per copy or license, the Contractor must provide maintenance during the warranty period at no cost to the State. At a minimum, that maintenance must be the standard maintenance program that the licensor, whether the Contractor or a third party, normally provides to its client base. That maintenance program must include all new releases, updates, patches, and fixes to the Commercial Software. It also must include a commitment to keep the software current with the operating environment in which it is designed to function and a commitment to promptly correct all material defects in the software.

Additionally, the Contractor will make (or obtain a commitment from the third-party licensor to make) maintenance available for the software for at least five years after the warranty period. The Contractor will limit or obtain a commitment from the third-party licensor, if applicable, to limit increases in the annual fee for maintenance to no more than five percent annually. If the licensor, whether it is the Contractor or a third-party, is unable to provide maintenance during that period, then the licensor must do one of the following things: (a) give the State a *pro rata* refund of the license fee based on a five-year useful life; or (b) release the source code for the software to the State for use by the State solely for the purpose of maintaining any copies of the software for which the State has a proper license. The State will treat the source code as Confidential Information under the Confidentiality Section of this Contract. In the case of third-party Commercial Software, the Contractor warrants that it has legally bound the third-party licensor to the obligations of this Contract or that the Contractor has the right to make these commitments directly to the State.

For Commercial Software designed for PC or PC-based server platforms and costing less than \$10,000.00 per copy or license, the Contractor must provide the same maintenance and user assistance during the warranty period at no additional cost to the State as the Contractor or the third-party licensor makes generally available at no additional charge to its other customers.

8.2 SOFTWARE UPGRADES. After an initial acquisition of a license in Commercial Software, the State may want to acquire a broader license than the original. Or the State may later want to migrate to another platform for the Commercial Software. When the Contractor or third-party licensor make the broader license generally available to its customer base or makes the version of the Commercial Software that runs on the new platform to which the State wants to migrate, then the State will have a right to upgrade any of its licenses to that broader license or to acquire the version of the Software that is appropriate for the new platform that the State intends to use. In these cases, the Contractor will provide the broader license or other version of the Commercial Software in exchange for a license fee that is based on the lesser of the following:

- (a) The Contractor's (or third party licensor's) standard upgrade or migration fee;
- (b) The upgrade or migration fee in Exhibit I; or
- (c) The difference between the license fee originally paid and the then-current license fee for the license or version of the Commercial Software that the State seeks to acquire.

The foregoing will not apply to Commercial Software for PCs and PC-based server software with a license fee of less than \$10,000.00, unless the Contractor or third-party licensor makes upgrade packages available for the Commercial Software to other customers. If PC or PC-based server software upgrades are available, the State will be entitled to the most favorable license fee on which such are made available to other most favored customers or dealers, as appropriate.

8.3 EQUIPMENT MAINTENANCE. If this Contract involves computer or telecommunications hardware or other mechanical or electrical equipment ("Equipment") as a Deliverable, then, during the warranty period and during any period covered by annual maintenance, the Contractor must provide maintenance to keep the Equipment in or restore the Equipment to good working order. This maintenance must include preventative and remedial maintenance, installation of safety changes, and installation of engineering changes based upon the specific needs of the individual item of Equipment. This maintenance also must include the repair, replacement, or exchange deemed necessary to keep the Equipment in good working order. For purposes of this Contract, Equipment restored to good working order means Equipment that performs in accordance with the manufacturer's published specifications. The Contractor must use its best efforts to perform all fault isolation and problem determination attributed to the Equipment. The following services are outside the scope of this Contract:

- (a) Maintenance to bring the Equipment into compliance with any law, rule, or regulation, if such law, rule, or regulation was not in effect on the acceptance date;
- (b) Repair and replacement work or increase in maintenance time as a result of damage or loss resulting from accident, casualty, neglect, misuse, or abuse, if such is the State's fault (and beyond normal wear and tear), damage resulting from improper packing or failure to follow prescribed shipping instruction (If such is done by the State), failure of electrical power, air conditioning or humidity control, use of supplies not approved by the original manufacturer of the Equipment as describe in the Equipment's documentation, or causes other than ordinary use of Equipment;
- (c) Furnishing platens, supplies, or accessories, making specification changes, or adding or removing approved accessories, attachments, or other devices except as permitted in the Equipment's user documentation;
- (d) Maintenance or increased maintenance time resulting from any improper use, maintenance, or connection to other equipment (not done by the Contractor) that results in damage to the Equipment;
- (e) Repairs needed to restore the Equipment to good operating condition if the Equipment has been damaged by anyone other than the Contractor's authorized service personnel repairing, modifying, or performing maintenance on the Equipment.

8.4 EQUIPMENT MAINTENANCE STANDARDS. Except in the case of excusable delay, remedial Equipment maintenance by the Contractor will be completed within eight business hours after notification by the State that maintenance is required. In the case of preventative maintenance, the Contractor will perform such in accordance with the manufacturer's published schedule and specifications. If maintenance is not completed within eight hours after notification by the State, the Contractor will be in default. Failure of the Contractor to meet or maintain these requirements will provide the State with the same rights and remedies as specified elsewhere in this Contract for default, except that the Contractor will only have eight hours to remedy a default. The Contractor will provide adequate staff to provide the maintenance required by this Contract.

8.5 EQUIPMENT MAINTENANCE CONTINUITY. If the Contractor is unable to provide Equipment maintenance to meet the State's ongoing performance requirements and if, in the State's sole opinion, the Contractor is unlikely to resume providing warranty services that meets the State's ongoing performance requirement, the Contractor will be in default, and the State will be entitled to the remedies in the default section of this Contract. The State will also be entitled to the following items from the Contractor:

- (a) All information necessary for the State to perform the maintenance, including but not limited to logic diagrams, maintenance manuals, and system and unit schematics, with all changes noted;
- (b) A listing of suppliers capable of supplying necessary spare parts;
- (c) Adequate information to permit the State to have spare parts manufactured elsewhere; and

- (d) A listing of spare parts and their recommended replacement schedule to enable the State to create a centralized inventory of spare parts.

The State will treat as Confidential Information in accordance with the Confidentiality Section of this Contract any information in items (a) through (d) above that the Contractor rightfully identifies in writing as confidential. And when disclosure to a third-party is necessary for the State to continue the maintenance, the State will require any third-party to whom disclosure is made to agree to hold the Confidential Information in confidence and to make no further disclosure of it. Further, the State agrees that any such Confidential Information will be used solely to perform maintenance for the State and will be returned to the Contractor or destroyed when such use is no longer needed.

8.6 PRINCIPAL PERIOD OF MAINTENANCE (GENERAL). Software and Equipment maintenance must be available nine working hours per weekday, between 8:00 a.m. and 5:00 p.m. Eastern Standard Time. Travel time and expenses related to remedial and preventative maintenance will not be billable and must be included in the price of the maintenance.

8.7 MAINTENANCE ACCESS (GENERAL). For all Software and Equipment maintenance under this Contract, the State will provide the Contractor with reasonable access to the Deliverable to perform maintenance. All maintenance that requires a Deliverable to be inoperable must be performed outside the State's customary working hours, except when the Deliverable is already inoperable. Preventative or scheduled maintenance must be performed at mutually agreeable times, within the parameters of the manufacturer's published schedule.

9 - ASSIGNMENT AND SUBCONTRACTING

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

9.2 SUBCONTRACTING. The State recognizes that it may be necessary for the Contractor to use subcontractors to perform portions of the work under this Contract. In those circumstances, before the Contractor engages any such subcontractor, the Contractor must submit a list identifying its subcontractors or joint venture partners performing portions of the work under the Contract. If any changes to that list occur during the term of the Contract, the Contractor must immediately provide the State an updated list of subcontractors or joint venture business partners. In addition, all subcontractors and joint venture business partners must agree in writing to be bound by all of the terms and conditions of this Contract and any specifications of any order under this Contract for which they perform work. The State may reject any subcontractor submitted by the Contractor.

10 – CONSTRUCTION

10.1 HEADINGS. The headings used in this Contract are for convenience only and may not be used in interpreting this Contract.

10.2 ENTIRE DOCUMENT. This Contract, which includes the Contractor's pricelist attached as Exhibit I and all documents referred to in this Contract, constitutes the entire agreement between the parties with respect to the subject matter and supersedes any previous agreements, whether oral or written.

10.3 BINDING EFFECT. This Contract will be binding on and benefit the respective successors and assigns of the State and the Contractor.

10.4 AMENDMENTS – WAIVER. No amendment or modification of this Contract will be effective unless it is in writing and signed by both parties. The failure of either party at any time to demand strict performance by the other party of any of the terms or conditions of this Contract may not be construed as a waiver of any those terms or conditions, and either party may at any time demand strict and complete performance by the other party.

- 10.5 SEVERABILITY.** If a court of competent jurisdiction finds any provision of this Contract to be unenforceable, the remaining provisions of this Contract will remain in full force and affect.
- 10.6 CONSTRUCTION.** This Contract must be construed in accordance with the plain meaning of its language and neither for nor against the drafting party.
- 10.7 NOTICES.** For any notice under this Contract to be effective, the noticing party must make it in writing and sent it to the address of the other party first appearing above, unless that party has notified the other party, in writing and in accordance with the provisions of this section, of a new mailing address for the receipt of notices. This notice requirement will not apply to any notices that this Contract expressly authorizes to be made orally.
- 10.8 CONTINUING OBLIGATIONS.** Any terms, conditions, representations, or warranties contained in this Contract that must survive termination or expiration of this Contract to be fully effective will survive the termination or expiration of the Contract. Additionally, termination or expiration of this Contract will not affect the State's right to continue to use any Deliverable for which it has paid, including licensed material. And no termination or expiration of the Contract will affect the State's right to receive maintenance, warranty work, or other services for which the State has paid.
- 10.9 PRIORITY.** If there is any inconsistency or conflict between this document and any provision of anything incorporated by reference, this document will prevail.
- 10.10 DAYS.** When this Contract refers to days, it means calendar days, unless it expressly provides otherwise.

11 - LAW AND COURTS

- 11.1 EEO.** The Contractor must comply with all Ohio laws regarding equal employment opportunity, including among others Code § 125.111, as well as all related Executive Orders of the Governor of Ohio.
- 11.2 DRUG FREE WORKPLACE.** The Contractor must comply with all Ohio laws regarding maintaining a drug-free workplace and make a good faith effort to ensure that all its employees do not possess and are not under influence of illegal drugs or alcohol or abuse prescription drugs while working on State property.
- 11.3 OHIO ETHICS LAW AND LIMITS ON POLITICAL CONTRIBUTIONS.** The Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of the Ohio ethics laws. 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 Contract 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.
- 11.4 SECURITY & SAFETY RULES.** When using or possessing State data or accessing State networks and systems, the Contractor must comply with all applicable State rules, policies, and regulations regarding data security and integrity. And when on any property owned or controlled by the State, the Contractor must comply with all security and safety rules, regulations, and policies applicable to people on those premises.
- 11.5 LAW AND VENUE.** This Contract is governed by and will be construed under Ohio law, and venue for all disputes will lie exclusively with the appropriate court in Franklin County, Ohio.
- 11.6 UNRESOLVED FINDINGS.** The Contractor represents that it is not subject to an unresolved finding for recovery under Code § 9.24. If this warranty proves false when the parties sign this Contract, the Contract will be void. Additionally, if this representation proves false on the date of any renewal or extension of the Contract, the renewal or extension will be void.

11.7 **TERROR DECLARATION.** 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.

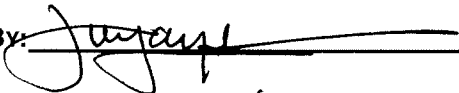
and,

(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.

11.8 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.


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: 
Juni Lazzinis

DATE: 11-01-07

**STATE OF OHIO,
OFFICE OF INFORMATION TECHNOLOGY**

BY: 
R. STEVE EDMONSON
DIRECTOR, OFFICE OF INFORMATION TECHNOLOGY
STATE CHIEF INFORMATION OFFICER

DATE: 11-5-07

Exhibit I

See price file labeled (EC America Consolidated Pricelist 8-6-7 STS.xls)
* No terms or conditions from the related (GSA MAS contract apply.)

EXHIBIT II

**ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

INSTRUCTIONS: Select the Manufacturer whose supplemental pricelist information and terms you want to view.

MANUFACTURER NAME

[Citrix Systems, Inc.](#)

[McAfee](#)

[Palo Alto](#)

[Sourcefire](#)

[TIBCO Software, Inc.](#)

“Ordering Activity” means an Ohio State Agency or other State entity authorized to purchase off the Ohio STS.

**ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

CITRIX SYSTEMS, INC.

CITRIX SYSTEMS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. GRANT OF LICENSE. This PRODUCT contains software that provides services on a computer called a server ("Server Software") and contains software that allows a computer to access or utilize the services provided by the Server Software ("Client Software"). This PRODUCT is licensed under a concurrent user, user, or device model. For purposes of this license, i) "Concurrent User" is single client device connected to the Server Software; ii) "User" is an individual authorized by Ordering Activity to use any device(s) to access instances of the Server Software through Ordering Activity's assignment of a single user ID, regardless of whether or not the individual is using the PRODUCT at any given time; and iii) a "Device" is a device authorized by Ordering Activity to be used by any individual(s) to access instances of the Server Software (locally or over a network) through Ordering Activity's assignment of the device identity to a Device log, regardless of whether or not the device is being used at any given time. Server Software is activated by licenses that allow use of the Server Software in increments defined by the license model ("Licenses"). Under the User or Device model, Ordering Activity may deploy network architectures that use hardware or software to reduce the number of Users or Devices that directly access the Server Software. This is referred to as *multiplexing* or *pooling*. This does not reduce the number of Licenses required to access or use the Server Software. A License is required for each User or Device that is connected to the multiplexing or pooling software or hardware front end. Ordering Activity must acquire and assign a License to each User or Device that accesses Ordering Activity's instances of the Server Software directly or indirectly, frequently or infrequently. Client Software is not activated by Licenses but will not operate in conjunction with the Server Software without the Server Software being activated. Licenses for other CITRIX PRODUCTS or other editions of the same PRODUCT may not be used to increase the allowable use for the PRODUCT. Licenses are version specific for the PRODUCT. They must be the same version or later than the Server Software being accessed. CONTRACTOR grants to Ordering Activity the following worldwide, non-exclusive rights to the Server Software and Client Software and accompanying documentation (collectively called the "SOFTWARE"):
 - a. Server Software. Ordering Activity may install and use the Server Software on one or more computers ("Server(s)"). Each License may be installed and used on a single license server within Ordering Activity's production environment and a single license server within Ordering Activity's disaster recovery environment. The Server Software may be used only to support up to the allowable number of Concurrent Users, Users or Devices based on Ordering Activity's total purchases of Licenses. Ordering Activity may use the Server Software to provide application services to third parties ("Hosting"). Each License that is installed in both a production and disaster recovery environment may be used only in one of the environments at any one time, except for duplicate use during routine testing of the disaster recovery environment. If Ordering Activity purchased the Enterprise or Platinum editions of this PRODUCT, each License may be used only to support use of any one or more of the edition features for the same Concurrent User, User or Device. Ordering Activity's use of Application Streaming to included with XenApp is limited to support of Concurrent Users, Users or Devices using XenApp hosted applications, and not other users. Ordering Activity's use of EasyCall voice services included with XenApp is limited to support of Concurrent Users, Users or Devices using XenApp hosted applications, and not other users. Ordering Activity's use of Profile management included with XenApp Enterprise or Platinum Edition is limited to support of Concurrent Users, Users or Devices using XenApp Enterprise and Platinum hosted applications, and not other users. Ordering Activity's use of Provisioning services included with the XenApp Platinum Edition is limited to provisioning only the XenApp Platinum Edition workload. Ordering Activity's use of Single Sign-On included with XenApp Platinum Edition is limited to support of Concurrent Users, Users or Devices using XenApp Platinum hosted applications, and not other users. If multiple Licenses are delivered for the various features of the edition, they should be treated as a single License. If Ordering Activity received this PRODUCT as a component of XenDesktop Enterprise or Platinum Edition, the Server Software may be used either to provide presentation services to physical or virtual machines running in the XenDesktop environment or directly to client devices.
 - b. Client Software. Under the Concurrent User or User model, the Client Software may be installed and used on an unlimited number of client devices. Under the Device Model, the Client Software may be installed and used only on Devices. Ordering Activity may use Client Software only to allow Concurrent Users, Users and Devices to access instances of the Server Software.
 - c. Perpetual License. If the SOFTWARE is "Perpetual License SOFTWARE," the SOFTWARE is licensed on a perpetual basis and includes the right to receive Subscription Advantage (as defined in Section 2 below).
 - d. Archive Copy. Ordering Activity may make one (1) copy of the SOFTWARE in machine-readable form solely for backup purposes, provided that Ordering Activity reproduce all proprietary notices on the copy.
2. SUBSCRIPTION RIGHTS. Ordering Activity's subscription for the SOFTWARE ("Subscription") shall begin on the date the Licenses are delivered to Ordering Activity by email. Should Licenses be delivered to Ordering Activity on a tangible license card, Subscription shall instead begin on the date Ordering Activity request that the Licenses be allocated to Ordering Activity through mycitrix.com. Subscription shall continue for a one (1) year term subject to Ordering Activity's purchase of annual renewals (the "Subscription Term"). During the initial or a renewal Subscription Term, CONTRACTOR may, from time to time, generally make Updates available for licensing to the public. Upon general availability of Updates during the Subscription Term, CONTRACTOR shall provide Ordering Activity with Updates for covered Licenses. Any such Updates so delivered to Ordering Activity shall be considered SOFTWARE under the terms of this ATTACHMENT A, except they are not covered by the Limited Warranty applicable to SOFTWARE, to the extent permitted by applicable law. Subscription Advantage may be purchased for the SOFTWARE until it is no longer offered in accordance with the CITRIX PRODUCT Support Lifecycle Policy posted at www.citrix.com. This website reference is for informational purposes only.

Ordering Activity acknowledges that CONTRACTOR may develop and market new or different computer programs or editions of the SOFTWARE that use portions of the SOFTWARE and that perform all or part of the functions performed by the SOFTWARE. Nothing contained in this ATTACHMENT A shall give Ordering Activity any rights with respect to such new or different computer programs or editions. Ordering Activity also acknowledges that CONTRACTOR is not obligated under this ATTACHMENT A to make any Updates available to the public. Any deliveries of Updates shall be Ex Works CITRIX (Incoterms 2000).

3. **SUPPORT.** Ordering Activity may buy SUPPORT for the SOFTWARE. SUPPORT shall begin on the date of SUPPORT activation by CONTRACTOR THROUGH CITRIX and shall run for a one (1) year term subject to Ordering Activity's purchase of annual renewals. SUPPORT is sold including various combinations of Incidents, technical contacts, coverage hours, geographic coverage areas, technical relationship management coverage, and infrastructure assessment options. An "Incident" is defined as a single SUPPORT issue and reasonable effort(s) needed to resolve it. An Incident may require multiple telephone calls and offline research to achieve final resolution. The Incident severity will determine the response levels for the SOFTWARE. Unused Incidents and other entitlements expire at the end of each annual term. SUPPORT may be purchased for the SOFTWARE until it is no longer offered in accordance with the CITRIX PRODUCT Support Lifecycle Policy posted at www.citrix.com. This website reference is for informational purposes only. SUPPORT will be provided remotely from CONTRACTOR THROUGH CITRIX to your locations. Where on-site visits are mutually agreed to in a separate agreement for such on-site visits, Ordering Activity will be billed for reasonable travel and living expenses in accordance with Ordering Activity's travel policy. CONTRACTOR THROUGH CITRIX' performance is predicated upon the following responsibilities being fulfilled by Ordering Activity: (i) Ordering Activity will designate a Customer Support Manager ("CSM") who will be the primary administrative contact; (ii) Ordering Activity will designate Named Contacts (including a CSM), preferably each CITRIX certified, and each Named Contact (excluding CSM) will be supplied with an individual service ID number for contacting SUPPORT; (iii) Ordering Activity agrees to perform reasonable problem determination activities and to perform reasonable problem resolution activities as suggested by CONTRACTOR THROUGH CITRIX. Ordering Activity agrees to cooperate with such requests; (iv) Ordering Activity is responsible for implementing procedures necessary to safeguard the integrity and security of SOFTWARE and data from unauthorized access and for reconstructing any lost or altered files resulting from catastrophic failures; (v) Ordering Activity is responsible for procuring, installing, and maintaining all equipment, telephone lines, communications interfaces, and other hardware at Ordering Activity's site and providing CONTRACTOR THROUGH CITRIX with access to Ordering Activity's facilities as required to operate the SOFTWARE and permitting CONTRACTOR THROUGH CITRIX to perform the service called for by this ATTACHMENT A; and (vi) Ordering Activity is required to implement all currently available and applicable hotfixes, hotfix rollup packs, and service packs or their equivalent to the SOFTWARE in a timely manner. CONTRACTOR THROUGH CITRIX is not required to provide any SUPPORT relating to problems arising out of: (i) Ordering Activity's customization to the operating system or environment that adversely affects the SOFTWARE; (ii) any alterations of or additions to the SOFTWARE performed by parties other than CONTRACTOR THROUGH CITRIX; (iii) use of the SOFTWARE on a processor and peripherals other than the processor and peripherals for which such SOFTWARE was designed and licensed for use on; or (iv) SOFTWARE that has reached End-of-Life. In situations where CONTRACTOR THROUGH CITRIX cannot provide a satisfactory resolution to Ordering Activity's critical problem through normal SUPPORT methods, CONTRACTOR THROUGH CITRIX may engage its product development team to create a private fix. Private fixes are designed to address Ordering Activity's specific situation and may not be distributed by Ordering Activity outside Ordering Activity's organization without written consent from CONTRACTOR. CONTRACTOR retains all right, title, and interest in and to all private fixes. Any hotfixes or private fixes are not SOFTWARE under the terms of this ATTACHMENT A and they are not covered by the Limited Warranty applicable to SOFTWARE, to the extent permitted by applicable law. With respect to infrastructure assessments or other consulting services, all intellectual property rights in all reports, preexisting works and derivative works of such preexisting works, as well as installation scripts and other deliverables and developments made, conceived, created, discovered, invented, or reduced to practice in the performance of the assessment are and shall remain the property of CONTRACTOR, subject to a worldwide, nonexclusive License to Ordering Activity for internal use.
4. **DESCRIPTION OF OTHER RIGHTS, LIMITATIONS, AND OBLIGATIONS.** Unless expressly permitted by applicable law, Ordering Activity may not transfer, rent, timeshare, or lease the SOFTWARE. Under the User or Device model, Ordering Activity may permanently reassign a License from one User to another or from one Device to another, and Ordering Activity may temporarily assign a License to a temporary worker while the User is absent or a License to a loaner device while the Device is out of service. If Ordering Activity purchased Licenses for the SOFTWARE to replace other CITRIX Licenses for other CITRIX SOFTWARE and such replacement is a condition of the transaction, Ordering Activity agrees to destroy those other CITRIX Licenses and retain no copies after installation of the new Licenses and SOFTWARE. Ordering Activity shall provide the serial numbers of such replaced Licenses and corresponding replacement Licenses to the reseller, and upon request, directly to CONTRACTOR for license tracking purposes. Except as specifically licensed herein, Ordering Activity may not modify, translate, reverse engineer, decompile, disassemble, create derivative works based on, or copy (except for backup as permitted above) the SOFTWARE, except to the extent such foregoing restriction is expressly prohibited by applicable law. Ordering Activity may not remove any proprietary notices, labels, or marks on any SOFTWARE. Notwithstanding the foregoing, this ATTACHMENT A shall not prevent or restrict Ordering Activity from exercising additional or different rights to any free, open source code, documentation and materials contained in or provided with the SOFTWARE in accordance with the applicable free, open source license for such code, documentation, and materials.

ORDERING ACTIVITY MAY NOT USE, COPY, MODIFY, OR TRANSFER THE SOFTWARE OR ANY COPY IN WHOLE OR IN PART, OR GRANT ANY RIGHTS IN THE SOFTWARE OR ACCOMPANYING DOCUMENTATION, EXCEPT AS EXPRESSLY PROVIDED IN THIS ATTACHMENT A. ALL RIGHTS NOT EXPRESSLY GRANTED ARE RESERVED BY CONTRACTOR OR ITS SUPPLIERS.

5. **LIMITED WARRANTY AND DISCLAIMER.** CONTRACTOR warrants that for a period of ninety (90) days from the date of delivery of the SOFTWARE to Ordering Activity, the SOFTWARE will perform substantially in accordance with the CITRIX PRODUCT documentation published by CITRIX and included with the PRODUCT. CONTRACTOR and its suppliers' liability and Ordering Activity's remedy under this warranty (which is subject to Ordering Activity returning the SOFTWARE to CONTRACTOR or an authorized reseller) will be, at the option of CONTRACTOR and subject to applicable law, to replace the media and/or SOFTWARE or to refund the purchase price and terminate this ATTACHMENT A. CONTRACTOR will provide the SUPPORT requested by Ordering Activity in a professional and workmanlike manner, but CONTRACTOR cannot guarantee that every question or problem raised by Ordering Activity will be resolved or

resolved in a certain amount of time. TO THE EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT FOR THE ABOVE LIMITED WARRANTY FOR SOFTWARE, CONTRACTOR AND ITS SUPPLIERS MAKE AND ORDERING ACTIVITY RECEIVE NO WARRANTIES OR CONDITIONS, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE; AND CONTRACTOR AND ITS SUPPLIERS SPECIFICALLY DISCLAIM WITH RESPECT TO SOFTWARE, UPDATES, SUBSCRIPTION ADVANTAGE, AND SUPPORT ANY CONDITIONS OF SECURITY, LACK OF VIRUSES, BUGS, OR ERRORS, AND ANY IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. THE SOFTWARE IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE OR DISTRIBUTION WITH ANY EQUIPMENT THE FAILURE OF WHICH COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE. ORDERING ACTIVITY ASSUMES THE RESPONSIBILITY FOR THE SELECTION OF THE SOFTWARE AND HARDWARE TO ACHIEVE ORDERING ACTIVITY'S INTENDED RESULTS, AND FOR THE INSTALLATION OF, USE OF, AND RESULTS OBTAINED FROM THE SOFTWARE AND HARDWARE.

6. PROPRIETARY RIGHTS. No title to or ownership of the SOFTWARE is transferred to Ordering Activity. CONTRACTOR and/or its licensors own and retain all title and ownership of all intellectual property rights in and to the SOFTWARE, including any adaptations or copies. Ordering Activity acquires only a limited License to use the SOFTWARE.

EXHIBIT A – ORDERING ACTIVITY RETURN POLICY

Limited Warranty. Contractor warrants to Ordering Activity for each Product that the Hardware delivered as part of an Appliance shall be free from defects in material and workmanship in normal use for a period of one (1) year from the date of delivery. Ordering Activity's remedy and the liability of Contractor, its licensors, and suppliers under this warranty. This warranty extends only to the original Ordering Activity and may not be assigned. Ordering Activity's remedy and the liability of Contractor, its licensors and suppliers under this limited warranty (which is subject to Ordering Activity returning the Hardware to Contractor or an authorized reseller) will be, at the discretion of Contractor, to replace the Hardware or refund the purchase price. This warranty does not cover any loss or damage which occurs in shipment or which is due to any of the following: (1) improper installation, maintenance, adjustment, repair or modification by Ordering Activity or a third party; (2) misuse, neglect, or any other cause other than ordinary use, including without limitation, accidents or acts of God; (3) improper environment, excessive or inadequate heating or air conditioning, electrical power failures, surges, or other irregularities; or (4) third party software or software drivers. Ordering Activity's maintenance agreement as detailed in Exhibit B hereunder with Contractor will supersede this Ordering Activity Return Policy.

Warranty Returns. Ordering Activity may return to Contractor through Citrix any defective Product subject to the limited warranty above. Prior to such return, Ordering Activity shall verify that the Product is defective and shall obtain from Citrix a Return Material Authorization ("RMA") number. Ordering Activity shall request each RMA number from Citrix in accordance with Citrix's RMA procedures including providing the part number, serial number and reason for return, an explanation of all failure symptoms and other relevant information. Citrix shall use commercially reasonable efforts to send to Ordering Activity an RMA form and RMA number within five (5) business days of Ordering Activity's request. Within one (1) business day after receiving an RMA number for the Product, Ordering Activity shall package the Product in its original packing material or equivalent, write the RMA number on the outside of the package and return the Product, at Citrix's cost, shipped properly insured, freight prepaid, DDP (Incoterms 2000) Citrix's designated facility. Ordering Activity shall enclose with the returned Product the applicable RMA form, and any other documentation or information requested by Citrix. Ordering Activity shall assume any and all risk of loss of or damage to the Product during shipping. Citrix shall elect to repair or replace the Product using new or reconditioned parts (of better or equivalent quality) at Citrix's discretion, and shall pay the shipping costs to return the Product to the location from which it was returned by Ordering Activity. Any Product that has been returned, but that Citrix determines not to be defective, or that is not otherwise covered under the limited warranty above, shall be returned to Ordering Activity at Citrix's expense and risk. Title to any Product returned under warranty shall at all times remain with Ordering Activity unless and until Citrix either replaces the Product or pays Ordering Activity the Price of the Product in lieu of repair or replacement, at which time title shall pass to Citrix. The warranty period of any repaired or replaced Product shall be the longer of (a) ninety (90) calendar days from Citrix's return shipment of the Product or (b) the original warranty period for the Product. Citrix shall not be responsible for any software, firmware, information, memory, data or the like of Ordering Activity or other's contained in, stored on or integrated with any Product returned to Citrix for repair, whether or not under warranty.

EXHIBIT B – CITRIX APPLIANCE MAINTENANCE & TECHNICAL SUPPORT

1. SERVICES PROVIDED BY CITRIX.

Contractor through Citrix offers a range of maintenance programs for its Products (including standard Products and optional Products) as described below and as summarized in the below Citrix Appliance Maintenance Program Overview (the "Program Overview"). Ordering Activity shall be entitled to receive the following services to the extent Ordering Activity has ordered and paid in full the Annual STS Fee for the applicable service. Ordering Activity must purchase maintenance services for its optional Products where Ordering Activity has maintenance services in place for the corresponding standard Product. Ordering Activity may purchase maintenance services for its optional Products only where it has maintenance services in place for the corresponding standard Product. Ordering Activity may also purchase optional installation and/or consulting services as offered by Contractor through Citrix.

Extended hardware Warranty D includes the following:

Except as otherwise provided in this Attachment A, Contractor warrants to Ordering Activity that the Hardware (as defined below) shall be free from material defects in materials and workmanship during the term of this Attachment A. Contractor's liability and Ordering Activity's remedy under this warranty shall be limited to repair or replacement of, or refund of the price paid for, the non-conforming Product at Contractor's option. For purposes of this Attachment A, "Hardware" shall mean that portion of the Product that is not the Software. For purposes of this Attachment A, "Software" shall mean the Product software, in machine-readable form, and accompanying user documentation licensed to Ordering Activity by Contractor pursuant to an applicable purchase order between Ordering Activity and Contractor for such license.

Software Subscription Service D includes the following:

Software Updates.

Ordering Activity's subscription for Software ("Subscription Advantage") shall be effective during the term of this Attachment A, subject to Ordering Activity's purchase of annual renewals (the "Subscription Term"). During the Subscription Term, Contractor may, from time to time, generally make Updates available for licensing to the public. For the purposes of this Attachment A, an Update shall mean a generally available release of the same Software. Upon general availability of Updates during the Subscription Term, Ordering Activity may obtain Updates by downloading the Update from Contractor through Citrix's server via the Internet. Any such Updates so delivered to Ordering Activity shall be considered Software under the terms of this Attachment A, except they are not covered by the Limited Warranty applicable to Software, to the extent permitted by applicable law. Subscription Advantage may be purchased for the Software until it is no longer offered in accordance with the Citrix Product Support Lifecycle Policy posted at www.citrix.com. This website reference is for informational purposes only.

Ordering Activity acknowledges that Contractor through Citrix may develop and market new or different computer programs or editions of the Software that use portions of the Software and that perform all or part of the functions performed by the Software. Nothing contained in this Attachment A shall give Ordering Activity any rights with respect to such new or different computer programs or editions. Ordering Activity also acknowledges that Contractor is not obligated under this Attachment A to make any Updates available to the public. Any deliveries of Updates shall be Ex Works Citrix (Incoterms 2000).

Bronze/Silver/Gold Maintenance

Bronze Maintenance includes all of the services set forth above under Extended Warranty Program and Software Subscription Service, plus each of the following:

Telephone Support. During the term of this Attachment A, Contractor through Citrix shall provide Ordering Activity technical telephone support for the Product through the Citrix support line during designated business hours. Citrix Appliance Support Coverage hours are indicated in the Program Overview. Citrix support technicians shall only be obligated to respond to Ordering Activity's designated contacts.

Support Service Level. Contractor through Citrix shall respond within twenty four (24) hours of receiving an inquiry from Ordering Activity if received during a business day (or if received on a day other than a business day, within twenty four (24) hours of the opening of business on the succeeding business day) regarding use or installation of the Product, and use diligent efforts to answer questions and resolve problems.

Returns. During the term of this Attachment A, Ordering Activity shall have the right to return to Contractor through Citrix any defective Product subject to the limited warranty set forth in the Extended Warranty Program above. Prior to such return, Ordering Activity shall verify that said Product is defective and shall obtain from Citrix a Return Material Authorization ("RMA ") number. Ordering Activity shall request each RMA number from Citrix in accordance with Citrix's RMA procedures including providing the part number, serial number, quantity and reason for return, an explanation of all failure symptoms and other relevant information. Citrix shall ship via a recognized express courier service a replacement Product to Ordering Activity no later than ten (10) business days after Citrix's issuance of an RMA number (or longer in countries where regulation requires export approval documentation in advance of RMA shipment). The replacement Product may be a new or reconditioned Product (of better or equivalent quality) at Citrix's discretion. Citrix shall pay the shipping costs to ship the replacement Product to Ordering Activity. Within five (5) business days after Citrix issues an RMA number for the defective Product, Ordering Activity shall package said Product in its original packing material or equivalent, write the RMA number on the outside of the package and return said Product, at Ordering Activity's cost, shipped properly insured, freight prepaid, DDP (Incoterms 2000) Citrix's designated facility. Ordering Activity shall enclose with the returned Product the applicable RMA form, and any other documentation or information requested by Citrix. Ordering Activity shall assume any and all risk of loss of or damage to such Product during shipping. Title to the defective Product shall pass to Citrix upon Citrix's receipt thereof. When a replacement Product is provided and Ordering Activity fails to return the defective Product to Citrix within ten (10) business days after Citrix issues an RMA number for the defective Product, Contractor may charge Ordering Activity, and Ordering Activity shall pay for the replacement Product at the then current GSA price. The warranty period of any replacement Product shall be the longer of (a) ninety (90) calendar days from Citrix's shipment of said Product or (b) the remainder of the applicable warranty period for said Product pursuant to the Extended Warranty Program.

Silver Maintenance includes all of the services set forth above under Extended Warranty Program and Software Subscription Service plus each of the following:

Telephone Support. During the term of this Attachment A, Contractor through Citrix shall provide Ordering Activity technical telephone support for the Product through the Citrix support line during designated business hours. Citrix Appliance Support Coverage hours are indicated in the Program Overview. Citrix support technicians shall only be obligated to respond to Ordering Activity's designated contacts.

Support Service Level. Contractor through Citrix shall respond within twelve (12) hours of receiving an inquiry from Ordering Activity if received during a business day (or if received on a day other than a business day, within twelve (12) hours of the opening of business on the succeeding business day) regarding use or installation of the Product, and use diligent efforts to answer questions and resolve problems.

Returns. During the term of this Attachment A, Ordering Activity shall have the right to return to Contractor through Citrix any defective Product subject to the limited warranty set forth in the Extended Warranty Program above pursuant to the Advance Return provisions set forth below.

Gold Maintenance includes all of services set forth above under Extended Warranty Program and Software Subscription Service plus each of the following:

Telephone Support. During the term of this Attachment A, Contractor through Citrix shall provide Ordering Activity technical telephone support for the Product through the Citrix support line twenty-four (24) hours per day, three hundred sixty-five (365) days per year. Citrix's support technician shall only be obligated to respond to Ordering Activity's designated contacts.

Support Service Level. Contractor through Citrix shall respond within two (2) hours of receiving an inquiry from Ordering Activity regarding use or installation of the Product, and use diligent efforts to answer questions and resolve problems.

Returns. During the term of this Attachment A, Ordering Activity shall have the right to return to Contractor through Citrix any defective Product subject to the limited warranty set forth in the Extended Warranty Program above pursuant to the Advance Return provisions set forth below.

Advance Return

Prior to any return as to which Advance Return applies, Ordering Activity shall first verify that said Product is defective and shall obtain from Contractor through Citrix a Return Material Authorization ("RMA") number. Ordering Activity shall request each RMA number from Citrix in accordance with Citrix's RMA procedures including providing the part number, serial number, quantity and reason for return, an explanation of all failure symptoms and other relevant information. Citrix shall ship via a recognized express courier service a replacement Product to Ordering Activity no later than one (1) business day after Citrix's issuance of an RMA number, except in countries where regulation requires export approval documentation in advance of RMA shipment (current list shown in the table below). The replacement Product may be a new or reconditioned Product (of better or equivalent quality) at Citrix's discretion. Citrix shall pay the shipping costs to ship the replacement Product to Ordering Activity. Within five (5) business days after Citrix issues an RMA number for the defective Product, Ordering Activity shall package said Product in its original packing material or equivalent, write the RMA number on the outside of the package and return said Product, at Citrix's shipping expense to Citrix's designated facility. Title to the defective Product shall pass to Citrix upon Citrix's receipt thereof. When a replacement Product is provided and Ordering Activity fails to return the defective Product to Citrix within ten (10) business days after Citrix issues an RMA number for the defective Product, Contractor may charge Ordering Activity. The warranty period of any replacement Product shall be the longer of (a) ninety (90) calendar days from Citrix's shipment of said Product or (b) the remainder of the applicable warranty period for said Product pursuant to the Extended Warranty Program.

*Current list of countries requiring export approval documentation before shipment of replacement Product:

Country	RMA Documents	Time Estimate
Egypt	CVO/EX A/Embassy	10 business days
Jordan	CVO/EX A/Embassy/Min. foreign	10 business days
Kuwait	EX A/Embassy/CVO	10 business days
Qatar	EX A/Embassy/CVO/Min. foreign	10 business days
Norway	EU A	1 business day
Switzerland	EU A	1 business day
Dubai/United Arab Emirates	CVO/EX A	2 business days
Israel	CVA/EX A	2 business days
Russian Federatio	EX A	2 business days
Saudi Arabia	EX A/CVO	2 business days
South Africa	EX A	2 business days
Turkey	EX A/ATR	2 business days

4-hour Advance Return

Where available, and upon payment of the applicable STS fees, Ordering Activities receiving Gold Maintenance may select an optional expedited Advance Return service. The features of the 4-hour Advance Return are the same as the standard Advance Return above, except that Contractor through Citrix shall ship via a recognized express courier service a replacement Product to Ordering Activity no later than four (4) hours after Citrix's issuance of an RMA number.

Onsite Support

This Attachment A does not include onsite support. In critical situations, Ordering Activity may request onsite support as a separate and distinct billable service, subject to a separate written agreement and purchase order between Contractor and Ordering Activity. Onsite support is subject to Contractor through Citrix resource availability, and the tasks performed will vary based on the situation, environment, and business impact of the problem.

Product Development Support

In situations where Contractor through Citrix cannot provide a satisfactory resolution to Ordering Activity's critical problem through normal support methods, Citrix may engage its product development team to create a Ordering Activity-specific solution (a "Private Fix") to the Products. Private Fixes are designed to address a specific Ordering Activity situation and may not be distributed by Ordering Activity outside the Ordering Activity organization without written consent from Citrix. Private Fixes and hotfixes are provided 'as-is', without warranty of any kind applicable to Software pursuant to this Attachment A to the extent permitted by applicable law. Citrix retains all right, title and interest in and to all Private Fixes.

Technical Relations Management

Ordering Activity may select an optional Technical Relations Manager (TRM) to enhance the technical support relationship between Ordering Activity and Contractor through Citrix. The TRM provides high-level technical expertise and proactive services, and also serves as the point of information delivery and feedback to Citrix product groups, research and development teams, and other Citrix groups. These services include:

- Orientation Session. At the start of this service, an initial orientation session will be scheduled for the TRM to introduce the Ordering Activity to Citrix Technical Support contact information and processes.
- Escalation Management. In cases where issues need engineering assistance, the TRM will act as the Ordering Activity's advocate and function as point-of-contact to assist in rapid resolution of the incident.
- Implementation and Informational Reviews. The TRM will be a resource for the Ordering Activity to assist with product information and recommendations for integration of Citrix products in the Ordering Activity environments.
- Incident Tracking and Status Reporting Sessions. TRM will provide the Ordering Activity on a regular basis, reports summarizing Ordering Activity account information such as incidents opened and status updates.

TRM services can only be used in a single geographical region. Ordering Activities wishing to use TRM services in more than one region must purchase 200 hour blocks in each region. All TRM purchased hours are valid for 12 months from date of purchase; unused TRM hours do not roll over into a subsequent purchase order term. Citrix regions are as follows: (a) Americas – North America, Latin America, and the Caribbean; (b) EMEA – Europe, Middle East and Africa; (c) Asia Pac –Asia, New Zealand and Australia and (d) Japan. Ordering Activities should contact Contractor through Citrix Technical Support to determine TRM service availability in their region.

2. ORDERING ACTIVITY RESPONSIBILITIES.

- a. Ordering Activity Assistance. Contractor through Citrix's performance is predicated upon the following responsibilities being fulfilled by Ordering Activity: (i) Ordering Activity agrees to provide Citrix reasonable access to all necessary personnel to answer questions or resolve problems reported by Ordering Activity regarding the Products; (ii) Ordering Activity agrees to perform reasonable problem determination activities and to perform reasonable problem resolution activities as suggested by Citrix. Ordering Activity agrees to cooperate with such requests; (iii) Ordering Activity is responsible for implementing procedures necessary to safeguard the integrity and security of Software and data from unauthorized access and for reconstructing any lost or altered files resulting from catastrophic failures; (iv) Ordering Activity is responsible for procuring, installing, and maintaining all equipment, telephone lines, communications interfaces, and other hardware at Ordering Activity's site; (v) Ordering Activity is required to implement all currently available and applicable Updates and error corrections provided by Citrix under this Attachment A in a timely manner, including hotfixes, hotfix rollup packs, and service packs or their equivalent; and (vi) Ordering Activity shall allow Citrix access as needed to the Products via the Internet for the purpose of providing support services and shall permit Citrix to perform the support services called for by this Attachment A. Ordering Activity shall maintain Citrix supported versions of required third party software, if any.
- b. Named Contacts. Ordering Activity shall appoint at least two (2) named contacts within Ordering Activity's organization to serve as contacts between Ordering Activity and Contractor through Citrix and to receive support through Citrix's telephone support center. Ordering Activity's contacts shall have been adequately trained on the Software and shall have sufficient technical expertise, training and experience.

3. EXCLUSIONS.

Notwithstanding anything in this Attachment A to the contrary, Contractor through Citrix shall have no obligation or responsibility to provide any support services relating to problems arising out of or related to (i) Ordering Activity's failure to implement all updates to the Software which are made available to Ordering Activity under this Attachment A; (ii) the failure to provide a suitable installation environment; (iii) Ordering Activity's customization to the operating system or environment that adversely affects the Software; (iv) any alteration, modification, enhancement or addition to the Products performed by parties other than Citrix; (v) use of the Products in a manner, or for a purpose, for which it was not designed; (vi) accident, abuse, neglect, unauthorized repair, inadequate maintenance or misuse of the Products; (vii) operation of the Products outside of environmental specifications; (viii) interconnection of the Software with other software products not supplied by Citrix; (ix) use of the Software on any systems other than the specified hardware platform for such Software; or (x) introduction of data into any database used by the Software by any means other than the use of the Software. Notwithstanding anything else contained in this Attachment A to the contrary, Citrix shall only be obligated to provide support for eligible Products as indicated in the Citrix Appliance End of Life Policy available www.citrix.com. This website reference is for informational purposes only.

4. OWNERSHIP AND USE; WARRANTY DISCLAIMER.

- a. Ownership and Use. All Updates and other changes, improvements, bug fixes or other modifications to the Software provided under this Attachment A shall be deemed to be included within the Software and shall be subject to the terms and conditions of this Attachment A except that they are not covered by the warranty. With respect to installation and consulting services relating to the Product purchased from Contractor, all intellectual property rights in all reports, preexisting works and derivative works of such preexisting works, as well as installation scripts and all other deliverables and developments made, conceived, created, discovered, invented, or reduced to practice in the performance of the consulting services are and shall remain the property of Contractor, subject to a worldwide, nonexclusive license to Contractor for internal use.
- b. Warranty and Warranty Disclaimer. Contractor shall use all reasonable commercial efforts to provide the support, installation and consulting services requested by Ordering Activity under this Attachment A in a professional and workmanlike manner, but Contractor cannot guarantee that every question or problem raised by Ordering Activity shall be resolved. **OTHER THAN THE EXPRESS LIMITED WARRANTIES MADE BY CONTRACTOR, CONTRACTOR MAKES, AND ORDERING ACTIVITY**

RECEIVES, NO WARRANTIES, REPRESENTATIONS OR CONDITIONS OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE ARISING IN ANY WAY OUT OF, RELATED TO, OR UNDER THIS ATTACHMENT A OR THE PROVISION OF MATERIALS OR SERVICES HEREUNDER, AND CONTRACTOR HEREBY SPECIFICALLY DISCLAIMS ALL OTHER EXPRESS, IMPLIED, STATUTORY AND OTHER WARRANTIES, REPRESENTATIONS AND CONDITIONS INCLUDING WITHOUT LIMITATION THOSE ARISING FROM A COURSE OF DEALING, LAW, USAGE OR TRADE PRACTICE AND THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND SATISFACTORY QUALITY.

HOW TO CONTACT CITRIX TECHNICAL SUPPORT

If Ordering Activity purchased maintenance for Citrix products, Ordering Activity can contact Citrix Technical Support either by phone or via the Internet. In order to contact Citrix Technical Support each individual named contact must have a valid support agreement number in place. If Ordering Activity purchased maintenance and Ordering Activity have been designated a named contact, Ordering Activity should have received Ordering Activity's individual agreement number via email. However, if Ordering Activity has not received Ordering Activity's agreement number, please send an email to Contractor through Citrix (addresses provided below) with your name, company name, phone number and serial number of the unit.

Phone

- From North America, Latin America, and the Caribbean, please dial: 1-800-424-8749 or (954) 267-2599
- From EMEA (Europe, Middle East, Africa), please dial: 00353-1-805-5000
- From APAC (Australia, New Zealand and Asia), please dial: +61-2 8870 0899
- From Japan, please contact your distributor directly.

Ordering Activity may also find Ordering Activity's country specific toll free phone number by going to the following website address:
www.citrix.com/English/ss/supportContacts.asp

Internet

- Log on to www.mycitrix.com
- Navigate to the Toolbox and select "My Support". This will direct Ordering Activity to the eService Self Service Homepage. This view provides links with associated descriptions in a user friendly web-based format. These links will include Service Requests, Agreements and Returns / Exchange Orders. Ordering Activity can find more details as you navigate through each link.

Email

- From North America, Latin America and the Caribbean, please use techsupport_na@citrix.com
- From EMEA (Europe, Middle East, & Africa), please use techsupport_emea@citrix.com
- From APAC (Australia, New Zealand and Asia), please use techsupport_apac@citrix.com
- From Japan, please contact your distributor directly.

CITRIX APPLIANCE MAINTENANCE PROGRAM OVERVIEW

As an Ordering Activity, Ordering Activity is entitled the following services as described in this document to the extent Ordering Activity has ordered and paid in full the Annual Fee for the applicable service.

Ordering Activity puts confidence in Contractor through Citrix when Ordering Activity installed products in Ordering Activity's network infrastructure. Citrix wants that confidence to last, and is committed to making sure Ordering Activity's Citrix Appliance is successfully implemented and continues to work to provide a robust solution for Ordering Activity's applications. The Citrix Appliance Maintenance Program has been designed to help sustain, grow and enhance our products within Ordering Activity's infrastructure, so Ordering Activity can be assured of their performance every step of the way.

The levels of maintenance that are available for the Citrix products are:

Bronze (not currently available for Citrix Access Gateway)

- Unlimited incidents during each one-year term
- Standard business hours (see technical support coverage hours below)
- One year of software updates and bug fixes
- 2 named contacts
- Standard replacement for materials (ships within 10 business days after issuing the RMA number*)

Silver

- Unlimited incidents during each one-year term
- Standard business hours (see technical support coverage hours below)
- One year of software updates and bug fixes
- Assigned Support Account Manager for non-technical Relations Management Services
- 4 named contacts
- Advanced replacement for materials (ships within 1 business day after issuing the RMA number*)

Gold

- Unlimited incidents during each one-year term
- 24 x 7 coverage hours
- One year of software updates and bug fixes
- Assigned Support Account Manager for non-technical Relations Management Services
- 6 named contacts
- Advanced replacement for materials (ships within 1 business day after issuing the RMA number*)

* Please note that in countries where regulation requires export approval documentation in advance of RMA shipment, the time for shipment may be longer.

Citrix Appliance Technical Support Coverage Hours

	Bronze	Silver	Gold
North America, Latin America, and the Caribbean	8 a.m. to 9 p.m. U.S. Eastern time, Monday -Friday	8 a.m. to 9 p.m. U.S. Eastern time, Monday -Friday	24 x 7
Asia (excluding Japan*)	8 a.m. to 6 p.m. Hong Kong time, Monday - Friday	8 a.m. to 6 p.m. Hong Kong time, Monday - Friday	24 x 7
Australia & New Zealand	8 a.m. to 6 p.m. AEST, Monday - Friday	8 a.m. to 6 p.m. AEST, Monday -Friday	24 x 7
Europe, Middle East, & Africa	8 a.m. to 6 p.m. GMT, Monday - Friday	8 a.m. to 6 p.m. GMT, Monday - Friday	24 x 7

*Ordering Activities in Japan should contact their local distributor for technical support coverage.

Contractor through Citrix's tiered Citrix Appliance Maintenance Program allows Ordering Activity to select the level of service that is best for Ordering Activity. Citrix's goal is to continue to earn Ordering Activity's confidence and to exceed Ordering Activity's expectations. If Ordering Activity has not already chosen a Citrix Appliance Maintenance Program, please review the levels above.

MCAFFEE MASTER SOFTWARE LICENSE AND MAINTENANCE AGREEMENT

EXHIBIT A
End-User License Agreement

EXHIBIT B McAfee[®]
Technical Support and Maintenance for Hardware and Software
Terms and Conditions

Exhibit A
End-User License Agreement

1. License Grant. On the terms specified below, we grant you a nonexclusive, nontransferable right to use the Software listed in your Grant Letter solely for your own internal business operations. The Software and all related information are proprietary to us and our suppliers. You are not granted rights to Updates and Upgrades unless you have purchased Support or a service subscription.
2. Copies and Use.
 - 2.1 Product Entitlement. The use of the Software depends on the license or licenses purchased and is subject to the Product Entitlement Definitions set forth (on the date of your Grant Letter) at http://www.mcafee.com/us/local_content/legal/product_entitlement_definitions.pdf.
 - 2.2 Multiple Platforms and Bundles. If the Software supports multiple platforms, or if you receive the Software bundled with other software, the total number of devices on which all versions of the Software are installed cannot exceed your product entitlement. Certain Software licensed as part of a suite-based product may also require the purchase of a separate server license in order to use the Software on certain types of services, in each case as specified in the Documentation.
 - 2.3 License Period. The license is perpetual unless limited by a license period specified in your Grant Letter.
 - 2.4 Copies. You may copy the Software as reasonably necessary for backup, archival, or disaster-recovery purposes.
 - 2.5 Subsidiaries. A Subsidiary may use the Software in accordance with this Agreement, but only as long as the entity remains your Subsidiary. Other state of Ohio agencies and Ohio political subdivisions, such as Ohio cities, counties, and townships ("Subsidiaries"), may rely on this Contract. Whenever a Subsidiary relies on this Contract to issue a purchase order, the Subsidiary will step into the shoes of the State under this Contract for purposes of its order, and, as to the Subsidiary's order, this Contract will be between the Contractor and the Subsidiary. The Contractor must look solely to the Subsidiary for performance, including but not limited to payment, and must hold the State harmless with regard to such orders and the Subsidiary'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 Subsidiary. Nothing in this Contract requires the Contractor to accept an order from a Subsidiary, if the Contractor reasonably believes that the Subsidiary is or will be unable to perform its obligations in relation to that order.
 - 2.6 Managing Party. A "Managing Party" means a third party hired by you to manage your information-technology resources. If you contract with a Managing Party, you may transfer all your rights to use the Software to the Managing Party if:
 - (A) the Managing Party uses the Software only for your internal operations and not for the benefit of the Managing Party or another third party;
 - (B) the Managing Party agrees to comply with this Agreement; and
 - (C) you give us written notice that a Managing Party will be using the Software on your behalf.
 - 2.7 General Restrictions. You must not — and must not let any third party — do any of the following:
 - (A) decompile, disassemble, or reverse-engineer the Software, except to the extent expressly permitted by applicable law, without our prior written consent;
 - (B) remove any product identification or proprietary-rights notices of the Software or Documentation;
 - (C) lease, lend, or use the Software for timesharing or service-bureau purposes;
 - (D) modify or create derivative works of the Software;
 - (E) publish any performance or benchmark test or analysis relating to the Software, without our prior written permission; or
 - (F) otherwise use or copy the Software except as expressly provided here.
3. Technical Support and Maintenance. The McAfee[®] Technical Support Terms apply if you have bought Support. After the Support or service-subscription period specified in your Grant Letter expires, you have no further right to receive any Support including Upgrades, Updates, or telephone support.
4. Limited Warranty and Disclaimer.
 - 4.1 Limited Warranty. The warranty extends for 60 days beyond the date that you receive the Grant Letter. We warrant that the Software licensed under this Agreement (including Upgrades provided within the warranty period but only until the warranty lapses) will perform substantially in accordance with the Documentation.
 - 4.2 Exclusive Remedy. Your sole remedy, and our entire liability, in case of any breach of the § 4.1 limited warranty is that we will:
 - (A) repair or replace the Software; or

- (B) refund the price you paid for the applicable Software if we think repair or replacement would be commercially unreasonable.
- 4.3 Exclusion of Warranty. This limited warranty does not apply if:
- (A) the Software is not used in accordance with this Agreement or the Documentation;
 - (B) the Software or any part of it has been modified by any individual or entity other than us; or
 - (C) a malfunction in the Software was caused by any equipment or software that we did not supply.
- 4.4 Disclaimer. The above warranties are your exclusive warranties. They replace all other warranties or conditions, express or implied, including warranties or conditions of merchantability, fitness for a particular purpose, title, and noninfringement. Except for the limited warranty in § 4.1, the Software is provided as is. We do not warrant or guarantee:
- (A) use or performance of the Software;
 - (B) operation of the Software or Hardware will be failsafe, uninterrupted, or free from errors or defects;
 - (C) Hardware or Software will protect you against all possible security threats (including intentional misconduct by third parties);
 - (D) that there will be no malfunctions or other errors in the Hardware or Software caused by virus, infection, worm or similar malicious code not introduced or developed by us.
- 4.5 Exceptions. The disclaimer in § 4.4 does not apply to you in a jurisdiction that does not allow the exclusion of express or implied warranties. In that case, the express or implied warranties are limited to the warranty period or to the minimum period required by applicable law.
5. Limitation of Damages and Remedies.
- 5.1 Parties' Liability for Nondirect Damages. Under no circumstances is either party liable to the other for any indirect, special, incidental, or consequential damages, or damages for loss of profits, loss of goodwill, loss of personnel salaries, computer failure or malfunction, costs of obtaining substitute software or services, work stoppage, downtime, service interruption nor any lost or stolen data or systems, or for any other such damages arising out of or relating to any actions or intrusions described in Section 4.4.
- 5.2 Aggregate Liability for Direct Damages. In no event will either party's aggregate liability to the other party for direct damages under this Agreement exceed the lesser of:
- (A) the amount of total fees paid or payable by you for the Software giving rise to the claim during the 12 months immediately preceding the event giving rise to the claim; or
 - (B) our applicable list price on the purchase date for the Software giving rise to the claim, and then only if you ordered the Software during the 12 months immediately preceding the event giving rise to the claim.
- 5.3 Liability Not Limited. No term of this Agreement excludes or in any way limits:
- (A) the liability of either party for death or personal injury caused by negligence;
 - (B) the liability of either party for tangible property damage caused by gross negligence; or
 - (C) your liability for excess usage of or any breach of our intellectual-property rights in the Software.
- 5.4 Express Assent to Limitations. The limitation of liability in this section recognizes that only end users can implement back-up plans and safeguards appropriate to their own needs to protect themselves if an error in the Software causes computer problems and related data losses. For these business reasons, you agree to the limitations of liability in this § 5 and acknowledge that without your agreement to this term, the fee charged for this Software would be higher.
6. Intellectual-Property Indemnity. Your sole remedy for intellectual-property-infringement claims is as follows:
- 6.1 Third-Party Claims. We will defend you from any claim by a third party that our Software infringes that party's patent, copyright, or trade secret, if:
- (A) you notify us within 14 calendar days after you receive notice of the claim;
 - (B) you reasonably cooperate with us as necessary for us to perform our obligations under this section; and
 - (C) we have sole control over the defense and all negotiations for settling the claim;
 - (D) Pursuant to ORC Sections 109.02 and 109.07, Customer's counsel may defend Customer at Customer's expense and, in such event, Customer and McAfee shall jointly defend Customer. McAfee shall control all substantive defenses and all negotiations to any such claim should this occur.
- 6.2 Limitation. Our obligation to defend you does not apply if you continue the allegedly infringing activity after being notified about it and we have provided you with a modification that would avoid the alleged infringement. Nor does our obligation apply to Software or any portions of components that are:
- (A) not supplied by us;
 - (B) used in a way not expressly authorized by this Agreement or the relevant Documentation;
 - (C) made to your specifications;
 - (D) modified by anyone other than us, if the alleged infringement relates to the modification; or
 - (E) combined with other products, processes, or materials in such a way that the combination caused the alleged infringement.
- 6.3 Remedy and Liability for Infringement. If a court of competent jurisdiction holds that the Software infringes, or if it enjoins use of the Software, your sole remedy, and our entire liability, at our sole option, to do one of the following:
- (A) First Recourse. We may:

- (1) obtain the right to continue using the Software;
 - (2) modify the Software so that its use becomes noninfringing; or
 - (3) replace the Software with software that is substantially similar in functionality and performance.
- (B) Second Recourse. If none of the options in § 6.3(A) is reasonably available to us, we will refund the residual value of the purchase price paid for the infringing Software, depreciated using the straight-line method of depreciation over a three-year period from the date the Software was delivered.

7. Termination.

- 7.1 If You Uninstall the Software. Without affecting your payment obligations, you may terminate your license at any time by uninstalling the Software.
- 7.2 If You Breach the Agreement. We may terminate your license if you materially breach this Agreement and fail to cure the breach within 30 days of receiving notice of the breach. If we terminate your license, you must promptly return or destroy all copies of the Software and Documentation.
- 7.3 If We Breach the Agreement. You may terminate this agreement if we materially breach this Agreement and fail to cure such breach within 30 days of receiving notice of such breach.

8. Evaluation Software.

- 8.1 License. If the Software is “Evaluation Software” — licensed for evaluation purposes only — then this § 8 applies and supersedes any other conflicting term in this Agreement. Your royalty-free, nontransferable, limited license to use the Evaluation Software is limited to 30 days unless we agree otherwise in writing.
- 8.2 Disclaimer; Limitation of Liability. The Evaluation Software may contain errors or other problems that could cause system or other failures and data loss. We provide Evaluation Software to you as is. We disclaim any warranty or liability obligations of any kind. Where legal liability cannot be excluded but may be limited, our liability and that of our suppliers and authorized partners is limited to US\$50 or the equivalent in local currency.
- 8.3 Use of Software. The restrictions described in § 2.7 apply. Any information about the Evaluation Software gathered from its use must be used solely for evaluation purposes. You must not give the Evaluation Software to any third party. If you fail to destroy the Evaluation Software after the evaluation period has expired, we may, at our discretion, invoice you for the McAfee[®] list price of the Evaluation Software, and you must pay the invoice on receipt.

9. Beta Software.

- 9.1 Our License to You. If the Software you receive has been identified as Beta Software, § 8 applies. We have no obligation to further develop or publicly release the Beta Software.
- 9.2 Feedback. At our request, you must give us feedback about your testing and use of the Beta Software, including error or bug reports. You grant us a perpetual, nonexclusive, royalty-free, worldwide license to use, copy, distribute, make derivative works from, and incorporate your feedback into any McAfee[®] product at our sole discretion.
- 9.3 Disposal of Beta Software. If you receive a later, unreleased version of the Beta Software or our release of a publicly released commercial version of the Beta Software, you must return or destroy all earlier Beta Software that you've received from us.

10. Free or Open-Source Software. The product may include code or programs that are licensed under an open- source- software (“OSS”) license model. OSS code and programs are subject to the applicable OSS license. They are specifically excluded from all warranty and support obligations described elsewhere in this Agreement.

11. Notice to United States Government End Users.

- 11.1 Statutory Classifications. The Software is commercial computer software under DFARS § 227.7202. The accompanying Documentation is commercial-computer-software documentation under FAR § 12.212. “DFARS” means Defense Federal Acquisition Regulation Supplement, codified under Chapter 2 in Title 48, Code of Federal Regulations. “FAR” means Federal Acquisition Regulation, codified in Title 48 of the United States Code of Federal Regulations.
- 11.2 Governance and Prohibitions. Any use, modification, reproduction, release, performance, display, or disclosure of the Software and accompanying Documentation by the United States Government is governed solely by this Agreement and is prohibited except to the extent expressly permitted by this Agreement.

12. Privacy.

- 12.1 The Software, Support or service subscription may employ applications and tools to collect personally identifiable, sensitive or other information about you and your users (e.g., including without limitation, you and your users' name, address, e-mail address, and payment details), their computers, files stored on their computers, or their computers'

interactions and other computers (e.g., including, without limitation, information regarding network, licenses used, hardware type, model, hard disk size, CPU type, disk type, RAM size, 32 Or 64 it architecture, operation system types, versions, locale, BIOS version, BIOS model, total scanners deployed, database size, system telemetry, device ID, IP address, location, content, our products installed, our components, processes and services information, frequency and details of update of our components, information about third-party products installed, extracts of logs created by us, usage patterns of our products and specific features, etc.) (collectively "Data").

12.2 The collection of this Data may be necessary to provide you and your users with the relevant Software, Support or service subscription functionalities as ordered (e.g., including, without limitation, detecting and reporting threats and vulnerabilities on customer's and users' computer network), enable us to improve our Software, Support or service subscription (e.g., including, without limitation, content synchronization, device tracking, troubleshooting, etc.) and to further or improve overall security for you and your users. You may be required to uninstall the Software or disable Support or its service subscription to stop further Data collection that supports these functions.

12.3 By entering into this Agreement, or using the Software, Support or service subscription, you and your users agree to the McAfee Privacy Policy on the McAfee web site (www.McAfee.com) and to the collection, processing, copying, backup, storage, transfer and use of this Data by us and our service providers, in, from and to the United States, Europe, or other countries or jurisdictions potentially outside of your own as part of the Software, Support or service subscription. You are solely responsible for securing any privacy-related rights and permissions from its users as may be required by local law or by your internal policies. We will only collect, process, copy, backup, store, transfer and use personally identifiable information in accordance with the McAfee Privacy Policy on the McAfee web site (www.McAfee.com).

13. Audit.

13.1 Purpose and Conduct. We may audit your compliance with this Agreement no more than once a year. Any audit will be conducted at our expense, after we give you reasonable written notice, during your standard business hours. We will not unreasonably interfere with the conduct of your business.

13.2 Auditing Methods. We use many methods to verify and support software use by our customers. These methods may include technological features of the Software that prevent unauthorized use and provide Software-deployment verification. On our reasonable request (no more than twice a year), you must provide us a system-generated report verifying your Software deployment.

14. Export Controls.

14.1 Controlling Statutes. The Software is subject to U.S. and, when applicable, European Union export regulations. You must comply with each jurisdiction's applicable export and import laws and regulations when exporting or importing the Software. If an export is prohibited by applicable law or regulation, you must not export the Software to a prohibited individual, entity, or country.

14.2 Responsibility. You are responsible, at your expense, for any government permits, licenses, or approvals required to import or export the Software.

14.3 Additional Information. For additional information about exporting and importing the Software, see http://mcafee.com/us/about/export_compliance/index.html. We may update this website from time to time.

15. Governing Law.

15.1 Applicable Law. This Agreement is governed by Ohio law without regard to its choice-of-law rules. The venue for all disputes will lie exclusively with the appropriate court in Franklin County, Ohio.

15.2 Expressly Excluded Laws. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act do not apply to this Agreement.

16. Confidentiality.

16.1 Access to Confidential Information. Each party might gain access to the other party's Confidential Information. "Confidential Information" means materials concerning the other party's business, technology, or products. Such Information is of substantial value, and that value could be impaired if the Confidential Information were disclosed to third parties.

16.2 Disclosure. When disclosed, Confidential Information must be handled in the following ways:

- (A) Written or other tangible Confidential Information must be identified and labeled in writing as Confidential Information belonging to the disclosing party.
- (B) Oral or visual Confidential Information must be treated by either party as Confidential Information 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 either party, or individuals or organizations about whom the State keeps information. The parties may not disclose any Confidential Information to third parties and must use it solely to perform under this Contract.

16.3 Use and Protection of Confidential Information. Neither party may use the other party's Confidential Information except to perform its duties under this Agreement — and never for its own benefit or for the benefit of any third party except as authorized under this Agreement. Each party must protect the other's Confidential Information to at least the same extent as it protects its own Confidential Information and to the same extent that a reasonable person would protect such Confidential Information.

16.4 Exceptions to Restrictions. The restrictions in this § 16 do not apply to Confidential Information that:

- (A) is already known to the receiving party;
- (B) becomes publicly available through no wrongful act of the receiving party;
- (C) is independently developed by the receiving party without benefit of the disclosing party's Confidential Information;
- (D) has been rightfully received from a third party not under obligation of confidentiality; or
- (E) must be disclosed by law if, where reasonably possible, the party compelled to disclose the Confidential Information gives the party owning the Confidential Information prior written notice of disclosure adequate for the owning party to take reasonable action to prevent the disclosure.

16.5 Return of Confidential Information. When this Agreement or an applicable addendum terminates, each party will return the other party's Confidential Information.

17. Miscellaneous.

17.2 Severability and Survival. If any part of this Agreement is for any reason held to be unenforceable, the rest of it remains fully enforceable. Any terms of this Agreement that by their nature should survive the Agreement's termination will survive the termination.

17.3 Entire Agreement. This Agreement constitutes the sole agreement of the parties with respect to its subject matter. It supersedes any prior written or oral agreements or communications between the parties.

17.4 Modification of Agreement. This Agreement may not be modified except by a written addendum issued by our duly authorized representative and mutually agreed upon by the parties.

17.5 Waiver. If either party fails to require the other to perform any term of this Agreement, that failure does not prevent the party from later enforcing that term. If either party waives the other's breach of a term, that waiver does not waive a later breach of the term. If we waive a term, we will do so only in a signed writing.

17.6 Conflicts Between Orders, Agreement, and Grant Letter. If you issue an order to an Authorized Partner or to us and the terms and conditions of the order conflict with the terms and conditions of this Agreement or your Grant Letter, then the terms and conditions in this Agreement and in your Grant Letter control.

17.7 Notices and Similar Communications. All notices and other communications required or permitted under this Agreement (other than routine operational communications) must be in writing and must be sent to our address on the first page of this Agreement, addressed to "Attention: Legal Department."

17.8 Headings. Headings are for convenience and do not affect the interpretation of this Agreement.

17.9 "Including." Unless the context requires otherwise, "including" means "including but not limited to."

18. Definitions.

18.1 "Authorized Partner" means any of our distributors, resellers, or other business partners.

18.2 "Grant Letter" means a confirmation-notice letter that we issue electronically to you confirming your Software or Support purchases, including the applicable product entitlement, as defined in the Product Entitlement Definitions (see § 2.1), and containing download details.

18.3 "Documentation" means explanatory materials in printed, electronic, or online form accompanying the Software in English and other languages, if available.

18.4 "McAfee" means

- (A) McAfee, Inc., a Delaware corporation, with offices located at 2821 Mission College Blvd., Santa Clara, California 95054, USA, if the Support is purchased in the United States, Mexico, Central America, South America, or the Caribbean;
- (B) McAfee Ireland Limited, with offices located at Building 2000, City Gate, Mahon, Cork, Ireland, if the Support is purchased in Canada, Europe, the Middle East, Africa, Asia (other than Japan), or Oceania; and
- (C) McAfee Co., Ltd., with offices located at Shibuya Mark City West Building 12-1, Dogenzaka 1-Chrome, Shibuya-ku, Tokyo 150-0043, Japan, if the Support is purchased in Japan.

- 18.5 "Software" means each McAfee[®] software program in object-code format licensed by and purchased from us or our Authorized Partners, including Upgrades.
- 18.6 "Subsidiary" refers to any entity you control through greater than 50% ownership of the voting securities.
- 18.7 "Support" means services we offer for the support and maintenance of the Software and McAfee[®] Hardware further specified in the McAfee[®] Technical Support Terms.
- 18.8 "Updates" are related to content, including all DATs, signature sets, policy updates, and database updates for the Product that are made generally available to our customer base as a part of purchased Support and that are not separately priced or marketed by us.
- 18.9 "Upgrade" means any and all improvements in the Software that we make generally available to our customer base as a part of purchased Support and that are not separately priced or marketed by us.
- 18.10 "Use" of the Software, for the purpose of this Agreement, means to access, install, download, copy, or otherwise benefit from using the Software.

Exhibit B

McAfee[®] Technical Support and Maintenance for Hardware and Software Terms and Conditions

1. Provision of Support. We will provide Support to you during the Support Period at the Support Level you bought, as confirmed in your Grant Letter. You are not entitled to receive Support outside the Support Period.
2. Updates and Upgrades.
 - 2.1 License. We grant you a nonexclusive, nontransferable license to use the Updates and Upgrades we may provide during the Support Period as a part of purchased Support. Updates and Upgrades are subject to the license that we have granted to you for the Software.
 - 2.2 Compatibility. An Upgrade may require a hardware upgrade or new-platform conversion to function properly.
 - 2.3 Your Duties. You should promptly download, distribute, and install all Updates or Upgrades as we release them during the Support Period. Your failure to download, distribute, or install the Updates or Upgrades may result in your inability to receive further Updates or Upgrades and Support, and may cause you major security risks.
3. Supported Versions and End of Life.
 - 3.1 Limitations and Policy. Our provision of Support is limited to the current version and the immediately preceding version of the Product. All Support is subject to our End-of-Life Policy available at <http://www.mcafee.com/us/resources/misc/support-policy-product-support-eol.pdf>.
 - 3.2 Further Information and Notifications. To determine whether a Product qualifies for Support, it is your responsibility to review and remain apprised of our Product Support Lifecycle webpage at http://www.mcafee.com/us/enterprise/support/customer_service/end_life.html. Furthermore, customer- proactive Support notifications can be accessed by subscribing to McAfee[®] Support Notification Service (SNS) available at https://sns.snssecure.mcafee.com/content/Subscription_Center.
4. Response Times. We will use commercially reasonable efforts to meet the response times set forth in the escalation and response charters listed under <http://www.mcafee.com/us/support/support-benefits.aspx>. Access to our websites for the provision of Support may be suspended for brief periods because of scheduled maintenance and other factors.
5. Bug Fixing and Remote Diagnostics. We will use commercially reasonable efforts to provide work-around solutions or patches to reported Product problems. We may sometimes have to perform remote diagnostics to work on reported problems. If you decline remote diagnostics, we may not be able to provide you with Support services. But you and we may agree to on-site Support, subject to an additional fee including reasonable travel and other expenses.
6. Support Period and Expired Support.
 - 6.1 Beginning of Period. The Support Period begins on the date the Product was purchased and continues as long as you renew the Support Period without interruption.
 - 6.2 Expired or Lapsed Period. If you let Support expire or lapse but later want to reinstate Support, you may be required to , at the sole desertion of McAfee; pay an out-of-compliance fee and must pay the then-current Support fee for the Product for the period during which there was no Support.
 - 6.3 Support Unavailable. In no event is reinstatement of Support available for a Product for which Support has lapsed longer than one year.
7. Support Coverage. Support is sold based on the quantity of all Products you purchase. When you purchase Support for a Product, you must purchase the same Support Level for all Product units you own or license that are in use at any location covered by Support. Some Support Levels are available for your purchase on a per- product-family basis. Those are sold by Support Region.
8. Acquired-Company Products. From time to time, we may acquire other companies and continue to support the products licensed by those companies. The Support Levels defined here may not apply to those products at the time of the acquisition, but we may within a reasonable time after the acquisition provide a description of any Support Levels available for them. That Support will become applicable once it is published on our Support website.
9. Exclusions.
 - 9.1 Modified Product. We do not provide Support if hardware, tools, or software other than those supplied or approved by us have been incorporated with the Product.
 - 9.2 Hardware Damage and Failures. We do not provide Support for Hardware that you have damaged or for

Hardware failures that you have caused.

9.3 Data, Programs, and the Like. We're not obligated to import or export customer data; to create or modify custom business rules or reports; or to support custom modifications to databases, active server pages, or other code, components, or programs.

9.4 Irreproducible Problems. We do not provide Support for problems that cannot be reproduced in running the Product in a configuration that meets published McAfee[®] specifications.

10. Your Obligations.

10.1 Support Process. You must report Product problems to our Support organization and be prepared to provide us with the Grant Number, the location of the Product, a detailed description of the problem, a description of the hardware on which the Software is loaded (including any serial number or service-tag number, where applicable), and the names and versions of any operating systems, networks, and software running with the Software, including patches and fixes. We may ask you to take certain actions to determine whether the problem or error is related to the Product or to another item. You must reasonably cooperate with us during this process.

10.2 Access. You must give us sufficient, free, and safe access to the Product and your computer systems, networks, and facilities if you and we agree that we will provide on-site support at your location or facilities, or that we will perform remote diagnostics.

10.3 Backup and Restore. You must keep adequate backup copies of data, databases, and application programs. You are solely responsible for any restoration or reconstruction of lost or altered files, data, and programs.

11. Termination. We may immediately terminate Support without any further obligation to you if you tamper with or modify the Product without our prior written authorization, or otherwise use the Product in violation of the applicable agreement or of these Support terms. Any terms that by their nature extend beyond the termination will remain in effect until fulfilled.

12. Warranty.

12.1 Performance of Support. We warrant that our Support will be performed in a professional and workmanlike manner.

12.2 Remedy and Liability for Breach. For any breach of this warranty, your sole remedy, and our entire liability, will be repeated performance of the nonconforming support. We are not liable for a breach of warranty unless you give us written notice of the breach within 30 days after the applicable support is performed.

12.3 Exclusive Warranty. This is your only warranty. It replaces any other warranty, express or implied, including warranties of merchantability, fitness for a particular purpose, title, noninfringement, skill, and care.

12.4 Disclaimer. We do not warrant that the Support will protect against all possible threats. This disclaimer does not apply to you in jurisdictions that do not allow the exclusion of express or implied warranties. In that event, any express or implied warranty is limited in duration to any minimum period required by the applicable law.

13. Hardware-Specific Terms.

13.1 Regional and Geographic Limitations. Unless we otherwise agree in writing or include as part of the applicable Support Level, Hardware is eligible for service only if it remains in the country where you originally installed it. Geographic restrictions or limitations may apply to certain Hardware Support Levels and are described under <http://www.mcafee.com/us/resources/misc/rm-dell-hw-by-country-external-1105.pdf>.

13.2 Hardware Return and Replacement. Hardware returned to us becomes our property when we receive it. You assume ownership of all replacement Hardware that we provide as soon as we ship it to you. Before you return any Hardware to us for repair or replacement, you must ensure that:

- (A) the Hardware is free of any legal obligations or restrictions and of any of your proprietary or confidential information that would prevent us from exchanging, repairing, or replacing the Hardware; and
- (B) you have obtained a return authorization from us, including a return-material authorization number (an "RMA Number").

13.3 Restrictions. Without our written authorization, you must not — and you must not let anyone else — do any of the following:

- (A) remove, alter, or obscure any proprietary notices or instructional labels on the Hardware;
- (B) install additional hardware or software on the Hardware; or
- (C) breach any tamper seal on the Hardware.

13.4 Inspection Period. We or our agents may inspect Hardware for which Support has lapsed for more than 90 days. We may charge a separate fee for the inspection. At our request, you must install the most current

Upgrades and Updates before we agree to renew Support for the Hardware.

14. General.

- 14.1 Recording. In providing Support, we may record all or part of telephone calls between you and us for quality-assurance and training purposes in compliance with applicable laws.
- 14.2 Third-Party Subcontractors. We may subcontract to a third party our obligations to provide Support. Such a subcontract does not constitute an assignment.
- 14.3 "Including." Unless the context requires otherwise, the term "including" means "including but not limited to."

15. Definitions.

- 15.1 "Grant Letter" means a confirmation-notice letter we issue electronically to you confirming your Software and Support purchase, including the applicable product entitlement, as defined in the Product Entitlement Definitions (see Exhibit A, § 2.1), and containing download details.
- 15.2 "Grant Number" means a unique number communicated by us in a Grant Letter confirming your Support entitlement and is required when accessing Support.
- 15.3 "Hardware" means McAfee[®] hardware equipment but excludes any Software or other intangible products.
- 15.4 "McAfee" means
- (A) McAfee, Inc., a Delaware corporation, with offices located at 2821 Mission College Blvd., Santa Clara, California 95054, USA, if the Support is purchased in the United States, Mexico, Central America, South America, or the Caribbean;
 - (B) McAfee Ireland Limited, with offices located at Building 2000, City Gate, Mahon, Cork, Ireland, if the Support is purchased in Canada, Europe, the Middle East, Africa, Asia (other than Japan), or Oceania; and
 - (C) McAfee Co., Ltd., with offices located at Shibuya Mark City West Building 12-1, Dogenzaka 1-Chrome, Shibuya-ku, Tokyo 150-0043, Japan, if the Support is purchased in Japan.
- 15.5 "Product" means our Software or Hardware product specified in a Grant Letter.
- 15.6 "Support Level" means the McAfee[®] Support offering you purchased. Software and Hardware Support Levels are defined on datasheets available at <http://www.mcafee.com/us/support/support-benefits.aspx>.
- 15.7 "Support Period" means the effective time period for which you have purchased Support that is confirmed in a Grant Letter.
- 15.8 "Support Region" means any one of the following five regions: (1) North America; (2) Europe, the Middle East, and Africa ("EMEA"); (3) Asia-Pacific ("APAC"); (4) Japan; and (5) Latin America ("LTAM").

Exhibit C

**Addendum to
Exhibit A End-User License Agreement**

1. Excusable Delay. Neither party will be liable for any delay in its performance under this Contract that arises from causes beyond its control. 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 must also describe the cause of the delay and what steps it is taking or will take to remove the cause.
2. UCITA. The Uniform Computer Information Transactions Act ("UCITA") will not apply to this Contract. To the extent that UCITA, or any version of it that is adopted by any jurisdiction in any form, is applicable, the parties agree to opt out of it pursuant to the opt-out provisions contained therein. Likewise, the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Contract.
3. Conflict of Interest. No Contractor Personnel may voluntarily acquire any personal interest that conflicts with their responsibilities under this Contract. Further, the Contractor will not knowingly permit any Ohio public official or public employee who has any responsibilities related to this Contract to acquire any interest in anything or any entity under the Contractor's control, if such an interest would conflict with that official's or employee's duties. The Contractor will disclose to the State knowledge of any such person who acquires an incompatible or conflicting personal interest related to this Contract. And the Contractor will take steps to ensure that such a person does not participate in any action affecting the work under this Contract. But this will not apply when the State has determined, in light of the personal interest disclosed, that the person's participation in any such action would not be contrary to the public interest.
4. Independent Status. Each party is an independent contractor. Neither party will have any authority to bind the other unless expressly

agreed in writing. Nothing in this Contract may be construed to create a partnership, agency, or employer-employee relationship between the Contractor and the State, and in no event will the Contractor and the State be deemed joint employers.

5. **Employees.** All Contractor Personnel are employees or contractors of the Contractor, and none are or will be deemed employees or contractors of the State. No Contractor Personnel will be entitled to participate in, claim benefits under, or become an "eligible employee" for purposes of any employee benefit plan of the State by reason of the subject matter of this Contract or work performed under this Contract. The Contractor must pay all federal, state, local, and other applicable payroll taxes and make the required contributions, withholdings, and deductions imposed or assessed under any provision of any law, rule, or regulation and measured by wages, salaries, or other remuneration paid by or which may be due from the Contractor to the Contractor Personnel. The Contractor will indemnify, defend, and hold the State harmless from and against all claims, losses, liability, demands, fine, or expense (including court costs, defense costs, and redeemable attorney fees) arising out of or relating to such taxes, withholdings, deductions, and contributions with respect to the Contractor Personnel. The Contractor's indemnity and defense obligations also apply to any claim or assertion of tax liability made by or on behalf of any Contractor Personnel or governmental agency on the basis that any Contractor Personnel are employees or contractors of the State, that the State is the "joint employer" or "co-employer" of any Contractor Personnel, or that any Contractor Personnel are entitled to any employee benefit offered only to eligible regular full time and regular part time employees of the State. Notwithstanding the foregoing, any defense of the State requires and is subject to the approval and consent of the Ohio Attorney General.
6. **Publicity.** The Contractor will not advertise or publicize that it is doing business with the State or use this Contract as a marketing or sales tool, unless otherwise agreed to in writing by the State.
7. **Equal Employment Opportunity.** The Contractor will comply with all state and federal laws regarding equal employment opportunity and fair labor and employment practices, including, but not limited to 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 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 Ohio Business Gateway at <http://business.ohio.gov/efiling/>

8. **Drug Free Workplace.** The Contractor must comply with all applicable Ohio laws regarding maintaining a drug-free workplace. The Contractor will commercially reasonable efforts that all its employees, while working on the State's property, do not possess and will not be under influence of illegal drugs or alcohol or abuse prescription drugs.
9. **Ohio Ethics Law and Limits on Political Contributions.** The Contractor certifies that it is currently in compliance with and will continue to adhere to the requirements of the Ohio ethics law. The Contractor hereby certifies that it and all applicable parties listed in Ohio Revised Code Section 3517.13 are in full compliance with Ohio Revised Code Section 3517.13.
10. **Record Keeping.** The Contractor must keep all financial records in accordance with generally accepted accounting principles consistently applied. And the Contractor will keep all related records and documents at its place of business.
11. **Audits.** During the term of this Contract and for three years after the payment of any fee to the Contractor under this Contract, on reasonable notice and during customary business hours, the State may audit the Contractor's records and other materials that relate to this Contract. This audit right will also apply to the State's duly authorized representatives and any person or organization providing the State with financial support related to this Contract. If any audit reveals any misrepresentation or any overcharge to the State, the State will be entitled to recover damages, as well as the cost of the audit.
12. **Ohio Revised Code Section 9.24.** Contractor warrants that it is not subject to an unresolved finding for recovery under Ohio Revised Code Section 9.24. If this warranty was false on the date the parties signed this Contract, the Contract is void. Further, if the Contractor is subject to an unresolved finding of the Auditor of State under Revised Code Section 9.24 on any date on which the parties renew or extend this Contract, the renewal or extension will be void.
13. **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.
14. **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 Contract.

**ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

PALO ALTO NETWORKS

PALO ALTO NETWORKS LICENSE, WARRANTY AND SUPPORT TERMS

1. License

Subject to the terms and conditions of this Attachment A, Contractor grants to you ("Ordering Activity") a non-exclusive license to use the Software solely as part of the Product with which the Software is delivered and solely for Ordering Activity's internal business purposes. If Ordering Activity purchases the Product for use by any Customer Affiliate (defined herein), Ordering Activity will provide each such Customer Affiliate with a copy of this Attachment A and will ensure that each such Customer Affiliate complies with the terms and conditions of this Attachment A. For purposes of this Attachment A, "Customer Affiliate" means any entity that controls, or is controlled by, or is under common control with Ordering Activity, and "Control" means ownership, directly or indirectly of 50% or more of the voting interest of Ordering Activity. All other rights in the Software are expressly reserved by Contractor.

2. Restrictions

Ordering Activity shall maintain the Software in strict confidence and shall not sell, resell, distribute, transfer, publish, disclose, rent, lend, lease or sublicense the Software or make the functionality of the Software available to any other party through any means, including, without limitation, by uploading the Software to a network or file-sharing service or through any hosting, application services provider, service bureau or other type of services. Notwithstanding anything to the contrary in this Section, the State may use the Software to process data on behalf of other Ohio State agencies (the "Agencies") for such Agency's own internal business purpose. The State may allow its third party contractors to use the Software solely in accordance with the terms and conditions of this Agreement to provide services for the State's internal business purpose. Ordering Activity shall not modify, translate or create derivative works based on the Software, in whole or in part, or permit or authorize a third party to do so. Ordering Activity acknowledges and agrees that portions of the Software, including, without limitation, the source code and the specific design and structure of individual modules or programs, constitute or contain trade secrets of Palo Alto Networks and/or its suppliers. Accordingly, Ordering Activity shall not disassemble, decompile, reverse compile, reverse engineer or otherwise attempt to derive the source code of the Software, in whole or in part, or permit or authorize a third party to do so, except to the extent such activities are expressly permitted by law notwithstanding this prohibition. Ordering Activity shall not disclose, publish or otherwise make publicly available any benchmark, performance or comparison tests that Ordering Activity runs (or has run) on the Software. Ordering Activity shall not copy the Software except for making a reasonable number of archival, disaster recovery, or backup copies; provided that Ordering Activity reproduces on such copies the copyright, trademark and other proprietary notices or markings that appear on the original copy of the Software as delivered to Ordering Activity. If Ordering Activity sells, leases, lends, rents or otherwise transfers a Product to a third party, Ordering Activity will permanently erase all copies of the Software from the Product and destroy any and all copies of the Software in Ordering Activity's possession or control.

3. Ownership

The Software is licensed, not sold. Palo Alto Networks and/or its suppliers retain ownership of the Software, including all intellectual property rights therein. Ordering Activity will not delete or in any manner alter the copyright, trademark or other proprietary rights notices or markings appearing on the Software as delivered to Ordering Activity.

4. U.S. Government Rights

The Software and its documentation are "commercial computer software" and "commercial computer software documentation," respectively; as such terms are used in FAR 12.212, and DFARS 252.227.7202. If the Software and its documentation are being acquired by or on behalf of the U.S. Government, then, as provided in FAR 12.212 and DFARS 227.7202-1 through 227.7202-4, as applicable, the U.S. Government's rights in the Software and its documentation will be only those specified as set forth in this Attachment A.

5. Limited Warranty

Contractor warrants that the (a) Product hardware will be free from defects in material and workmanship for one (1) year from the date of delivery; and (b) the Software will perform substantially in accordance with Palo Alto Networks' standard specifications for three (3) months from the date of delivery. As Ordering Activity's remedy and Contractor's and its suppliers' liability for any breach of this warranty, Contractor shall, at its option and expense, repair or replace the Product or correct the Software, as applicable. All warranty claims must be made on or before the expiration of the warranty period specified herein. Replacement Products may consist of new or remanufactured parts that are equivalent to new. All Products that are replaced become the property of Contractor. Contractor shall not be responsible for Ordering Activity's or any third party's software, firmware, information, or memory data contained in, stored on, or integrated with any Product returned to Contractor for repair, whether under warranty or not.

6. Exclusions

The limited warranty set forth under "Limited Warranty" above applies only to the software that Contractor includes in the Product as shipped by Contractor. Contractor will not have any obligation to the extent any failure of a Product to comply with the limited warranty set forth under "Limited Warranty" above results from or is otherwise attributable to: (i) repair, maintenance or modification of the Product by persons other than Contractor-authorized personnel; (ii) accident, negligence, abuse or misuse of a Product; (iii) use of the Product other than in accordance with Palo Alto Networks' specifications; (iv) improper installation or site preparation or any failure by Ordering Activity to comply with environmental and storage requirements for the Product specified by Contractor, including, without limitation, temperature or humidity ranges; or (v) causes external to the Product such as, but not limited to, failure of electrical systems, fire or water damage. Contractor and its suppliers do not warrant that the operation of the Product will be uninterrupted or error free.

7. Disclaimers

EXCEPT FOR THE WARRANTIES EXPRESSLY STATED UNDER "LIMITED WARRANTY" ABOVE, CONTRACTOR AND ITS SUPPLIERS MAKE NO OTHER WARRANTIES, AND EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING

WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.

EXHIBIT A - END USER SUPPORT TERMS AND CONDITIONS

SUPPORT PLANS AND SERVICES OFFERED

Support Offerings	4 Hour Premium Support	Premium Support	Standard Support
Office Hours Availability	See https://Support.paloaltonetworks.com		
After Hours Availability	Yes - 24x7x365	Yes - 24x7x365	No
<i>Hardware Support</i>			
4 Hour Replacement Service (available only for products located within a specified range of a Palo Alto Networks Service Location)	Yes	No	No
Advance Replacement Service: Next Business Day Ship	No	Yes	No
Return and Repair	No	No	Yes
<i>Call Response Times</i>			
Severity 1 – Critical Product is down, critically effects customer production environment. No workaround yet available.	< 1 hour	< 1 hour	< 1 hour 7am – 6pm PST
Severity 2 – High Product is impaired, customer production up, but impacted. No workaround yet.	2 Business Hours	2 Business Hours	2 Business Hours
Severity 3 – Medium A Product function has failed, customer production not affected. Support is aware of the issue and a workaround is available.	4 Business Hours	4 Business Hours	4 Business Hours
Severity 4 -- Low Non-critical issue. Does not impact customer business. Feature, information, documentation, how-to and enhancement requests from the customer.	8 Business Hours	8 Business Hours	8 Business Hours
<i>Contacting Support</i>			
Palo Alto Networks, Inc 3300 Olcott Street Santa Clara, CA 95054	Toll Free US: 1.866.898.9087 Website: support.paloaltonetworks.com	Toll Free US – 1.866.898.9087 Outside the US +1.408.738.7799 Website: support.paloaltonetworks.com	

1. DEFINITIONS.

- a) *"Business Hours"* means Mondays through Fridays, 7:00 am – 6:00 pm PST, excluding U.S. and Ohio holidays.
- b) *"Hardware"* means the appliance and server agent products listed on Contractor's published GSA price list.
- c) *"Major Releases"* means significant modifications or improvements to the Software that: (i) are designated by a change in the 1st digit of the version release number (e.g., v5.0 to v6.0); and (ii) are generally made available by Palo Alto Networks to its customers under valid support contracts, at no additional cost.
- d) *"Minor Releases"* means minor modifications or improvements to the Software, cumulative bug fixes from Maintenance Releases since the last Minor Release and new bug fixes, as applicable, that: (i) are designated by a change in the 2nd set of digits of the version release number (e.g., v5.00 to v5.01); and (ii) are generally made available by Palo Alto Networks to its customers under valid support contracts, at no additional cost.
- e) *"Maintenance Releases"* means bug fixes to the Software that: (i) are designated by a change in the 3rd set of digits of the version release number (e.g., v5.00.01 to v5.00.02); and (ii) are generally made available by Palo Alto Networks to its customers under valid support contracts, at no additional cost.
- f) *"Palo Alto Networks Standard Support," "Palo Alto Networks Premium Support,"* and *"Palo Alto Networks 4 Hour Premium Support"* refer to software and hardware support programs offered by Palo Alto Networks, as further detailed in Section 3 below.
- g) *"Palo Alto Networks Support Plans"* means Palo Alto Networks Standard Support, Palo Alto Networks Premium Support, Palo Alto Networks 4 Hour Premium Support, and any other support plan for the Products described in this Agreement or on the Palo Alto Networks Support Web Site.
- h) *"Palo Alto Networks Support Web Site"* means the web site currently located at <https://support.paloaltonetworks.com>, or any successor site thereto, as specified by Palo Alto Networks.
- i) *"Products"* means, collectively, Hardware and Software.

- j) “Software” means the software products listed on Contractor’s published GSA price list, including any software embedded in Hardware.

2. DESCRIPTION OF SUPPORT PLANS.

Each Product under a Palo Alto Networks Support Plan must be registered by Ordering Activity in the Palo Alto Networks Support Web Site in order to access the features available on such site. In consideration of Ordering Activity’s purchase of a Palo Alto Networks Support Plan, Contractor through Palo Alto Networks will use commercially reasonable efforts to provide the applicable services, as set forth in the table entitled “Support Plans and Services Offered” above, which are more fully described as follows:

- a) Technical Support
- i. Telephone support available during the times specified for the Palo Alto Networks Support Plan purchased by Ordering Activity.
 - ii. Support cases created via the Web will be classified as non-critical and will have a response time based on the severity classification as set forth in the table entitled “Support Plans and Services Offered” above.
- b) Secure Web Access
- i. Access to the Palo Alto Networks Support Web Site to acquire the latest software fixes, feature releases, software release notes, signature updates, FAQs, case management and technical documentation.
 - ii. Contractor through Palo Alto Networks will use commercially reasonable efforts to ensure that the Palo Alto Networks Support Web Site is available 24x7.

3. SUPPORT OPTIONS.

Ordering Activity shall choose from three support plans: Palo Alto Networks Standard Support, Palo Alto Networks Premium Support and Palo Alto Networks 4 Hour Premium Support. Based upon the Ordering Activity’s selection and payment of the applicable fees per the purchase, Contractor through Palo Alto Networks shall have the following obligations:

- a) Palo Alto Networks Standard Support
- i. Maintain and support the list of releases as defined as the current support releases on the Palo Alto Networks Support Web Site.
 - ii. Make available all supported Maintenance Releases, Minor Releases and Major Releases.
 - iii. Verify and correct identified defects in the Software for the currently supported Maintenance Releases.
 - iv. Provide access to Palo Alto Networks online support through the Palo Alto Networks Support Web Site including, but not limited to, knowledge base/FAQ, case management and software downloads.
 - v. Provide technical telephone support Monday through Friday, excluding Palo Alto Networks’ designated holidays, in accordance to the times listed on Palo Alto Networks Support Web Site.
 - vi. Provide a return and repair service for Hardware defects.

Ordering Activity may access Palo Alto Networks technical call center numbers and website address as listed in the table entitled “Support Plans and Services Offered” above.

- b) Palo Alto Networks Premium Support
Includes all of the support services described under Palo Alto Networks Standard Support plus the following:
- i. After hours technical telephone support on a 7x24 (seven days per week, 24 hours per day) basis for Severity 1, critical issues.
 - ii. Provide a next business day ship advance replacement for Hardware defects.

- c) Palo Alto Networks 4 Hour Premium Support
This support option is available only for Products located within a specified range of a Palo Alto Networks Service Location. Includes all of the support services described under Palo Alto Networks Premium Support plus commercially reasonable efforts by Contractor through Palo Alto Networks to deliver the replacement hardware to the Ordering Activity within four hours.

4. RMA POLICY AND PROCESS.

In those situations when it is necessary for Ordering Activity to return a Product to Contractor through Palo Alto Networks, Ordering Activity must request Palo Alto Networks to issue a Return Material Authorization (RMA) Number prior to shipment. Each RMA Number will be uniquely identified and records will be maintained to record significant information regarding the processing of the Product.

- a) Return and Repair: Ordering Activity shall obtain an RMA Number for the Product that Ordering Activity desires to return to Palo Alto Networks by contacting Palo Alto Networks Support via telephone or email or via the Palo Alto Networks Support Web Site. Palo Alto Networks Support will work with Ordering Activity to confirm the Hardware problem and issue an RMA Number to be used in connection with shipping the Product back to Palo Alto Networks. Ordering Activity shall repackage the Product in the original packaging (shipping damage that occurs as a result of insufficient packaging is not covered under this Attachment A), note the RMA Number on the shipping label and ship the Product to the specified Palo Alto Networks location. Products will be repaired or replaced within 10 business days from receipt of the defective Product by Palo Alto Networks. Palo Alto Networks will pay all shipping costs that it incurs in connection with shipping the repaired or replacement Product to Ordering Activity, except that if Ordering Activity is located outside the United States,.
- b) Advance Replacement: Ordering Activity shall obtain an RMA Number for the Product that Ordering Activity desires to return to Palo Alto Networks by contacting Palo Alto Networks Support via telephone or via the Palo Alto Networks Support Web Site. Palo Alto Networks Support will work with the Ordering Activity to confirm the Hardware problem and issue an RMA Number to be used in connection with shipping the Product back to Palo Alto Networks. Palo Alto Networks will ship a replacement Product to Ordering Activity by the next business day and a prepaid return airbill will be included with the shipping documents affixed to the exterior of the shipping carton. Palo Alto Networks will pay all shipping costs that it incurs in connection with shipping the replacement Product to Ordering Activity, except that if Ordering Activity is located outside the United States, Upon receipt of a replacement Product, Ordering Activity shall return the defective Product to Palo Alto Networks in the replacement Product’s packaging (shipping damage that occurs as a result of insufficient packaging is not covered under this Attachment A), the airbill affixed to the exterior of the shipping carton and the designated courier service contacted for pickup.

- c) 4 Hour RMA Replacement: Ordering Activity shall obtain an RMA Number for the Product that Ordering Activity desires to return to Palo Alto Networks by contacting Palo Alto Networks Support via telephone. Palo Alto Networks Support will work with the Ordering Activity to confirm the Hardware problem and issue an RMA Number to be used by Palo Alto Networks for administrative purposes. Contractor through Palo Alto Networks will use its commercially reasonable efforts to have a replacement Product delivered to Ordering Activity within four hours of the time the Ordering Activity receives an RMA number. Ordering Activity must have an authorized representative available to accept delivery of the replacement Product.

5. ORDERING ACTIVITY OBLIGATIONS

During the term of this Attachment A, Ordering Activity shall:

- a) Operate at the then-current Maintenance Release; and
- b) Use reasonable efforts to isolate, collect all error and log files to enable Contractor through Palo Alto Networks to fulfill its obligations herein.

6. LIMITATIONS.

The following services are expressly excluded from the Palo Alto Network Support Plans:

- a) Repair or replacement of Product required as a result of causes other than normal use, including without limitation: (i) repair, maintenance or modification of the Product by persons other than Palo Alto Networks-authorized personnel; (ii) accident, fault or negligence of Ordering Activity; (iii) user error or misuse of the Product; or (iv) causes external to the Product such as, but not limited to, failure of electrical systems or fire or water damage or hardware failure, operation system software failure or any other damage and failure not caused by Contractor through Palo Alto Networks.
- b) Maintenance or technical services for any third party software or hardware, whether or not such third party software or hardware is provided by Contractor through Palo Alto Networks.

7. NO WARRANTY.

Nothing in this Exhibit A shall be construed as expanding or adding to the warranty set forth in Attachment A. CONTRACTOR MAKES, AND ORDERING ACTIVITY RECEIVES, NO WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, ARISING IN ANY WAY OUT OF, RELATED TO, OR UNDER THIS ATTACHMENT A OR THE PROVISION OF MATERIALS OR SERVICES THEREUNDER, AND CONTRACTOR SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
SOURCEFIRE, INC.

SOURCEFIRE, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. DEFINITIONS

The following capitalized terms shall have the following meanings in this Attachment A:

- 1.1. "Appliance" means any Sourcefire-branded network security appliance made available to You, consisting of Hardware and pre-installed Sourcefire Software and/or other Licensed Materials.
- 1.2. "Documentation" means written information contained in user manuals and technical specifications pertaining to the use of the Sourcefire Products and made available by Sourcefire with the Sourcefire Products in any manner (including on CD-ROM, or on-line), including any pertinent Updates.
- 1.3. "Hardware" means the hardware components of any Appliance on which Sourcefire Software is installed and runs.
- 1.4. "Laws" means, collectively, all international and national laws, treaties, statutes, ordinances, regulations and other types of government authority (including without limitation the laws and regulations governing export control, unfair competition, anti-discrimination, false advertising, privacy and data protection, and publicity).
- 1.5. "Licensed Materials" means any Sourcefire Software, Documentation and URL Data licensed by Sourcefire to You hereunder.
- 1.6. "Party" or "Parties" means, individually each party hereto, and collectively all the parties to this Attachment A.
- 1.7. "Products" means the Sourcefire Products and/or the Third Party Products.
- 1.8. "Reseller" means an authorized reseller or distributor of Sourcefire.
- 1.9 "Sourcefire Products" means the Appliance(s) and/or Licensed Materials.
- 1.10. "Sourcefire Software" means the machine-readable computer software programs licensed by Sourcefire to You hereunder, including any pertinent Updates.
- 1.11. "Third Party Products" means any products or other materials made available to You for use with Sourcefire Products and which are not Sourcefire Products.
- 1.12. "Updates" means with respect to Licensed Materials any Sourcefire-approved periodic patches, bug-fixes, work-arounds, error corrections, enhancements, rules updates, vulnerability database updates, security enhancement updates and additions and other modifications thereto, or revised versions thereof, which may be made available from time to.
- 1.13. "URL Data" means that URL data made available to You by Sourcefire for use with the Sourcefire Products. Unless otherwise defined herein, the capitalized terms used in this EULA shall be defined in the context in which they are used.
- 1.14 "End User," "You" or "Your" means the Ordering Activity which is defined as 1) any entity authorized to use GSA sources of supply and services as set forth in GSA Directive ADM 4800.2F or such later issued version, and 2) any entity acting on behalf of an Ordering Activity pursuant to a properly issued letter of authorization under Information for Ordering Activities applicable to All Special Item Numbers.

2. LICENSE GRANT

Subject to the terms and conditions of this Attachment A, Contractor grants to You a limited, non-exclusive and non-transferable license to download, install and use for Your internal operations and internal security purposes the Licensed Materials for which You have paid the required license fees to Contractor or a Reseller, as applicable. Contractor agrees that it will permit the transfer of fully paid licenses in the event the State merges or consolidates state entities. Such Licensed Materials may be delivered to You pre-installed on an Appliance, on a recorded or fixed media, or may be made available to You via download from a website designated by Sourcefire. In order to use the Products, You may be required to input a registration number, product authorization key or otherwise register Your Products online at Sourcefire's designated website to obtain the necessary license key or license file. You shall own the Appliance that You purchase and the magnetic or other physical media upon which the Licensed Materials are originally or subsequently recorded or fixed, but Sourcefire and Sourcefire's licensors, as applicable, retain all title, copyright and other intellectual proprietary rights in, and ownership of, the Licensed Materials regardless of the media upon which the original or any copy may be recorded or fixed. You may make one (1) copy of the Licensed Materials solely for internal backup purposes. Contractor and its licensors expressly reserve any rights in Licensed Materials not granted herein.

3. SCOPE OF USE

If You purchased an Appliance, You may only use the Licensed Materials on the Appliance for which the Licensed Materials are provided and registered for use. Additionally, You may not deploy or use any Licensed Materials in a manner that exceeds the permitted number of connections to the applicable Appliance(s) associated with the license fees paid or payable by You. If Sourcefire Software is made available to You for use without an Appliance, Your use of such Sourcefire Software may not exceed the applicable use restrictions, number of licenses

purchased and other limitations associated with the license fees paid or payable by You for such use. If You purchase a license to use the Licensed Materials on a subscription or term basis, You may not deploy or use such Licensed Materials in a manner that exceeds the permitted number of users, term of license, monitored hosts or other subscription or term limitations associated with the applicable license fees paid or payable by You.

4. LICENSE RESTRICTIONS

You agree not to directly or indirectly: (i) sell, lease, rent, distribute, sublicense or transfer any of the Licensed Materials; (ii) reverse engineer, decompile, disassemble, decrypt or otherwise attempt to determine the source code of any of the Licensed Materials, except to the limited extent permitted by law; (iii) modify, make error corrections to or create derivative works based on the Licensed Materials; (iv) use any Licensed Materials for the benefit of any third parties (e.g., in an ASP, SaaS, outsourcing or service bureau relationship) or in any way other than in its intended manner, except as otherwise permitted by Contractor; (v) remove, alter or obscure any proprietary or copyright notice, labels, or marks on the Hardware or within the Licensed Materials; or (vi) disable or circumvent any access control or related security measure, process or procedure established with respect to the Appliance or any Licensed Materials or any other part thereof. Notwithstanding anything to the contrary in this Section, the State may use the Software to process data on behalf of other Ohio State agencies (the "Agencies") for such Agency's own internal business purpose. The State may allow its third party contractors to use the Software solely in accordance with the terms and conditions of this Agreement to provide services for the State's internal business purpose. You may use the Sourcefire Products to conduct internal performance and benchmark testing, the results of which only You may publish or publicly disseminate, provided that (a) Contractor through Sourcefire has reviewed and approved the methodology, assumptions and parameters of Your testing, (b) You publish a full description of the test environment and methods, assumptions and parameters used in the testing, and (c) You do not publish false, deceptive or misleading statements relating to the test or Sourcefire Products. Please contact a Sourcefire technical support representative regarding approved testing methodology, assumptions and parameters.

As part of your use of the Sourcefire Products, You may be granted access to URL Data and/or a hosted database or related service (the "Service"). You acknowledge and agree that in addition to all other terms and conditions set forth in this Attachment A, You will not with respect to the URL Data or Service directly or indirectly: (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit the URL Data or Service; (ii) modify or make derivative works based upon the URL Data or the Service; (iii) create Internet "links" to the URL Data or Service or "frame" or "mirror" the URL Data or Service on any other server or wireless or Internet-based device; or (iv) utilize the URL Data or Service in order to: (a) build a competitive product or service; (b) build a product using similar ideas, features, functions or graphics; (c) copy any ideas, features, functions or graphics; or (d) aggregate subscriptions to the URL Data or Service, either by sublicensing or by rebranding of the URL Data or Products.

5. INTELLECTUAL PROPERTY; TITLE

This Attachment A does not transfer to You any title or any ownership right or interest in any Licensed Materials or in any other intellectual property rights of Sourcefire or Sourcefire's licensors. You acknowledge that the Appliance(s) and the Licensed Materials contain, embody and are based upon patented or patentable inventions, trade secrets, copyrights and other intellectual property rights owned by Sourcefire and its licensors. If You purchased an Appliance, title and risk of loss to each Appliance transfers to You when the Appliance is delivered to You. In all instances, Licensed Materials are licensed to You pursuant to this Attachment A and not sold to You.

6. TECHNICAL SUPPORT

You may obtain technical support for Sourcefire Products by separately enrolling in Contractor through Sourcefire's customer support plan (the "Support Plan"). All Updates received by You pursuant to the Support Plan shall be governed by, and licensed to You under, this Attachment A.

7. INSTALLATION

You represent, warrant and covenant that You are solely responsible for the proper installation, configuration and management of the Appliance on which the Licensed Materials will be installed, as well as the installation of any separately provided Licensed Materials. You further understand and hereby acknowledge that the failure to properly configure and manage an Appliance, and the failure to properly install any separately provided Licensed Materials, may adversely affect the performance of the Appliance and the Licensed Materials. You represent, warrant and covenant that You will adhere strictly to the recommended minimum requirements specified in the Documentation. Contractor shall have no obligation under this Attachment A to the extent an Appliance or any separately provided Licensed Materials fails to substantially perform the functions described in the Documentation, in whole or in part, because (i) You fail to meet specified minimum requirements; (ii) Your separate hardware fails to perform properly; (iii) You mis-configured an Appliance; or (iv) the Licensed Materials had been improperly installed.

8. WARRANTY AND DISCLAIMER

Contractor warrants that, for a period of ninety (90) days from the date of delivery of the Appliance or, in the case of Sourcefire Software separately provided to You, the date the Sourcefire Software is made available to You for download or delivered on a fixed media (as the case may be, the "Software Warranty Period"), the unmodified Sourcefire Software will, under normal use, substantially perform the functions described in its Documentation. Contractor also warrants that for a period of one (1) year from the date of initial delivery of a new Appliance (the "Hardware Warranty Period") that the unmodified Hardware comprising such Appliance will, under normal use, be free of substantial defects in materials and workmanship. Neither of the aforementioned warranties apply if the Sourcefire Software or Appliance (i) has been altered, except by Contractor or its authorized representative, (ii) has not been installed, operated, repaired or maintained in accordance with instructions supplied by Contractor, (iii) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence or accident by You, or (iv) is licensed for beta, evaluation, testing or demonstration purposes.

EXCEPT AS EXPRESSLY WARRANTED IN THIS SECTION 8, THE SOURCEFIRE PRODUCTS (INCLUDING, ANY EVALUATION AND BETA PRODUCTS), AND ANY OTHER DOCUMENTATION, MATERIALS AND/OR DATA PROVIDED BY CONTRACTOR ARE PROVIDED "AS IS" AND "WITH ALL FAULTS," AND CONTRACTOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF OPERABILITY, CONDITION, TITLE, NON-INTERFERENCE, QUIET ENJOYMENT, VALUE, ACCURACY OF DATA, OR QUALITY, AS WELL AS ANY

WARRANTIES OF MERCHANTABILITY, SYSTEM INTEGRATION, WORKMANSHIP, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT.

THE SOURCEFIRE PRODUCTS ARE NOT FAULT-TOLERANT AND ARE NOT DESIGNED OR INTENDED FOR USE IN ANY HAZARDOUS ENVIRONMENT REQUIRING FAIL-SAFE PERFORMANCE OR OPERATION. SOURCEFIRE PRODUCTS ARE NOT FOR USE IN THE OPERATION OF AIRCRAFT NAVIGATION, NUCLEAR FACILITIES, WEAPONS SYSTEMS, DIRECT OR INDIRECT LIFE-SUPPORT NO WARRANTY IS MADE BY CONTRACTOR ON THE BASIS OF TRADE USAGE, COURSE OF DEALING OR COURSE OF TRADE. CONTRACTOR DOES NOT WARRANT THAT THE APPLIANCE, THE LICENSED MATERIALS OR ANY OTHER INFORMATION, MATERIALS, DOCUMENTATION OR TECHNOLOGY PROVIDED UNDER THIS ATTACHMENT A WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. YOU ACKNOWLEDGE THAT CONTRACTOR'S OBLIGATIONS UNDER THIS ATTACHMENT A ARE FOR YOUR BENEFIT ONLY. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS ATTACHMENT A, ANY THIRD PARTY PRODUCTS ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY WHATSOEVER.

Contractor's obligation and liability, and Your remedy under the warranties set forth in Section 8 shall be for Contractor to use commercially reasonable efforts to remedy the problem, or to replace the defective Hardware and/or the Sourcefire Software, if Contractor is notified in writing of all warranty problems during the applicable warranty period.

9. U.S. GOVERNMENT END USERS

The Licensed Materials, information and data provided under this Attachment A are prepared entirely at private expense and are "Commercial Items" as that term is defined in 48 C.F.R. 2.101. If you are an agency, department, or other entity of the United States Government, or funded in whole or in part by the United States Government, then your use, duplication, reproduction, release, modification, disclosure or transfer of this commercial product and data, is restricted in accordance with 48 C.F.R. §12.211, 48 C.F.R. §12.212, 48 C.F.R. §227.7102-2, and 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.211, 48 C.F.R. §12.212, 48 C.F.R. §227.7102-1 through 48 C.F.R. §227.71023, and 48 C.F.R. §§227.7202-1 through 227.7202-4, as applicable, this commercial product and data are licensed to U.S. Government end users (i) only as Commercial Items, and (ii) with only those rights as are granted to all other users pursuant to the Sourcefire's standard end user license agreement. In case of conflict between any of the FAR and DFARS provisions listed herein and this Attachment A, the construction that provides greater limitations on the U.S. Government's rights shall control. For purpose of any public disclosure provision under any federal, state or local law, it is agreed that this commercial product and data are a trade secret and proprietary commercial products and not subject to disclosure.

EXHIBIT A - SUPPORT PLAN TERMS

A. Support Services Terms. Contractor through Sourcefire will provide Support Services to End User for Covered Products provided that End User has paid the applicable Support Fees to Contractor. The Support Services will be provided in accordance with the following:

1. Technical Assistance. Contractor through Sourcefire will provide End User with technical assistance regarding use of the Covered Products by telephone and on-line during the hours that are applicable to the Support Plan Level purchased by End User. Access to Support Services by telephone and on-line is limited to End User's designated support contacts. End User should refer to the Support Guidelines attached hereto as Exhibit B for Sourcefire contact information.

2. New Releases and Updates. Contractor through Sourcefire will make available to End User all Major Releases, Minor Releases and Updates to the Current Version of the Software that Sourcefire generally releases or generally makes available at no additional cost to Sourcefire's other customers subscribing to the same Support Plan Level. To the extent a Major Release, Minor Release or Update includes substantially new functionality; Sourcefire reserves the right to treat such new functionality as a new Software product.

3. Repair and Replacement of Hardware. If End User has purchased a Covered Product that includes Hardware, Contractor through Sourcefire will, at its option, either repair or replace any defective Hardware. Hardware units or parts used for replacement will either be new or refurbished so that End User gets a "like-for-like" exchange. All Hardware units and parts removed from a Covered Product for replacement will, upon removal and return, be the property of Sourcefire; the replacement Hardware units and parts will, upon delivery, be the property of End User. End User will promptly return all units and parts to be replaced to Sourcefire in accordance with the Support Guidelines and Sourcefire's instructions.

4. Error Reporting. End User may submit to Contractor through Sourcefire support requests identifying potential errors in a Covered Product. Requests should be in writing and directed to Sourcefire through the customer support page of the Sourcefire support website, currently located at <https://support.sourcefire.com>, and should provide Sourcefire with sufficient information to reproduce the error. Sourcefire retains the right to determine the final disposition of all such requests, and will inform End User of the disposition of each request.

5. Error Corrections. Contractor through Sourcefire will use commercially reasonable efforts to correct any reproducible and material error in a Covered Product with a level of effort reasonably commensurate with the severity of the error. Corrections will be made in accordance with the time schedule set forth in the Support Guidelines. Sourcefire will not be responsible for correcting errors not attributable to Sourcefire or that do not relate to Covered Products. Sourcefire may provide error corrections in the form of an Update and may publish "known issue" information with each Update to the extent necessary.

6. End User Responsibility. As a condition to Sourcefire's provision of the Support Services, End User will do the following: (a) implement in a reasonably timely manner all Updates provided by Contractor through Sourcefire; (b) supply Sourcefire with access to and use of information and personnel reasonably determined to be necessary by Sourcefire to render the Support Services; (c) perform any tests or procedures reasonably recommended by Sourcefire for the purpose of identifying and/or resolving any problems; and (d) if Hardware was purchased, maintain the Hardware in good working order in accordance with the manufacturers' specifications, and in compliance with the minimum system requirements set forth in the Coved Product documentation, to ensure that any problems reported to Sourcefire are not due to user

error or End User's improper maintenance. End User's delay or failure to satisfy the foregoing will, for the duration of the delay or failure, relieve Sourcefire of its obligations under this Attachment A to provide the Support Services.

7. Consistent Product Coverage. For each deployment of Covered Products, Contractor through Sourcefire requires that End User purchase the same Support Plan Level for all Covered Products comprising such deployment.

8. Term. Contractor through Sourcefire will provide the Support Services during the Initial Term and any Renewal Term provided that End User has paid all applicable Support Fees.

9. Limitations. Contractor through Sourcefire will provide the Support Services only for the Current Version and the Prior Version. Sourcefire has no obligation to provide Support Services for a Legacy Version. Sourcefire will not provide Support Services for Covered Products that have been modified by End User, a third party on behalf of End User or otherwise modified and not approved by Sourcefire in writing. Sourcefire does not provide Support Services to address problems resulting from: (a) use of a Covered Product in a manner not described in the user documentation or otherwise not in the ordinary course; (b) the use of third party software, firmware or data, or from the use of hardware, software or firmware not meeting Sourcefire's minimum recommended configuration; or (c) use of a Covered Product other than in the recommended operating environment. Support Services do not include the costs of developing or otherwise providing End User with additional features, functionality or customizations to the Covered Products, which additional services may be purchased separately from Sourcefire. For products that (a) have reached their end-of-life (EOL) or end-of-support (EOS) date, or (b) provide additional functionality based on a specific Hardware platform configuration, End User is responsible for acquiring, at its own cost, any updated and additional Hardware, firmware and software necessary to implement or use an Update.

10. End of Life Policy. Support Services provided by Contractor through Sourcefire may be limited, and the security effectiveness of Sourcefire products may be diminished, due to Hardware and/or Software products impacted by an EOL announcement and/or End User not migrating to the latest version of the Sourcefire products. For Hardware products, a replacement unit will not be provided for the return of a unit that has passed its EOL date. Consult the Product Life Cycle section of the Sourcefire website, currently located at www.sourcefire.com/customer-support, for more information regarding EOL and EOS announcements.

11. Support Guidelines. The Support Services provided to End User will be provided in accordance with the Support Guidelines attached hereto as Exhibit B which are incorporated herein by reference, and will vary based on the Support Plan Level purchased.

12. End User Suggestions. Any suggested changes, clarifications, additions, modifications or improvements to a Covered Product that End User provides to Contractor through Sourcefire (collectively, "Improvements") will constitute an assignment to Sourcefire (without charge) of all right, title and interest in such Improvements. Sourcefire has the right, but not the obligation, to incorporate Improvements into Covered Products as it deems necessary in its sole discretion. Sourcefire will be the exclusive owner of the Improvements, including all intellectual property rights related thereto.

B. Definitions: For purposes of this Attachment A, the following terms will have the following meanings:

"*Authorized Reseller*" means any reseller, distributor or other entity authorized by Contractor to directly or indirectly resell Sourcefire products and support to End User on behalf of Contractor.

"*Covered Products*" means those Sourcefire products specified in an Order that will include Hardware and/or Software for which End User has paid the applicable Support Fee(s) to receive Support Services.

"*Current Version*" means the most recent Major Release of a Software product.

"*Hardware*" means the Sourcefire-branded appliance on which Software is installed and is designed to operate.

"*Initial Term*" means the initial period of time starting on the date of shipment for the applicable Covered Product during which Sourcefire will provide Support Services to End User. The Initial Term will be one (1) years, unless otherwise agreed to by Sourcefire.

"*Legacy Version*" means any Major Release older than the Prior Version.

"*Major Release*" means a version of Software in which there is a change in the number immediately preceding or immediately following the first decimal point in the Software version number (e.g. v4.9 to v5.0 or v5.0 to v5.1).

"*Minor Release*" means a version of Software in which there is a change in any number following the second decimal point in the Software version number (e.g. v4.10 to v4.10.1 or v4.10.1.1 to v4.10.1.2).

"*Order*" means one of the following documents: (i) an invoice from Contractor or from an Authorized Reseller to End User, (ii) an executed sales quotation between End User and Contractor, or (iii) a purchase order from End User to Contractor or from an Authorized Reseller to Contractor on End User's behalf.

"*Prior Version*" means the next most recent Major Release of a given Software product preceding the Current Version.

"*Renewal Term*" means any term beyond the Initial Term during which Sourcefire will provide Support Services to End User.

"*Software*" means the software application component(s) of the Covered Product(s) that are combined for use with the Hardware and/or that may be licensed separately for use without Hardware. Updates are considered Software under this Agreement. All Software is subject to this end user license agreement between Sourcefire and End User.

“*Support Fee*” means the GSA price for the applicable Covered Product at the Support Plan Level purchased for the Initial Term and/or the Renewal Term, as applicable. The Support Fee may be (i) a separate charge in addition to the purchase price for the Covered Product, or (ii) included in the price of a license subscription for software-only products, as applicable.

“*Support Guidelines*” means the guidelines and processes that govern Support Services, a current copy of which is attached hereto as Exhibit B.

“*Support Plan Level*” means that level of Support Services for the applicable Covered Product purchased by End User as set forth in an Order. A description of the different levels of Support Services are found on the Sourcefire website, currently at <http://www.sourcefire.com/customer-support>.

“*Update*” means any update to the Software including but not limited to, patches, bug-fixes, work-arounds, error corrections, enhancements, rules updates, vulnerability database updates and security enhancement updates.

EXHIBIT B - SUPPORT GUIDELINES

A. Communications/Contact Information

The following communication methods are available to obtain assistance from Contractor through Sourcefire for a Support Services request.

- Telephone Support: +1 (410) 423-1901; 1-800-917-4134
- Customer Portal: <https://support.sourcefire.com>
- Email: support@sourcefire.com
- See <https://support.sourcefire.com/contact> for additional access numbers

B. Response Times

Normal Business Hours for Support Services are 11:00 PM Sunday through 12:00AM Saturday (U.S. Eastern Time).

Telephone Response:

- During Normal Business Hours telephone calls are taken in the order that they are received.
- Outside of Normal Business Hours calls are handled by on-call support engineers.
- Sourcefire typically responds to all calls within one (1) hour of receipt.

Email/Web Response:

- Sourcefire typically responds to all inquiries submitted during Normal Business Hours via email or via the Customer Portal within two (2) hours.
- Inquiries submitted outside of Normal Business Hours via email or via the Customer Portal will typically be answered within two (2) hours of the start of the next business day.

It is strongly recommended that End User contact Sourcefire Customer Support via telephone for all severe product issues arising outside of Normal Business Hours.

C. Support Requests

End User will be required to provide all of the following information when contacting Sourcefire with a technical issue:

- Name
- Covered Product serial number, license key or other identification number, as applicable
- Detailed request or problem description
- The priority and/or urgency of request
- Whether any recent changes have been made to the Covered Products or End User's network
- List of changes that were applied to the configuration of the Covered Product prior to the problem's first occurrence
- Any relevant environmental and architectural information
- Packet capture (if applicable)
- Troubleshoot script output

D. Technical Issue Resolution

Support requests begin with Sourcefire's Tier I Support Team. A Technical Support Engineer (“TSE”) will provide End User with a case number and will manage the reported technical issue to its final resolution. The TSE will attempt to resolve the issue as quickly as possible and will engage additional resources at Sourcefire as needed including members of Tier II Support and/or Product Development in accordance with the escalation process outlined below. If the technical issue is determined to be defective Hardware, Sourcefire will, subject to any applicable EOL announcements then in effect, ship an advance replacement unit and/or parts, as applicable, within one (1) business day via priority overnight shipping. The time to delivery of the advance replacement unit and parts will vary depending on the destination and local customs clearance requirements. Advance replacement units will be shipped with the Current Version of software unless otherwise requested.

E. Severity Definitions

Contractor through Sourcefire classifies reported issues in accordance with the following:

Severe:

- The Covered Product is down or not functioning; or
- Network traffic has been disrupted as a result of the use of the Covered Product; or
- There are no workarounds to restore Covered Product functionality.

Moderate:

- Network or Covered Product is operating at a reduced capacity; or
- Significant product functionality is not working according to Covered Product definitions; or
- Significant business objectives for the use of the Covered Product cannot be met.

Minor:

- Minor product functionality is not working according to Covered Product definitions; or
- Minor business objectives for the use of Covered Product cannot be met.

F. Escalation Process

The escalation process is managed by the TSE with assistance from the End User. The escalation process moves from the TSE through the Support Management and Product Development groups as appropriate. The TSE will manage the resolution of the reported issue, which includes acting as the primary contact for communication between the various Sourcefire groups and the End User throughout the escalation process. The following estimated response timelines define the normal guidelines for escalation beyond Tier I Support Team. The timeframes are based on the severity level of the reported issue and may be reduced as appropriate as determined by Sourcefire.

Severity Level	Escalation to Tier II Support	Escalation to Product Development
Severe	Within 24 hours of initial request	Within 24 hours of escalation to Tier II
Moderate	Within 3 business days of initial request	Within 3 business days of escalation to Tier II
Minor	Within 5 business days of initial request	Within 5 business days of escalation to Tier II

If an acceptable workaround can be applied to the issue, then the Severity Level may be downgraded to the next lower level. For example, if an acceptable workaround exists for a Moderate issue, then the Severity Level for such issue will be downgraded to Minor.

If reasonable progress has not been made, the technical issue will be escalated to Sourcefire's Support Management and/or Product Development groups, as appropriate. Escalation of an issue thru the Support Management group will be initiated whenever the resolution is not meeting the End User's expectations or whenever a technical issue has not been resolved within the escalation time frames above. Since each technical issue is unique, there may be some variation in the resolution time.

Escalation can be initiated from two sources: (1) TSEs are tasked with the responsibility of escalating based on their judgment of both the business impact and the technical issue, and (2) End User is encouraged to seek escalation when an issue is not being resolved in accordance with the level of Support Services that End User has purchased. End User can escalate through the TSE, Support Management or its designated Account Representative.

**ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

TIBCO SOFTWARE, INC.

TIBCO SOFTWARE LICENSE, WARRANTY AND SUPPORT TERMS

“Enterprise” means an unlimited Number of Units of the Software, to be deployed by Ordering Activity during a period defined in a purchase order (the “Enterprise Term”), at which time, the Number of Units then deployed in Production and Non-Production use by Ordering Activity becomes fixed and Ordering Activity may not thereafter deploy additional Units. During the Enterprise Term, Ordering Activity’s right to deploy an unlimited Number of Units does not extend to any entity which acquires, is acquired by, merged into, or otherwise combined with Ordering Activity. Ordering Activity hereby agrees to provide Contractor, within sixty (60) days after the end of the Enterprise Term, with written notice of the Number of Units deployed at the end of the Enterprise Term by Unit and License Type.

“Project” means an unlimited Number of Units of the Software set forth in a task or delivery order as a Project, to be deployed by Ordering Activity solely in connection with the purpose stated in its task or delivery order, during the period stated in the task or delivery order (the “Project Term”), at which time, the Number of Units then deployed in Production and Non-Production use by Ordering Activity becomes fixed and Ordering Activity may not thereafter deploy additional Units. During the Project Term, Ordering Activity’s right to deploy an unlimited Number of Units does not extend beyond the scope of the Project as set forth in the task or delivery order or to any entity which acquires, is acquired by, merged into, or otherwise combined with Ordering Activity. Ordering Activity hereby agrees to provide Contractor, within sixty (60) days after the end of the Project Term, with written notice of the Number of Units deployed at the end of the Project Term by Unit and License Type. Contractor hereby grants Ordering Activity a nonexclusive, perpetual, worldwide license, to use the Software, at Ordering Activity’s premises up to the specified Number of Units, solely for Ordering Activity’s own internal operations and for processing its own data. No right to use, copy, duplicate or display the Software is granted, except as expressly provided herein.

Scope

Ordering Activity acknowledges and agrees that the scope of the licenses granted under this Attachment does not permit Ordering Activity to (directly or indirectly, in whole or in part): (a) make more copies of the Software than the specified Number of Units (except for a reasonable number of copies for archival and disaster recovery purposes) or use any unlicensed versions of the Software; (b) provide access to the Software to anyone other than Ordering Activity’s employees, contractors, or consultants who have agreed in writing to be bound by terms at least as protective of Contractor as those in this Contract (“Authorized Users”); (c) sublicense, distribute or pledge the Software or any of Ordering Activity’s rights herein; (d) lease, rent or commercially share (including time-share) or otherwise use the Software for purposes of providing a service bureau, including, without limitation, providing third-party hosting, or third-party application integration or application service provider-type services, or for any similar services; (e) use the Software in connection with any ultra hazardous activity, or any other activity for which its failure might result in serious property damage, or death or serious bodily injury; or (f) modify, translate, reverse engineer, decrypt, decompile, disassemble, create derivative works based on, or otherwise attempt to discover the Software source code or underlying ideas, techniques or algorithms. Ordering Activity may engage in such conduct as is necessary to ensure the interoperability of the Software as required by law, provided that prior to commencing any de-compilation or reverse engineering of any Software, Ordering Activity agrees it shall observe strict obligations of confidentiality and provide Contractor reasonable advance written notice and the opportunity to assist with and/or conduct such activity on Ordering Activity’s behalf and at Ordering Activity’s expense; and (g) notwithstanding the method of delivery of the Software, the scope of the licenses granted under this Attachment are limited to the Software as set forth in a task or delivery order.

Contractor hereby grants Ordering Activity a nonexclusive, worldwide license to use the Materials (and a reasonable number of copies thereof) solely for Ordering Activity’s internal operations in conjunction with the license to the Software. Materials obtained during attendance at Education programs, unless otherwise agreed in a Work Order, are limited to the one copy received by each attendee.

“Materials” means any tangible or intangible information, design, specification, instruction or data (and any modifications, adaptations, derivative works or enhancements) provided by Contractor or its subcontractors during the performance of Consulting Services which incorporates, reinforces or is used to apply Contractor’s configuration or implementation methodologies, processes and know-how to Ordering Activity’s use of the Software, excluding Output. “Output” means Confidential Information of Ordering Activity that has been input in the Materials for Ordering Activity’s use of the Software.

Maintenance Service Levels

For the purpose of any license or maintenance agreement under which Maintenance is provided, as used below, “Software”, shall include “TIBCO Software”, “Spotfire Software” or “Software”.

MAINTENANCE LEVEL	Updates Only	Bronze (includes Updates)	Silver (includes Updates) Silver Equipment (includes Updates for embedded Licensor Software)	Gold (includes Updates)

Service Hours:	N/A	9am-5pm, Monday-Friday Service hours are based on PST, EST, CST, CET, MST, GMT, DST, AEST time zones. Based on the time zone you are assigned, services hours exclude holidays in the U.S., California, U.K., A.P.A.C. and Japan.	24 Hours/Day, 7 Days/Week	24 Hours/Day, 7 Days/Week
Initial Response:	N/A	Severity 1 & 2: 4 Business Hours	Severity 1 & 2: 4 Hours	Severity 1: 1 Hour Severity 2: 2 Hours
Target Resolution:	N/A	Severity 1: 48 Hours Severity 2: 5 Days Severity 3: Next Major Release	Severity 1: 48 Hours Severity 2: 5 Days Severity 3: Next Major Release	Severity 1: 36 Hours Severity 2: 3 Days Severity 3: Next Major Release
TIBCO DirectConnect SM	N/A	N/A	Add-on options (for an additional fee): - TIBCO DirectConnect SM On-Demand - TIBCO DirectConnect SM Premier	Includes TIBCO DirectConnect Premier
Authorized Contacts:	N/A	3	5	10

TIBCO DirectConnect Maintenance level options

TIBCO DirectConnect Maintenance options:	TIBCO DirectConnect On Demand	TIBCO DirectConnect Premier
A TIBCO DirectConnect Manager ("DCM") from the support organization to: - Coordinate Ordering Activity support issues - Attend onsite initial introduction and quarterly meetings. - Provide onsite support (as mutually agreed) to assist in Severity 1 resolution At the Gold Maintenance level, access to global DCM's is available	Included	Included
Additional Authorized Contacts	Not applicable	2
Consulting Services	Not applicable	Includes and must be used within the applicable annual Maintenance term: - 1 Consultant for five (5) contiguous work days - 1 Consultant for five (5) contiguous work days - 5 days of training at a Contractor Learning Center or Virtual training courses for one (1) person (Must be utilized within the annual Maintenance term).
TIBCO DirectConnect Forum	Not applicable	Included

Term	Purchased in one (1) month increments. (Must be utilized within the annual Maintenance term).	Purchased in annual increments, payable annually in advance.
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Spotfire, DataSynapse, and Foresight Maintenance Service Levels

MAINTENANCE LEVEL	Bronze term (includes Updates)	Silver (includes Updates)
Service Hours:	9am-5pm, Monday-Friday Service Hours are based on CET, UTT/GMT and EST time zones. Based on the time zone you are assigned, services hours exclude holidays in the U.S., Sweden and Japan.	24 Hours/Day, 7 Days/Week
Initial Response:	Severity 1 & 2: 4 Business Hours	Severity 1 & 2: 4 hours
Target Resolution:	Severity 1: 48 Hours Severity 2: 5 Days Severity 3: Next Major Release	Severity 1: 48 Hours Severity 2: 5 Days Severity 3: Next Major Release
Number of Contacts:	3	5

Severity Level Definitions

“Severity 1” is an emergency production situation where the Software is totally inoperable or fails catastrophically and there is no workaround;

“Severity 2” is a detrimental situation (and there is no workaround) where (a) performance degrades substantially under reasonable loads causing a severe impact on use, (b) the Software is usable but materially incomplete; or (c) one or more mainline functions or commands is inoperable;

“Severity 3” is where the Software is usable, but does not provide a function in the most convenient manner; and

“Severity 4” is a minor problem or documentation error, which is reasonably correctable by a documentation change or by a future maintenance release from Contractor through Manufacturer.

Scope

Contractor will use commercially reasonable efforts to resolve matters according to the problem Severity ("Maintenance") level determined. An Ordering Activity will use commercially reasonable efforts to provide: (a) a detailed problem description; (b) a method for repeatedly reproducing the problem; and (c) reasonably continuous access to an authorized contact. During the Maintenance term, Ordering Activity authorized contacts as applicable for the Maintenance level selected in Ordering Activity's order, may notify Contractor through Manufacturer's Technical Assistance Center of an error, defect, or malfunction in the Software. Maintenance includes the right to use Updates (as defined below) as replacements for existing copies, whether provided under Maintenance, Warranty or which are provided for any other reason by Contractor, or their respective authorized resellers or distributors (if applicable); Updates are subject to Ordering Activity's license agreement limitations and restrictions. "Updates" means Software bug fixes, enhancements, and upgrades, if and when made generally available by Contractor through Manufacturer under Maintenance to Ordering Activities for a specific Software product. Ordering Activity's right to use Updates extends to any supported Platform then currently available for each discrete Software product under Maintenance. Updates may include new or additional Platforms that are deemed (at Contractor's sole discretion) to have no more than a minimum different in price, features and functionality from previously available Platforms. Contractor, through Manufacturer will provide Maintenance for a release version of the Software products for at least (a) six months after a new release version is generally available, but in no event for more than (b)(i) two years from the general availability of a Software release version or (b)(ii) one year from the general availability of a subsequent release version, whichever of (b)(i) or (b)(ii) is later, after which Maintenance shall be discontinued for that release version.

Limits

Ordering Activity must purchase the same service level of Maintenance for all quantities of Software products that it has licensed. Maintenance does not include support for any non-TIBCO software, custom configuration, product modification, new products and functionality for which Contractor is charging an additional license fee, services at a Customer site, any work product provided under Consulting Services or for Software products with non-matching service levels. Contractor reserves the right to make fixes only to the most current version of the relevant Software, and may elect, at its discretion, to make fixes generally available for minor release versions or the latest service pack for a supported version. In the event that a request for Maintenance reveals that the cause of the problem is not an error, defect or malfunction in the unmodified Software,

Perpetual Term Licenses

The initial Maintenance term shall be for one year commencing on the effective date of the applicable task or delivery order. In the event Ordering Activity elects to renew Maintenance, Maintenance will be renewed for successive one (1) year terms

Limited Term Licenses

The initial Maintenance term shall be for one (1) year commencing on the effective date of the applicable task or delivery order.
Limited Term Equipment Leases

Silver Equipment level Maintenance is included in the "Initial Term" of the Lease.

Silver Equipment level Maintenance

Under Silver Equipment level Maintenance, Contractor offers an advance replacement program for the Equipment, post warranty. Advance replacement provides a permanent replacement of the Equipment. The replacement Equipment is shipped airfreight carrier to your location. Certain features, such as interface standards, product footprint and mobility, firmware and software compatibility may not be available. When experiencing a problem Ordering Activity must first place a call to the designated support number. Contractor through Manufacturer will provide basic telephone technical assistance for installation, product configuration, setup and problem resolution for the Equipment. Prior to scheduling advance replacement of the Equipment, Contractor through manufacturer may ask Ordering Activity to provide relevant information, start diagnostic tools and perform other supporting activities.

If the problem cannot be resolved remotely; Contractor will replace the failed Equipment with new or equivalent-to-new Equipment free of major cosmetic defects. The failed Equipment must be returned to Contractor through Manufacturer or within the timeframe specified below and becomes the property of Contractor.

Ordering Activity is responsible for performing the following functions prior to return shipping failed Equipment: a) perform all steps for self-test and trouble-shooting specified in the operating manual for the Equipment; b) provide, in writing, the model number, serial number, current failure symptoms, pertinent failure history and ship-to address (if applicable); and c) unless the failed Equipment will be delivered in person by Ordering Activity, Ordering Activity is responsible for packaging the failed Equipment carefully in the original shipping container, or a shipping container that prevents the Equipment from being damaged while in transit.

The replacement Equipment will be shipped in a suitable container and include instructions for returning the failed Equipment. Packaging instructions and a prepaid shipping label for the return of the failed Equipment will be included in replacement Equipment shipping container.
Support Limitations

At Contractor's discretion Maintenance will be provided using remote diagnosis and or other service delivery methods. Other service delivery methods, in lieu of shipping replacement Equipment, may include the overnight shipment of parts specified as Ordering Activity replaceable. Contractor will determine the appropriate delivery method required. Services such as the following, but not limited to, are excluded from Maintenance:

- Diagnosis or Maintenance at the Ordering Activity site.
- Set-up and installation of the replacement Equipment or replacement parts at the Ordering Activity site
- Recovery of the operating system, other software, and data
- Troubleshooting for interconnectivity or compatibility problems
- Services required due to failure of Ordering Activity to incorporate any system or software fix, repair, patch, or modification provided to the Ordering Activity.
- Services required due to failure of the Ordering Activity to take avoidance action previously advised by Contractor.
- User preventative maintenance.

Maintenance is not provided for:

- Damage caused by failure of Ordering Activity to follow Contractor's recommended maintenance or operating specifications
- Damage due to war or nuclear incident, terrorism, unauthorized attempts to repair Equipment or Equipment previously repaired by an unauthorized technician or user
- Data, business interruptions, obsolescence, cosmetic damage, rust, change in color, texture or finish, wear and tear, gradual deterioration or any damage that does not affect the Equipment functionality
- Fraud, fire, theft, unexplained or mysterious disappearance, misuse, abuse or willful act
- Alteration or modification of the Equipment in any way
- Transit or relocation of Equipment by Ordering Activity, including any damages occurring while in transit or related to such relocation, and services accompanying or related to transit or relocation of the Equipment.
- Power surge or failure
- Normal wear and tear

Ordering Activity will inform Contractor in writing prior to making any changes to or relocation of the Equipment. Contractor will then confirm whether Maintenance will be available for the Equipment or at the relevant Ordering Activity location within ten (10) business days of receipt of the notification from Ordering Activity. Ordering Activity acknowledges that any changes to or relocation of the Equipment may change the service level and/or pricing of Maintenance available for the Equipment. If Ordering Activity fails to inform Contractor of changes to or relocation of the Equipment, Contractor will not be obligated to provide Maintenance.

Ordering Activity Responsibilities

The Customer will be required, upon Contractor's request, to support resolving any problem reported under Maintenance remotely by:

- Providing all information necessary for Contractor to deliver timely and professional remote support and/or to enable Contractor to determine the level of support eligibility
- Starting self tests and/or other diagnostic tools and programs
- Performing other reasonable activities to help Contractor identify or resolve the problem
- Ordering Activity must acknowledge receipt of replacement Equipment by signing freight carrier air bill at time of delivery.
- Ordering Activity must ship failed Equipment to Contractor, within three (3) working days of receipt of the replacement Equipment and must obtain a prepaid insurance receipt to be retained by Ordering Activity as proof of shipment.
- Ordering Activity is responsible to install Ordering Activity replaceable parts and replacement Equipment in a timely manner.
- Ordering Activity shall maintain a backup copy of all software and data. Contractor recommends regular backups.
- Ordering Activity shall restore software and data on the Equipment after the repair or replacement
- Ordering Activity is responsible for the installation of any software not provided by Contractor with the Equipment and insure all software installed on the Equipment is appropriately licensed
- Ordering Activity shall adhere to Contractor's published guidelines or written instructions concerning the return of Equipment or parts.

Reinstatement of Maintenance

Reinstatement of Maintenance is subject to payment of Maintenance fees for any period during which Maintenance had lapsed and for the 12 month period commencing with the date Maintenance is reinstated.

Non-Continuous Coverage

In the event Ordering Activity elects not to maintain continuous Maintenance, Contractor may, at its discretion, refuse to provide any Maintenance to Ordering Activity until payment for the period of discontinuity is made current.

Discontinued support for prior release version

When a prior version goes out of Maintenance, it means that fixes will no longer be generally available for that version. Support will continue to accept problem reports for that prior version, and when feasible, attempt to provide a customer with reasonable assistance to troubleshoot and resolve the problem. Engineering will only evaluate reported issues in the supported versions of the Software product. When a Ordering Activity:

- encounters a known defect, which is already corrected in the most current or a supported version of the Software, the Ordering Activity will need to upgrade to the most current or supported version of the Software to obtain the fix; or
- discovers an unknown defect, engineering will make the fix in the most current version of the Software and the Ordering Activity will need to upgrade to that version to obtain the fix.

Product End-of-Life

Ordering Activity are provided advance written notice (up to twelve months) when Software is to be retired. This information is published as "Retirement Notices" under the Late Breaking News (LBN) section of the Support Web.

TIBCO Extended Support Program

Contractor is pleased to offer customers extended Maintenance on certain Software product versions. The scope and terms of extended Maintenance:

Include

- The ability to submit service requests for eligible product versions.
- Contractor assistance providing workarounds and existing fixes for issues reported; staging of issues by Contractor will be on the latest version of eligible product(s).
- Maintenance service level initial response and target resolution times are according to customers' existing Maintenance service level.

Exclude

- Enhancements, service packs, or defect corrections
- Support for new platforms (database versions, operating system versions, infrastructure products, etc.)
- Back porting of any fixes (including, but not limited to, bug or security fixes) from later product versions
- Partners participating in the Partner Network or any other Partner program.

Contractor reserves the right, at its discretion, without notice of any kind, to change products and product versions included in any extended Maintenance product version list. Changes to the extended Maintenance product version list will have no impact during any Maintenance term for which Contractor Extended Support Program Maintenance fees have already been paid.

Contractor support level and responsibilities:

First level (Technical Assistance Center):

- Review Service Requests reported by Web, Email or phone from a Ordering Activity authorized contact
- Validate Ordering Activity maintenance status, product entitlement and check for any special handling required.
- Identify type of request, problem definition, configuration, products, product versions and platforms.
- Determine severity of the problem and execute any escalation procedures necessary.
- Direct problems for resolution to workgroups

- Second level (Product Support):

- Confirm problem and configuration used by the Ordering Activity
- Evaluate against known problems or issues
- Stage the problem
- Reproduce problems and provide workarounds

- Escalate to engineering where required to develop patches and fixes
 - Keep the SR updated at all times within the Call Tracking system
 - Keep the Ordering Activity Authorized Contact updated on the progress
- Third level (Engineering):
- Develop fixes as needed
 - Test and verify functionality and performance
 - Update the source code control system as needed
 - Ensure patches and fixes are incorporated into a future product release

Escalations

- Special procedures apply to Service Request escalations. An escalated issue is generally one of the following:
- No response to a problem reported, within the designated time given by the call response coordinator or technical engineer
- Response times out of severity guidelines
- Ordering Activity dissatisfaction with Service Request resolution you've been given

North and South America +1.650.846.5789

EMEA (Europe, Middle East, and Africa) +44(0).870.909.3889

Asia and Australia +61.2.4379.9322 or 1.800.184.237 (within Australia only)

The above telephone numbers provide access to a Contractor through Manufacturer Support Manager. This phone number is to be used if or when a Ordering Activity is dissatisfied with the progress of problem resolution, or wants the problem reported brought to the attention of Contractor through Manufacturer's management.

Warranties and Remedies

Contractor hereby warrants that: (a) for 30 days following initial delivery to Ordering Activity of the Software set forth in an Order Form, that the Software as delivered, under normal use on the Platform for which it is intended, will perform all material functions described in its Documentation; (b) to the best of Contractor's knowledge after employing reasonable technical means to detect computer viruses, the Software as delivered by Contractor does not contain any virus, computer code, routines or devices (other than as set forth in the Documentation) designed to disable, damage, impair, or erase the Software or other software or data; and c) Contractor has the right to grant the licenses and other rights set forth herein.

EXCEPT AS PROVIDED ABOVE, THE CONTRACTOR SOFTWARE, MAINTENANCE AND CONSULTING SERVICES ARE PROVIDED "AS IS", AND ALL OTHER EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF INFORMED OF SUCH PURPOSE), INFRINGEMENT, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY DISCLAIMED TO THE EXTENT ALLOWED BY APPLICABLE LAW. CERTAIN THIRD PARTY SOFTWARE MAY BE PROVIDED TO ORDERING ACTIVITY ALONG WITH CERTAIN CONTRACTOR SOFTWARE AS AN ACCOMMODATION TO ORDERING ACTIVITY. THIS THIRD PARTY SOFTWARE IS PROVIDED "AS IS". ORDERING ACTIVITY MAY CHOOSE NOT TO USE THIRD PARTY SOFTWARE PROVIDED AS AN ACCOMMODATION. NO WARRANTY IS MADE THAT THE CONTRACTOR SOFTWARE FUNCTIONALITY OR MAINTENANCE OR CONSULTING SERVICES WILL MEET ORDERING ACTIVITY'S REQUIREMENTS, OR THAT THE OPERATION OF ANY OF THE FOREGOING WILL BE UNINTERRUPTED OR ERROR-FREE.

In the event of a breach of Warranty, CONTRACTOR'S LIABILITY AND ORDERING ACTIVITY'S REMEDY SHALL BE FOR CONTRACTOR AT ITS OWN EXPENSE, TO EITHER REPAIR, REPLACE OR MODIFY THE AFFECTED CONTRACTOR SOFTWARE. IF THE FOREGOING REMEDIES ARE NOT COMMERCIALY REASONABLE (IN THE REASONABLE OPINION OF CONTRACTOR), CONTRACTOR MAY CANCEL THE ORDER AND REFUND TO ORDERING ACTIVITY THE LICENSE FEES AND ANY UNEARNED PRE-PAID MAINTENANCE FEES, IN EACH CASE PAID TO CONTRACTOR BY ORDERING ACTIVITY FOR THE AFFECTED CONTRACTOR SOFTWARE. Contractor shall not be liable to the extent any claim is based upon or attributable to: (i) modifications of the Software, or portions thereof; (ii) such claim would have been avoided by use of the then-current release; or (iii) Ordering Activity's continued allegedly infringing activity after being provided with modifications that would have avoided the alleged infringement.