

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.

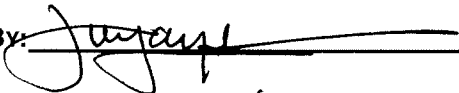
and,

(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 Lazzini

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

***BUSINESS OBJECTS SOFTWARE AND SOFTWARE MAINTENANCE
INFORMATION***

1. **RESPONSIBILITIES OF CONTRACTOR:**

- a. Contractor warrants that the Products will operate substantially in conformity with the user documentation and the reference manual(s), in whatever form recorded, supplied by Licensor with the Product ("Documentation") for thirty (30) days, and ninety (90) days for APOS software, from the date of Licensee's receipt (the "Performance Warranty Period"); and (iii) the Product physical media will be free of material defects for ninety (90) days following Licensee's receipt of the Product (the "Media Warranty Period").
- b. If Licensee detects a defect in a Product's physical media within the Media Warranty Period, Licensee may return the defective physical media to Contractor and Contractor shall replace it free of charge.

2. **PLACE OF PERFORMANCE:**

Inspection and replacement of defective software under this guarantee will be performed only at the Contractor's authorized service facility/plant at:

Business Objects Americas
3030 Orchard Parkway
San Jose, CA 95134

The ordering activity should not return defective software to the Contractor's authorized service facility for replacement without its prior consultation and instruction.

3. **TECHNICAL SERVICES:**

All technical telephone support, product upgrades and product enhancement services are provided only in conjunction with the purchase of software maintenance (SIN 132-34).

4A. **GRANT OF LICENSE:**



b. PRODUCT USE RIGHTS.

(1) NAMED USER LICENSE (“NUL”). When the Product is licensed on a Named User basis, each individual Named User must be specifically identified as the sole holder of a NUL. The sharing of the NUL by more than one individual is expressly prohibited. In addition, NUL(s) may not be transferred from one individual to another unless the original end user no longer requires, and is no longer permitted, access to the Product. NUL(s) for Business Objects Enterprise, Crystal Enterprise, Incentive Compensation Management and Add-Ons are assigned to a single Deployment, and may not be shared among different Deployments. NUL(s) for Business Objects Planning Applications (except for Incentive Compensation Management) may be used with multiple Planning Applications. In addition, a PAL is required in order to utilize a NUL with a Business Objects Planning Application.

(2) CONCURRENT ACCESS LICENSE (“CAL”). When the Product is licensed on a Concurrent Access basis, the aggregate number of end users accessing the Product at any one time may not exceed the number of CALs Licensee has obtained. CAL(s) are assigned to a particular Deployment, and may not be shared among different Deployments. When using CALs, Licensee may not utilize a program or system to cache or queue report requests.

(3) PROCESSOR OR CPU LICENSE. When the Product is licensed on a Processor or CPU basis the aggregate number of central processing units (“Processors”) running any Product components(s) (except as to the following components of Crystal Enterprise: the Web Connector, SDK, Report Publishing Wizard and report viewers) may not exceed the number of Processors or CPU licensed. A multi-core chip Processor with *N* processor cores shall be counted as *N* Processors or CPUs.

(4) SERVER LICENSE. When the Product is licensed on a Server basis, the Product may be loaded onto a single computer with up to four (4) processors or such other number of processors as set forth in an Order Schedule or Purchase Order.

(6) DEVELOPMENT LICENSE. If Licensee acquires a Development License, Licensee may use the number and type of licenses acquired only to develop or test Deployments. A Development License cannot be used in or transferred to a production environment.

(7) UPDATE LICENSE. If Licensee received the Product as an update to a previously licensed product, Licensee’s license to use the Product is limited to the aggregate number of licenses Licensee has acquired for the previous product. If Licensee chooses to use the Product and the previous product simultaneously, the aggregate number of licenses used to access the Product and the previous product may not exceed the aggregate number of licenses Licensee acquired for the previous product.

(8) PROMOTIONAL LICENSE. If Licensee received the Product as a special offer or promotional license (“Promotional License”), Licensee may only use the Promotional Licenses with a new Deployment. Promotional Licenses may not be added to or used with an existing Deployment or Project.

(9) RESTRICTED LICENSE. If Licensee acquired the Product bundled or otherwise provided in combination with or for use with a third party product (OEM Application),

Licensee has acquired a Restricted License. Licensee may use each licensed copy of the Product only in conjunction with the OEM Application with which it was provided. Accessing data that is not specifically created or used by the OEM Application is in violation of this license. If the OEM Application requires the use of a data mart or data warehouse, the Product may be used with the data mart or data warehouse only to access data created or processed by the OEM Application. If Licensee acquired Crystal Xcelsius bundled or otherwise provided in combination with Planning Applications, Licensee has acquired a Restricted License with respect to Crystal Xcelsius. Licensee may use Crystal Xcelsius only in conjunction with the Planning Applications, and accessing data that is not specifically created or used by the Planning Applications is in violation of this license. Restricted Licenses may not be combined with unrestricted licenses in the same Deployment.

(10) **EVALUATION/NOT FOR RESALE LICENSE.** An Evaluation or Not For Resale License is triggered by temporary key codes and may be used only for the number and type of licenses specified and for the period specified on the Product packaging, ordering or shipping documentation. Upon expiration of such specified period, the Products associated with an Evaluation or Not For Resale license will not function unless Licensee has obtained applicable permanent license keys. If the ordering or shipping documentation specifies a particular project, the Product may be used only with that project. An Evaluation or Not For Resale License may only be used for evaluation purposes and may not be used for production purposes. Notwithstanding any other provision of this Agreement, Products provided under an Evaluation or Not for Resale License are provided "AS-IS" without warranty of any kind, express or implied. An Evaluation License or Not For Resale License may be terminated by Licensor at any time upon written notice to Licensee.

(11) **PLANNING APPLICATION LICENSE ("PAL").** A PAL permits Licensee to install on a server a single copy of the Business Objects Planning Application(s) for which the license was acquired and to permit users with a NUL to access and use the application. A NUL must be acquired for each individual user accessing the Business Objects Planning Application.

DEFINITIONS. "Deployment" means a single installation of no more than one of the following Product modules: Repository, Security Domain, Central Management Server ("CMS") or CMS Cluster. "Project" means one or more Deployments (a) providing the same or substantially similar reports; (b) utilizing the same or a substantially similar custom application interface; or (c) used with applications consisting of related modules or components.

(12) **ANALYTIC APPLICATIONS AND DASHBOARD MANAGER.** The software components, tools and utilities supplied with an Analytic or Dashboard Manager may only be used with the product with which they were provided. In addition, the Web Intelligence utilities provided with Dashboard Manager may only be used to view the analytic templates provided with Dashboard Manager.

(13) **BUSINESSOBJECTS ENTERPRISE AND CRYSTAL ENTERPRISE.** Licensee may not combine licenses for different editions of BusinessObjects Enterprise or Crystal Enterprise in a single Deployment, (for example, Premium licenses may not be combined with Professional licenses in a single Deployment). Licensee may use BusinessObjects Professional and Crystal Enterprise Professional to publish and distribute only one of Business Objects' proprietary report format types (Crystal Reports, OLAP Intelligence/Crystal Analysis/Information Analyzer, Web Intelligence/Desktop Intelligence/ BusinessObjects). Web Intelligence and Desktop Intelligence are deemed a single proprietary report format for this purpose. If

Licensee wishes to publish and distribute more than one report format type, Licensee must acquire BusinessObjects Enterprise Premium or Crystal Enterprise Premium. Notwithstanding the foregoing, if Licensee migrates from a combined BusinessObjects and WebIntelligence Deployment to BusinessObjects Enterprise Professional, Licensee may use both BusinessObjects and WebIntelligence report types in that Deployment.

(14) **PRODUCT OPTIONS.** Options for BusinessObjects Enterprise Professional, Crystal Enterprise Professional, and Crystal Reports Server (collectively, "Underlying Application") are licensed as add-ons to a Deployment. Options may include Crystal Reports Explorer, Auditing, Publishing, Live Office, Integration Kits for third party **applications and other products designated as Options** for an Underlying Application. The number and type of Option licenses (other than Integration Kits) must match the number and type of the Underlying Application licenses in the Deployment in which the Options are used.

(15) **WEB INTELLIGENCE INTERACTIVE VIEWING.** Keycodes to Web Intelligence Interactive Viewing may unlock all features of the full Web Intelligence product. However, Web Intelligence Interactive Viewing is a limited license and may not be utilized to edit or create documents.

(16) **BUSINESSOBJECTS RAPID MARTS.** When licensing BusinessObjects Rapid Marts, a license for BusinessObjects Data Integrator must also be obtained. If BusinessObjects Rapid Marts Product are licensed with the BusinessObjects Data Integrator, an individual BusinessObjects Rapid Marts license must be obtained for each BusinessObjects Data Integrator license. Copying one BusinessObjects Rapid Marts license and then deploying it to other instances is prohibited. In addition to the foregoing, Licensee must license certain applicable application interfaces.

(17) **BUSINESSOBJECTS DATA INTEGRATOR.** If Licensee desires to deploy a Server license to access enterprise data sources such as packaged applications, mainframes, or technology infrastructure products ("Enterprise Data Sources"), Licensee must obtain individual BusinessObjects Data Integrator Interface licenses.

(18) **BUSINESSOBJECTS DATA INTEGRATOR INTERFACES.** When licensing the BusinessObjects Data Integrator Interfaces, licenses for BusinessObjects Data Integrator must also be obtained. An individual interface license must be acquired for each BusinessObjects Data Integrator license. If multiple instances of an Application, Technology, or Mainframe type are accessed by the BusinessObjects Data Integrator Interface, then one interface license must be acquired for each instance. If multiple instances of a Database type are accessed by the BusinessObjects Data Integrator Interface, then only one interface license must be acquired for that Database type. Unlike other Interfaces, Database interfaces are charged per database type and not per instance.

(19) **BUSINESSOBJECTS KNOWLEDGE ACCELERATOR.** BusinessObjects Knowledge Accelerator is licensed on a Named User basis and may be used to meet Licensee's employee training needs for the number of employees identified to Licensor ("Employees") and may not be used by or on behalf of any third party. Licensee shall purchase additional licenses equal to the number of additional or new Employees to be trained. Any customization tools included with the BusinessObjects Knowledge Accelerator Product (Global Knowledge™ OnDemand-for-Business Objects Software) shall be used only for modifying or customizing the content developed by BusinessObjects Knowledge Accelerator Product, and only by the number of instructional designers and administrators specified in the sales order. Licensee shall not modify, reverse engineer, or distribute for commercial or non-commercial use such tools, or use such tools to develop other content, including content related to other

Licensor products. Notwithstanding any other provision of this Agreement, NULs of Knowledge Accelerator may not be transferred to other individuals, even if the original user is no longer permitted access to Knowledge Accelerator. If an individual is no longer employed by Licensee, Licensee may transfer such individual's NUL to another user.

(20) **BUSINESSOBJECTS PUBLISHER.** BusinessObjects Publisher may be licensed on a: 1) Processor basis, or 2) Named User basis, where each recipient of a report generated by BusinessObjects Publisher must have a Named User license.

c. **CRYSTAL REPORTS PROFESSIONAL AND DEVELOPER.**

(1) **DESIGNER TOOLS.** The Crystal Reports report design application and utilities installed by the Crystal Reports setup program ("Designer Tools") are licensed on a Named User basis. Each copy of Crystal Reports Professional, Crystal Reports Developer and Crystal Reports Server includes one Named User license of the Designer Tools.

(2) **CRYSTAL REPORTS DEVELOPER RUNTIME PRODUCT** (Applicable to Crystal Reports Developer Only).

(i) **DEFINITIONS APPLICABLE TO CRYSTAL REPORTS DEVELOPER.**

"Client Application" means an application developed by Licensee that a) utilizes the Runtime Product, b) is installed fully on an end user's machine, with all report processing local to that machine, and c) adds significant and primary functionality to the Runtime Product.

"Internal Installation" or *"Internally Install"* means installing into production Client Applications and/or Server Applications on one or more computers within Licensee's company or organization only in connection with Licensee's internal business purposes.

"Distribution" or *"Distribute"* means selling, leasing, licensing or redistributing Client Applications and/or Server Applications to third party end users external to Licensee's company or organization.

"Runtime Product" means the version specific files and application program interfaces (APIs) specified in the RUNTIME.TXT file provided with the Product.

"Server Application" means an application developed by Licensee that a) utilizes the Runtime Product, b) allows more than one user to access the Runtime Product either directly or indirectly through any middle tier application(s), and c) adds significant and primary functionality to the Runtime Product. A Client Application installed in a Windows terminal server environment (e.g. Citrix or Microsoft Remote Desktop Platform) is a Server Application.

(ii) **USE OF THE RUNTIME PRODUCT.** Licensee may install and use a single copy of the Runtime Product to develop Client Applications and Server Applications. The Distribution and Internal Installation terms and conditions differ based on the type of applications Licensee develops, as described in the following sections.

(iii) **INTERNAL INSTALLATION OF CLIENT APPLICATIONS AND SERVER APPLICATIONS.** Licensor grants Licensee a personal, nonexclusive, limited license to Internally Install the Runtime Product with Client Applications and Server Applications.

- (iv) DISTRIBUTION OF CLIENT APPLICATIONS. Licensor grants Licensee a personal, nonexclusive, limited license to Distribute Client Applications to end users. If Licensee Distributes Client Applications utilizing the Report Creation API ("RCAPI"), Licensee must also acquire a licensed copy of Crystal Reports Developer for each third party to whom the Client Application is distributed.
- (v) DISTRIBUTION OF SERVER APPLICATIONS. Licensor grants Licensee a personal, nonexclusive limited license to Distribute Server Applications to third parties provided that a) Licensee has acquired a licensed copy of Crystal Reports Develop for each third party to whom Licensee distributes a Server Application, and b) Licensee complies with all of the terms of such license and this license agreement.
- (vii) RUNTIME PRODUCT DISTRIBUTION REQUIREMENTS. If Licensee Distributes the Runtime Product to third parties, Licensee shall comply with the following requirements:

Licensee Distributes copies of the Runtime Product solely as a part of an application that adds specific and primary functionality to the Runtime Product;

Licensee remains solely responsible for support, service, upgrades, and technical or other assistance, required or requested by anyone receiving such Runtime Product copies or sample applications;

Licensee does not use the name, logo, or trademark of Licensor, or the Product, without prior written permission from Licensor;

- d. CRYSTAL REPORTS SERVER. Crystal Reports Server may be offered on a Named User or CAL basis., Regardless of the license type, for each Deployment Crystal Reports Server may be installed and used only on a single server that has no more than four Processors. If licensed on a CAL basis, no more than 20 CALs may be used in each Deployment. Furthermore, there may be no more than one instance of each Enterprise Server in a deployment. An Enterprise Server includes the Central Management Server (CMS), Crystal Reports Page Server, Crystal Reports Cache Server, Crystal Reports Job Server, Input File Repository, Output File Repository, Destination Job Server, Program Job Server, Event Server, List of Values Job Server, Report Application Server and any other server designated as an Enterprise Server in the Documentation. You may not create or modify universes using the universe designer components, if any, included with Crystal Reports Server. If bundled with Crystal Reports Professional or Developer, Crystal Reports Server is licensed on a Promotional License basis.
- e. CRYSTAL XCELSIUS.

(1) DEFINITIONS APPLICABLE TO CRYSTAL XCELSIUS.

"Connected Presentation" means a Macromedia® Flash® application created with Crystal Xcelsius Designer that connects to an external data source.

"Self-Contained Presentation" means a presentation created with Crystal Xcelsius Designer or Crystal Xcelsius Standard or Professional that does not connect to an external data source.

- (2) CRYSTAL XCELSIUS STANDARD AND PROFESSIONAL; CRYSTAL XCELSIUS DESIGNER. The Crystal Xcelsius design application and utilities installed by the Crystal Xcelsius setup program ("Xcelsius Designer Tools") are

licensed on a Named User basis. Each copy of Crystal Xcelsius Standard, Crystal Xcelsius Professional and Crystal Xcelsius Designer includes one Named User license of the Xcelsius Designer Tools. A Named User license of these products may be installed and used on only a single computer.

(3) **CRYSTAL XCELSIUS VIEWER.** Crystal Xcelsius Viewer permits users to access, view or use Connected Presentations. Crystal Xcelsius Viewer may be licensed on a Named User or Processor basis ("Viewer License"). If Crystal Xcelsius Viewer is licensed on a Processor basis, viewing or using the Connected Presentations outside the Business Objects Enterprise environment is limited to 150 Named Users per Processor

(4) **DISTRIBUTION AND USE OF CONNECTED PRESENTATIONS.** A Viewer License is required to permit users to access, view or use Connected Presentations. Connected Presentations may be used only for users' internal business purposes and not pursuant to a commercial sale, rental, or lease of the Connected Presentations (whether alone or in combination with another program or product). The Named User who developed the Connected Presentations may access, view or use the Connected Presentations without a Viewer License.

(5) **DISTRIBUTION AND USE OF SELF-CONTAINED PRESENTATIONS.** Self-Contained Presentations may be distributed to an unlimited number of end users solely for such users' internal business purpose, provided such distribution is not pursuant to a commercial sale, rental, or lease of the Self-Contained Presentation (whether alone or in combination with another program or product).

- f. **INCENTIVE COMPENSATION MANAGEMENT.** A NUL must be acquired for each individual being tracked by the Incentive Compensation Management.
- g. **DATA QUALITY DIRECTORY.** Postal authority regulations require that Licensee utilize current directories in conjunction with the Data Quality Products. To comply with such regulations, Licensor utilizes "time bombs" mechanisms in the Products to ensure that outdated directories will not be used in conjunction with the Data Quality Products. Licensee will receive periodic directory updates as provided from time to time by the applicable postal authority. Directory Subscription fees include charges from US and international postal authorities for address information, which may include a Postal Address File fee ("PAF fees"). Any increase in the PAF fees by the applicable postal authorities will result in Licensor passing through to Licensee the additional fees for directories within thirty (30) days of the effective date of the PAF fee increase.
- i. **OUTSOURCERS.** If Licensee contracts with an Outsourcer, Licensee may permit access to, and use of, the Products by the Outsourcer, provided that: (i) the Outsourcer complies with the terms of this Agreement and accesses and uses the Products solely for purposes of rendering services to Licensee; and (ii) the total number of licenses used by Licensee and Outsourcer must not exceed the number of licenses ordered. Licensee shall be responsible for Outsourcer's compliance with the terms of this Agreement. Upon completion of Licensee's services by Outsourcer, Licensee shall certify in writing that Outsourcer has un-installed and destroyed all copies of Products within thirty (30) days of such completion of services.

4B. GRANT OF LICENSE (APOS Software):

- a. GRANT OF LICENSE. This License grants Licensee the following rights:
- (1) BUSINESS SITE. Licensee may install and use the Software Product within the business site as specified on the invoice.
 - (2) COMPUTERS. Licensee may install and use the Software Product only on the number of computers specified on the Invoice.
 - (3) NETWORK STORAGE/USE. Licensee may also store or install a copy of the Software Product on a storage device, such as a network server, used only to install or run the Software Product as per this Agreement.
 - (4) CONCURRENT USE. A License for the Software Product may only be used on the number of computers specified in the invoice, and this Agreement does allow a licensed user to install the Software Product on development and quality assurance systems, but at no time shall the Software Product be used on more than one production system, except as specifically agreed by Licensor in writing.
- b. MAINTENANCE. If maintenance has been purchased for the Software Product, Licensee is entitled to receive any upgrades without cost during maintenance term.
- d. UPGRADES. If the Software Product is an upgrade from another product, whether from Licensor or another supplier, Licensee may use the Software Product only in conjunction with that upgraded product, unless Licensee destroys the upgraded product. If the Software Product is an upgrade of an APOS product Licensee now may use that upgraded product only in accordance with this License. If the Software Product is an upgrade of a component of a package of software programs that Licensee licensed as a single product, the Software Product may be used only as part of that single product package and may not be separated for use on more than one computer.
- e. TRANSFER OF LICENSE. Provided Licensor is given advance notice, Licensee may permanently transfer all rights under this License, provided Licensee retains no copies, Licensee transfers all of the Software Product (including all component parts, the media and printed materials, any upgrades and this License), and the recipient agrees to the terms of this License. If the Software Product is an upgrade, any transfer must include all prior versions of the Software Product.
- i. APOS SUPPORT SERVICES. Customers will be able to receive technical support services from APOS every Monday - Friday, 8:30AM - 5:00PM EST, statutory holidays excepted. Customers can obtain support by email at support@apos.com or by calling 519-653-2767 ext 1.

For SEV1 support issues linked to a problem with the APOS technology, an Emergency Resolution Meeting (ERM) will be required within (4) hours of notification to APOS of the SEV1 status of the support issue. The ERM will outline a plan for getting to resolution of the SEV1 issue. This meeting will include the Director/VP of Engineering and the CEO of APOS. Resolution is required within (1) week of the SEV1 being logged with Contractor..

For all other SEV matters, a Resolution Meeting (RM) will occur within (48) hours so that a resolution plan gets set in motion. Resolution is required within (3) weeks of the SEV being logged with Contractor.

7. SOFTWARE MAINTENANCE (SUPPORT SERVICES):

- a. Standard, Planning, 7-Day Project, Corporate, Elite or Premium Software Maintenance (Support Services) includes:

Standard

- Provides support during local Licensor support center office hours in the region where licenses were purchased (8:00 a.m. to 6:00 p.m. CST for Data Quality Products)
- Gives Licensee flexibility to log its cases via the Online Customer Support web site or telephone
- Three Named Contacts
- Unlimited cases per year
- Receive Updates

Planning

- Provides support from 6:00 a.m. to 5:00 p.m. Pacific time (US); 9:00 a.m. to 5:00 p.m. CET (Europe); 9:00 a.m. to 6:00 p.m. Singapore time (Asia Pacific)
- Gives Licensee flexibility to log its cases via the Online Customer Support web site or telephone
- Support provided to any Business Objects Planning Applications trained user
- Installation support (telephone or e-mail)
- Support of personalizations provided by Licensor
- Unlimited cases per year
- Receive Updates

7-Day Project

- One (1) 7 consecutive day term commencing from the date of activation
- Expires 12 months after date of purchase.
- May be activated only if Licensee has subscribed to Standard Support and is then current on all applicable Standard Support fees
- Provides telephone support for production down (Severity 1) issues 24 x 7 x 7 for licenses in use within the region where they were purchased (escalation to product group and code testing and fixes will be supplied during local office hours for the applicable product group)
- Gives Licensee flexibility to log its cases via telephone
- Certain Products are excluded

Corporate

- Provides support during local Licensor support center office hours in the region where licenses were purchased

- Provides interactive support for production down (Severity 1) issues 24 x 7 x 365 for licenses in use within the region where they were purchased (escalation to product group and code testing and fixes will be supplied during local office hours for the applicable product group)
- Gives Licensee flexibility to log its cases via the Online Customer Support web site or telephone
- Four Named Contacts
- Unlimited cases per year
- Receive Updates

Elite

- Provides support during local Licensor support center office hours in the region where licenses were purchased
- Provides emergency support for production down (Severity 1) issues 24 x 7 x 365 for licenses in use within the region where they were purchased
- Gives Licensee flexibility to log its cases via the Online Customer Support web site or telephone.
- Provides personalized service through a team of Elite Support engineers
- Provides Licensee with a weekly status report of all case activity for the prior week (for Licensee's primary contact)
- Six Named Contacts
- Unlimited cases per year
- Receive Updates

Premium

- Provides support during local Licensor support center office hours in the region where licenses were purchased
- Provides emergency support for production down (Severity 1) issues 24 x 7 x 365 for licenses in use within the region where they were purchased
- Gives Licensee flexibility to log its cases via the Online Customer Support web site or telephone.
- Provides personalized service through a group of Premium Support engineers
- Provides a Technical Account Manager who will make regular site visits as well as conduct a review of Licensee's environment and make recommendations as needed
- Priority response to all cases
- Provides Licensee with a weekly status report of all case activity for the prior week (for Licensee's primary contact)
- Provides Licensee with access to self-service online reporting tool (for up to three of your nine named contacts)
- Nine Named Contacts
- Unlimited cases per year
- Receive Updates

b. The following terms and conditions relate to Software Maintenance (Support Services) for Licensor Products.

- (1) Unless otherwise set forth herein, to receive Support Services, Licensee must be current (paid in full) on all Support Service fees.
- (2) After commencement of Support Services, should the Licensee's Support Services ever be permitted to lapse and Licensee then desires to reinstate Support Services, (i) Licensee shall pay a Support Services reinstatement fee (the "Reinstatement Fee") in addition to the Support Services fee applicable how is that calculated?; and

(ii) the start date for the reinstated period shall be the effective date set out in the relevant Purchase Order. The Reinstatement Fee shall be (i) payable prior to Licensor's acceptance of the Support Services reinstatement, (ii) calculated at the then current rates must be sts rates or we can not pay, and (iii) equivalent to one twelfth (1/12) of one full year's worth of Support Services fees times the number of full or partial months between the last day of Support Services under the previous Support Services relationship and the reinstated Support Services.

c. Licensor's obligations with respect to Maintenance (Support Services) shall be:

- (1) Assistance support includes assistance and workarounds for resolving known problems, to individual(s) designated by Licensee (and only to such individual(s)) in the event that Licensee experiences Documentation or Product related issues. The particulars of this assistance depend upon the level of service to be supplied;
- (2) Maintenance support, including replacements of Product in order to correct programming errors, if required in the judgment of Licensor to enable the Product to perform substantially in conformity with published specifications that accompany the Product; and
- (3) Provision of Updates when they are generally available to licensees that have paid for Support Services and are in compliance with Support Service policies. Updates may include program error fixes and/or enhancements. Updates do not include new products or features for which Licensor generally charges a separate fee.
- (4) Licensor is under no obligation to provide Support Services to Licensee with respect to (i) any Products altered or modified by Licensee or third parties, (ii) restoration of lost data, (iii) third party software or applications being used in conjunction with the Products, (iv) Products not operated on Licensor certified operating environments ("COE") or operated in a manner inconsistent with its documentation or license use terms, (v) computer hacking, security breaches, or illegal or unauthorized access to software products, servers, or computer systems, (vi) installation, consulting or customer training, any of which may be obtained by Licensee at Licensor's then current rates, on an as-available basis; (vii) modification, integration, installation, or configuration of the Product to run with new versions of the operating system, database, middleware or models of hardware installed by Licensee; or (viii) responding to Licensee's support calls if Licensee fails to provide sufficient information, as reasonably requested by Licensor, to enable Licensor to identify, reproduce and analyze the reported problem. Support Services do not cover the maintenance and/or service of any machines, computer hardware or equipment.
- (5) As used in Section (c)(3) of this section An "Update" means: (i) a "Major Release" that includes architectural changes and may be identified by a change of the first digit of the release numbering, (ii) a "Minor Release" that includes improvements and bug corrections and may be identified by a change of the second digit of the release numbering, or (iii) a "Maintenance Release" indicating a bug correction release and may be identified by a change of the third digit of the release numbering; in each case, when generally provided on an upgrade basis without additional charge to Product licensees who are current subscribers of Support Services. "Updates" shall not include any new products, features, or enhancements for which Licensor generally charges an additional fee (including to subscribers of Support Service). For each Major Release, Licensor shall offer Maintenance and Interactive Assistance support for a period of thirty (36) months from the date of first general commercial availability.
- (6) Once Licensor provides Licensee with the Latest Release, Licensee may continue to use the licenses for the previous version of the Product, or may replace some or all of

the copies of the previous versions of the Product with the Latest Release. In any event, at any moment in time the cumulative total number of licenses (previous version and Latest Release, combined) installed and in use may not exceed the cumulative number of licenses purchased by Licensee.

- (7) Licensee's obligations shall be: (i) designation and training of individual(s) who shall ordinarily be the sole contact with Licensor; (ii) installation of the Latest Release of Product and only on a Licensor certified operating environment; (iii) notification to Licensor of any malfunction, programming error or other problem in accordance with procedures furnished by Licensor; and (iv) prompt destruction of all materials (software and Documentation) related to earlier versions of Product and copies thereof when Licensee implements the Latest Release.
- (8) Licensor reserves the right to end-of-life a particular Product. In this event, Licensor shall notify Licensee of the Product end-of-life decision. Subject to the terms of this Agreement, Licensor will provide, for a Product declared end-of-lifed, six (6) months of maintenance support (as defined above) and twelve months of assistance support (as defined above), from the declared end-of-life date, provided however that any such maintenance and assistance support shall be provided solely with respect to the Latest Release of the product declared end-of-lifed.
- (9) Licensor expressly reserves the right to correct any errors in the Latest Release of the Product.

CORDA SOFTWARE AND SOFTWARE MAINTENANCE INFORMATION

1. GUARANTEE/WARRANTY:

2. TECHNICAL SERVICES:

All Corda Software related technical support and maintenance are provided on an annualized basis and only in conjunction with the purchase of a Corda Software Support Offering. Contractor, without additional charge to the ordering activity, provides a Corda hot line technical support number (801-805-9505) for the purpose of providing normal and reasonable levels of user assistance and guidance in the implementation of the Corda Software.

4. GRANT OF LICENSE:

- a. **NUMBER OF LICENSED MACHINES.** Unless the ordering activity has purchased a multiple copy license, the ordering activity is authorized to use a single copy of the Software on a single Licensed Machine. If the ordering activity has purchased a multiple copy license, the ordering activity is authorized to use the number of copies for which it has paid, each on a single Licensed Machine. If this License is for a Corda Builder product, the term "Licensed Machine" means a stand alone computer owned or leased by the ordering activity. Once the Software has been installed on a Licensed Machine, it may be used on another machine only if it is first completely removed from the first machine.
- b. **COMMERCIAL CORDA BUILDER PRODUCTS.** If this License is for a Commercial Corda Builder product, the ordering activity is authorized to use the Software to construct

graph or map definitions or templates (appearance files) for 1) deployment with PopChart, OptiMap and/or Highwire servers provided that the ordering activity use of the relevant application conforms in all respects with the terms and conditions of the license pursuant to which it is authorized to use it; and/or 2) publishing of graphs, maps or PDF documents using Corda Builder. The ordering activity is only authorized to use a Corda Builder product to create definitions or templates (appearance files) for the use by persons who have a valid license for PopChart, OptiMap and/or Highwire server and/or Corda Builder in accordance with licenses covering those applications. The graphs, maps and/or PDF files generated by PopChart, OptiMap and/or Highwire server and/or Corda Builder are freely distributable.

- c. **EVALUATION VERSION.** If the License is for an evaluation version of any Corda software, the ordering activity is authorized to use the Software only for evaluation purposes for a single evaluation period not to exceed 30 days from shipment. Should the ordering activity require an evaluation period exceeding thirty (30) days, it may contact Licensor or its licensors for an extended evaluation license. Graphs, charts or maps produced by Software configured with an evaluation version must contain symbols and text provided by Corda indicating that the graph, chart or map was produced with an evaluation version of the Software. The ordering activity is not authorized to obtain more than one license for an evaluation version of any Corda software by subsequent downloads or installations.
- d. **DEVELOPER VERSION.** If the License is for a Developer version of any Corda software, the ordering activity is authorized to use the Software only for internal development and testing purposes and not for general use on the Internet, an intranet or any application which is accessible to those other than the developers creating an application or those who are directly approving an application as it is developed. All Server-based Developer software is limited to and licensed for the creation of no more than 1,000 charts or maps or no more than 500 Highwire documents during any single day.
- e. **STAGING/TESTING/PRE-PRODUCTION LICENSE.** If the License is for a Staging/Testing/Pre-Production version of any Corda software, the ordering activity is authorized to use those licensed copies of the Software only for internal staging/testing/pre-production purposes and not for general use on the Internet, an intranet or any application which is accessible to those other than the developers testing an application or those who are directly approving an application as it is tested. No restrictions on the number of charts, maps or Highwire documents is made for a Staging/Testing/Pre-Production version of the software. Staging/Testing/Pre-Production Licenses are limited to the number of servers and CPU's licensed by the ordering activity for full use hereunder.
- f. **CPU LICENSE.** If the license is for a server product, this license restricts the use of the software to the number of CPU licenses bought with/for the software. Absent a purchase of additional CPU rights, this software may be used only on a computer containing two (2) or fewer CPU's. One CPU license is required for each CPU of the server(s) running the software. Additional CPU licenses can be purchased from Licensor or its licensors. Regardless of where or how the software is loaded, all CPU's that serve up output from the software must be licensed.
- g. **PUBLIC INTERNET LICENSE.** If this license is for a server product, this license does not permit the use of the software on the public internet unless a Public Internet License is purchased from Licensor or its licensors.
- h. **APPLICATIONS SERVICE PROVIDER.** This license does not permit the ordering activity to utilize the Software as all or a part of an Applications Service Provider (ASP) service offering whereby the ordering activity provide web-based software and hosting of

that software for use by third parties for a fee. Licensor or its licensors offers Corda ASP licenses under a separate ASP License Agreement.

5. SOFTWARE RESTRICTIONS:

- d. **MULTIPLE MEDIA.** If the ordering activity receives the Software and related documentation in more than one medium, this License applies only to the medium that is appropriate for the licensed machine on which the Software is to be installed. The ordering activity is not authorized to install, use, or transfer any other media.
- e. **UPGRADES AND UPDATES.** If the Software and related documentation are provided as an upgrade patch or update to an earlier licensed version of the Software, the ordering activity must have a valid license to operate the earlier release of the same version and edition as the upgrade or update to install or use the upgrade or update. All software being upgraded or updated is deemed to be part of the Software and is subject to this License. In the event that the ordering activity upgrades any Software, it agrees that, within thirty (30) days that it will remove all prior versions of the Software so that it does not have more than the appropriate number of licensed copies of the Software, regardless of version, installed on the ordering activity computer(s). This thirty (30) day transition period is for the sole purpose of allowing configuration and testing of the new release while still operating the prior release in a production environment. Nothing in this License shall be construed to obligate Licensor or its licensors to provide upgrades or updates to the ordering activity under any circumstances.

6. SOFTWARE MAINTENANCE SUPPORT OFFERINGS:

A maintenance agreement provides ordering activities with support and free upgrade services for all of their products during the period of maintenance purchased. The purchase of Corda's CenterView dashboard product includes a 45 day maintenance agreement and Corda's PopChart, OptiMap and Highwire products includes a 30 day maintenance agreement.

After the specified days per product, ordering activities can purchase additional annual maintenance. Maintenance support includes:

- Free new versions of Corda products they own
- Free updates, minor releases, and bug fixes
- Fast answers to questions about general usage, installation, and configuration
- Priority E-mail access
- Priority toll-free phone access (in USA and Canada only)
- Unlimited technical support via email or telephone available Monday through Friday, 8am - 5pm MST (excluding Corda recognized holidays).

EMC SOFTWARE AND SOFTWARE MAINTENANCE INFORMATION

1. RESPONSIBILITIES OF CONTRACTOR:

- a. LIMITED WARRANTY.

- (1) MEDIA AND DOCUMENTATION. Contractor warrants that if the media or documentation are damaged or physically defective at the time of delivery of the first copy of the Software to Licensee and if defective or damaged product is returned to Contractor (postage prepaid) within thirty (30) days thereafter is 30 days long enough? This is ok, then Contractor will provide Licensee with replacements at no cost.
- b. Software is provided "AS IS" and is not warranted to meet any requirement or the Software will be uninterrupted or error free. Contractor will not be liable or responsible for lost data. Is this paragraph ok? No. good catch.

2. PLACE OF PERFORMANCE:

Inspection and replacement of defective software under this guarantee will be performed at the Contractor's authorized service facility/plant at:

EMC Corporation
Open Storage Software
2350 West El Camino Real
Mountain View, CA 94040

The Ordering activity should not return defective software to the authorized service facility for replacement without its prior consultation and instruction.

3. TECHNICAL SERVICES:

All technical telephone support, product upgrades and product enhancement services are provided only in conjunction with the purchase of software maintenance (SIN 132-34).

4. SOFTWARE MAINTENANCE:

- a. Software maintenance services available to the ordering activity are available as Priority Maintenance. Updates are only provided to the ordering activity's authorized administrative contact.

For all products Priority Maintenance is provided at a 100% discount for the first year after date of receipt of products; thereafter Priority Maintenance may be renewed on an annual basis. "Maintenance", as discussed herein includes both Technical Support and Updates.

- b. Remote technical support provided by Licensor's technical engineers ("Technical Support") will be provided for up to five of Licensee's Authorized Support Contacts. Additional Authorized Support Contacts may be added per the fees set forth in the Pricelist for such additional Authorized Support Contacts. On-site support at the ordering activity's location is available as a Supplemental Support Service.

(iii) TECHNICAL SUPPORT. Licensor will use commercially reasonable efforts to provide Technical Contact(s) with Technical Support consisting only of telephone assistance, fixes, access to web-based self-help and other web-based resources. Technical Support will be provided to Authorized Support Contacts for new Severity 1 Cases 24x7, seven days a week, 365 days a year. Severity 1 Problems must be reported via telephone. Technical Support assistance will be provided to Technical Contacts for Severity 2, Severity 3 and Severity 4 Problems during regular business hours on Licensor's Business Days. Licensee is entitled to two days of prescheduled After-Hours Support annually.

(iv) PRIORITY MAINTENANCE Service Level Objectives. During the Maintenance Term, Licensor will use commercially reasonable efforts to meet the following service level objectives and response times.

Severity	Definition	Designated Support Engineer	Relief Target
P1:	<p>Severe problem preventing customer or workgroup from performing critical business functions.</p> <ul style="list-style-type: none"> Production data corruption (data loss, data unavailable) Production System crash or hang. Production Systems significantly impacted Production Systems and/or data is at high risk of potential loss. Production System workaround is required immediately 	<p>Direct Connect to Designated Support Engineer or submit case online (During peak hours, holidays or after hours expect 1 hour)</p>	<p>Continual relief effort applied around the clock. (Attempt to provide relief within 1 business day)</p>
P2:	<p>Customer or workgroup able to perform job function, but performance of job function degraded or severely limited.</p> <ul style="list-style-type: none"> Production System adversely impacted Non-Production data corruption (data loss, data unavailable) Non-Production System crash or hang Non-Production System and/or data is at high risk of potential loss or interruption Non-Production System workaround is required Development system(s) is inoperative 	<p>2 Business hours*</p>	<p>Continual relief effort applied during normal business hours. (Attempt to provide relief within 5 business days.)</p>

P3:	Customer or workgroup performance of job function is largely unaffected Production or development system has encountered a non-critical problem or defect and/or questions have arisen on product use.	4 business hours*	Relief effort applied during normal business hours. (Attempt to provide relief within 10 business days.)
P4:	Minimal system impact; includes feature requests and other non-critical questions No customer business impact Requests for Enhancements	12 business hours*	Relief effort applied as required. (Attempt to provide relief within 20 business days.)

*Business hours are defined by customary local hours

e. SUPPLEMENTAL SUPPORT SERVICES. All prices for Supplemental Support Services are incremental to Priority Maintenance and require Priority Maintenance.

(i) DESIGNATED SUPPORT ENGINEER. Designated Support Engineer extends your Priority Support, a pre-requisite for this Supplemental Support Service, by adding the following features:

- A Designated Single Point of Contact. All product-specific, support cases are routed to your assigned Designated Support Engineer (Primary or Alternate). Designated Support Engineers are highly experienced, senior-level technical staff. A low ratio of 4 Customers to 1 Designated Support Engineer allows us to develop detailed knowledge of your applications, environment and project plans as they relate to the specific product being supported.
- Specialized product expertise. The assigned Designated Support Engineer is available to provide in-depth, technical expertise for the specified product line in the customer's environment (i.e. EmailXtender, AutoStart, NetWorker, etc.). If customers require a focus on multiple product lines, they can do so by purchasing an additional Designated Support Engineer for each area of product expertise required.
- Coverage Period. The Designated Support Engineer is generally available during customer normal work hours (usually 08:00 – 17:00), Monday through Friday, (excluding local holidays). Customer may request some deviation to the normal work hours, which Contractor will try to accommodate.
- Up to Four Authorized Support Contacts are entitled to submit cases under the Designated Support Engineer program. The Authorized Support Contacts are in addition to the five contacts authorized to submit cases under Priority Support. Authorized Support Contacts for the Designated Support Engineer are available in increments of 4 contacts within the same product line. If more than 4 Authorized Support Contacts are required to call a Designated Support Engineer, customer must purchase an incremental Designated Support Engineer for that product line. The four authorized support contacts may be located at multiple customer sites in various time zones but Designated Support Engineers will only be available based on their resident time zones. If customer requires local time zone coverage for multiple sites, then you may be required to purchase multiple Designated Support Engineers to provide support based on those local times zone needs.

- * Scheduled Business Reviews: Your Designated Support Engineer will schedule a business review every six months to discuss upcoming product releases, review support activity, and anything else related to support for your Content Management or Storage Software deployment.
 - * Guidance on New Releases and Products. Your Designated Support Engineer will proactively notify you of upcoming releases of your products, work with you to determine which releases offer relevant improvements and assist in developing migration plans.
- (ii) PRIORITY ONSITE SUPPORT. Priority Onsite Support extends your Priority Support program, a pre-requisite for this Supplement Support Service, by adding the following features:
- * Onsite support upon request: Customers can request an Contractor's EMC software support engineer to travel to their production site to continue to resolve an existing business critical (P1) production system issue. Contractor commits to having a support engineer onsite within forty-eight (48) hours from notice.
 - * Onsite support assistance available up to 4 times per year: Customers can request up to 4 onsite support visits per year for critical (P1) production system issues after purchasing the Priority Onsite Support program. Onsite support visits are valid for one year after the purchase date. Additional onsite support requests are available for an incremental fee. Any remaining on-site support visits expire at the end of the Priority Onsite Support annual agreement.
 - * Coverage Period. The Priority Onsite Support engineer is generally available 24x7, excluding local holidays. For other than normal working hours of 08:00 – 17:00, customer shall let Contractor know the desired time of support and Contractor shall reasonably try to accommodate customer's request.
 - * Onsite support until relief is provided: The Contractor EMC software support engineer will remain onsite troubleshooting the business critical (P1) production system issue until one of the following events occurs:
 - o A solution or workaround has been provided to resolve the production system issue.
 - o The customer's production system is operational and the customer is able to perform business critical operations that pertain to the Content Management or Storage Software solution.
 - o The issue has been isolated as one that does not involve the Content Management or Storage Software solution.
 - o The customer has not committed to provide or Licensor the appropriate access resources at their production site.
 - o Customer and support engineer mutually agree the issue no longer requires onsite presence by Contractor or Licensor to continue resolving the production system issue.
 - * Priority access to other senior technical resources at EMC's Content Management and Storage Software support facilities while onsite, including priority access to Engineering if hot fixes are required to resolve critical bugs you encounter.
- (iii) ONSITE SUPPORT ENGINEER. Our Onsite Support Engineer program is designed to supplement customers' in-house staff with a specialized, technical expert who will

reside at your location for up to one year. This onsite supplemental service expands your Priority Support program, a pre-requisite to the Onsite Support Engineer program, by adding:

- * A Dedicated Single Point of Contact Onsite. All product-specific, support cases are routed to your assigned Onsite Support Engineer who resides at your designated location. Onsite Support Engineers are highly experienced, senior-level technical staff focused on providing in-depth, product expertise.
 - * Specialized product expertise onsite. The Onsite Support Engineer is available to provide technical expertise for the specified product line in the environment (i.e. EmailXtender, AutoStart, NetWorker, etc.). The Onsite Support Engineer is available to focus on the specified product line for up to one year. If customers require a focus on multiple product lines, they can do so by purchasing an additional Onsite Support Engineer for each area of product expertise required at the customer's location.
 - * Coverage Period. The Onsite Support Engineer is generally available 5x9, during customer normal work hours (usually 08:00 – 17:00, Monday through Friday, excluding local holidays. Customer may request some deviation to the normal work hours which Contractor will try to accommodate.
 - * Priority access to other senior technical resources at EMC's Content Management and Storage Software support facilities through your Onsite Support Engineer, including priority access to Engineering if hot fixes are required to resolve critical bugs you encounter.
 - * Scheduled Business Reviews: Your Onsite Support Engineer will, every six months, lead and discuss upcoming product releases, review support activity, and anything else related to support for your Content Management or Storage Software deployment.
 - * Guidance on New Releases and Products. Your Onsite Support Engineer will be available to proactively notify you of upcoming releases of your products, work with you to determine which releases offer relevant improvements and assist in developing migration plans.
- (iv) AFTER-HOURS SUPPORT. After Hours Support is ideal for customers who have projects such as upgrades and implementations scheduled to occur outside of normal business hours. It enables the customer to proactively engage the support organization to evaluate its existing migration, upgrade or implementation plans to avoid any potential issues/challenges, validate its testing and to review backup/restore procedures.

To request After-Hours Support, submit a technical support case detailing your project and the resources and skill set(s) needed. Include configuration information and migration plans.

A minimum of two weeks advance notice is required to ensure availability.

Systems containing custom code/applications may also require Developer Support. It is required that you perform a successful pre-upgrade/migration test, provide a written plan and have a verified backup and recovery procedure in place.

5. GRANT OF LICENSE:

- d. **UPDATES.** This section applies if the Software acquired is an update to the original Software (the "Update"). An Update does not constitute a legally licensed copy of the Software unless purchased as an Update to a previous version of the same Software. The Update may only be used in accordance with the provisions of this Agreement. The Update, together with the original Software, constitute one (1) legally licensed copy of the Software.
- e. **EVALUATION LICENSE.** This Section applies if the Software is being used for an initial thirty (30) day evaluation period. The license is valid only for a period of thirty (30) days from the delivery of the Software, and is designed to allow Licensee the right to evaluate the Software during such period. In the event that Licensee desires to enter into a longer-term license agreement with Licensor, Licensee shall obtain an appropriate Enabler and Authorization Code, upon payment of applicable fees, which authorizes use of the Software after such evaluation period, but only subject to all of the terms and conditions of this Agreement. In the event Licensee determines not to enter into a licensing transaction with Licensor at the end of such thirty (30) day evaluation period, then Licensee's rights under this Agreement shall terminate automatically and Licensee shall promptly return to Licensor or destroy all copies of the Software and so certify to Licensor.

6. ADMINISTRATION OF SOFTWARE:

- a. **SOFTWARE ACTIVATION.** Licensor employs Enabler Codes and Authorization Codes that enable the use of the Software. The Software is shipped in a "Media Kit" which consists of object code software on CD-ROM and an Enabler Code for initial activation of the Software or the Software and Enabler Code may be delivered electronically. Once Licensor receives confirmation from Licensee that the Enabler Code is installed and is provided with the host ID information, Licensor will provide the Authorization Code to Licensee. Licensor administers the generation and distribution of Enabler and Authorization Codes, which administration may be modified by Licensor from time to time.

FUJITSU SOFTWARE AND SOFTWARE MAINTENANCE INFORMATION

1. WARRANTY:

See Appendix C for Contractor warranty – where is Appendix C?. Software that is initially pre-loaded by FNC into a network element equipment component or provided by FNC to be downloadable into a network element equipment component once deployed in the ordering activity network is defined as the applicable operating software for that equipment. NETSMART 1500 software is not loaded or downloaded into a network element equipment component so it is defined as application software. NETSMART 1500 software is used for network element management and provisioning.

2. TECHNICAL SERVICES:

Certain technical services applicable to FNC software are described in the Pricelist Section. Other technical services may be available outside the scope of this contract from Contractor or Authorized Government Resellers.

3. SOFTWARE MAINTENANCE:

- a. **GENERAL DESCRIPTION.** Maintenance service for FNC's Element Management System (EMS) software, NETSMART 1500, is available on an annual basis.

Annual maintenance plans (Bronze, Silver, or Gold, see Plan Description Table below) provide differing levels of support for the software. The annual cost of a plan is based on the level of support chosen (Bronze, Silver, or Gold) and the number of network elements (NEs) being maintained under the chosen plan. The applicable services included in each plan are described in the Plan Description Table below. Internet web access is provided so Customer can obtain Service Patches. A "Service Patch" is a periodic modification to the software to fix or provide a means to work around errors or design shortcomings, decrease failure rates, or make other adjustments to the software determined to be necessary to enable the software to perform in accordance with FNC's specifications for the version of such software then being used by Customer. By providing Service Patches, Contractor is not liable for any increase in equipment capacity that may be necessary to run the modified software.

- b. **FACILITY AND PERSONNEL ACCESS.** If Customer purchases EMS maintenance service Customer will grant access to Customer's facilities and personnel concerned with the operation of the software at mutually agreed upon times to enable service to be provided. If a trip to Customer's facility is one of the on-site visits referred to in the Plan Description Table for the applicable plan chosen by Customer and access to the equipment or software is not provided, such visit shall still count as one of the on-site visits applicable to the selected plan.
- c. **PERFORMANCE TO FNC SPECIFICATIONS.** If Customer purchases EMS maintenance service and Customer believes the software is not performing in accordance with FNC's applicable specifications Customer will promptly notify Contractor and provide as much information as possible, including but not limited to server configuration and file allocations, database structure and listings, and any other data or information that may be reasonably requested in order to reproduce operating conditions similar to those present when the error occurred.
- d. **PRODUCT INSTALLATION AND PERFORMANCE.** If Customer purchases EMS maintenance service, Customer agrees that if it requests an on-site visit to address a performance problem with the software and it is determined that such problem is due to Customer's noncompliance with the operating parameters and performance optimization recommendations set forth in the "Installation Guide" for the software, a copy of which will be provided to Customer, such on-site visit will be billable at Contractor's then current charges.
- e. **SERVICES NOT COVERED BY MAINTENANCE FEE.** If Contractor determines (i) Customer or a third party has, or has attempted to, modify the software, or (ii) any database contained in the software, or any database that the software interfaces with, has been corrupted due to Customer's or an unauthorized third party's attempt to directly access or update such database using a means other than performing such update

through use of the software's application interface, all services performed by Contractor will be billable to Customer at Contractor's then current STS rates. Customer will be solely responsible for the corruption of any such database. Also, maintenance of the application server that the NETSMART software resides on and the operating system software applicable thereto is not covered under the maintenance plans described in the Plan Description Table but may be available outside the scope of this contract.

- f. **TERMINATION OF MAINTENANCE SERVICE.** Contractor may terminate maintenance services (a) upon termination of the right to use license applicable to the software covered under the maintenance plan or (b) if Customer (including its employees or agents) violates the provisions of the terms herein or the applicable software license and Customer fails to cure such violation to Contractor's or Licensor's satisfaction.

Plan Description Table

Features or Service	Bronze Plan	Silver Plan < 50 NEs	Silver Plan 50 + NEs	Gold Plan < 50 NEs	Gold Plan 50 + NEs
Unlimited 7/24/365 Telephone Support	Yes	Yes	Yes	Yes	Yes
Monthly Call Reports	No	Yes	Yes	Yes	Yes
Software Site Install & Site Visit(s)	No	1 Install No Site Visit	1 Install 1 Site Visit	1 Install No Site Visit	2 Install 2 Site Visits
E-Mail Notification	Yes	Yes	Yes	Yes	Yes
Web Site	Limited	Yes	Yes	Yes	Yes
Software Upgrades	10% Disc.	10% Disc.	10% Disc.	Yes	Yes
Optional Modules	No	No	No	10% Disc	10% Disc

4. GRANT OF LICENSE:

- a. **GRANT OF LICENSE.** Licensor or its licensors licenses FNC object code versions of software and both equipment and software documentation (the "Licensed Products") to Customer solely for Customer's internal use.

b.

FORTRESS SOFTWARE AND SOFTWARE MAINTENANCE INFORMATION

1. WARRANTY:

- b. **WARRANTY PERIODS.** For ninety (90) days from date of receipt, Contractor warrants that the Media supplied which contains the Fortress Branded Software due to defects in materials and workmanship when properly installed and used on the Hardware designated by Fortress.

Contractor further warrants, for a period of one (1) year from date of receipt, that Software shall substantially conform to Specifications in effect on the ship date of the Products.

Replacement Products will be warranted for the remaining warranty period of the original Products.

4. GRANT OF LICENSE:

Customer may not transfer the software to another party except with Licensor's written permission.

HELINET SOFTWARE AND SOFTWARE MAINTENANCE INFORMATION

INFOBLOX SOFTWARE AND SOFTWARE MAINTENANCE INFORMATION

1. WARRANTY:

2. TECHNICAL SERVICES:

- a. **SOFTWARE UPDATES.** For a period of 90 days after receipt by Contractor, Contractor shall provide Updates for the Software that are generally released by Infoblox during such period. Warranty services do not include Upgrades. Customer must purchase maintenance support in order to receive Upgrades or to receive Updates after the 90 day warranty period.

b. ACCESS TO WEB SUPPORT. For a period of 90 days after shipment by Contractor, Customer may access the self-service web portal at support.infoblox.com for Product installation and configuration assistance.

c. All other technical service are only available under Software Maintenance Special Item Number 132-34.

3. SOFTWARE MAINTENANCE:

Software Maintenance includes upgrades to the latest software version of all covered applications, including all corrections, minor changes, and major enhancements.

4. GRANT OF LICENSE:

IRONPORT SOFTWARE AND SOFTWARE MAINTENANCE INFORMATION

1. WARRANTY:

4. GRANT OF LICENS):

a. LICENSE. Licensor or its licensors hereby grants ordering activity a non-exclusive, non-transferable, non-sublicensable I'm confused about the licensing; in some places we deleted licensing; in some places they grant a revocable license; here it is something different. Are we ok with the inconsistencies ok because licensing rights are determined by the specific product being offered? They are offering software from multiple vendors with various license terms and conditions. I tried to delete those that conflicted.

ISILON SOFTWARE AND SOFTWARE MAINTENANCE INFORMATION

1. WARRANTY:

3. SOFTWARE MAINTENANCE:

a. SERVICES AND SUPPORT PACKAGE. Customer will be provided the technical support and maintenance services ("Services"), for the following support packages selected by the Customer ("Support Package"):

Gold Support

Platinum Support

1 Year Patches/Fixes Minor Upgrades Next Business Day Response	1 Year Patches/Fixes Minor Upgrades 4 Hour Response
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COVERED PRODUCTS. Contractor will provide the Services solely for the eligible products set forth in Exhibit B that are purchased by or licensed to Customer from Contractor (“Covered Products”).

SERVICE MODIFICATIONS. Contractor reserves the right to add, change, or delete available Services or Support Packages for certain hardware or software platforms and configurations in its reasonable discretion upon 90 days written notice. If Contractor r deletes an entire Support Package at any time during the term of this Agreement, Contractor will refund to Customer a pro rata portion of the Annual Fee paid by Customer for the portion of applicable Services not rendered for the remainder of the term due to the deletion of the Support Package.

- b. **MAINTENANCE RELEASES, SOFTWARE UPDATES, AND SOFTWARE UPGRADES.** “Maintenance Release” is a set of related or unrelated bug fixes that Licensor makes generally available to customers who have purchased a Support Package that includes Maintenance Release Services. Maintenance Releases are typically labeled with a change in the version number after the second decimal (e.g. 1.0.0 to 1.0.1), although not each change may be deemed to be a Maintenance Release.

For as long as Maintenance Release Service is in effect under the Support Package selected by Customer (as specified in Exhibit A), Contractor will make available Maintenance Releases for the version of the software included in or with Covered Products (“Covered Software”), until the release of the next Software Upgrade. Maintenance Releases will be deemed Covered Software upon release to Customer, and Customer’s access and use of Maintenance Releases will be subject to the same license terms as applicable for the Covered Software.

“Software Updates” are improvements, bug fixes, error corrections, and patches that may include minor new features but not architectural changes or major new features, which Licensor makes generally available to customers of a Support Package that includes Software Update Service. Software Updates are typically labeled with a change in the version number after the first decimal (e.g. 1.0 to 1.1), although not each change may be deemed a Software Update.

If Software Update Service is in effect under the Support Package selected by Customer, Contractor will make available Software Updates for the Covered Software, until the next Software Upgrade. Software Updates will then be deemed Covered Software, and Customer’s access and Customer’s use of the Software Updates will be subject to the same license terms as applicable for the Covered Software.

“Software Upgrades” are new software releases, versions, modules, or feature sets that may include new features, architectural changes, and quality improvements that allow the Customer to upgrade from one version of Licensor’s software to the next version (e.g., 1.0 to 2.0).

Software Upgrades will be made available to only those Customers who have separately purchased Software Upgrades in accordance with the then-current terms and conditions for their sale.

DOCUMENTATION. Contractor will make available to Customer all published revisions or corrections to the documentation for the Covered Products that Licensor makes

generally available to customers who have ordered Services for the Covered Products. This documentation will be made available online at Licensor's support web site, currently located at www.isilon.com/support/ (the "Web Site") or by any other means specified by Licensor.

c. TECHNICAL SUPPORT AND ERROR CORRECTIONS.

TECHNICAL ASSISTANCE SUPPORT CENTER. During the hours stated for the applicable Support Package ("Support Hours"), commercially reasonable efforts will be used to provide Customer with assistance to diagnose and resolve technical problems with the Covered Products (whether hardware or software based) through the Web Site, by e-mail, by telephone (at the e-mail address and telephone number indicated on the Web Site), or by any other means specified by Licensor.

SUPPORT WEB SITE. Licensor will issue Customer a unique username and password to access the Web Site. Customer will use the Web Site only for supporting its authorized use of the Covered Products and Covered Software. Customer will maintain reasonable password security with respect to the username and password issued for the Web Site, and will immediately report to Licensor any breach of security. Licensor will have the right to terminate or suspend, in its discretion, Customer's access to the Web Site in the event of any security breach. All software that is available for download on the Web Site will be licensed to Customer in accordance with any license terms stated on the Web Site for the software, and the terms of the parties' license agreement for the Covered Products. Customer acknowledges that Licensor will be entitled to track usage and other statistics on the Web Site, which information may be used by Licensor to improve its services or otherwise for its internal business without restriction.

RESPONSE TIMES AND ERROR CORRECTIONS. Customer may report any failure of the Covered Products to substantially conform to their published specifications ("Error"). Each call will be responded to within the Response Time specified for the applicable Support Package to gather initial or additional information about the Error. Commercially reasonable efforts will be used to correct or minimize the adverse effect of any reproducible and demonstrable Error reported by Customer in a manner commensurate with the severity of the Error. If Customer selects the Gold or Platinum Support Package, these corrections may include providing Customer with bug fixes as soon as they are reasonably available. If Customer has not selected either the Gold or Platinum Support Package, bug fixes will only provide temporary or permanent workarounds as available.

LIMITATIONS ON SUPPORT AND ERROR CORRECTIONS. The Services to be provided are limited to addressing problems that are demonstrable and reproducible. There is no commitment, representation, or guaranty regarding the amount of time it will take to diagnose or resolve a problem once it is brought to attention. Except as expressly stated in this Agreement, Contractor will have no obligation to correct errors in or failures of any Covered Products.

4. GRANT OF LICENSE:

Intermec SOFTWARE AND SOFTWARE MAINTENANCE INFORMATION

1. WARRANTY:

- * 50%-off the current list price if upgrading to a new base application.

4. GRANT OF LICENSE:

a. DEFINITIONS.

**PSC DATALOGIC SOFTWARE AND SOFTWARE MAINTENANCE
INFORMATION**

a. GENERAL.

- (1) ADMINISTRATOR. Customer shall provide the name, address and telephone number of a designated administrator and alternate. The designated administrator and alternate shall have a working knowledge of supported products. Only the designated administrator and alternate are authorized to contact Licensor's customer service department for support services. Customer shall immediately notify Licensor of any changes with respect to the name or telephone number of the designated administrator and alternate.
- (2) SUPPORT PERIOD. The principal period of support, including telephone support, shall be available between 8:00 a.m. and 5:00 p.m. Pacific Time – is Pacific Time ok? If we can get them to change it to EST that would be better. In all honesty I don't believe we purchase much if any of this software., excluding weekends and Licensor holidays. International technical support shall be available as agreed by the parties.
- (3) MINIMUM REQUIREMENTS. In order to perform diagnostic testing and fault isolation with minimal interruption, minimum configuration requirements may be required for products to be eligible for support.

b. SOFTWARE SUPPORT services.

- (1) SUPPORT. For Software problems, appropriate action will commence after Customer's designated administrator provides notification by completing and faxing a problem report form to the technical support fax line, or by telephoning technical support line. Commercially reasonable efforts will be used to correct any Software errors or provide work-around solutions or fixes. Support obligations shall apply only to the latest Software release.
- (2) The following definitions shall apply to this section:
 - (i) Critical priority means that the Product Deficiency prevents use of Software where use of Software is on Customer's critical path, no Workaround exists and use is mission critical to Customer.
 - (ii) Error Correction means the development of a Workaround or Fix to Software which brings the product back into specification, corrects a Product Deficiency or allows Software to be reasonably convenient to use within Customer's environment.
 - (iii) Fix means a change required in the Software to make the product perform in accordance with specifications or to correct a Product Deficiency. A Fix may be provided by telephone, facsimile, FTP in the form of a software patch or an Update.
 - (iv) High priority means that the Product Deficiency prevents use of Software where its use will soon be on Customer's critical path and no Workaround exists. If this

Product Deficiency is not corrected in a timely fashion, it may become Critical.

- (v) Low priority means that the Product Deficiency (i) impacts productivity and is seen by Customer as a minor inconvenience and an acceptable Workaround exists, (ii) is a nuisance or annoyance, (iii) is easily worked around, (iv) is trivial or (v) the likelihood of encountering it is very low and it is not a severe problem.
 - (vi) Medium priority means that the Product Deficiency impairs use of Software where its use (i) is on Customer's critical path, a Workaround exists and the Workaround process is tedious (impacts productivity) or (ii) the Product Deficiency prevents use of Software not on Customer's critical path, and no Workaround exists. In either case, there is a significant impact on productivity and (i) the Product Deficiency is seen by Customer as a major inconvenience or (ii) the Product Deficiency is chronic.
 - (vii) Product Deficiency means a problem where the behavior of Software is not as predicted by its functional specification or documentation, but which significantly impacts product usage. Product Deficiencies include but are not limited to (i) bugs, (ii) incompatibility with Products or environment, (iii) non-compliance with standards or (iv) problems which make the Software inconsistent or inconvenient to use.
 - (viii) Updates means revisions or new versions of Software or portions of Software and related documentation, which are released by Licensor and distributed to Licensor's customers and intended to provide Fixes, Error Corrections, new features, performance enhancements, and increased reliability, performance, or capacity.
 - (ix) Workaround means an alternative method to use Software to avoid Product Deficiencies. Workarounds provided by PSC will include a description of the symptoms of the problem fixed.
- (3) NOTIFICATION OF PRODUCT ISSUES. Receipt of notification of Product Deficiencies will be acknowledged, usage questions or other Customer problems, within four business hours of such notice. It may be necessary for support engineers to request problem descriptions, test cases, or problem files from Customer for final diagnosis and resolution.
- (4) PRIORITY. The priority of Product Deficiency will determine response time requirements. Commercially reasonable efforts will be used to correct all Product Deficiencies in accordance with the resolution times identified below:

Priority	Response
Critical	<p>Within two business days of notification by Customer, Customer will be provided:</p> <ul style="list-style-type: none"> (i) a Workaround or Fix; or (ii) if the Fix cannot be provided within two business days, inform Customer of the availability date of a Workaround or Fix; and (iii) a Fix to Customer within 30 calendar days; and

	(iv) include the Fix to the Product Deficiency in the next available Update.
High	<p>Within 14 business days of notification by Customer, , Customer will be provided:</p> <p>(i) a Workaround or Fix; or (ii) if the Fix cannot be provided within 14 business days, inform Customer of the availability date of a Workaround or Fix; and (iii) fix the Product Deficiency in the next available Update; and (iv) a Workaround, Fix or Update shall be made available within 60 calendar days.</p>
Medium	<p>Within four calendar weeks of notification by Customer, , Customer will be provided:</p> <p>(i) the availability date of a Workaround, Fix or Update containing a Fix; and (ii) deliver by such date.</p>
Low	<p>Within six calendar weeks of notification by Customer, , Customer will be provided:</p> <p>(i) the availability date of a Workaround, Fix or Update containing a Fix; and (ii) deliver by such date.</p>

- (5) TEST CASES. For certain Software problems may be required to furnish a test case and sufficient documentation to allow recreation of the problem.
- (6) PRODUCT DEFICIENCY, WORKAROUNDS. Commercially reasonable effort shall be used to design, code and implement programming changes and modifications which correct reproducible Product Deficiencies in order to bring the software into conformance with specifications and performance standards.
- (7) UPDATES. Customer shall be provided Updates of Software as soon as such versions are available. Each Update of Software shall be provided on an agreed upon media and shall include release notes, a listing of all Product Deficiencies fixed, a listing of all open Product Deficiencies, and a listing of all enhancements included in the Update.
- c. INSPECTION. All obligations are contingent upon inspection of products and the right to reject support for any product which has not been on continuous support or has been repaired by Customer or another party without the prior written consent. If a product is rejected for support, Customer shall be responsible for all charges to restore that product to a condition acceptable prior to commencement of support.

- d. **EXCLUDED SERVICES.** Support service does not include: (a) services connected with the relocation or reconfiguration of the products; (b) supplies, accessories or media; (c) service resulting from: (i) neglect, misuse or accidental damage of the products; (ii) modifications, relocations or repairs performed by a person not authorized; (iii) the failure of Customer to provide and maintain a suitable installation environment including but not limited to proper electrical power, air conditioning or humidity control; (iv) the use of supplies or materials not meeting specifications; (v) the use of the products for other than the purposes for which they were designed; or (vi) electrical work external to products; (d) the refurbishment of any product which has exceed its reasonable life expectancy; or (e) the support of third party products.

4. GRANT OF LICENSE:

Below is an example of Licensor's End User License Agreement (EULA). Versions of the EULA with substantially similar provision are also shipped with products. If there is any conflict with any of the terms and conditions set forth below or a specific EULA, the terms and conditions of the EULA stated herein will control.

- a. **DEFINITIONS.** "Licensor Product" means the Licensor family of products, including every model series ever offered by Licensor, including all embedded Software in such Licensor Products and any and all application Software provided by Licensor, and all Documentation related to such products, which have been purchased or otherwise acquired by End User, whether obtained directly or indirectly from Licensor.

"Software" means any software or computer programs of Licensor or its third party licensors in any form, including but not limited to, embedded, and/or separate application software, whether obtained directly or indirectly from Licensor, including any replacement, update, upgrade, enhancement, or modification.

"Documentation" means materials such as user's guides, program reference guides, quick reference guides, manuals, or similar materials associated with or related to the Licensor Product, whether in printed, "online", or other form.

"Proprietary Information" means: (a) source code, object code, software, documentation, and any related internal design, system design, data base design, algorithms, technology, technical data or information, implementation techniques, and trade secrets related to the Software, (b) any other trade secrets marked appropriately or identified as proprietary or confidential, and (c) any information that End User, under the circumstances, should recognize as confidential. Proprietary Information does not include any information that the receiving party can establish was (1) in the public domain, (2) already in the receiving party's possession or rightfully known prior to receipt, (3) rightfully learned from a third party not in violation of any other's proprietary rights, or (4) independently developed without access to Proprietary Information.

SYSTEM CONCEPTS SOFTWARE AND SOFTWARE MAINTENANCE INFORMATION

1. WARRANTY:

- c. **DELIVERY.** Delivery of TraxWare ("Delivery") shall consist of Customer's receipt via reproducible media or network transfer of the TraxWare installation image and thereafter of TraxWare executable code components for upgrades, fixes or enhancements.

3. SOFTWARE MAINTENANCE:

- a. TECHNICAL SUPPORT. Customer shall name a Project Manager who shall become Contractor's single point of contact for technical support. Contractor shall not provide technical support directly to end users. For a period of ninety (90) days following Delivery (the "Initial Technical Support Period") Contractor shall provide technical support free of charge to the Project Manager. Following the expiration of the Initial Technical Support Period Contractor shall provide five (5) free technical support calls per year. Contractor shall endeavor to respond to technical support questions within a reasonable period of time, generally not to exceed one (1) business day. After the Initial Technical Support Period expires Contractor shall provide technical support to Customer according to the fee schedule set forth in this proposal.
- b. MAINTENANCE. Maintenance shall consist of fixes of specific errors reported by Customer, aggregation of corrections of all errors reported by other customers in the standard TraxWare software, and releases with a higher number than the previous release received by Customer, including minor new functionality. Contractor shall not provide Maintenance for Customer Intellectual Property,
- c. The basic annual software subscription rate shall entitle the ordering activity to:

Support	Availability
Technical Assistance Center (5 calls per yr)	8-5 M-F
Software Updates & Upgrades	As Released

3. GRANT OF LICENSE:

APPENDIX C

WARRANTY INFORMATION

1. WARRANTY:

- a. Contractor provides a return to factory warranty for all products offered. Contractor warrants that, for a period of one (1) year from the date of receipt of the Products (the "Warranty Period"), the Products sold hereunder will materially conform to IronPort's published specifications in effect as of the date of manufacture.
- b. The foregoing warranty will not apply if the defective Product (i) has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling or use contrary to any instructions issued by IronPort, (ii) has been repaired or altered by persons other than Contractor or IronPort, (iii) has not been installed, operated, repaired and maintained in accordance with the Documentation (iv) has failed due an Act of God, including but not limited to fire, flood, tornado, earthquake, hurricane or lightning or (v) has been used with any third party software or hardware which has not been previously approved in writing by Contractor or IronPort.
- c. If during the Warranty Period: (i) Contractor is notified promptly in writing upon discovery of any defect in the Product, including a detailed description of such alleged defect, (ii) (iii) per IronPort's inspections and tests determine that the Product is indeed defective and has not been subjected to any of the conditions set forth in "b" above, then, as Customer's remedy and Contractor's obligation under the foregoing warranty, Contractor will, at Contractor's option, repair or replace without charge the defective Product or refund a pro-rata portion of the purchase price of the Product based on a three (3) year straight-line amortization. Any Product that has either been repaired or replaced under this warranty will have warranty coverage for the longer of ninety (90) days or the remaining warranty period. Replacement parts used in the repair of Product may be new or equivalent to new.
- b. All parts replaced during the guarantee period shall become the property of Contractor.
- b. Inspection and repair of defective equipment under this guarantee will be performed only at the Contractor's authorized service facility/plant at:

IronPort Systems
Attn: RMA #

- d. Product returned to the Contractor's authorized service facility must first be assigned a Return Materials Authorization (RMA) number.
- e. When equipment is out of warranty and returned to the Contractor's authorized service facility for repairs, the ordering activity shall be responsible for any loss or damage to equipment being returned by the ordering activity for repair to the Contractor's authorized service facility. Contractor shall only be responsible for any loss or damage while the equipment is at the Contractor's authorized service facility and until it is returned to the ordering activity's location.

2. TECHNICAL SERVICES:

Technical services and support are available as listed in the Pricelist.

APPENDIX C

WARRANTY INFORMATION

1. INSTALLATION AND TECHNICAL SERVICES:

- a. **INSTALLATION.** Installation and various technical services are available from the Contractor at the option of the ordering activity (Customer). The description and charges for such services (which may vary per location) are set forth in the Pricelist Section.

CUSTOMER OBLIGATIONS FOR ON-SITE SERVICES. Unless the parties otherwise mutually agree in writing, Customer must (a) ensure that all easements, rights-of-way, and other permits necessary for Contractor to perform the services are in effect; (b) ensure that the site is safe and free from actual or potential hazards and equipped with reasonable heat, light, plumbing, electricity, ventilation, and loss prevention; (c) provide sufficient on-site storage space and security for Contractor's equipment and materials to be used for the services; (d) ensure that Contractor's personnel have access to the site and the applicable products as necessary to perform the services; and (e) timely comply with any reasonable requests made by Contractor to permit Contractor to perform the services. During the performance of any services at Customer's site, Contractor personnel will comply with all posted or written site security rules provided to Contractor by Customer.

2. WARRANTY:

- a. **EXPRESS WARRANTIES.** Contractor warrants that, for the applicable warranty period below, (a) equipment and software media will be free from defects in material and workmanship, (b) equipment and software will conform to Fujitsu Network Communication's (FNC's) specifications for the product at the time of shipment, and (c) services will conform to FNC's specifications at the time of performance and be free from defects in workmanship. The warranty period for products begins on the date of receipt. The warranty period for services begins upon their completion.

Product or Service	Warranty Period	Upon Repair or
--------------------	-----------------	----------------

	(WP)	Replacement
equipment and applicable	24 months	Longer of WP or 90
application software	90 days	Longer of WP or 90
installation	1 year	N/A

- b. **REMEDY.** Customer's remedy under this warranty is for Contractor, at its option and without charge, to repair or replace any equipment, correct any software, or re-perform any service that does not materially conform to this warranty during the warranty period. Providing technical assistance (via the telephone) by engineers at the FNC Technical Assistance Center (TAC) in the operation or maintenance of equipment or software is not included as part of the warranty but is available at a separate charge (see Pricelist Section).
- c. **DEFECTIVE ON ARRIVAL (DOA) RETURNS.** If Customer performs the initial installation of the equipment and Customer rejects the equipment because, within 60 days after receipt of the equipment to Customer, it fails Customer's acceptance testing against applicable specifications provided or agreed upon in writing by Contractor or its supplier prior to such acceptance testing, Customer should immediately notify Contractor. Upon receipt of this notification by Contractor within the time prescribed above, Contractor will furnish a replacement unit of equipment to Customer with the understanding that Customer will within 30 days after receipt of the replacement unit of equipment (a) return the non-conforming unit of equipment to Contractor's authorized service facility or (b) issue a purchase order to Contractor for the purchase price, as set forth in the Pricelist Section, of the replacement unit of equipment. Contractor will test any returned rejected equipment against FNC's applicable specifications.

If Customer rejects any software as not meeting the applicable specifications furnished by FNC or its supplier and so notifies Contractor within the DOA period, Contractor or its supplier will, promptly after receipt of Customer's notice, provide a patch to the software to make it conform to the applicable specifications or replace the non-conforming software.

- d.
- e. **WARRANTY RETURNS.** Before Customer may return any equipment furnished by Contractor that Customer believes does not conform to the above warranties, Customer must first obtain a Return Material Authorization (RMA) from Contractor's authorized service facility. To obtain an RMA Customer should call 1-800-525-0303. Once the RMA is obtained and properly completed, Customer must send the RMA to Contractor's authorized service facility along with the equipment being returned.

Customer does not need to return non-conforming Software; it will be repaired by Contractor or its supplier providing corrective patches or updates.

- f. **WARRANTIES VOID.** The above warranties are void and Contractor disclaims any obligation if: (a) the product has not been put into service within the applicable warranty period; (b) the product has not been stored, used, maintained, or packed for return in accordance with the applicable specifications and instructions for the product or recognized standards of due care (e.g. packing to avoid the possibility of electrostatic discharge damage when returning product); (c) the product or its installation has been subjected to accident, disaster, neglect, abuse, misuse, damage (e.g. burned, cracked, etc.) repair, or modification in any respect by anyone other than Contractor or its authorized service representatives without prior consent; (d) the product's performance is adversely affected by materials, equipment, software or services not provided by Contractor; or (e)

APPENDIX D

MAINTENANCE INFORMATION

1. SERVICE AREAS:

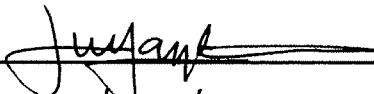
On-site technical and maintenance services are only available to an ordering activity location within the geographic scope of this contract.

2. MAINTENANCE PROVISIONS:

Contractor provides technicians that are trained and qualified to work on its equipment for on-site maintenance, trouble-shooting, or repairs. See the Pricelist Section for the type and definition of available services and applicable charges. Services can be provided on an "as-needed" basis or pre-arranged for a defined period of time. The ordering agency should consult with Contractor or an Authorized Government Reseller to determine the type and length of specific service desired or needed.

CONTRACTOR

BY: _____



Jun Lazdins

DATE: _____

11-1-2007

STATE OF OHIO,
OFFICE OF INFORMATION TECHNOLOGY

BY: _____


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

DATE: _____

11-5-07