

**STATE OF OHIO  
DEPARTMENT OF ADMINISTRATIVE SERVICES  
STATE TERM SCHEDULE**

**THIS CONTRACT** is between the STATE OF OHIO, DEPARTMENT OF ADMINISTRATIVE SERVICES ("DAS"), IT GOVERNANCE DIVISION, ON BEHALF OF THE STATE OF OHIO ("State"), with offices at 30 East Broad Street, Columbus, Ohio 43215 and IBM Corporation ("Contractor" or "IBM", and each of Contractor/IBM and the State, a "Party") with offices at 5475 Rings Rd. Atrium II, Suite 300, Dublin, Ohio 43017.

**BACKGROUND**

The Contractor has entered into a contract with the Federal Government under the Federal Government's Supply Schedule Contract Program administered by the General Services Administration ("GSA"). That program allows a contractor and the GSA to negotiate in advance of actual purchases the terms and conditions under which a contractor will supply goods or services to the Federal Government. Such a Federal Schedule Contract is not a commitment to purchase any goods or services; it is only a convenient way to do so should a Federal agency so choose during the contract's term.

The State has determined that it is in the interest of efficiency and economy to rely on some Federal schedule contracts of the Federal Government, with certain changes, as the basis for some state term contracts, which operate in a manner very similar to Federal schedule contracts. The Department of Administrative Services has also determined that the Contractor's Federal schedule contract offers goods or services that may be of interest to various state agencies and has therefore decided to use the Contractor's Federal contract as a basis for a State Term Contract with the Contractor. This State Term Contract (the "Contract") establishes terms and conditions under which a state agency may acquire the Contractor's goods or services, but it in no manner obligates any state agency to do so.

**TERMS & CONDITIONS**

**COMPOSITION OF CONTRACT.** This Contract consists of the terms of the Contractor's Federal Schedule Contract, Number GS-35F-4984H (the "Federal Schedule Contract" or "Schedule Contract"), as amended by this Contract (see Entire Agreement Section below). The Contractor's Schedule Contract consists of all the documents and materials incorporated in that agreement with the Federal Government. Those documents include, among possible others, the Federal Government's original solicitation, the Contractor's offer to the Federal Government, with amendments, the Contractor's best and final offer letter, the final award, and the Contractor's most current version of its Authorized Schedule Price List. Additionally, all representations, clarifications, and certifications submitted by the Contractor as a part of that contracting process are also included. And it includes any laws, regulations, documents, guidelines, and other materials incorporated by reference in the Contractor's Schedule Contract, including all FAR, DFAR, FIRMR, FIPS PUB, FED-STD and USC provisions, among others. By way of example, such would include all cited FAR and DFAR provisions relating to warranties, liabilities, and rights in data, and the GSA's Price Reduction Clause, among many others. Any terms not defined in this Contract shall have the meanings ascribed to such terms in the Federal Schedule Contract.

**CERTIFICATION OF ACCURACY.** The Contractor certifies that the Contractor's prices under this Contract are the prices at which the Contractor currently offers each product and service to the US Government under the GSA's Multiple Award Schedule program. The Contractor further certifies that the above representations will apply and be true with respect to all future pricing information submitted to revise this Contract.

**FEDERAL REPRESENTATIONS.** The Contractor warrants that all certifications and representations made to the Federal Government as a basis for obtaining or as a part of its GSA Schedule Contract were and still are true and accurate. The Contractor further agrees that such representations are a basis for the State entering into this Contract and that such representation and certifications inure to the State's benefit.

**FUTURE NOTICES.** The Contractor acknowledges that any continuing obligation to notify the Federal Government of changes affecting its GSA Schedule Contract, including by way of example, notices required under the price reduction provisions of its Schedule Contract, must be provided in the same manner to the State. And the State's rights under those notices will be the same as the rights of the Federal Government. Additionally, the Contractor agrees to notify the State within thirty (30) days of all changes in the status of or amendments to its Federal Schedule Contract.

**PARTIES TO THE CONTRACT.** For purposes of this Contract, all references to "Government," "Federal Government," "GSA," or similar terms meaning the Federal Government in the Contractor's Schedule Contract will mean the "State." And references to the "Contracting Officer" will mean the State representative, or their successor or designee, who signed this Contract on behalf of the State. Additionally, for purposes of this Contract, all rights and obligations of the Contractor and the Federal Government under the Contractor's Schedule Contract, except to the extent that such would create an absurdity, or are otherwise clearly inappropriate, or would violate state or federal law, will be rights and obligations between the Contractor and the State. This Contract may be relied on by Ohio counties, townships, municipalities and other political subdivisions of the State, collectively, Political Subdivisions. Whenever a Political Subdivision relies upon this Contract to issue a purchase order, the Political Subdivision will step into the shoes of the State under this Contract. Any order placed by a Political Subdivision under this contract will be between the Contractor and the Political Subdivision. The Contractor will look solely to the Political Subdivision for performance, including but not limited to payment, and will hold the State harmless with regard to such orders. The State, however, 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 where the Contractor reasonably believes that the Political Subdivision is or will be unable to perform its obligations in relation to that order.

**TERMINATION.** The State may terminate this Contract or any order under this Contract if the Contractor defaults in meeting its obligations and fails to cure its default within the time allowed by this Contract, or if a petition in bankruptcy has been filed by or against the Contractor. The State may also terminate this Contract or any order if the Contractor violates any law or regulation while performing under this Contract, or it appears to the State that the Contractor's performance is substantially endangered through no fault of the State. In such case, the termination will be for cause.

On written notice, the Contractor will have thirty (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 thirty (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 or the applicable order(s). The State may also terminate this Contract in the case of breaches that are cured within thirty (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 three (3) times. After the third such notice, the State may terminate this Contract without a cure period if the Contractor again fails to meet any obligation. The three (3) notices do not have to relate to the same obligation or type of failure. Some provisions of this Contract may provide for a shorter cure period than thirty (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 may also terminate this Contract or any order under this Contract for its convenience and without cause or if the Ohio General Assembly fails to appropriate funds for any order under this Contract. If a third party is providing funding for a Deliverable, the State may also terminate this Contract or any order should that third party fail to release any funds.

The notice of termination, whether for cause or without cause, 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 will also 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 any affected orders by using another contractor on such commercially reasonable terms and conditions as it and such covering contractor may agree. Subject to the Limitation of Liability clause contained herein the Contractor will be liable to the State for all costs related to covering for any affected orders to the extent that such costs exceed the costs that the State would have incurred under this Contract. The Contractor will also be liable, subject to the Limitation of Liability clause contained herein, for any other direct damages resulting from its breach of this Contract or other action leading to termination for cause. For purposes of this Contract, "Product" means any IBM Machine or ICA Program. "Machine" means a hardware device, its features, conversions, upgrades, elements, or accessories, or any combination of them. "ICA Program" has the meaning ascribed to it in the GSA, and does not include "Other IBM Programs" (as such term is defined in the GSA). "Deliverable" (also sometimes referred to as "Materials") means literary works or other works of authorship (such as software programs and code, documentation, reports, and similar works) that IBM may

deliver to the State as part of a service, but does not include programs, machine code, or other items available under their own license terms or agreements.

If the termination is for the convenience of the State, the Contractor will be entitled to (i) compensation for any Product or Deliverable that the Contractor has delivered through the termination, (ii) reimbursable expenses identified in the SOW that Contractor incurs through service termination, and (iii) any cost reasonably incurred in order to comply with the State's termination order as agreed to by the parties. 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 agreed by the parties to be owed to the Contractor. If the State terminates for cause, the Contractor shall only be entitled to compensation listed in (i) above.

The State will have the option of suspending rather than terminating this Contract where the State believes that doing so would better serve its interest. Such suspension will not exceed ninety ( 90 ) days without the agreement of IBM, after which time suspension will either be lifted or converted to a termination.

In the case of a suspension for the State's convenience, the amount of compensation due to the Contractor for work performed before the suspension will be determined in the same manner as provided in this section for termination for the State's convenience or the Contractor may be entitled to compensation for work performed before the suspension, less any damage to the State resulting from the Contractor's breach of this Contract or other fault.

The notice of suspension, whether with or without cause will be effective immediately on the Contractor's receipt of the notice. The Contractor will immediately prepare a report and deliver it to the State as is required in the case of termination.

#### **OWNERSHIP OF DELIVERABLES.**

Each SOW will specify Deliverables to be delivered to the State and will identify them as "Type I Materials," "Type II Materials," or otherwise as both parties agree. If not specified, Deliverables will be considered Type I Materials. Type I Materials are those, created during the Service performance period, in which the State has all right, title and interest (including ownership of copyright). The Contractor will retain one copy of the Deliverables. The Contractor is granted 1) an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, distribute (internally and externally) copies of, and prepare derivative works based on Type I Materials and 2) the right to authorize others to do any of the former.

The Contractor will provide the State with all assistance reasonably needed to vest such rights of ownership in the State. But 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 Type I Deliverable ("Pre-existing Materials").

The Contractor will grant the State a worldwide, non-exclusive, royalty-free perpetual license to use, modify, sell, and otherwise distribute within its Enterprise all Pre-existing Materials that are incorporated in any Type I Deliverables rather than grant the State ownership of the Pre-existing Materials, provided however, that the State may distribute such Pre-existing Materials outside of its Enterprise to the extent required by governmental funding mandates upon prior notice to Contractor. The Contractor will not include in any Type I 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 Type I Deliverable, the Contractor must disclose that and obtain written approval from the State for doing so in advance. On request of the Contractor, the State will incorporate any proprietary notice of the Contractor may reasonably want for any Pre-existing Materials included in a Type I Deliverable in all copies the State makes of that Type I Deliverable.

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

The Contractor will include the definitions of the ownership types that will be used in that SOW (e.g., Type I or II Materials or Custom Deliverables) in each SOW submitted under this Agreement.

**SPECIFIC CHANGES.** The State and the Contractor agree to the following changes to specific provisions of the Contractor's Federal Schedule Contract, notwithstanding anything to the contrary contained in the Contractor's Federal Contract:

All equipment will be new, and replacement parts will be new or warranted as new.

The ordering and payment addresses under this Contract will be those contained in the Contractor's offer letter to the State.

Payments and invoicing will be done according to the terms below.

All shipping of equipment under warranty for repairs will be at the Contractor's expense.

All references to hours of the day will be deemed to be references to Eastern Standard Time.

The State will not purchase goods or services using credit cards, order goods or services for overseas delivery, or provide the Contractor with overseas support.

The State has the specific right to use any IBM software licensed to it by IBM at one (1) remote, third-party disaster recovery site for disaster recovery and disaster recovery testing. For third-party software purchased under this Contract, the Contractor shall make commercially reasonable efforts to have such third parties grant use rights to the State in accordance with the forgoing. The Contractor shall notify the State in the Contractor's proposal if these efforts are unsuccessful.

Except for PC software, the license fee for which is less than \$5,000.00 per copy and for which maintenance is not made generally available, software maintenance will be available to the State under the terms of this Contract for the longer of the period the Contractor is required to make it available under its Federal Contract or the period the Contractor makes it generally available to its customer base. Further, the State will be entitled to software maintenance at the then-current price it is made available to the Federal Government or, if the Contractor does not make maintenance available to the Federal Government under a federal contract through the GSA, at a price that represents an annual increase in the maintenance fee from the last Federal contract price for such of no more than five percent. For purposes of this section, the Contractor's last Federal contract means the last GSA federal supply schedule contract covering the applicable maintenance program.

The Contractor will not sell to the State any notebook computers with less than a 1.2 GHz internal clock speed. And the Contractor will not sell to the State any PCs or servers using CPUs with less than a 1.6 GHz internal clock speed. All such items listed in the Contractor's Price List are deleted for purposes of this contract.

The Contractor will not sell to the State any term software licenses. All such items listed in the Contractor's Price List are deleted for purposes of the State.

The Contractor will not offer to the State any product's that are not Year 2000 compliant. All such items listed in the Contractor's Price List are deleted for purposes of the State.

The Contractor will not sell to the State any Microsoft Products. All such items listed in the Contractor's Price List are deleted for purposes of the State.

As this Contract refers to a GSA schedule contract for convenience, orders under this Contract are not orders under the GSA schedule program. The Federal Supply Schedules for blanket purchase agreements, contractor team arrangements and purchase of incidental, non-schedule items, therefore, are not applicable to this Contract.

Subject to the Limitation of Liability clause contained herein, the Contractor shall be liable for the actual direct costs incurred by the State in replacing data that is lost or damaged due to the Contractor's fault or negligence, provided however, that the Contractor shall only be liable for such costs if the State has maintained back-up systems and the necessary data and source materials are available to enable the restoration.

If certain data is lost or damaged due to the Contractor's fault or negligence and the State was not able to back up such data in advance, the Contractor shall provide reasonable assistance, as mutually agreed by the State and the Contractor, in identifying and providing other options for restoring such data.

The following amendments to the terms and conditions of the IBM Corporation's GSA Contract are hereby incorporated into this agreement between the Contractor and the State.

## **CHAPTER 1. GENERAL INFORMATION**

Delete subsection entitled "Credit Cards Orders" from paragraph (1.3) pages 1-3 and 1-4 Contractor's Ordering Address and Payment Information.

Modify paragraph (1.9) page 1-6 State and Local Taxes to add "Notwithstanding the foregoing, the parties hereby acknowledge that the State is exempt from State and Local taxes in the State of Ohio. The State shall provide tax exemptions certificates to IBM upon request."

Delete paragraph (1.12) page 1-7 Small Requirements in its entirety.

Delete paragraph (1.35) page 1-13 On-Line Information in its entirety.

Delete paragraph (1.24) pages 1-11 Blanket Purchase Agreements (BPAs) in its entirety.

Delete paragraph (1.25) page 1-11 Contractor Team Arrangements in its entirety.

Modify paragraph (1.41)(B) page 1-15 Patent and Copyright Indemnity by replacing the wording "Gives IBM such opportunity as is offered by applicable laws, rules or regulations to participate in the defense thereof. The Government shall make every effort to permit IBM to fully participate in the defense and/or in any settlement of such claim. However, IBM understands that such participation will be under the control of the Department of Justice." **with**

"IBM shall have control over the settlement of any monetary issues relating to an infringement action and the State will cooperate with IBM (at IBM's expense) in any related settlement negotiations. IBM agrees that the Office of the Ohio Attorney General shall retain control over any issues regarding liability and money damages to be paid by the State and any other issues not relating to indemnification by IBM."

Delete paragraph (1.42) page 1-15 Limitation of Liability in its entirety.

## **CHAPTER 2. SPECIAL ITEM 132-3: LEASING**

Delete CHAPTER 2 Special Items 132-3: Leasing in its entirety.

## **CHAPTER 3. SPECIAL ITEM 132-8: PURCHASE**

Modify paragraph (3.10) page 3-6 Risk of Loss or Damage by adding the wording "and is responsible for taking whatever steps it believes are appropriate to protect against risk of loss." to the end of the sentence that reads: "Thereafter, the Government assumes the risk."

Modify paragraph (3.13.2) page 3-12 Ownership by replacing the wording "IBM will transfer title to the Government upon shipment of the Machine. If the Government doesn't make timely payment or defaults on payment, title shall revert to IBM." with

"IBM will transfer title to the Government upon receipt of the Machine. If the Government doesn't make timely payment or defaults on payment, title shall revert to IBM."

Modify paragraph (3.6) page 3-3 Warranty by replacing the wording "The warranties stated above will not apply to the extent to there has been misuse, (including but not limited to use of any Machine capacity or capability, other than that authorized by IBM in writing), accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by the Government or a third party, or failure caused by a product for which IBM is not responsible. The warranty for IBM Machines is voided by removal or alteration of Machine or parts identification labels.

THESE WARRANTIES ARE THE GOVERNMENT'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

*Items Not Covered by Warranty*

IBM does not warrant uninterrupted or error-free operation of a Product or Service or that IBM will correct all defects.

IBM identifies Products that it does not warrant in the hardware pricelist or the IBM announcement letter. Unless IBM specifies otherwise in this Contract or in a quote or proposal, IBM provides Materials, non-IBM products (including those provided with or installed on an IBM Machine at the Government's request) and non-IBM Services WITHOUT WARRANTIES OF ANY KIND. However, non-IBM manufacturers, developers, suppliers or publishers may provide their own warranties to you. Warranty, service, support and refund rights, if any, for non-IBM Products are provided directly to the Government by their manufacturer or supplier, not IBM.

#### *Warranty Details*

IBM provides certain types of Service to keep Machines in, or restore them to, conformance with their Specifications. IBM will inform the Government of the available types of Service for a Machine. At its discretion, IBM will 1) either repair or exchange the failing Machine and 2) provide the Service either at the Government's location or a service center.

When the type of Service requires that the Government deliver the failing Machine to IBM, the Government agrees to ship it suitably packaged (prepaid unless IBM specifies otherwise) to a location IBM designates. After IBM has repaired or exchanged the Machine, IBM will return it to the Government at its expense unless IBM specifies otherwise. IBM is responsible for loss of, or damage to, the Government's Machine while it is 1) in IBM's possession or 2) in transit in those cases where IBM is responsible for the transportation charges.

The Government agrees to:

1. Obtain authorization from the owner to have IBM service a Machine that is not owned by the Government; and
2. Where applicable, before IBM provides Service –
  - A. Follow the problem determination, problem analysis, and service request procedures that IBM provides,
  - B. Secure all programs, data, and funds contained in a Machine, and
  - C. Inform IBM of changes in a Machine's location

When Service involves the exchange of a Machine or part, the item IBM replace becomes its property and the replacement becomes yours. If, however, the Government wishes to retain the replaced parts for security purposes, the Government agrees to pay IBM's then current purchase price for any retained parts. The Government represents that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty or maintenance Service status of the replaced item. Before IBM exchanges a Machine or part, the Government agrees to remove all features, parts, options, alterations, and attachments not under IBM's service. The Government agrees to ensure that the item is free of any legal obligations or restrictions that prevent its exchange." **with**

#### *Extent of Warranty*

"The warranties stated above will not apply to the extent there has been misuse, (including but not limited to use of any Machine capacity or capability, other than that authorized by IBM in writing), accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by the Government or a third party, or failure caused by a product for which IBM is not responsible. The warranty for IBM Machines is voided by removal or alteration of Machine or parts identification labels.

#### *Items Not Covered by Warranty*

IBM does not warrant uninterrupted or error-free operation of a Product or Service or that IBM will correct all defects.

IBM identifies Products that it does not warrant in the hardware pricelist or the IBM announcement letter.

*Warranty Details*

IBM provides certain types of Service to keep Machines in, or restore them to, conformance with their Specifications. IBM will inform the Government of the available types of Service for a Machine. At its discretion, IBM will 1) either repair or exchange the failing Machine and 2) provide the Service either at the Government's location or a service center.

When the type of Service requires that the Government deliver the failing Machine to IBM, the Government agrees to ship it suitably packaged (at IBM's expense) to a location IBM designates. After IBM has repaired or exchanged the Machine, IBM will return to the Government at its expense unless IBM specifies otherwise. IBM is responsible for loss of, or damage to, the Government's Machine while it is 1) in IBM's possession or 2) in transit in those cases where IBM is responsible for the transportation charges.

The Government agrees to

1. Obtain authorization from the owner to have IBM service a Machine that is not owned by the Government; and
2. Where applicable, before IBM provides Service –
  - A. Follow the problem determination, problem analysis, and service request procedures that IBM provides,
  - B. Secure all programs, data, and funds contained in a Machine, and
  - C. Inform IBM of changes in a Machine's location

When Service involves the exchange of a Machine or part, the item IBM replace becomes its property and the replacement becomes yours. If, however, the Government wishes to retain the replaced parts for security purposes, the Government agrees to pay IBM's then current purchase price for any retained parts. The Government represents that all removed items are genuine and unaltered. The replacement may not be new, but will be warranted as new and at least functionally equivalent to the item replaced. The replacement assumes the warranty or maintenance Service status of the replaced item. Before IBM exchanges a Machine or part, the Government agrees to remove all features, parts, options, alterations, and attachments not under IBM's service. The Government agrees to ensure that the item is free of any legal obligations or restrictions that prevent its exchange."

Delete paragraph (3.13.5) page 3-13 Invoicing/Payment in its entirety.

Modify paragraph (3.13.4) pages 3-12 and 3-13 Production Status by replacing the wording "Items purchased under Special Item 132-8 of this Contract will be newly manufactured and may contain some serviceable used parts and/or features. In any event, IBM's warranty terms identified under "Warranty", shall apply." with "Items purchased under Special Item 132-8 of this Contract will be newly manufactured and may contain some serviceable used parts warranted as new. In any event, IBM's warranty terms identified under "Warranty", shall apply."

Modify the last paragraph on page 3-9 of paragraph (3.12.1) page 3-8 IBM ServicePac for Warranty and maintenance Options (Warranty Service Upgrades – WSU) by replacing the wording "When a type of Service involves the exchange of a Machine or part, the item IBM replaces becomes its property and the replacement becomes yours. The Government represents that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the Service Status of the replaced item. Before IBM exchanges a Machine or part, the Government agrees to remove all features, parts, options, alterations, and attachments not under IBM's Service. The Government also agrees to ensure that the item is free of any legal obligations or restrictions that prevent its exchange." **with**

"When a type of Service involves the exchange of a Machine or part, the item IBM replaces becomes its property and the replacement becomes yours. The Government represents that all removed items are genuine and unaltered. The replacement will be new or warranted as new. The replacement assumes the Service Status of the replaced item. Before IBM exchanges a Machine or part, the Government agrees to remove all features, parts, options, alterations, and attachments not under IBM's Service. The Government

also agrees to ensure that the item is free of any legal obligations or restrictions that prevent its exchange.”

Delete the last paragraph of Termination on page 3-15 in its entirety.

#### **CHAPTER 4. SPECIAL ITEM 132-12 MAINTENANCE AND REPAIR**

Delete Chapter 4 Special Item 132-12: Maintenance and Repair in its entirety.

#### **CHAPTER 5. SPECIAL ITEM 132-33 PERPETUAL SOFTWARE LICENSE**

Delete paragraph entitled “One time Charges (OTC)” on page 5-5 within paragraph 5.12 Charges, Invoices, and Payments pages 5-5 and 5-6 Charges, Invoice, and Payment in its entirety.

Modify paragraph (5.14.3) page 5-8 Warranty by replacing the wording “The warranties stated herein will not apply to the extent there has been misuse, accident, modification, unsuitable physical or operating environment, operation in other than the Specific Operating Environment, improper maintenance by the Government or failure caused by a product for which IBM is not responsible.

**THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

IBM does not warrant uninterrupted or error-free operation of a Product or Service or warrant that all defects will be corrected.

Unless specified otherwise, IBM provides Materials and non-IBM products, without warranties of any kind.” *with*

“The warranties stated herein will not apply to the extent there has been misuse, accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by the Government.

IBM does not warrant uninterrupted or error-free operation of a Product or Service or warrant that all defects will be corrected.”

Modify the first paragraph of the subsection entitled “Acceptance” within paragraph (5.15) page 5-12 IBM Program License Agreement (IPLA) by replacing the wording “The Government’s acceptance of a Program is the earlier of the second business day after the Program’s standard transit allowance period, or receipt of the Program, when IBM provides the Government authorization to download the product via the Proof of Entitlement.” *with*

“The Government’s acceptance of a Program will be receipt of the software.”

Delete the last paragraph of paragraph (5.15.4) page 5-14 Warranty that reads “**THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE**” in its entirety.

Delete the third paragraph of the subsection entitled “Warranty” within paragraph paragraph (5.15.7.1) IBM’S SOFTWARE MAINTENANCE INCLUDES page 5-16 that reads, “**THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACES ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE**” in its entirety.

Delete the wording in subsection entitled “Funding” at page 5-24 within paragraph (5.15.8) PASSPORT ADVANTAGE that reads, “Notwithstanding anything to the contrary in these terms, the Government’s obligation for performance of under these terms is contingent on the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under these terms beyond the end of the fiscal year until funds are

made available to the Contracting Officer for performance and until we receive notice of availability to be confirmed in writing by the Contracting Officer." in its entirety.

## **CHAPTER 6. SPECIAL ITEM 132-50: CLASSROOM TRAINING**

Modify the third paragraph (6.7) page 6-3 Invoices and Payment by replacing the wording "Prices for publicly scheduled classes include the use of required education Materials and machines. They do not include taxes or student travel and living expenses. For private classes, additional charges may be applicable for instructor travel and living expenses, facilities, and remote lab support. It is expected that the customer's computer and terminal will be used to support the lab exercises for a requested private class. The course description indicates whether a class includes machine labs." *with*

"Prices for publicly scheduled classes include the use of required education Materials and machines. They do not include taxes or student travel and living expenses. For private classes, additional charges may be established in accordance with Section 126-1-02 of the Ohio Administrative Code. It is expected that the customer's computer and terminal will be used to support the lab exercises for a requested private class. The course description indicates whether a class includes machine labs."

Modify paragraph (6.8) page 6-3 Prices for IBM Private Classes by replacing the wording "IBM Private classes are delivered at a customer's location for a class with up to 14 students, (except as noted in the pricelist) with an incremental charge for each additional student. The prices in the Education Pricelist assumes local instructor availability. For those courses conducted at the ordering activity's location, instructor travel charges (if applicable), including mileage and daily living expenses (e.g., per diem charges) are governed by Pub. L. 99-234 and FAR Part 31.205-46, and are reimbursable by the ordering activity on orders placed under this GSA Schedule, as applicable, in effect on the date(s) the travel is performed. Contractors cannot use GSA city pair contracts. The Industrial Funding Fee does NOT apply to travel and per diem charges." *with*

"IBM Private classes are delivered at a customer's location for a class with up to 14 students, (except as noted in the pricelist) with an incremental charge for each additional student. The prices in the Education Pricelist assumes, local instructor availability. Where a local instructor is not available, a Travel and Living charge will be in accordance with the State of Ohio's travel policy. These charges are applicable in the continental U.S. The Industrial Funding Fee does NOT apply to travel and per diem charges"

Delete paragraph (6.8.1) page 6-3 OUTSIDE THE CONTINENTAL U.S. (OCONUS) in its entirety.

Modify paragraph (6.9.4) page 6-5 WARRANTY by replacing the wording "THERE ARE NO EXPRESS WARRANTIES EXCEPT THOSE CONTAINED HEREIN OR IN ANY APPLICABLE LICENSE AGREEMENT. THERE ARE NO IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WE MAKE NO WARRANTY AS TO RESULTS TO BE ATTAINED BY ATTENDING OUR CLASSES OR USING OUR EDUCATIONAL MATERIAL." *with*

"WE MAKE NO WARRANTY AS TO RESULTS TO BE ATTAINED BY ATTENDING OUR CLASSES OR USING OUR EDUCATIONAL MATERIALS."

## **CHAPTER 7. SPECIAL ITEM 132-51: INFORMATION TECHNOLOGY PROFESSIONAL SERVICES**

Delete paragraph (7.2) page 7-2 Performance Incentives in its entirety.

Change paragraph (7.3) (B) page 7-2 Order by deleting the words "except as may be otherwise agreed to by both IBM and the user agency with GSA's concurrence."

Delete third paragraph under subsection entitled "Extent of Warranty/Items not covered by Warranty" under paragraph (7.23) WARRANTY FOR IBM SERVICES pages 7-8 and 7-9 in its entirety.

Delete paragraph (7.25.2) page 7-10 Travel Reimbursement and Other Charges in its entirety.

Modify paragraph (7.26) page 7-11 Performance Based Services by replacing the wording "Performance Based Services include a wide variety of tailored services and may include service level objectives. Examples of such IT Solutions are: Web Hosting Services, Colocation Services, Seat Management Services

and Managed Storage/Storage on Demand Services. These Performance Based Services may include elements in other SIN's of GSA's IT Schedule. Offers are made in response to a SOW issued in accordance with the IT Professional Services ordering procedures as set forth in SIN 132-51 entitled "Ordering Procedures," and may include unique terms, conditions and prices. As opportunities are identified, each offering will be established with the Agency based on their unique requirement." **with**

"Performance Based Services include a wide variety of tailored services and may include service level objectives. Examples of such IT Solutions are: Web Hosting Services, Colocation Services, Seat Management Services and Managed Storage/Storage on Demand Services. These Performance Based Services may include elements in other SIN's of GSA's IT Schedule. Offers are made in response to a SOW issued in accordance with the IT Professional Services ordering procedures as set forth in SIN 132-51 entitled "Ordering Procedures." As opportunities are identified, each offering will be established with the Agency based on their unique requirement."

Modify the fourth paragraph within paragraph (7.27) MOVEMENT OF EQUIPMENT (REINSTALLATION, DISCONTINUANCE, REARRANGEMENT) page 7-11 by replacing the wording "Discontinuance Services: IBM will prepare the Government's Machines, and identify the items normally shipped with them, for shipment in accordance with IBM's standard practice. IBM will identify and place appropriate service manuals, diagnostics, licensed internal code, and other items in shipping containers (provided by IBM). If requested, IBM will perform additional activities such as the retrieval and packing of cables (including channel interface cables or other cables the Government specifies), as well as other items which the Government may request, for shipment in containers which the Government supplies or which IBM may supply if requested. These additional activities and packing material will be priced separately and the terms and conditions included in the Statement of Work." **with**

"Discontinuance Services: IBM will prepare the Government's Machines, and identify the items normally shipped with them, for shipment in accordance with IBM's standard practice. IBM will identify and place appropriate service manuals, diagnostics, licensed internal code, and other items in shipping containers (provided by IBM). If requested, IBM will perform additional activities such as the retrieval and packing of cables (including channel interface cables or other cables the Government specifies), as well as other items which the Government may request, for shipment in containers which the Government supplies or which IBM may supply if requested. These additional activities and packing material will be priced separately and included in the Statement of Work."

Modify the last paragraph within paragraph (7.27) MOVEMENT OF EQUIPMENT (REINSTALLATION, DISCONTINUANCE, REARRANGEMENT) page 7-13 by replacing the wording "IBM will be responsible for physical damage to the machines during disassembly and/or reassembly of the machines only while the machines are under the control of IBM or IBM-selected independent contractors. The Government is responsible for reporting physical loss or damage to the Machines. IBM must receive such notification in writing within 10 working days after the service is performed. IBM's responsibility for damage as stated above is contingent upon IBM's receipt of such notice. In no event will IBM be liable for damage caused during shipment, including invisible transit damage." **with**

"IBM will be responsible for physical damage to the machines during disassembly and/or reassembly of the machines only while the machines are under the control of IBM or IBM-selected independent contractors. The Government is responsible for reporting physical loss or damage to the Machines. IBM must receive such notification in writing within 10 working days after the service is performed. IBM's responsibility for damage as stated above is contingent upon IBM's receipt of such notice."

DELETE APPENDIX A pages A-1 through A-4 OVERSEAS INFORMATION in its entirety.

#### **APPENDIX D. SERVICE OFFERINGS**

Those terms and conditions of the Contractor's offering documentation not specifically referenced by the Amendments delineated under this heading shall remain unchanged.

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

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

The Contractor shall also submit a close - out report within one hundred and twenty (120) days after the expiration of this Contract. The contract expires upon the physical completion of the last, outstanding task or delivery order of the Contract. The close - out report must cover all sales not shown in the final quarterly report and reconcile all errors and credits. If the Contractor reported all contract sales and reconciled all errors and credits on the final quarterly report, then the Contractor should show zero "0" sales in the close - out report.

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

Department of Administrative Services  
IT Governance Division  
Acquisitions Management  
30 East Broad Street, Suite 4099  
Columbus, Ohio 43215 - 3414

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

**CONTRACTOR REVENUE SHARE.** The Contractor must pay the State a revenue share of the sales transacted under this Contract. The Contractor must remit the revenue share in U.S. dollars within thirty (30) days after the end of the quarterly sales reporting period. The revenue share equals 0.75% of the total quarterly sales reported. Contractors must include the revenue share in their prices. The revenue share is included in the award price(s) and reflected in the total amount charged to ordering activities.

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

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

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

Contractor must forward the check to the following address:

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

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

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

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

**INDEMNITY.** The Contractor will indemnify the State against all liability or expense resulting from bodily injury to any person (including injury resulting in death) or damage to real property or tangible personal property arising out of the performance of this Contract, providing such bodily injury or property damage is due to the negligence of the Contractor, its employees, agents, or subcontractors. The Contractor will also indemnify the State against any claim of infringement of a copyright, patent, trade secret, or similar intellectual property rights based on the State's proper use of any Product or Deliverable under this Contract. This obligation of indemnification will not apply where (A) the State has modified (or a third party has modified on the State's behalf) the Product or Deliverable and the claim of infringement, is based on the

modification (B) the claim is based on (i) anything provided by the State or a third party on the State's behalf that is incorporated into a Product or Deliverable, or Contractor's compliance with any designs, specifications, or instructions provided by the State or a third party on the State's behalf; (ii) the combination, operation, or use of a Product with any product, hardware device, program, data, apparatus, method, or process that Contractor did not provide as a system, if the infringement would not have occurred were it not for such combination, operation or use; (iii) the distribution, operation or use of a Product by a third party other than the State (unless such third party is owned more than 50 percent by the State); or (iv) infringement by a non-IBM Product or software other than IBM machine code alone . The State agrees to give the Contractor notice of any such claim as soon as reasonably practicable. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor will do one, (1) of the following four (4) things:

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

The State agrees that this Contract does not create any right or cause of action for any third party against the Contractor except for third party claims that fit within the indemnification provision of this Contract. The State further agrees not to initiate a cause of action against the Contractor for the asserted claims by any third party for damages that may result from breach of contract.

**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, address, and telephone number of any such dealer, as well as the dealer's purchase order and payment address(es) and Federal tax identification number. The Contractor must also 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 Director of DAS' Division of Computer & Information Services.

In doing so, the Contractor warrants that: (a) The dealer has been given 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 agrees to remain liable under this Contract for any failure of the dealer to perform and 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 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. One or more distributors may be identified in the authorizing letter. In such cases, information regarding tax-payer 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.

**ADDITIONAL OFFERINGS.** If the Contractor supplements the products or services it offers to the Federal Government under its Federal Contract, then the following provisions are applicable.

This Contract includes the additional products and/or supplies offered in the price list(s) or catalog(s) identified below. The Contractor agrees to provide these products and/or services to the State under the same terms as those products and/or services listed in the Contractor's GSA Price List. The Contractor certifies that these products and/or services are "commercial" items, in accordance with the definition of "commercial" items in the Contractor's Federal Contract, and the Contractor agrees that the requirements of the GSA's Price Reduction Clause are applicable to these additional products. Further, the Contractor warrants that these products and/or services are being offered to the State at the most favorable prices it

has made them available to any other customer within the year immediately preceding the date these products and/or services were added to this Contract.

The additional products and/or services are identified in the following price list(s) and/or catalog(s) (insert "none" if this provision is inapplicable): None.

If the price list(s) and/or catalog(s) contain suggested retail prices or undiscounted, direct customer pricing, indicate by individual item or service, or by category of item or service, the applicable discount to the State (insert none if no additional product(s) or service(s) are being offered or see price list/catalog if the prices include the applicable State discount): None.

#### **CONTRACTOR WARRANTIES.**

**The Contractor shall provide all applicable warranties to the State as set forth in the GSA. Notwithstanding anything to the contrary in the GSA, however, the parties hereto agree that the Contractor will not sell non-IBM Machines to the State unless provided in the context of an "integrated system", which shall be expressly stated by the applicable SOW. In such instance, the Contractor shall provide warranties for all IBM and non-IBM Machines in the "integrated system" as specifically set forth in the applicable SOW.**

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 will correct such failure with all due speed in accordance with its standard warranties as follows. The Contractor will remain liable to the State for any direct damages and claims based on breach of these warranties in accordance with the Limitation of Liability provision of this Contract.

It is understood and agreed to by the parties to this Agreement that the Contractor will not offer third-party products for sale under the State Term Schedule and will remove any such items from the Contractor's product list.

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

**1. THE LIMITATION IN PARAGRAPH 3 DOES NOT APPLY TO LIABILITY ARISING FROM THIRD PARTY CLAIMS RELATED TO (A) THE REVISIONS TO PARAGRAPH (1.28)(B) PAGE 1-14 "PATENT AND COPYRIGHT INDEMNITY" OR TO THE "INDEMNITY" SECTION IN THIS APPENDIX D.**

**2. NEITHER PARTY WILL BE LIABLE FOR (A) ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, OR (B) LOSS OF, OR DAMAGE TO DATA, IN EACH CASE EVEN IF THE PARTIES HAVE BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGE.**

**3. THE CONTRACTOR SHALL REMAIN LIABLE FOR ALL DIRECT DAMAGES DUE TO THE CONTRACTOR'S FAULT OR NEGLIGENCE UP TO (2) TWO TIMES VALUE OF THE TRANSACTION OR TWO MILLION DOLLARS (\$2,000,000.00), WHICHEVER IS GREATER. FOR PURPOSES OF THIS PARAGRAPH, THE PARTIES AGREE THAT THE TERM "TRANSACTION" MEANS A PURCHASE ORDER ISSUED BY THE STATE.**

**PAYMENT DUE DATE.** Payments will be due on the thirtieth (30th) calendar 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 products or services. 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 thirtieth (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 Section §126.30.

**INVOICE REQUIREMENTS.** The Contractor must submit an original invoice with three (3) 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 and/or attachments:

(1) Name and address of the Contractor as designated in this Contract.

- (2) The Contractor's Federal tax identification number as designated in this Contract.
- (3) The Contractor's invoice remittance address as designated in this Contract.
- (4) The purchase order number authorizing the delivery of products or services.
- (5) A description of what the Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, the Contractor must also 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 with the improper invoice to the address designated for receipt of purchase orders within fifteen (15) calendar days after receipt of the invoice. 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 thirty (30) days after the State receives a proper invoice and has accepted the Contractor's product or service.

**NOTIFICATION OF PRICE INCREASES.** If this Contract permits any price increases, notification of such must be given to the Deputy Director of the Division of Computer and Information Services and to the purchase order "bill to" address contained in the applicable purchase order(s) for any orders affected by the increase (e.g., existing leases, licenses, or annual maintenance programs). The Contractor must give these notices no later than thirty (30) days before the effective date of the price increase. This notification must specify, when applicable, the product serial number, location, current price, increased price, and applicable purchase order number.

**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 the payments due under an order referencing this Contract, the order will terminate as of the date that the funding expires, and the State will have no further obligation to make any payments. The State agrees to provide written notice to Contractor within a reasonable time, if reasonable possible, upon its determination that funds will not be appropriated.

**CONFIDENTIALITY.** The State may disclose to the Contractor written material or oral or other information that the State treats as confidential ("State Confidential Information"). Title to the State Confidential Information and all related materials and documentation the State delivers to the Contractor will remain with the State. Information shall be considered State Confidential Information if it is so marked, or 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. Contractor agrees at all times, during the term of this Contract and for a period of at least five (5) years after its termination not to disclose any State Confidential Information to third parties unless otherwise authorized in writing by the State to do so and to use such State Confidential Information solely to perform under this Contract. Notwithstanding the prior sentence, the Contractor may not disclose or use in any manner except as authorized in this Contract (or a SOW hereunder) any information disclosed to Contractor by the State about people that is personal in nature, such as medical records, addresses, phone numbers, social security numbers, and similar items (collectively, "Sensitive Information"), regardless of whether such information is also available publicly through other sources. IBM may disclose, publish, disseminate, and use the ideas, concepts, know-how, and techniques, related to IBM's business activities, which are in the State Confidential Information and retained in the memories of IBM's employees who have had access to the Information under this Agreement.

The State acknowledges that, in connection with Contract and its relationship with Contractor, it may obtain information relating to the Products or to the Contractor that is of a confidential and proprietary nature ("Contractor Confidential Information", and collectively with "State Confidential Information", the "Confidential Information"). Such Contractor Confidential Information may include, but is not limited to, trade secrets, know how, inventions, techniques, processes, programs, schematics, software source documents, data, financial information, and sales and marketing plans or information which the State knows or has reason to

know is confidential, proprietary or trade secret information of Contractor. The State shall at all times, during the term of this Contract and for a period of at least five (5) years after its termination, keep in trust and confidence all such Contractor Confidential Information, and shall not use such Contractor Confidential Information other than as expressly authorized by Contractor under this Contract, nor shall the State disclose any such Contractor Confidential Information to third parties without Contractor's written consent.

The parties' obligation to maintain the confidentiality of the Confidential Information will not apply where such: (1) was already in the possession of the receiving party before disclosure by the disclosing party, and was received by the receiving party without obligation of confidence; (2) is independently developed by the receiving party, provided documentary evidence exists to support the independent development; (3) is or becomes publicly available without breach of this Contract (except with regard to Sensitive Information); (4) is rightfully received by the receiving party from a third party without obligation of confidence; (5) is disclosed by the receiving party with the written consent of the disclosing party; or (6) is released under a valid order of a court or governmental agency, provided that the receiving party (a) notifies the disclosing party of the order immediately upon receipt of it and (b) makes a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production. The receiving party will return all originals of any Confidential Information and destroy any copies it has made for its own internal use on termination or expiration of this Contract or as requested by the disclosing party.

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

**OBM CERTIFICATION.** This Contract is subject to Ohio Revised Code Section §126.07. Any orders under this Contract are void until the Director of the Office of Budget and Management certifies that there is a balance in the appropriation available to pay for the order.

**TAXES.** The State is exempt from all state and local taxes and does not agree to pay any taxes.

**TRANSACTION INCENTIVE PROPOSALS ("TIPS").** TIPS offer the State a credit for future purchases as a result of a particular transaction or series of transactions. A TIP is not a retroactive change in the price for that purchase, but rather a credit to be used toward a future STS purchase. TIPS must be documented in the original purchase order from the ordering Enterprise. TIPS may only be used by the same ordering Enterprise who made the original TIP purchase, must be for the same type of product purchased in the original transaction and must be used in the same fiscal year as the original transaction. Ordering Enterprises are responsible for tracking and using their TIP credits earned.

**CANCELLATION.** The State or the Contractor may cancel this Contract without cause and on thirty (30) days written notice. But, in the case of any lease of goods or services or any license of software or other intangible property entered into before the effective date of the termination, the State will have the right to continue such lease or license after termination on the same terms.

**AUTOMATIC RENEWAL.** This Contract expires on even date with the Contractor's Federal Contract, but this Contract may be automatically renewed for one (1) year, unless the State has accepted a new state term contract based on the Contractor's new GSA schedule contract or the Contractor has notified the Office of General Counsel for DAS, in writing, of its desire to terminate this Contract, or the State Controlling Board has not approved the use of GSA schedule contracts in any fiscal year. Termination under this Section will not relieve the Contractor of its obligations, including any applicable warranty or maintenance obligations, for products or services ordered before the date of termination. It also will not terminate any existing leases or licenses.

**DELIVERIES.** All deliveries will be F.O.B. Destination.

**EQUAL EMPLOYMENT OPPORTUNITY.** The Contractor will comply with all Ohio laws regarding equal employment opportunity, including Ohio Revised Code Section §125.111, and all related Executive Orders of the Governor of Ohio.

**DRUG FREE WORKPLACE.** The Contractor will make a good faith effort to ensure that none of its employees are under the influence of or possess illegal drugs or alcohol or abuse prescription drugs while they are on State property.

**OHIO ETHICS AND ELECTIONS LAW.** The Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of the Ohio ethics laws applicable to Contractor. 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.

**UNRESOLVED FINDINGS.** The Contractor represents that (i) the undersigned has no knowledge of any written notice from the State of Ohio for any unresolved finding for recovery and (ii) Contractor has performed a search under the State of Ohio Office of the Attorney General, which search concluded that as of the date hereof, Contractor 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.

**TERROR DECLARATION.** Pursuant to Ohio Revised Code Section 2909.33, unless Contractor has been pre-certified, the Contractor must complete a Declaration Regarding Material Assistance/non-assistance to Terrorist Organizations ("Declaration") in its entirety to enter into this Contract and to renew it. If the State discovers that the Contractor submitted a false Declaration to obtain this Contract or any renewal of it, the State may terminate this Contract for cause, and the State will be entitled to the damages specified in this Contract. Should this Contract require renewal for completion of any services the Contractor performs under it or for the State to obtain maintenance for any Deliverable acquired during the term of this Contract, the Contractor must submit a new Declaration as part of that process. The Contractor's failure to submit an acceptable Declaration in such a situation will entitle the State to damages as in the case of a termination of this Contract for cause.

**PUBLICITY.** The Contractor will not advertise that it is doing business with the State or use this Contract as a marketing or sales tool without the prior, written consent of the State.

**CONTROLLING BOARD AUTHORIZATION.** The State's obligations under this Contract are subject to the Ohio Controlling Board's continuing authorization to use GSA schedule contracts and negotiate state term contracts. If the Ohio Controlling Board fails to authorize or withdraws its authorization for this program, this Contract will terminate, and the Contractor may not take any more orders under this Contract. The Controlling Board's withdrawal of its authorization will not affect existing licenses, leases, warranty commitments, and maintenance obligations.

**TRAVEL EXPENSES.** Any travel or per diem required by the Contractor to do 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. All travel and per diem that the State requests in addition to what this Contract requires the Contractor to provide at the Contractor's expense will be paid in accordance with §126-1-02 of the Ohio Administrative Code.

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

**ASSIGNMENT.** The Contractor will not assign this Contract without the written consent of the State.

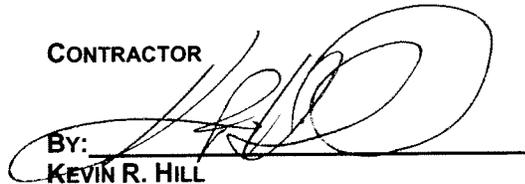
**ORDER OF PRIORITY.** If there is any inconsistency or conflict between this document and any provision of anything incorporated by reference, this document will prevail.

**ENTIRE AGREEMENT.** This Contract consists of the Contractor's Schedule Contract (see Composition of Contract Section above), this Contract document, the Contractor's state offer letter, and, if applicable, the Contractor's letter(s) designating dealers (and/or distributors), and any price lists or catalogs specifically mentioned elsewhere in this Contract. The foregoing constitutes the entire agreement between the parties, and any changes or modifications to this Contract must be in writing.

**LAW.** This Contract is governed by and will be construed under Ohio law, and venue for any dispute will be with the appropriate court in Franklin County, Ohio.

**TO SHOW THEIR AGREEMENT,** the parties have executed this Contract on the date(s) below and unless otherwise indicated is effective as of the date of signature by the State.

**CONTRACTOR**

  
BY: \_\_\_\_\_

**KEVIN R. HILL  
CLIENT EXECUTIVE  
IBM CORP**

**DATE:** \_\_\_\_\_

*6/28/08*

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

  
BY: \_\_\_\_\_

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

**DATE:** \_\_\_\_\_

*6/30/08*