



City of Cleveland  
Frank G. Jackson, Mayor

**City of Cleveland**  
**Department of Law**

**RECEIPT FOR PUBLIC RECORDS**

RE: Records Request Copy of records regarding the  
automatic license plate readers (ALPRs) as  
detailed in your correspondence.

Received from Mr. Gary Daniels of  
ACLU

Total Amount Due: \$ 4.95 (Cash / Check / Money Order) for public records.

( 99 ) pages @ \$0.05 cents per page, plus \$        postage.

(        ) video, audio cassette tape, diskette, compact disc, DVD @ \$        each.

(        ) photographs: [        5 x 7 size ] [        8 x 10 size ] @ \$        each.

(        ) drawings @ \$        each.

Kim L. Roberson  
Public Records Section

*P10*  
*9/21/17*

**The reasons for the redactions in the records provided are as follows:**

Social Security Numbers and/or Federal Identification Numbers have been redacted under *State ex rel. Beacon Journal Publishing Co. v. Akron* (1970), 70 Ohio St.3d 605.

Funding for each came from the grants listed below:

**PS2010-33**

FY09 Recovery Act - \$303,860.00

TOTAL - \$303,860.00

We have paid in full PS2010-33. The invoices are attached.

**OH2012-31**

FY09 Law Enforcement Terrorism Prevention Program (LETPP) -  
\$56,255.00

FY09 Urban Area Security Initiative (UASI) - \$237,400.00

TOTAL - \$293,655.00

We have paid \$271,300.00 (invoice attached) for OH2012-31. We are still waiting on the last item to be delivered.



# CONTRACT CERTIFICATION REQUEST (CCR)

Revised: 9/1/2010  
Division of Accounts  
City of Cleveland

To: Richard Sensenbrenner Date: March 1, 2010

From: Shawn Gitley

Department: Public Safety (Department requesting the contract)  
Public Utilities Division of Water

Vendor #: 154

Vendor Name: Elisag North American, LLC

Address: 20511 Creek Ridge Road Notes on Addresses:  
Greensboro, NC 27408  
1. cannot be a PO Box  
2. address in CRD must match exactly the address in the contract and PeopleSoft; otherwise submit a Vendor change form.

Process as indicated (circle one):

1. Original Certification
2. Amendment (Increase Certification)
3. Additional Certification of Funds (only)
4. Incr. Max Amt in Contract Log (for R.C.'s)
5. Extend Date of Contract (only)
6. Non-Financial (File Return only)
7. Decertification

Existing Contract # (if an amendment):

Prefix to be used (for original cert. or increase):

PS

Maximum Amount of Contract (for Contract Log):

Original of Current Maximum: \$ 303,860.00 A. For original or current certifications

Increase of Current Maximum: \$ \_\_\_\_\_ B. For amendments

New Maximum Amount: \$ 303,860.00 A + B

Is there a "not to exceed \$ amount" provision included in the contract? Yes: x

If yes, what is the "not to exceed amount"? \$ 303,860.00

Is this a citywide contract? Yes: \_\_\_\_\_ No: x

Contract start date: \_\_\_\_\_ Contract end date: \_\_\_\_\_

Rate: \_\_\_\_\_

Ordinance #: 610-09

Object # (old PS Account): 5320

Fund: 19

Department: 8002

Unit: 00

Activity (old PS Program): \_\_\_\_\_

Sub Fund: 800

Program (old PS Project/Grant): 18900000

Amount: \$303,860.00

Budget Year: 9999

Contract Description: Mobile License Plate Readers

OBM Signature:

*[Signature]* 13464

Date:

3/2/10

Accounts:

PO#: \_\_\_\_\_

Date Posted: \_\_\_\_\_

Prepared by: \_\_\_\_\_

Purpose of CRD

1. Original certifications:
2. Amendments:
3. Additional certification of funds (only):
4. Incr. Max Amt in Contract Log (for R.C.'s)
5. Extend Date of Contract (only)
6. Non-Financial
7. Decertification

Required attachments:

- Original copies of the contracts (usually 3)
- Original copies of the amendments (usually 3)
- Copy of front page, signature & term(s) pages of contract; Copy of Ordinance & BOC Resolution (if applicable)
- Term(s) page should indicate begin/end dates of contract, options to renew, etc..
- Copy of front page (agreement page) of R.C.
- Copy of front page, signature & term(s) pages of contract; Copy of Ordinance & BOC Resolution (if applicable)
- Original copies of the contracts (usually 3); these are often associated with revenue or development agreements
- Copy of original Purchase Order

**AGREEMENT  
between  
THE CITY OF CLEVELAND  
and  
ESLAG NORTH AMERICA, LLC  
For Equipment and Services For  
The Department of Public Safety, Division of Police  
Under State Term Schedule No. 800067**

**THIS AGREEMENT** for goods and services is made this 23<sup>rd</sup> day of February, 2010, between the City of Cleveland ("City"), a municipal corporation of the State of Ohio, through its Director of Public Safety, pursuant to City of Cleveland Ordinance 610-09, passed by City Council on June 1, 2009 (Exhibit "A"), and ELSAG North America, LLC ("Contractor"), a Delaware Limited Liability Company authorized to do business in Ohio with principal offices at 205-H Creek Ridge Road, Greensboro, NC 27406, through its duly-authorized representative.

**RECITALS:**

1. The City desires to obtain Mobile License Plate Readers with related software, technical support services, and training.
2. Contractor has proposed to provide such equipment and services and the City find its proposal satisfactory and wishes to purchase the equipment and services under State Term Contract, Schedule No. 800067.

In consideration of the foregoing, the payments and the mutual promises contained herein, the parties agree as follows:

**SECTION 1.        STATE TERM SCHEDULE PURCHASE**

This Agreement for the purchase of Mobile License Plate Readers and related services is being made under the terms and conditions of State Term Schedule ("STS") No. 800067, with effective dates of November 15, 2009 to October 31, 2013, unless extended by the State. The STS terms and condition are described in the contract attached as Exhibit C and fully incorporated herein. The City's membership number for the State's Cooperative Purchasing Program is 0000587.

Contractor is being retained under this Agreement to provide the equipment and services described in its proposal attached hereto and incorporated herein as Exhibit B ("Contractor's Proposal"). If the City identifies material deficiencies in the deliverables based upon the requirements set forth in the Proposal, Contractor will make the necessary corrections as soon as possible at no additional charge to the City. If changes are requested outside the scope of the original Proposal, such changes will be addressed as an amendment to this Agreement.

## SECTION 2. CHARGES

For the accomplishment of all services set forth in Exhibit B, the City shall pay Contractor at the applicable prices set forth in the STS contract price list, which total amount shall not exceed Three Hundred and Three Thousand Eight Hundred Sixty Dollars (\$303,860.00). The City shall pay Contractor within thirty (30) days of receipt and approval of Contractor's monthly invoice. Contractor shall provide itemized invoices that show the work that has been performed and show all prior payments made by City for work performed under this Agreement. Upon request by the Director of Public Safety, Contractor will provide any reasonable additional information the City needs in order to approve invoices.

No approval given or payments made under this Agreement shall be conclusive evidence of the acceptance of performance under this Agreement either wholly or partially, and no payment made shall be construed to be an acceptance of deficient or unsatisfactory work.

## SECTION 3. TERM

The term of this Agreement shall begin on the effective date first above written and, unless extended by the parties through written amendment or sooner canceled or terminated under the provisions of this Agreement, shall expire twelve (12) months later or upon expenditure of all funds certified to this Agreement, whichever shall occur first.

## SECTION 4. NOTICES AND PAYMENTS

All invoices and payments and all notices that may be proper or necessary to be served shall be sent by regular mail, postage prepaid, to the following addresses until designated otherwise in a written notice from the designating party:

To the City:                      Director of Public Safety

601 Lakeside Avenue, Room 230  
Cleveland, Ohio 44114

With a copy to: Assistant Director  
Office of Homeland Security  
205 West St. Clair Avenue  
Cleveland, Ohio 44113

To the Contractor: Attention: Sherri Corder  
~~P.O. Box 504111~~ 205 H Creek Ridge Road  
~~St. Louis, MO 63150-4111~~ Greensboro, NC 27406

#### SECTION 5. EQUAL OPPORTUNITY

This Agreement is a "contract" and Contractor is a "Contractor" within the meaning of Chapter 187 of the Codified Ordinances of Cleveland, Ohio 1976. During the term, Contractor shall comply with all terms, conditions, and requirements imposed on a "Contractor" in the Equal Opportunity Clause, Section 187.11 C.O., attached as Exhibit "D" and made a part of this Agreement. A copy of such Clause shall be made a part of every subcontract or agreement entered into for goods or services, and shall be binding on all persons, firms, and corporations with whom Contractor may deal.

#### SECTION 6. ATTACHMENTS

In the case of any conflict between Contractor's Proposal and the State Term Schedule, the State Term Schedule shall control. In case of any conflict between this Agreement, and the State Term Schedule, this Agreement shall control.

The following documents attached to this Agreement are incorporated with and made a part of this Agreement:

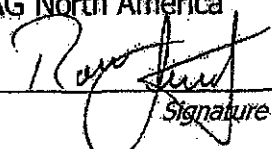
1. Exhibit A - Ordinance No. 610-09
2. Exhibit B - Contractor's Proposal
3. Exhibit C - State Term Schedule Terms and Conditions
4. Exhibit D - Equal Opportunity Clause
5. Exhibit E - 2010 Non-competitive Bid Statement

**IN WITNESS WHEREOF**, the parties have caused this instrument to be executed as of the date and year first above written.

CITY OF CLEVELAND

By:   
Martin L. Flask, Director of Public Safety

ELSAG North America

By:   
Signature

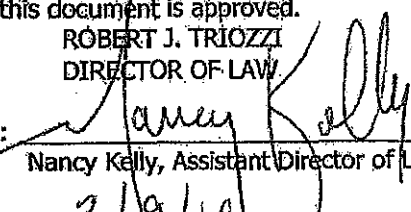
Print Name: Ross Jurait

Title: General Counsel

Taxpayer ID # \_\_\_\_\_

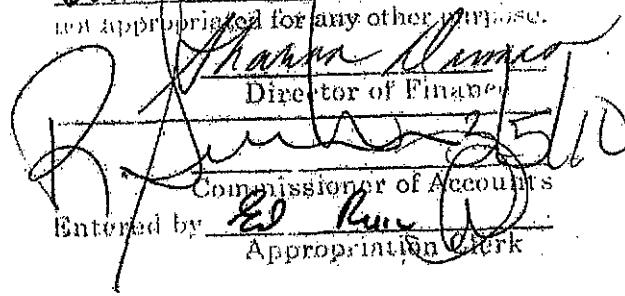
The legal form and correctness  
of this document is approved.

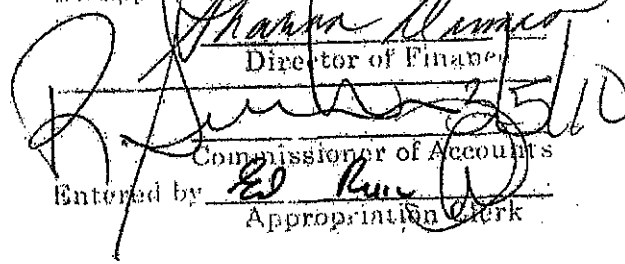
ROBERT J. TRIOZZI  
DIRECTOR OF LAW

By:   
Nancy Kelly, Assistant Director of Law

Date: 3/9/10

The sum of \$307,160.00  
\_\_\_\_\_ Dollars  
required for this Contract was on  
March 3, 2010, and is at this  
date in the City Treasury or in process  
of collection, to the credit of  
6320-6007-1990000 Fund and  
not appropriated for any other purpose.

  
Director of Finance

  
Commissioner of Accounts

Entered by Ed Ruc  
Appropriation Clerk

Ord. No. 810-09.  
By Council Members Conwell and Sweeney (by departmental request).

An emergency ordinance authorizing the Director of Public Safety to enter into various written standard purchase and requirement contracts needed in connection with implementing the Recovery Act Byrne Justice Assistance Grant and to enter into agreements with various participating municipalities and individuals, agencies, or entities which are necessary to implement the grant.

Whereas, one of the economic benefits under the American Recovery and Reinvestment Act of 2009, also known as the Stimulus Bill, Pub.L. 111-5, H.R.L. S. 1 ("ARRA"), allowed Cities to receive funding for eligible improvements, projects, and programs; and

Whereas, under the authority of Ordinance No. 483-09, passed April 20, 2009, this Council authorized the Director of Finance or the Director responsible for the eligible improvements, projects, and programs to apply for and accept these ARRA funds from Federal, State, or other public entities; and

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. That the Director of Public Safety is authorized to make one or more written standard purchase contracts and written requirement contracts under the Charter and the Codified Ordinances of Cleveland, Ohio, 1976, the period of requirements to be determined by the director, for the necessary items of materials, equipment, supplies, and services necessary to implement the Recovery Act Byrne Justice Assistance Grant (JAG), as described in the summary placed in File No. 810-09-A, to be purchased by the Commissioner of Purchases and Supplies on a unit basis for the Division of Police, Department of Public Safety. Bids shall be taken in a manner that permits an award to be made for all items as a single contract, or by separate contract for each or any combination of the items as the Board of Control determines.

Section 2. That the costs of the requirement contract shall be charged against the proper appropriation accounts and the Director of Finance shall certify the amount of the initial purchase, which purchase, together with all later purchases, shall be made on order of the Commissioner of Purchases and Supplies under a requisition against the contract or contracts certified by the Director of Finance.

Section 3. That under Section 108(b) of the Charter, the purchases authorized by this ordinance may be made through cooperative agreements with other governmental agencies. The Director of Public Safety may sign all documents that are necessary to make the purchases, and may enter into one or more contracts with the vendors selected through that cooperative process.

Section 4. That the Director of Public Safety is authorized to enter into one or more agreements or memoranda of understanding with individuals, agencies, or entities as described in the file, which are necessary to implement the grant, including various participating municipalities.

Section 5. That the costs of the contract or contracts authorized by this ordinance shall be paid from the fund or funds to which are credited the grant proceeds accepted under Ordinance No. 483-09, passed April 20, 2009, and are appropriated for this purpose.

Section 6. That the Director of Public Safety shall have the authority to extend the term of the grant during the grant term for the funds received under the authority of Ordinance No. 483-09, passed April 20, 2009, for the purposes of this ordinance.

Section 7. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed June 1, 2009.  
Effective June 5, 2009.

Ord. No. 812-09.  
By Council Member Sweeney (by departmental request).

An emergency ordinance appropriating Community Development Block Grant funds for strategic acquisition, and site preparation of land, and/or vacant, abandoned, boarded structures within the City of Cleveland including, but not limited to, site preparation, environmental and geotechnical analyses, and civil engineering activities; and authorizing the Director of Community Development to enter into one or more contracts with various agencies, entities, or individuals for the redevelopment or rehabilitation of the land and/or vacant, abandoned, and boarded structures acquired by the City.

Whereas, the City of Cleveland has received a Community Development Block Grant, Year 36 from the United States Government; and

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. That CDBG Year 36 grant funds in the amount of \$50,000 are appropriated for the strategic acquisition, and site preparation of land, and/or vacant, abandoned, boarded structures within the City of Cleveland including, but not limited to, site preparation, environmental and geotechnical analyses, and civil engineering activities. Specifically, the purpose of this allocation is to create redevelopment opportunities through strategic land acquisition and site clearance.

1078

Section 2. That the Director of Community Development is authorized to enter into one or more contracts with various agencies, entities, or individuals, for the redevelopment or rehabilitation of the land and/or vacant, abandoned, and boarded structures acquired by the City.

Section 3. That the contract or contracts shall be prepared by the Director of Law.

Section 4. That the aggregate cost of the contracts in Section 2 shall not exceed \$50,000 and shall be paid from Fund No. 14 SF 035, Request No. 176654.

Section 5. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed June 1, 2009.  
Effective June 5, 2009.

Ord. No. 822-09.  
By Council Member Sweeney (by departmental request).

An emergency ordinance authorizing the Director of Finance to enter into one or more requirement contracts without competitive bidding with Oracle USA, Inc. for acquisition and maintenance of software licenses and other Oracle products for the various divisions of City Government for a period of three years, with two years, with three one-year options to renew, for the Department of Finance.

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. That the Council determines that the within commodities are non-competitive and cannot be secured from any source other than Oracle USA, Inc. Therefore, the Director of Finance is authorized to make one or more written requirement contracts with Oracle USA, Inc. under the Charter and the Codified Ordinances of Cleveland, Ohio, 1976, for the requirements for a period not to exceed two years, with three one-year options to renew, of the necessary items for acquisition and maintenance of software licenses and other Oracle products, to be purchased by the Commissioner of Purchases and Supplies on a unit basis, for the Division of Information and Technology, Department of Finance. The first of the one-year options to renew may not be exercised without additional legislative authority. If such additional legislative authority is granted and the first of the one-year options to renew is exercised, then the second of the one-year options to renew may be exercisable at the option of the Director of Finance, without the

EXHIBIT

A



# ELSAG North America

412 Clocktower Commons  
Brewster, NY 12059

Duns # 196140821  
Phone: 866-9M/PH900 (567-4906)  
Fax: 936-979-7164

2/3/2010  
QUOTATION

Delivered to:  
Ohio Department of Homeland Security  
c/o Cleveland PD  
205 W. St. Clair St.  
Cleveland, OH

Quotation valid until: April 3, 2010  
Prepared by: Matt Maxwell  
Projected Arrival Date: TBD

NASPO Multi-State Contract #PC62119 Award #19745  
(California Participating Addendum)  
WCSA # PC 62119 Hazardous Incident Response Equipment  
(Contract terms: 5/20/2007 - 5/10/2010)

Model #	Description	Unit Price	Quantity	Amount
MPH-900C2 (Trans)	Mobile License Plate Reader - Includes LPR processor, 4 cameras (2 color and 2 infrared LPR in two enclosures), cables and related software. Software is license free and can be loaded on multiple computers. EQUIPMENT PROVIDED IN A TRANSPORTABLE RUGGEDIZED ELECTRONIC SUITCASE.	\$16,300	17	\$277,100.00
FPH-900K	Fixed High Performance LPR Smart Camera and mounting hardware, with color video overlay camera and PC support back to command center.	\$8,950	1	\$8,950.00
FCU-900	Field Control Unit-Pole Mountable includes ruggedized PC (1.5ghz/512mb ram), 24vdc power supply (up to 8 cameras), surge suppression, environmental controls.	\$6,110	1	\$6,110.00
MPH-900 OPC	Operations Center License designed to coordinate multiple fixed and mobile units across a network. Data is provided in a web-based environment with NO per user pricing. This price does not cover hardware.	\$650	18	\$11,700.00
Phone Support	24 Hour Telephone Support by qualified MPH-900 technicians			FREE
ON-SITE TRAINING	Included in the purchase of both transportable and permanent MPH-900 installations available in group and individual sessions.			FREE
TRAINING CENTER MEMBERSHIP	Unlimited access to ELSAG North America training classes held either in the field or at Company Facilities.			FREE
TOTAL				

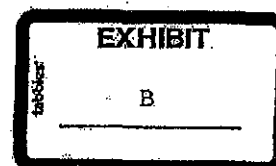
## Service Plan for goods and services provided by the above quote:

	Year	Price	Due Date
Year I	Free	Hardware and Software	1 year after receipt
Year II	\$21,270	Hardware and Software	2 years after receipt
Year III	\$21,270	Hardware and Software	3 years after receipt
Year IV	\$21,270	Hardware and Software	4 years after receipt
Beyond	\$9,116	Software Only	4 years after receipt

Service Plan Includes:  
- Software Updates  
- Annual Training/Service  
- Parts & Labor

Approval Signature: \_\_\_\_\_

Terms: 30 Days Receipt of Goods





Index No: STS846  
Rev Date: 11/15/2009

STATE OF OHIO  
DEPARTMENT OF ADMINISTRATIVE SERVICES  
GENERAL SERVICES DIVISION  
OFFICE OF PROCUREMENT SERVICES  
4200 SURFACE ROAD, COLUMBUS, OH 43228-1395

S-&L GOVERNMENT PRICING SCHEDULE

SCHEDULE NUMBER: 800067

EFFECTIVE DATES: 11/15/2009 TO 10/31/2013

The Department of Administrative Services has completed the evaluation and analysis of the State Term Schedule (STS) offering submitted by the Contractor as listed herein. The Contractor listed herein has been determined to provide competitive, economical and reasonable pricing for the items contained in their offer. The respective offer, including the Standard Contract Terms & Conditions, any proposal amendment, special contract terms & conditions, specifications, pricing schedules and any attachments incorporated by reference and accepted by DAS become a part of this State Term Schedule.

This State Term Schedule is effective beginning and ending on the dates noted above unless, prior to the expiration date, the Schedule is renewed, terminated, or cancelled in accordance with the Standard Contract Terms and Conditions dated 10-01-2007.

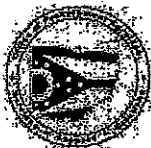
This State Term Schedule is available to all state agencies, state institutions of higher education and political subdivisions properly registered as members of the Cooperative Purchasing Program of the Department of Administration Services, as applicable.

Agencies are eligible to make purchases of the supplies and/or services in any amount and at any time as determined by the agency (see maximum order limit). The State makes no representation or guarantee that agencies will purchase the supplies and/or services approved in the State Term Schedule.

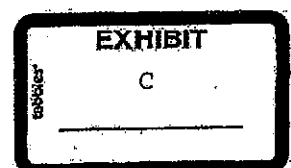
State agencies may make purchases under this State Term Schedule up to \$2500.00 using the state of Ohio payment card. Any purchases that exceed \$2500.00 will be made using the official state of Ohio purchase order (ADM-0523). Any non-state agency, institution of higher education or Cooperative Purchasing member will use forms applicable to their respective agency.

Questions regarding this and/or the State Term Schedule may be directed to:

Katie Heisler  
katie.heisler@dass.state.oh.us



This State Term Schedule and any Amendments thereto are available from the DAS website at the following address: <http://procure.ohio.gov>.



**ELSAG North America, LLC**

**STATE TERM SCHEDULE**

STATE OF OHIO  
DEPARTMENT OF ADMINISTRATIVE SERVICES  
GENERAL SERVICES DIVISION  
OFFICE OF PROCUREMENT SERVICES  
4200 SURFACE ROAD, COLUMBUS, OH 43228-1395

Index No: STS846  
New Date: 11/15/2009

**CONTRACTOR, PRICES, TERM SCHEDULE, ETC.**

**Send Purchase Orders To:**

0000084872  
ELSAG North America, LLC  
205-H Creek Ridge Road  
Chapel Hill, NC 27406  
www.elsagna.com

**Remit To:**

0000084872  
ELSAG North America, LLC  
PO Box 504111  
St. Louis, MO 63150-4111

**OAKS Contract ID:**

800967

**Contractor's Contact:**

Mr. Matthew Maxwell Telephone: (937) 294-3724 FAX: (336) 379-7164 Email: matthew.maxwell@elsagna.com

**Delivery:**

30 Days A.R.O. - F.O.B. Destination

**Terms:**

Net 30 Days

**Basic Order Limitations:** (Agencies should contact Procurement Services when they expect to exceed the Maximum Order Limitation.)

Minimum: \$250.00

Maximum: \$100,000.00

**APPROVED PRODUCTS/SERVICES:** Only those vendors, products, or services as listed in the price pages, approved by the Office of Procurement Services, may be purchased from this State Term Schedule. Any vendors, prices, terms, conditions, products or services not listed in the approved price sheets are outside the scope of this schedule.

**MANDATORY USE CONTRACTS:** All General Distribution Contracts (GDC), Limited Distribution Contracts (LDC), Multiple Award Contracts (MAC), and Request for Proposals (RFP) take precedence over this State Term Schedule (STS). This STS is only for governmental entities without a mandatory use contract.

**EXCLUDED ITEMS:** (State Agencies Only) in accordance with the Ohio Revised Code Section 6147.07, 4115.31, through 4115.35, 6119.16 and 3304.28 through 3304.33 state agencies are required to purchase through Ohio Penal Industries (OPI), Community Rehabilitation Programs (CRP), Department of Mental Health (DMH) Office of Support Services (Central Warehouse, and Pharmacy Services), and Rehabilitation Services Commission (RSC). State agencies must obtain a waiver from OPI, CRP, DMH Central Warehouse or Pharmacy Services, and/or RSC to procure from this schedule.

**SPECIAL NOTE:** The state of Ohio including but not limited to its agencies, boards, commissions, departments, state universities, state vocational schools, state community colleges of Ohio, and any entity authorized by law to use this State Term Schedule (STS) is not obligated to procure any products or services from this STS. This STS shall not be construed to prevent the state from purchasing products or services using other procurement methods as authorized by law.

**NOTICE TO CONTRACTOR/VENDOR:** It is the responsibility of the contractor's contact to maintain this State Term Schedule with current information. All updates i.e., telephone numbers, contact names, email addresses, tax identification number, prices, and catalogs etc., are required to be processed through the formal amendment authorization process which is initiated by way of a written request from the contractor's contact.

**UNSPSC CODES (OAKS Category ID) and Item Descriptions:**

All purchase orders placed against this contract shall use the following UNSPSC Codes when completing requisitions.

46171600 - Surveillance and detection equipment

License plate reading technology

**NOTES:**

Current Price List dated November 1, 2009.

This contract serves all 88 Ohio counties.

**STATE OF OHIO  
DEPARTMENT OF ADMINISTRATIVE SERVICES  
STATE TERM SCHEDULE--S&LG-BASED**

THIS CONTRACT is between the STATE OF OHIO, DEPARTMENT OF ADMINISTRATIVE SERVICES ("DAS"), GENERAL SERVICES DIVISION, OFFICE OF STATE PURCHASING, ON BEHALF OF THE STATE OF OHIO ("State"), with offices at 4200 Surface Road, Columbus, Ohio 43228-1395 and \_\_\_\_\_ ("Contractor") with

Office(s) at \_\_\_\_\_

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- IV. Contractor Warranty and Liability Provisions
- V. General Provisions

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- II. Parties to the Contract
- III. Pricing Provisions
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- VII. Ownership/Title Provisions
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**EXHIBITS**

Exhibit 1 Contractor's Price List

**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 will enter into a contract with the manufacturer provided that the manufacturer offers its goods and ancillary services at the same prices that the manufacturer offers those goods and services to its distributors, or if the manufacturer has no distributors, the prices that the manufacturer offers to its similarly situated 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 the service area. Because of this, the State may sometimes agree to work directly with a manufacturer's dealers. But, if the Contractor is not the manufacturer of the goods or services under this contract, the Contractor must submit a letter from the manufacturer that assures the State that the Contractor will have sufficient quantities of the offered products for the duration of the Contract and any extensions to meet the State's needs under the Contract and that the Contractor is an authorized dealer in the manufacturer's goods or services. The letter

State of Ohio-Department of Administrative Services S&LG Agreement-- Revised 10-01-07

must identify each product or service that the Contractor will supply under this Contract. The letter must also contain an assurance of the availability through the dealer of repair and spare parts for equipment covered by this Contract for five (5) years from the date of purchase. It must also contain an assurance that software maintenance will be available under the terms of this Contract either from the dealer or the manufacturer for six (6) years from the date of acceptance. (This assurance is not necessary for PC and PC-based server software with a permanent license fee of less than \$5,000.00 per copy.) The manufacturer's letter must be signed by an authorized official of the manufacturer and submitted with the executed copies of this Contract.

This state term contract (the "Contract") establishes terms and conditions under which a State agency (including any board, instrumentality or other political body) or political subdivision may acquire the Contractor's goods or services at the Contractor's best pricing. But this Contract only permits such; it in no manner obligates any State agency to do so.

## STANDARD TERMS & CONDITIONS

### I. CONTRACT TERM PROVISIONS:

- A. **APPROPRIATION OF FUNDS.** The State of Ohio's funds are contingent upon the availability of lawful appropriations by the Ohio General Assembly. If the General Assembly fails at any time to continue funding for the payments or any other obligations due by the State under this Contract, the State will be released from its obligations on the date funding expires.

The current General Assembly cannot commit a future General Assembly to an expenditure. Therefore, this Contract will automatically expire at the end of the current applicable biennium. The State may renew this Contract in the next biennium by issuing written notice to the Contractor or by action of the State of the decision to do so.

- B. **OBM CERTIFICATION.** None of the rights, duties, or obligations in this Contract will be binding on the State, and the Contractor will not begin its performance, until all the following conditions have been met:

1. All statutory provisions under the Ohio Revised Code, including Section §128.07, have been met.
2. All necessary funds are made available by the appropriate state agencies.
3. If required, approval of this Contract is given by the Controlling Board of Ohio; and
4. If the State is relying on Federal or third-party funds for this Contract the State gives the Contractor written notice that such funds have been made available.

### C. **TERMINATION / SUSPENSION.**

1. **Contract Termination.** If Contractor fails to perform any one of its obligations under this Contract, it will be in default and the State may terminate this Contract in accordance with this section. The termination will be effective on the date delineated by the State.
  - a. **Termination for Default.** If Contractor's default is unable to be cured in a reasonable time, the State may terminate the Contract by written notice to the Contractor.

- b. **Termination for Unremedied Default.** If Contractor's default may be cured within a reasonable time, the State will provide written notice to Contractor specifying the default and the time within which Contractor must correct the default. If Contractor fails to cure the specified default within the time required, the State may terminate the Contract. If DAS does not give timely notice of a default to Contractor, the State has not waived any of the State's rights or remedies concerning the default.
- c. **Termination for Persistent Default.** The State may terminate this Contract by written notice to Contractor for defaults that are cured, but are persistent. "Persistent" means three or more defaults. After the State has notified Contractor of its third default, the State may terminate this Contract without providing Contractor with an opportunity to cure, if Contractor defaults for a fourth time. The four defaults are not required to be related to each other in anyway.
- d. **Termination for Endangered Performance.** The State may terminate this Contract by written notice to the Contractor if the State determines that the performance of the Contract is endangered through no fault of the State.
- e. **Termination for Financial Instability.** The State may terminate this contract by written notice to Contractor if a petition in bankruptcy or similar proceeding has been filed by or against the Contractor.
- f. **Termination for Delinquency, Violation of Law.** The State may terminate this Contract by written notice, if it determines that Contractor is delinquent in its payment of federal, state or local taxes, workers' compensation, insurance premiums, unemployment compensation contributions, child support, court costs or any other obligation owed to a state agency or political subdivision. The State also may cancel this Contract, if it determines that Contractor has violated any law during the performance of this Contract. However, the State may not terminate this Contract if the Contractor has entered into a repayment agreement with which the Contractor is current.
- g. **Termination for Subcontractor Default.** The State may terminate this contract for the default of the Contractor or any of its subcontractors. The Contractor will be solely responsible for satisfying any claims of its subcontractors for any suspension or termination and will indemnify the State for any liability to them. Subcontractors will hold the State harmless for any damage caused to them from a suspension or termination. The subcontractors will look solely to the Contractor for any compensation to which they may be entitled.
- h. **Termination for Failure to Retain Certification.** Pursuant to Section § 123.151 and §123.152 of the Revised Code, the State may certify businesses for participation in state sponsored business assistance programs. After certification is obtained it is the responsibility of the Contractor to maintain certification. If the Contractor is awarded a contract pursuant to a certification program and fails to renew its certification and/or is decertified, the State may immediately cancel the contract.
- i. **Termination for Convenience.** The State may terminate this Contract for its convenience after issuing written notice to the Contractor. 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 after the Contractor has submitted a proper invoice for such, with the invoice reflecting the amount determined by the State to be owing to the Contractor.

J. **Termination, Effectiveness, Contractor Responsibilities.** The notice of termination whether for cause or without cause will be effective as soon as Contractor receives it. Upon receipt of the notice of termination, Contractor will immediately cease all work on the Project, if applicable, and refuse any additional orders and take all steps necessary to minimize the costs the Contractor will incur related to this Contract. The Contractor will immediately prepare a report and deliver it to the State. The report must detail either the work completed at the time of termination or the orders received and not processed prior to termination, and if applicable, the percentage of the Project's completion, estimated time for delivery of all orders received prior to termination, any costs incurred by the Contractor in doing the Project to date and any deliverables completed or partially completed but not delivered to the State at the time of termination. Any and all work, whether completed or not, will be delivered to the State along with the specified report. However, if delivery in that manner would not be in the State's interest, then the Contractor will propose a suitable alternate form of delivery.

2. **Contract Suspension.** If Contractor fails to perform any one of its obligations under this Contract, it will be in default and the State may suspend rather than terminate this Contract where the State believes that doing so would better serve its interest.

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

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

## II. CONTRACT REMEDIES:

A. **ACTUAL DAMAGES.** Contractor is liable to the State of Ohio for all actual and direct damages caused by Contractor's default. The State may buy substitute supplies or services, from a third party, for those that were to be provided by Contractor. The State may recover the costs associated with acquiring substitute supplies or services, less any expenses or costs saved by Contractor's default, from Contractor.

B. **LIQUIDATED DAMAGES.** If actual and direct damages are uncertain or difficult to determine, the State may recover liquidated damages in the amount of 1% of the value of the order, deliverable or milestone that is the subject of the default, for every day that the default is not cured by the Contractor.

C. **DEDUCTION OF DAMAGES FROM CONTRACT PRICE.** The State may deduct all or any part of the damages resulting from Contractor's default from any part of the price still due on the contract, upon prior written notice being issued to the Contractor by the State.

## III. PAYMENT PROVISIONS:

A. **INVOICE REQUIREMENTS.** The Contractor must submit an original invoice with three (3) copies to the office designated in the purchase order as the "bill to" address. To be a proper invoice, the invoice must include the following information:

1. The purchase order number authorizing the delivery of products or services,

2. A description of what the Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, the Contractor must also include the payment number (e.g., 1 of 36).

If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of the Contractor's information.

- B. **PAYMENT DUE DATE.** Payments under this Contract will be due on the 30<sup>th</sup> calendar day after the later of:

1. The date of actual receipt of a proper invoice in the office designated to receive the invoice, or the date the service is delivered and accepted in accordance with the terms of this Contract.
2. The date of the warrant issued in payment will be considered the date payment is made.

Interest on late payments will be paid in accordance with Ohio Revised Code Section §126.30.

#### IV. CONTRACTOR WARRANTY AND LIABILITY PROVISIONS:

- A. **CONTRACTOR'S WARRANTY AGAINST AN UNRESOLVED FINDING FOR RECOVERY.** Contractor warrants that it is not subject to an unresolved finding for recovery under ORC §9.24. If the warranty was false on the date the parties signed this Contract, the Contract is void *ab initio*.

- B. **GENERAL REPRESENTATIONS AND WARRANTIES.** The Contractor warrants that the recommendations, guidance, and performance of the Contractor under this Contract will:

1. Be in accordance with the sound professional standards and the requirements of this Contract and without any material defect.
2. No Deliverable will infringe on the intellectual property rights of any third party.
3. All warranties are in accordance with Contractor's standard business practices attached.
4. That the Deliverables hereunder are merchantable and fit for the particular purpose described in this contract.

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

5. The Contractor has the right to enter into this Contract.
6. The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Contract.
7. 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.
8. The Contractor has good and marketable title to any goods delivered under this Contract and which title passes to the State.
9. The Contractor has the right and ability to grant the license granted in 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 will correct such failure with all due speed or will

refund the amount of the compensation paid for the Deliverable. The Contractor will also indemnify the State for any direct damages and claims by third parties based on breach of these warranties.

- C. **INDEMNITY.** The Contractor will indemnify the State for any and all claims, damages, law suits, costs, judgments, expenses, and any other liabilities resulting from bodily injury to any person (including injury resulting in death) or damage to property that may arise out of or are related to Contractor's performance under this Contract, providing such bodily injury or property damage is due to the negligence of the Contractor, its employees, agents, or subcontractors.

The Contractor will also indemnify the State against any claim of infringement of a copyright, patent, trade secret, or similar intellectual property rights based on the State's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where the State has modified or misused the Deliverable and the claim of infringement, is based on the modification or misuse. The state agrees to give the Contractor notice of any such claim as soon as reasonably practicable and to give the Contractor the authority to settle or otherwise defend any such claim upon consultation with and approval by the Office of the State Attorney General. 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 take one (1) of the following four (4) actions:

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

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

1. NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAVE BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
2. THE CONTRACTOR FURTHER AGREES THAT THE CONTRACTOR SHALL BE LIABLE FOR ALL DIRECT DAMAGES DUE TO THE FAULT OR NEGLIGENCE OF THE CONTRACTOR.

#### V. GENERAL PROVISIONS:

- A. **AMENDMENTS.** No amendment or modification of this Contract will be effective unless it is in writing and signed by both parties.
- B. **ANTITRUST ASSIGNMENT TO THE STATE.** Contractor assigns to the State of Ohio, through the Department of Administrative Services, all of its rights to any claims and causes of action the Contractor now has or may acquire under state or federal antitrust laws if the claims or causes of action relate to the supplies or services provided under this Contract. Additionally, the State of Ohio will not pay excess charges resulting from antitrust violations by Contractor's suppliers and subcontractors.

- C. **ASSIGNMENT/DELEGATION.** The Contractor will not assign any of its rights nor delegate any of its duties under this Contract without the written consent of the State. Any assignment or delegation not consented to may be deemed void by the State.
- D. **AUDITS.** The Contractor must keep all financial records in a manner consistent with generally accepted accounting principles. Additionally, the Contractor must keep separate business records for this project, including records of disbursements and obligations incurred that must be supported by contracts, invoices, vouchers and other data as appropriate.

During the period covered by this Agreement and until the expiration of three (3) years after final payment under this Agreement, the Contractor agrees to provide the State, its duly authorized representatives or any person, agency or instrumentality providing financial support to the work undertaken hereunder, with access to and the right to examine any books, documents, papers and records of the Contractor involving transactions related to this Agreement.

The Contractor shall, for each subcontract in excess of two thousand five hundred dollars (\$2,500), require its subcontractors to agree to the same provisions of this Article. The Contractor may not artificially divide contracts with its subcontractors to avoid requiring subcontractors to agree to this provision.

The Contractor must provide access to the requested records no later than five (5) business days after the request by the State or any other party with audit rights. If an audit reveals any material deviation from the Contract requirements, any misrepresentations or any overcharge to the State or any other provider of funds for the Contract, the State or other party will be entitled to recover damages, as well as the cost of the audit.

- E. **CONFIDENTIALITY.** The Contractor may learn of information, documents, data, records, or other material that is confidential in the performance of this Contract. The Contractor may not disclose any information obtained by it as a result of this Contract, without the written permission of the State. The Contractor must assume that all state information, documents, data, records or other material is confidential.

The Contractor's obligation to maintain the confidentiality of the information will not apply where it: (1) was already in the Contractor's possession before disclosure by the State, and it was received by the Contractor without the obligation of confidence; (2) is independently developed by the Contractor; (3) is or becomes publicly available without breach of this Contract; (4) is rightfully received by the Contractor from a third party without an obligation of confidence; (5) is disclosed by the Contractor with the written consent of the State; or (6) is released in accordance with a valid order of a court or governmental agency, provided that the Contractor (a) notifies the State of such order immediately upon receipt of the order and (b) makes a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the confidential information solely for the purposes intended to be served by the original order of production. The Contractor will return all originals of any information and destroy any copies it has made on termination or expiration of this Contract.

The Contractor will be liable for the disclosure of any confidential information. The parties agree that the disclosure of confidential information of the State's may cause the State irreparable damage for which remedies other than injunctive relief may be inadequate, and the Contractor agrees that in the event of a breach of the obligations hereunder, the State shall be entitled to temporary and permanent injunctive relief to enforce this provision without the necessity of proving actual damages. This provision shall not, however, diminish or alter any right to claim and recover damages.

F. **CONTRACT CONSTRUCTION.** This Contract will be constructed in accordance with the plain meaning of its language and neither for nor against the drafting party.

G. **CONTRACTOR DISCLOSURE: LOCATION OF SERVICES, DATA.** As part of this Agreement, Contractor shall disclose the following:

1. The location(s) where all services will be performed; and
2. The location(s) where any state data applicable to the contract will be maintained or made available; and
3. The principal location of business for the contractor and all subcontractors.

Contractor shall not, during the performance of this Contract, change the location(s) of the country where the services are performed or change the location(s) of the country where the data is maintained or made available without prior written approval of the State.

H. **DRUG FREE WORKPLACE.** The Contractor agrees to comply with all applicable state and federal laws regarding drug -- free workplace and shall make a good faith effort to ensure that all its employees, while working on state property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

I. **EQUAL EMPLOYMENT OPPORTUNITY.** The Contractor will comply with all state and federal laws regarding equal employment opportunity, including Ohio Revised Code Section 125.111 and all related Executive Orders.

Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be submitted to the DAS Equal Opportunity Division to comply with the affirmative action requirements. Affirmative Action Verification Forms and approved Affirmative Action Plans can be found by going to the Equal Opportunity Departments web site: <http://www.das.ohio.gov/Eod/AAEQO.htm>

J. **FORCE MAJEURE.** If the State or Contractor is unable to perform any part of its obligations under this Contract by reason of force majeure, the party will be excused from its obligations, to the extent that its performance is prevented by force majeure, for the duration of the event. The party must remedy with all reasonable dispatch the cause preventing it from carrying out its obligations under this Contract. The term "force majeure" means without limitation: acts of God; such as epidemics; lightning; earthquakes; fires; storms; hurricanes; tornadoes; floods; washouts; droughts; any other severe weather; explosions; restraint of government and people; war; strikes; and other like events; or any other cause that could not be reasonably foreseen in the exercise of ordinary care, and that is beyond the reasonable control of the party.

K. **GOVERNING LAW / SEVERABILITY.** This Contract shall be governed by the laws of the State of Ohio, and the venue for any disputes will be exclusively with the appropriate court in Franklin County, Ohio. If any provision of the Contract or the application of any provision is held by that court to be contrary to law, the remaining provisions of the Contract will remain in full force and effect.

L. **HEADINGS.** The headings used in this Contract are for convenience only and will not affect the interpretation of any of the Contract terms and conditions.

M. **NOTICES.** For any notice under this Contract to be effective it must be made in writing and sent to the address of the appropriate contact provided elsewhere in the Contract.

- N. **ORDER OF PRIORITY.** If there is any inconsistency or conflict between this document and any provision incorporated by reference, this document will prevail.
- O. **PUBLICITY.** The Contractor will not advertise that it is doing business with the State or use this Contract as a marketing or sales tool without the prior, written consent of the State.
- P. **STRICT PERFORMANCE.** The failure of either party, at any time, to demand strict performance by the other party of any of the terms of this Contract will not be construed as a waiver of any such term, and either party may at any time demand strict and complete performance by the other party.
- Q. **SUBCONTRACTING.** The State, through the Department of Administrative Services, General Services Division, Office of State Purchasing recognizes that it may be necessary for the Contractor to use a subcontractor to perform a portion of the work under the Contract. In those circumstances, the Contractor shall submit a list identifying its subcontractors or joint venture partners performing portions of the work under the Contract. If any changes occur during the term of the Contract, the Contractor shall supplement its list of subcontractors or joint venture business partners. In addition, all subcontractors or joint venture business partners agree to be bound by all of the Terms and Conditions and specifications of the Contract. The State, through the Department of Administrative Services, General Services Division, Office of State Purchasing, reserves the right to reject any subcontractor submitted by the Contractor.
- R. **SURVIVORSHIP.** All sections herein relating to payment, confidentiality, license and ownership, indemnification, publicity, construction warranties, limitations of warranties and limitations on damages shall survive the termination of this contract.
- S. **TAXES.** The State is exempt from all state and local taxes and does not agree to pay any taxes.
- T. **ELECTIONS LAWMAN.** Contractor, by signature affixed on this document, hereby certifies that all applicable parties listed in Division (I)(2) or (J)(3) of O.R.C. Section 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of O.R.C. Section 3517.13.

The Contractor is solely responsible to know the requirements and limitations set forth in the above-referenced Divisions of O.R.C. Section 3517.13, and to comply with those requirements and restrictions. The Contractor shall not accept a Contract and/or any purchase order issued under the Contract if the Contractor is unable to certify compliance with all provisions set forth in O.R.C. Section 3517.13. If the Contractor is unable to certify such compliance and accepts a Contract and/or purchase order issued under the Contract, DAS shall deem the Contractor in breach. As such, DAS may deem the Contract invalid and immediately cancel the Contract. If DAS cancels the Contract and applicable purchase order(s), the Contractor will be subject to all legal remedies available to the Department of Administrative Services up to and including debarment from doing business with the State of Ohio. Also, any Contractor unable to certify compliance with the above-referenced provisions in O.R.C. Section 3517.13, that accepts the Contract and any purchase orders issued under the Contract, will be held financially liable for any additional costs incurred by the DAS or other governmental entities placing orders under the Contract. These additional costs include those costs associated with re-awarding the Contract and/or seeking replacement items related to the cancellation of the Contract and/or related purchase orders.

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

U. In accordance with R. C. 2909.33 (C) I certify that I meet one of the following Conditions:

1. I have 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) I have 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) I have either pre-certified with the Office of Budget and Management, or have completed the attached Declaration of Material Assistance form certifying that I have not provided material assistance to any organization on the Terrorist Exclusion List, as that term is defined in R. C. 2909.21.

### **SPECIAL TERMS AND CONDITIONS**

#### **I. CONTRACT COMPLIANCE PROVISIONS:**

**A. CONTRACT COMPLIANCE.** The participating state agency and/or political subdivision that utilize this State Term Schedule will be responsible for the administration of the Contract and will monitor the Contractor's performance and compliance with the terms, conditions and specifications of the Contract. If an agency observes any infraction(s), such shall be documented and conveyed to the Contractor for immediate correction. If the Contractor fails to rectify the infraction(s), the agency will notify the State through the Department of Administrative Services, Office of State Purchasing, by executing a Complaint to Vendor (CTV) to help resolve the infraction(s). The State will apply the terms and conditions of the Termination provision of this Contract to resolve the infractions(s).

**B. CERTIFICATION OF ACCURACY.** The Contractor hereby certifies the following:

1. The Contractor's prices under this Contract are the best prices for which it or any of its distributors has sold each product or provided each service to any of its or its distributor's similarly situated most favored customers within the year before the date the Contractor executed this Contract and added the product or service to this Contract.
2. If the Contractor has submitted a manufacturer's letter to certify that the Contractor is an authorized dealer for the manufacturer, the Contractor warrants that the information in the letter is accurate and that a duly authorized representative of the manufacturer signed the letter.

The Contractor further represents and warrants that all future pricing information submitted to revise this Contract would also be true, correct, current, accurate, and complete.

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

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

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

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

Department of Administrative Services  
General Services Division, STS Program  
4200 Surface Road  
Columbus, Ohio 43228 - 1395

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

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

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

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

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

The Contractor must forward the check to the following address:

Department of Administrative Services  
General Services Division, STS Program  
4200 Surface Road  
Columbus, Ohio 43228 - 1395

Please make check payable to: Ohio State Treasurer Richard Cordray, Payment Currency is US Dollars

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

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

- E. **DELIVERABLES.** Attached as Exhibit 1 is the Contractor's price list for the products and services that the Contractor may provide to the State under this Contract. For convenience, those goods and services are referred to as "Deliverables" under this Contract. The Contractor may not provide any other goods or services under this Contract without an amendment to this Contract. Also, the

Contractor may not charge any other prices for these Deliverables other than the prices on the Exhibit 1. If Exhibit 1 contains or incorporates by reference any terms or conditions other than a description of the scope of license for software, product/service description, and product/service prices, they are excluded from this Contract and are of no effect. The Contractor's price list attached as Exhibit 1 is identified as the following commercial price list(s).

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

1. Workers' compensation insurance, as required by Ohio law or the laws of any other state where work under this Contract will be done. The Contractor will also maintain employer's liability insurance with at least a \$1,000,000.00 limit.
2. Personal injury, bodily injury, and property damage liability insurance, including automobile coverage, with personal injury and bodily injury of not less than \$1,000,000.00 combined single limit, and property damage of at least \$500,000.00 for any one (1) occurrence.

The Contractor will also furnish a certificate of insurance to the State for the required insurance evidencing coverage from an insurance carrier, or carriers authorized to do business in Ohio. The certificate 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 carrier(s). The certificate must also provide thirty (30) days notice to the State before cancellation.

**G. LEASES/FINANCING.** The State may elect to obtain equipment and software on a finance/lease basis subject to the terms of the State of Ohio, Department of Administrative Services, Master Financing Agreement (Revised 01/20/02) or the Master Lease Agreement (Revised 04/24/02), when the parties execute the applicable agreement.

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

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

**II. PARTIES TO THE CONTRACT:**

**A. DEALERS.** The State authorizes the Contractor to name one or more dealers to work with the State on behalf of the Contractor. But if the Contractor decides to use any dealers, the Contractor must submit the name, address, and telephone number of any such dealer, as well as the dealer's purchase order and payment address(es) and federal tax identification number. The Contractor must also submit a completed W9 form for each dealer it wishes to name under this section. The Contractor's submission must be on its official letterhead, signed by an authorized representative, and addressed to the Administrator, Office of State Purchasing.

In doing so, the Contractor warrants that:

1. The dealer has been given a copy of this Contract, and a duly authorized representative of the dealer has agreed, in writing, to be bound by the terms and conditions in this Contract.
2. Such agreement specifically provides that it is for the benefit of the State as well as the Contractor.

3. The Contractor agrees to remain liable under this Contract for the services of any dealer to perform and any breach of the dealer under this Contract.
4. Payments under this Contract for the services of any dealer may be made directly to that dealer, and the Contractor will look solely to the dealer for any payments due the Contractor once the State has paid the dealer.
5. 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 would 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.

- B. INDEPENDENT STATUS OF THE CONTRACTOR.** The parties will be acting as independent contractors. The partners, employees, officers, and agents of one party will act only in the capacity of representatives of that party and not as employees, officers, or agents of the other party and will not be deemed for any purpose to be such. Each party assumes full responsibility for the actions of its employees, officers, and agents, and agents while performing under this Contract and will be solely responsible for paying its people. Each party will also be alone responsible for withholding and paying income taxes and social security, workers' compensation, disability benefits and the like for its people. Neither party will commit, nor be authorized to commit, the other party in any manner.

- C. POLITICAL SUBDIVISIONS.** This Contract may be relied on by Ohio political subdivisions, including Ohio cities and counties ("Political Subdivisions"). 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 will look solely to the Political Subdivision's performance, including but not limited to payment, and will 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 where the Contractor reasonably believes that the Political Subdivision is or will be unable to perform its obligations in relation to that order.

### III. PRICING PROVISIONS:

- A. ECONOMIC PRICE ADJUSTMENT.** The State will be entitled to a price decrease any time the Contractor or any of its distributors sells a product or a service to any similarly situated most favored customer for less than the price agreed to between the State and the Contractor under this Contract. Any time the Contractor or any of its distributors sells a product or provides a service to any customer or dealer for less than it is available to the State under this Contract, the Contractor must notify the State of that event within thirty (30) calendar days of its occurrence and immediately reduce the price of the affected goods or services to the State under this Contract. The Contractor will also notify the State within thirty (30) calendar 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 will ask to renegotiate the price under this Contract of the goods and

services affected by the general reduction in price. If the Contractor and the State cannot agree on a renegotiated price, the State will have the right, on notice to the Contractor, to immediately remove the affected products and services from this Contract.

- B. NOTIFICATION OF PRICE INCREASE.** If this Contract permits any price increases, the Contractor must notify the Department of Administrative Services, Office of State Purchasing and any affected State customers of the increase at least sixty (60) days before the effective date of the price increase. State customers must be notified at their purchase order "bill to" address contained in the applicable purchase order(s). This notification must specify, when applicable, the product serial number, location, current price, increased price, and applicable purchase order number.

#### **IV. MERCHANDISE PROVISIONS:**

- A. EQUIPMENT WARRANTY.** If any electrical equipment, mechanical device, computer hardware, telecommunications hardware, or other type of physical machinery ("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 is modified or damaged after title passes to the State.

The Contractor will do the following if any Equipment does not meet the above warranties:

1. Cause the Equipment to perform substantially in accordance with the user manuals, technical materials, and related writings published by the manufacturer with respect to the Equipment, or if that is not commercially practicable; then
2. Grant the State a refund equal to the amount the State paid for the Equipment.

For all Equipment, the warranty period will be the longer of one (1) year after acceptance or the Equipment's standard warranty period.

- B. PRODUCT RECALL.** In the event product delivered has been recalled, seized, or embargoed and/or has been determined to be misbranded, adulterated, or found to be unfit for human consumption by the packer, processor, manufacturer or by any State or Federal regulatory agency, the Contractor shall be responsible to notify the State through DAS, Office of State Purchasing and all ordering agencies/entities within two business days after notice has been given. Contractor shall, at the option of the ordering agency, either reimburse the purchase price or provide an equivalent replacement product at no additional cost. Contractor shall be responsible for removal and/or replacement of the affected product within a reasonable time as determined by the ordering agency. At the option of the ordering agency, Contractor may be required to reimburse storage and/or handling fees to be calculated from time of delivery and acceptance to actual removal. Contractor will bear all costs associated with the removal and proper disposal of the affected product. Failure to reimburse the purchase price or provide equivalent replacement product will be considered a default.

- C. QUALITY ASSURANCE.** At the option of DAS or the participating agency, samples may be taken from deliveries made and submitted for laboratory tests. The State will bear the cost of testing when samples are found to be in compliance with the Contract. If samples do not conform to the Contract, Contractor will bear the costs of testing and the State will apply the terms and conditions of the Termination provision of this Contract.

**D. RETURN GOODS POLICY.** The State will apply the following Return Goods Policy on all purchases made under the Contract. The Contractor acknowledges to have read, understood, and agrees to this Policy.

1. Return goods, when due to Contractor error (i.e. over-shipment, defective merchandise, unapproved substitution, etc.) shall be returned to the Contractor, at the Contractor's expense. The Contractor shall make arrangements to remove the return goods from the ordering agency premises within seven (7) calendar days after notification. The Contractor shall not apply any restocking or other charges to the ordering agency. At the option of the ordering agency, replacement items may be accepted and will be shipped within seven (7) calendar days of notification. Failure of the Contractor to arrange for return of the items within the specified time will result in the items being deemed as abandoned property and the ordering agency will dispose of accordingly.
2. Return goods of regular catalog stock merchandise, when due to agency error (i.e. over purchase, discontinued use, inventory reduction, etc.) will be accepted by the Contractor if notice is given by the agency within six (6) months of delivery and acceptance. All items to be returned must be unused and in their original containers and in suitable condition for resale. The ordering agency will be responsible for all transportation costs associated with both the original shipment of items to the agency and the subsequent return of the items to the location designated by the Contractor. The Contractor may assess a restocking fee associated with the return of the items to the location designated by the Contractor. The Contractor may assess a restocking fee not to exceed their standard published restocking fee or equivalent restocking fee that is assessed to other customers of the Contractor. Return of regular stock catalog merchandise, when delivery and acceptance exceed six (6) months will be at the option of the Contractor.
3. For orders of custom manufactured items, the Contractor will provide a production sample of the item to the ordering agency for acceptance. The production sample will be identical to the item to be provided. The ordering agency will provide written acceptance of the item prior to the Contractor continuing with production. Once delivery and acceptance has been completed and the ordering agency determines for any reason that any remaining quantities will not be used, the agency may request the return of the custom manufactured items. Acceptance of the return of custom manufactured items will be at the option of the Contractor. If the Contractor agrees to the return of these items, the agency will be responsible for all costs associated with packaging, shipment and transportation, to include the original shipment to the agency and subsequent return of goods to the location designated by the Contractor. The Contractor may assess restocking fees that are equivalent to restocking fees that are normally assessed to other customers or as published by the Contractor. Failure of the Contractor to provide a production sample and obtain written approval from the ordering agency will result in the Contractor bearing all responsibility and costs associated with the return of these goods.

**V. MAINTENANCE PROVISIONS:**

- A. EQUIPMENT MAINTENANCE.** If this Contract involves computer or telecommunications hardware or other mechanical or electrical Equipment (use of the word "Equipment" means all the foregoing) as a Deliverable, then, during the warranty period and during any period covered by annual maintenance, the Contractor will provide Equipment maintenance to keep the Equipment in or restore the Equipment to good working order. This maintenance will 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 will also 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 condition means Equipment that performs in accordance with the manufacturer's published specifications.

The Contractor will exert its best efforts to perform all fault isolation and problem determination attributed to the Equipment covered under this Contract. The following services are outside the scope of this Contract:

1. 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.
2. 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 or included in the Contractor's proposal, or causes other than ordinary use of Equipment.
3. Furnishing platens, supplies, or accessories, making specification changes, or adding, or removing approved accessories, attachments or other devices except as set forth herein.
4. Maintenance or increase in 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.
5. Activities required restoring the Equipment to good operating condition if the problem has resulted from someone other than Contractor's authorized service personnel repairing, modifying or performing any maintenance service on the Equipment.

**B. EQUIPMENT MAINTENANCE CONTINUITY.** This section applies if Equipment will be a Deliverable under this Contract. If the Contractor is unable to provide maintenance services 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. But the State will also be entitled to the following items from the Contractor:

1. 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.
2. A listing of suppliers capable of supplying necessary spare parts.
3. Adequate information to permit the State to have spare parts manufactured elsewhere; and
4. A listing of spare parts and their recommended replacement schedule that will enable the State to create a centralized inventory of spare parts.

Any information in items (1) through (4) above that are rightfully identified by the Contractor as proprietary information will be maintained in confidence by the State except where disclosure to a third-party is necessary for the State to continue the maintenance. However, the State will require any third-party to whom disclosure is made to agree to hold the proprietary information in confidence and to make no further disclosure of it. Further, the State agrees that any such proprietary information will be used solely to perform maintenance for the State and will be returned to the Contractor or destroyed on completion of such use.

**C. EQUIPMENT MAINTENANCE STANDARDS.** This section applies if Equipment will be a Deliverable under this Contract. Except in the case of excusable delay, remedial Equipment maintenance by the Contractor will be completed within eight (8) 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 (8) 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 (8) hours to remedy a default. The Contractor will provide adequate staff to provide the maintenance required by this Contract.

D. **MAINTENANCE ACCESS (GENERAL)**. The section applies if any software or Equipment will be a Deliverable under this Contract. The State will provide the Contractor with reasonable access to the Deliverable to perform maintenance. All maintenance that requires the 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 will be performed at mutually agreeable times, within the parameters of the manufacturer's published schedule.

E. **PRINCIPAL PERIOD OF MAINTENANCE (GENERAL)**. This section applies if software or Equipment will be a Deliverable under this Contract. Maintenance will be available nine (9) 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 considered billable but will be included in the price of the maintenance.

#### VI. IT PROVISIONS:

A. **LICENSE IN COMMERCIAL MATERIAL**. As used in this section, "Commercial Material" means anything that has been developed at private expense by the Contractor or a third party, commercially available in the marketplace, subject to intellectual property rights, and readily copyable through duplication on magnetic media, paper, or other media. Examples include the written reports, books, pictures, videos, movies, computer programs, and computer 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 Exhibit 1 or as an attachment referenced in Exhibit 1, 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 perpetual rights in item (1) through (8) of this section or as expressly stated otherwise in this Contract. The Commercial Software may be:

1. Used or copied 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. Used or copied for use in with a backup computer for disaster recovery and disaster recovery testing purposes or if any computer for which it was acquired is inoperative,
3. Reproduced for safekeeping (archives) or backup purposes.

4. Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the Commercial Software will be subject to same restrictions on use.
5. Disclosed to and reproduced for use on behalf of the State by support service contractors or their subcontractors, subject to the same restrictions on use; and
6. Used or copied for use in or transferred to a replacement computer.

**However:**

7. If Commercial Software delivered under this Contract is published and copyrighted, it is licensed to the State without disclosure prohibitions; and
8. If any Commercial Software is delivered under this Contract with the copyright notice in 17 U.S.C. 401, it will be presumed to be published, copyrighted, and licensed to the State without disclosure restrictions unless a statement substantially as follows accompanies the copyright notice: "Unpublished rights reserved under the copyright laws of the United States". The State will treat such Commercial Software as Confidential Information to the extent that such is actually the case.

In case any other scope of license (e.g., MIP's, tier, concurrent users, enterprise, site, or otherwise) the foregoing will apply except as modified expressly by the applicable license description, which must be incorporated as part of Exhibit 1. If the Contractor provides greater license rights in and item included in Exhibit 1 to its general customer base for the Software's list price, those additional license rights will also 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.

**B. SOFTWARE WARRANTY.** If Exhibit 1 includes work to develop custom software as a Deliverable, then, on delivery and for one (1) year after the date of acceptance of any Deliverable that includes custom software, the Contractor warrants that:

1. The software will operate on the computer(s) for which the software is intended in the manner described in the relevant software documentation.
2. The software will be free of any material defects.
3. The Contractor will deliver and maintain relevant and complete software documentation, commentary, and source code.
4. 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
5. 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 (if applicable) to make the following warranties and maintenance obligations directly to the State. During the warranty period described in the next paragraph, the Contractor will:

6. Maintain or cause the third-party licensor to maintain the Commercial Software so that it operates in the manner described in its documentation.
7. Supply technical bulletins and updated user guides.
8. Supply the State with updates, improvements, enhancements, and modifications to the Commercial Software and documentation and, if available, the commentary and the source code.
9. Correct or replace the software and/or remedy any material programming error that is attributable to the Contractor or the third-party licensor; and
10. 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 \$5,000.00 per license or per copy, the warranty period will be the longer of one (1) year after acceptance or the licensor's standard warranty period. For Commercial Software designed for PC or PC-based servers and costing less than \$5,000.00 per license or per copy, the warranty period will be the longer of three (3) months after acceptance of 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 will 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 source code will be provided in the language in which it was written and will include commentary that will 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.

- C. **SOFTWARE MAINTENANCE.** If this Contract involves any custom software as a Deliverable, then, during the warranty period, the Contractor will correct any material programming errors that are attributable to the Contractor, within a reasonable time, provided that the State notifies the Contractor, either orally or in writing, of a problem with the software and provides sufficient information to identify the problem. 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 administrators to employ work-arounds to fully use the software, Contractor will respond to requests for resolution within four (4) business hours and begin working on a proper solution within one (1) business day, dedicating the resources of one (1) 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 will respond within two (2) 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 \$5,000.00 per copy or license, the Contractor will provide maintenance during the warranty period at no cost

to the State. That maintenance will be the standard maintenance program that the licensor, whether the Contractor or a third party, normally provides to its client base. But, at a minimum, that maintenance program must include all new releases, updates, patches, and fixes to the commercial Software. It will also include a commitment to keep the software current with the operating environment in which it is designed to function and to correct material defects that the State finds in the software in a timely fashion.

Additionally, the Contractor will make (or obtain a commitment from the third-party licensor to make) maintenance available for the product for at least five (5) 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 (5%) 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 (1) of the following two (2) things: (a) give the State a pro rata refund of the license fee based on a five (5) 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 the copy(ies) of the software for which the State has a proper license. For purposes of receiving the source code, the State agrees to treat it as confidential and to be obligated to the requirements under the Confidentiality Section of this Contract with respect to the source code. That is, with respect to the source code that the State gets under this section, the State will do all the things that the Confidentiality Section requires the contractor to do in handling the State's Confidential Information. 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 \$5,000.00 per copy or license, the Contractor will provide the maintenance and/or user assistance during the warranty period at no additional cost to the State that the Contractor or the third-party licensor makes generally available at no additional charge to its other customers. That maintenance will be the standard maintenance program that the licensor, whether the Contractor or a third-party, normally provides to its client base.

D. **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 on which to use 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:

1. The Contractor's (or third party's) standard upgrade or migration fee.
2. The upgrade or migration fee in Exhibit 1.
3. Or 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. This will not apply to Commercial Software for PCs and PC-based server software with a license fee of less than \$5,000.00, 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 which is made available to other similarly situated most favored customers or dealers, as appropriate.

## VII. OWNERSHIP/TITLE PROVISIONS:

A. **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 thirty (30) days after installation to do this. The State will not issue a formal letter of acceptance, and passage of thirty (30) days will imply acceptance, though the State will issue a notice of noncompliance if a Deliverable does not meet the warranties in this Contract. If the State issues a letter of noncompliance, then the Contractor will have thirty (30) calendar days to correct the problems listed in the noncompliance 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 letters has been cured. If the problems have been fixed during the thirty (30) day period, the State will issue the acceptance letter within fifteen (15) days after all defects have been fixed.

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

C. **OWNERSHIP OF DELIVERABLES.** Notwithstanding this contract cannot be used for software development, all custom work done by the Contractor and covered by this Contract will be treated as "work for hire" on behalf of the State, with all rights, title, and interest in all intellectual property that comes into existence through the Contractor's custom work being assigned to the State. Additionally, the Contractor waives any shop rights, author rights, and similar retained interests in custom developed material. The Contractor will provide the State with all assistance reasonably needed to vest such rights of ownership in the State. But the Contractor will retain ownership of all tools, methods, techniques, standards, and other development procedures, as well as generic and preexisting shells, subroutines, and similar material incorporated in any custom Deliverable ("Pre-existing Materials").

The Contractor will grant the State a worldwide, non-exclusive, royalty-free perpetual license to use, modify, sell, and otherwise distribute all Pre-existing Materials that are incorporated in any custom-developed Deliverable rather than grant the State ownership of the Pre-existing Materials. The Contractor will 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 and obtain written approval from the State for doing so in advance. On request of the Contractor, the State will incorporate any proprietary notice of the Contractor may reasonably want for any Pre-existing Materials included in a 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.

D. **PASSAGE OF TITLE.** Title to any Deliverable will pass to the State only on acceptance of the Deliverable. All risk of loss will remain with the Contractor until title to the Deliverable passes to the State.

## VIII. GENERAL PROVISIONS:

A. **CONTRACT RENEWAL.** This Contract may be renewed solely at the discretion of the Department of Administrative Services for a period of one month. Any further renewals will be by mutual agreement between the contractor and the Department of Administrative Services for any number of times and for any period of time. The cumulative time of all mutual renewals may not exceed two years.

B. **CONTROLLING BOARD AUTHORIZATION.** The State's obligations under this Contract are subject to the Ohio Controlling Board's continuing authorization to use state term contracts. If the Ohio Controlling Board fails to authorize or withdraws its authorization for this program, this Contract will terminate, and the Contractor may not take any more orders under this Contract.

C. **OHIO ETHICS** All Contractors who are actively doing business with the State of Ohio or who are seeking to do business with the State of Ohio are responsible to review and comply with all relevant provisions of O.R.C. Sections 102.01 to 102.09, and Governor Strickland's Executive Order 2007-01S for Ethics.

In accordance with Executive Order 2007-01S, Contractor, by signature on this document, certifies: (1) it has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands Ohio ethics and conflict 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 with the state of Ohio up to and including debarment.

Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of Ohio ethics laws.

Executive Order 2007-01S is available for review at [www.governor.ohio.gov](http://www.governor.ohio.gov), click on Governor's Office and then on Executive Orders.

D. **OHIO PAYMENT CARD.** Participating state agencies purchasing supplies from the Contract may use the Ohio Payment Card. Such purchases may not exceed \$2,500 unless the Office of Budget & Management has approved the agency to exceed this limit. In the event that OBM increases the dollar limit for payment cards for all state agencies, notice of such increase will be posted on the Department of Administrative Services, Office of State Purchasing Website. Participating state agencies are required to use the Ohio Payment Card in accordance with the Ohio, Office of Budget and Management's current guidelines for the Ohio Payment Card and the participating agency's approved plan filed with the Office of Budget of Management. Contractor may process a payment in the payment card network only upon delivery and acceptance of the supplies or services ordered. For partial deliveries or performance, Contractor may process a payment for the amount delivered or completed only and not for the entire amount ordered by the participating agency. Upon completion of the delivery of remaining supplies or services, Contractor may process a payment request in the payment card network for the remainder of the order. Contractor will receive payment through its merchant bank within the time frame agreed upon between Contractor and its merchant bank. The Contractor should expect normal processing fees from its merchant bank for payment card transaction which may not be passed on to the agency making the purchase.

E. **TRAVEL EXPENSES.** Any travel or per diem required by the Contractor to do its obligations under this Contract will be at the Contractor's expense. The State will pay for any additional travel that it requests only with prior written approval. All additional travel and per diem that the State requests in addition to what this Contract requires the Contractor to provide at the Contractor's expense will be paid in accordance with the Office of Budget and Management's Travel Rules in Section §126-1-02 of the Ohio Administrative Code.

F. **ENTIRE AGREEMENT.** This Contract consists of this document; the Contractor's offer letter, and if applicable the Contractor's letter(s) designating authorized dealers and Exhibit 1. The foregoing constitutes the entire agreement between the parties, and any changes or modifications to this Contract must be in writing.

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

ACCEPTED BY:

THE CONTRACTOR

ACCEPTED BY:

STATE OF OHIO,  
DEPARTMENT OF ADMINISTRATIVE SERVICES

Signature

Signature

Name (printed)

Hugh Quill  
Name (printed)

Title

Director  
Title

Date

Date

## Cleveland City Council

Martin J. Sweeney, Council President

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## Cleveland Area Business Code

## EQUAL OPPORTUNITY CLAUSE

## City of Cleveland Codified Ordinance Section 187.22(b)

During the performance of this contract, the contractor agrees as follows:

(1) The contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, national origin, age, disability, ethnic group, or Vietnam-era or disabled veteran status. The contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to race, religion, color, sex, sexual orientation, national origin, age, disability, ethnic group, or Vietnam-era or disabled veteran status. As used herein, "treated" means and includes without limitation the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship, promoted, upgraded, demoted, downgraded, transferred, laid off and terminated. The contractor agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the hiring representatives of the contractor setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that the contractor is an equal opportunity employer.

(3) The contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract, or understanding, a notice advising the labor union or worker's representative of the contractor's commitments under the equal opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) It is the policy of the City that businesses, minority-owned businesses and female-owned businesses shall have every practicable opportunity to participate in the performance of contracts awarded by the City subject to the applicable provisions of the Cleveland Area Business Code.

(5) The contractor shall permit access by the Director or his designated representative to any relevant and pertinent reports and documents to verify compliance with the Cleveland Area Business Code, and with the Regulations. All such materials provided to the Director or his designee by the contractor shall be considered confidential.

(6) The contractor will not obstruct or hinder the Director or his designee in the fulfillment of the duties and responsibilities imposed by the Cleveland Area Business Code.

(7) The contractor agrees that each subcontract will include this Equal Opportunity Clause, and the contractor will notify each subcontractor, material supplier and supplier that the subcontractor must agree to comply with and be subject to all applicable provisions of the Cleveland Area Business Code. The contractor shall take any appropriate action with respect to any subcontractor as a means of enforcing the provisions of the Code.

(Effective June 3, 2008)

CLEVELAND CITY COUNCIL  
601 LAKESIDE AVENUE, ROOM 220  
CLEVELAND, OH 44114  
(216) 664-2840 • (216) 664-3837 fax

COUNCIL MEMBERS • LEGISLATION • NEWS • RESOURCES  
HOME • CONTACT US • WEBMASTER • PRIVACY

EXHIBIT

D

Requested By: \_\_\_\_\_  
(Department/Office)

**NON-COMPETITIVE BID CONTRACT  
STATEMENT FOR CALENDAR YEAR 2010  
(ALL DEPARTMENTS/OFFICES)**

This statement, properly executed and containing all required information must be completed. IF YOU FAIL TO COMPLY, YOUR PROPOSAL WILL NOT BE CONSIDERED.

Entity Name: Elsay North America, LLC  
Entity's Mailing Address: 205 H Creek Ridge Road  
Greensboro, NC 27406

COMPLETE SECTION I, II, OR III BELOW, WHICHEVER IS APPROPRIATE, AND SECTION IV.

NOTE: For purposes of this Statement, the "Mayor" and "Mayor's Committee" means Frank G. Jackson and the Frank G. Jackson For A Better Cleveland Committee, respectively.

**SECTION I. TO BE COMPLETED BY NON-PROFIT CORPORATIONS AND GOVERNMENTAL ENTITIES.**

If you are recognized by the IRS as a non-profit corporation or are a governmental entity, mark the appropriate designation below and proceed to the indicated section(s).

\_\_\_\_ NON-PROFIT CORPORATION GO TO SECTIONS III and IV.  
\_\_\_\_ GOVERNMENTAL ENTITY GO TO SECTION IV.

**SECTION II. TO BE COMPLETED BY INDIVIDUALS, SOLE PROPRIETORSHIPS, PARTNERSHIPS, INCORPORATED PROFESSIONAL ASSOCIATIONS, UNINCORPORATED ASSOCIATIONS, ESTATES AND TRUSTS.**

The above-named entity is a (Please mark appropriate designation):

\_\_\_\_ SOLE PROPRIETORSHIP      \_\_\_\_ TRUST  
\_\_\_\_ INCORPORATED PROFESSIONAL ASSOCIATION      \_\_\_\_ ESTATE  
\_\_\_\_ UNINCORPORATED ASSOCIATION      \_\_\_\_ PARTNERSHIP  
☒ LIMITED LIABILITY COMPANY      \_\_\_\_ JOINT VENTURE

For purposes of Section II, a "principal" means an individual, an owner, a partner, a shareholder, a member, an administrator, an executor or trustee connected with the above-named entity, or the spouse of any of them.

PLEASE READ PARAGRAPHS (A) and (B) and mark the appropriate paragraph. If paragraph (B) is checked, the City of Cleveland is prohibited by Section 3517.13 of the Revised Code from awarding a non-competitively bid contract over \$600.00 to the entity during calendar year 2010 unless Council makes a direct award.

☒ (A) NO ONE PRINCIPAL of the above named entity made one or more contributions to the Mayor or the Mayor's Committee between January 1, 2008 and December 31, 2009 that totaled in excess of \$1,000.00 per individual. (This paragraph also applies if no principal of the above-named entity made any contributions to the Mayor or the Mayor's Committee).

\_\_\_\_ (B) ONE OR MORE PRINCIPALS of the above named entity made, as individual(s), one or more contributions to the Mayor or the Mayor's Committee between January 1, 2008 and December 31, 2009 that totaled in excess of \$1,000.00.

**SECTION III. TO BE COMPLETED BY NON-PROFIT AND FOR-PROFIT CORPORATIONS AND BUSINESS TRUSTS**

☐ NON-PROFIT CORPORATION ☒ FOR-PROFIT CORPORATION  
☐ BUSINESS TRUST (OTHER THAN INCORPORATED PROFESSIONAL ASSOCIATIONS)

For purposes of Section III, a "principal" means an individual or an entity owning more than 20% of the corporation or business trust or the spouse of any such individual.

PLEASE READ PARAGRAPHS (A), (B), (C) and (D) and mark the appropriate paragraph. If paragraph (C) is checked, the City of Cleveland is prohibited by Section 3517.13 of the Revised Code from awarding a non-competitively bid contract over \$500.00 to the entity during calendar year 2010 unless Council makes a direct award. If paragraph (D) is checked, the City of Cleveland is prohibited by Section 3585.03 from awarding a contract to the non-profit corporation.

- ☐ (A) NO INDIVIDUAL or entity owned more than 20% of the corporation or business trust between January 1, 2008 and December 31, 2009.
- ☒ (B) NO PRINCIPAL of the above named entity made, as an individual, one or more contributions to the Mayor or the Mayor's Committee between January 1, 2008 and December 31, 2009 that totaled in excess of \$1,000.00. (This paragraph also applies if no principal of the above named entity made any contributions to the Mayor or the Mayor's Committee).
- ☐ (C) ONE OR MORE PRINCIPALS of the above named entity made one or more contributions to the Mayor or the Mayor's Committee between January 1, 2008 and December 31, 2009 that totaled in excess of \$1,000.00 individual.
- ☐ (D) FUNDS OF THE NON-PROFIT CORPORATION were contributed to the Mayor or the Mayor's Committee at any time.

GO TO SECTION IV.

**SECTION IV. TO BE COMPLETED BY ALL ENTITIES**

I do hereby state that I have legal authority to complete this statement on behalf of the above named entity and to the best of my knowledge and belief the answers herein are true and complete.

Print Name Ross Jureit Print Title General Counsel  
 Signature [Signature] Date 2/8/10  
 Telephone No. 336-379-7135  
 (Area Code)

STATE OF North Carolina }  
 COUNTY OF Guilford } SS:

Before me, a Notary Public in and for said County and State, personally appeared the above named Ross Jureit, who acknowledged that (he/she) did sign the foregoing statement and that the same is (his/her) free act deed, personally and as duly authorized representative of ELSAG NA, and the free act and deed of the entity on whose behalf (he/she) signed.

Notary Public Mary Kay Bennett  
 Date 2/10/10  
 Embossed Hereon is My  
 Official Seal, North Carolina Notary Public Seal  
 My Commission Expires May 31, 2010  
 MARY KAY BENNETT

FOR MAYOR'S OFFICE USE ONLY  
☒ ELIGIBLE [Signature]  
☐ INELIGIBLE  
 DATE 2/22/10

# STATE ISSUED LICENSE

In accordance with section 2909.32 (2)(a) of the Ohio Revised Code

## DECLARATION REGARDING MATERIAL ASSISTANCE/NONASSISTANCE TO A TERRORIST ORGANIZATION

This form serves as a declaration of the provision of material assistance to a terrorist organization or organization that supports terrorism as identified by the U.S. Department of State Terrorist Exclusion List (see the Ohio Homeland Security Division Web site for a reference copy of the Terrorist Exclusion List).

Any answer of "yes" to any question, or the failure to answer "no" to any question on this declaration shall serve as a disclosure that material assistance to an organization identified on the U.S. Department of State Terrorist Exclusion List has been provided. Failure to disclose the provision of material assistance to such an organization or knowingly making false statements regarding material assistance to such an organization is a felony of the fifth degree.

For the purposes of this declaration, "material support or resources" means currency, payment instruments, other financial securities, funds, transfer of funds, and financial services that are in excess of one hundred dollars, as well as communications, lodging, training, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

LAST NAME		FIRST NAME		MI
HOME ADDRESS				
CITY	STATE	ZIP	COUNTY	
HOME PHONE (336) 379-7135		WORK PHONE		

## COMPLETE THIS SECTION ONLY IF YOU ARE A COMPANY, BUSINESS OR ORGANIZATION

BUSINESS/ORGANIZATION NAME Elsag North America, LLC		PHONE (336) 379-7135	
BUSINESS ADDRESS 205 H Creek Ridge Road			
CITY Greensboro	STATE NC	ZIP 27406	COUNTY Guilford

## DECLARATION

In accordance with section 2909.32 (A)(2)(b) of the Ohio Revised Code

For each question, indicate either "yes," or "no" in the space provided. Responses must be truthful to the best of your knowledge.

- Are you a member of an organization on the U.S. Department of State Terrorist Exclusion List? ☐ Yes ☒ No
- Have you used any position of prominence you have with any country to persuade others to support an organization on the U.S. Department of State Terrorist Exclusion List? ☐ Yes ☒ No
- Have you knowingly solicited funds or other things of value for an organization on the U.S. Department of State Terrorist Exclusion List? ☐ Yes ☒ No
- Have you solicited any individual for membership in an organization on the U.S. Department of State Terrorist Exclusion List? ☐ Yes ☒ No
- Have you committed an act that you know, or reasonably should have known, affords "material support or resources" to an organization on the U.S. Department of State Terrorist Exclusion List? ☐ Yes ☒ No
- Have you hired or compensated a person you knew to be a member of an organization on the U.S. Department of State Terrorist Exclusion List, or a person you knew to be engaged in planning, assisting, or carrying out an act of terrorism? ☐ Yes ☒ No

In the event of a denial of licensure due to a positive indication that material assistance has been provided to a terrorist organization, or an organization that supports terrorism as identified by the U.S. Department of State Terrorist Exclusion List, a review of the denial may be requested. The request must be sent to the Ohio Department of Public Safety's Division of Homeland Security. The request forms and instructions for filing can be found on the Ohio Homeland Security Division website.

## CERTIFICATION

I hereby certify that the answers I have made to all of the questions on this declaration are true to the best of my knowledge. I understand that if this declaration is not completed in its entirety, it will not be processed and I will be automatically disqualified. I understand that I am responsible for the correctness of this declaration. I understand that failure to disclose the provision of material assistance to an organization identified on the U.S. Department of State Terrorist Exclusion List, or knowingly making false statements regarding material assistance to such an organization is a felony of the fifth degree. I understand that any answer of "yes" to any question, or the failure to answer "no" to any question on this declaration shall serve as a disclosure that material assistance to an organization identified on the U.S. Department of State Terrorist Exclusion List has been provided by myself or my organization. If I am signing this on behalf of a company, business or organization, I hereby acknowledge that I have the authority to make this certification on behalf of the company, business or organization referenced above.

*[Signature]* for Elsag North America, LLC  
APPLICANT SIGNATURE DATE 2/18/10

# PURCHASE ORDER

PO 6001 OH2012000000031 05/30/2012

Page 1 of 2

**CITY OF CLEVELAND**  
 Division of Purchases & Supplies  
 601 Lakeside Avenue  
 Room 128  
 Cleveland, OH 44114  
 Tax ID: 34-6000646

**Issued To:**

VC0000000154  
 ELSAG NORTH AMERICA LLC  
 ATTN: ELSAG NORTH AMERICA LLC  
 205 H CREEK RIDGE RD  
 GREENSBORO, NC 27406  
 Contact Phone: 000-000-0000

**Ship To:**

Homeland Security  
 205 West St. Clair Ave. 5th Floor  
 Cleveland, OH 44113  
 Deliver By:

**Bill To:**

Homeland Security  
 205 West St Clair 5th Floor  
 Office of Homeland Security  
 Cleveland, OH 44113  
 \*\*Invoice must reference PO number

F.O.B.: FOB Destination, Freight Prepaid

**\*\*DUPLICATE\*\***

Line	Commodity Description	Quantity Service From	Unit	Unit Price Service To	Total Amount
1	MPH-900 ADM3 ST2 25/16 10ft Perm Pwr (110091)	16.00	EA	\$16,300.00	\$260,800.00
SOURCED FROM REQUISITION NO. RQS 6001 RE2012000001126 FOR LINE ITEM NO. 1					
2	ELSAG Operations Center (EOC) License Fee (410322)	16.00	EA	\$656.25	\$10,500.00
SOURCED FROM REQUISITION NO. RQS 6001 RE2012000001126 FOR LINE ITEM NO. 2					
3	ELSAG Operations Center (EOC) License Fee (410322)	1.00	EA	\$1,275.00	\$1,275.00
SOURCED FROM REQUISITION NO. RQS 6001 RE2012000001126 FOR LINE ITEM NO. 3					
4	Engineering Day - Onsite (21003)	1.00	EA	\$1,250.00	\$1,250.00
SOURCED FROM REQUISITION NO. RQS 6001 RE2012000001126 FOR LINE ITEM NO. 4					
5	MPH-900 SP2 Covert Trailblazer (110125)	1.00	EA	\$19,380.00	\$19,380.00
SOURCED FROM REQUISITION NO. RQS 6001 RE2012000001126 FOR LINE ITEM NO. 5					
6	IR Replacement Glass-Explorer (412305)	1.00	EA	\$450.00	\$450.00
SOURCED FROM REQUISITION NO. RQS 6001 RE2012000001126 FOR LINE ITEM NO. 6					
<b>Additional Terms and Conditions</b>					
No Price increase					
Commissioner of Purchases and Supplies		Refer Questions To:			Purchase Order Total
SIGNATURE		Requestor: Shawn Gidley      Buyer: James Hardy Phone: 216-664-7027      Phone: 216-664-2620 Requestor Email: sgidley@city.cleveland.oh.us Buyer Email: JHardy@city.cleveland.oh.us			\$293,655.00

See Terms and Conditions on reverse, which are an integral part hereof.

# PURCHASE ORDER

PO 6001 OH2012000000031 05/30/2012

Page 2 of 2

**CITY OF CLEVELAND**  
 Division of Purchases & Supplies  
 601 Lakeside Avenue  
 Room 128  
 Cleveland, OH 44114  
 Tax ID: 34-6000646

**Issued To:**

VC0000000154  
 ELSAG NORTH AMERICA LLC  
 ATTN: ELSAG NORTH AMERICA LLC  
 205 H CREEK RIDGE RD

GREENSBORO, NC 27406

Contact Phone: 000-000-0000

**Ship To:**

Homeland Security  
 205 West St. Clair Ave. 5th Floor

Cleveland, OH 44113

**Deliver By:**

**Bill To:**

Homeland Security  
 205 West St Clair 5th Floor  
 Office of Homeland Security  
 Cleveland, OH 44113

**\*\*Invoice must reference PO number**

F.O.B.: FOB Destination, Freight Prepaid

**\*\*DUPLICATE\*\***

Line	Commodity Description	Quantity	Unit	Unit Price	Total Amount
		Service From		Service To	
	This Purchase Order does not permit price increases.				
	<i>Purchased pursuant to Ohio STS846 Schedule No. 800067 and pricing per quotations 2012-788 and 2012-868 enclosed.</i> <i>Note: Per State Contract, prices must be "FOB Destination."</i> <i>COOP Membership No. 7264.</i>				
Commissioner of Purchases and Supplies		Refer Questions To:		Purchase Order Total	
SIGNATURE		Requestor: Shawn Gidley Phone: 216-664-7027 Requestor Email: sgidley@city.cleveland.oh.us Buyer Email: JHardy@city.cleveland.oh.us		Buyer: James Hardy Phone: 216-664-2620	
				\$293,655.00	

See Terms and Conditions on reverse, which are an integral part hereof.



# REQUEST FOR LEGISLATION

RQS 6001 RE2012000001126

Pending

**CITY OF CLEVELAND**  
 Division of Purchases & Supplies  
 601 Lakeside Avenue  
 Room 128  
 Cleveland, OH 44114  
 Tax ID: 34-6000646

Division: 6001  
 Requester: Shawn Gidley  
 664-7027  
 sgidley@city.cleveland.oh.us

Line #	Description	Quantity	Unit	Unit Price	Total Amount
		Service From		Service To	
1	MPH-900 ADM3 ST2 25/16 10ft Perm Pwr (110091)	16.00	EA	\$16,300.00	\$260,800.00
2	ELSAG Operations Center (EOC) License Fee (410322)	16.00	EA	\$656.25	\$10,500.00
3	ELSAG Operations Center (EOC) License Fee (410322)	1.00	EA	\$1,275.00	\$1,275.00
4	Engineering Day - Onsite (21003)	1.00	EA	\$1,250.00	\$1,250.00
5	MPH-900 SP2 Covert Trailblazer (110125)	1.00	EA	\$19,380.00	\$19,380.00
6	IR Replacement Glass-Explorer (412305)	1.00	EA	\$450.00	\$450.00

**ESTIMATED COST \$293,655.00**

## VENDOR

ELSAG NORTH AMERICA LLC  
 205 H CREEK RIDGE RD  
 GREENSBORO, NC 27406

## CHART OF ACCOUNTS

LINE	BAL	TYPE	SUBPLAN	DEPT	ACT	APPROPRIATION	OBJECT	PROGRAM	AMOUNT
1	9999	19	958	6001	00	640	6414	19958000	\$32,600.00
2	9999	19	922	6001	00	640	6414	19922000	\$228,200.00
1	9999	19	958	6001	00	640	6414	19958000	\$1,300.00
2	9999	19	922	6001	00	640	6414	19922000	\$9,200.00
1	9999	19	958	6001	00	640	6414	19958000	\$1,275.00
1	9999	19	958	6001	00	640	6414	19958000	\$1,250.00
1	9999	19	958	6001	00	640	6414	19958000	\$19,380.00
1	9999	19	958	6001	00	640	6414	19958000	\$450.00

## COMMENTS



# REQUEST FOR LEGISLATION

RQS 6001 RE2012000001126

Pending

Page 2 of 2

## CITY OF CLEVELAND

Division of Purchases & Supplies  
601 Lakeside Avenue  
Room 128  
Cleveland, OH 44114  
Tax ID: 34-6000646

Division: 6001

Requester: Shawn Gidley  
664-7027  
sgidley@city.cleveland.oh.us

### COMMENTS

*Purchased using STS Ohio #800067*

# Quotes



**ELSAG North America**  
A Finmeccanica Company

Prepared by: Matt Maxwell  
Phone: 937-572-9014  
Email: matthew.maxwell@elsag.com



205 - H Creek Ridge Road  
Greensboro, NC 27406  
Duns # 198140821  
FED TAX ID# 800119568  
Tel: 1.877-77-ELSAG  
(1.877.773.5724)  
Fax: 1.336.379.7164

Quote#: 2012-868

Quote Date: 08/26/2012

Funding Source:

Quote Expiry Date: 06/24/2012

Grant Details:

Scheduled Install Date:

Payment Method:

Terms: Net 30 days from date of shipment. If installation is required then Net 30 days from the Installation Date. Elsag agrees not to ship equipment until an Installation Date is agreed upon by the Parties. All orders shipped FOB Greensboro.

Contracts: - Ohio #800067

Comment:

Bill To:	Cleveland Police Department 1300 Ontario St Cleveland, OH 44113 United States	Ship To:	Cleveland Police Department 1300 Ontario St Cleveland, OH 44113 United States
----------	----------------------------------------------------------------------------------------	----------	----------------------------------------------------------------------------------------

Product Qty	Product/Service	Unit Price	Amount
14	MPH-900 ADM3 ST2 25/16 10ft Perm Pwr(110091) [Mount:Hedley Mount(110091)]	16,350.00	228,900.00
14	ELSAG Operations Center (EOC) License Fee (410322)	975.00	13,650.00
	Contract discount for ST2:		-700.00
	Contract discount for EOC:		-4,450.00
Upfront	Goods & Services Sub-total (Pre-Tax):		237,400.00
	Tax Exempt		0.00
	Goods & Services Total:		237,400.00
*This Quote constitutes the entire offer and understanding between the parties and supersedes and replaces any prior offer, quote, agreement, understanding or arrangement whether written or oral between the parties. If there is a discrepancy, please contact your account manager for correction.			

\*Training and 24-Hour Telephone Support are in your purchase at no additional cost and will continue throughout your warranty period.

\*Terms listed above may not be changed or modified unless in writing and signed by authorized representative of Elsag. Elsag will not be bound by any terms of Buyer's purchase order unless expressly agreed to in writing and signed by an authorized representative of Elsag.

# Quotes



**ELSAG North America**  
A Finmeccanica Company

Prepared by: Matt Maxwell  
Phone: 937-572-9014  
Email: matthew.maxwell@elsag.com



205 - H Creek Ridge Road  
Greensboro, NC 27406  
Duns # 196140821  
FED TAX ID# 800119568  
Tel: 1.877-77-ELSAG  
(1.877.773.5724)  
Fax: 1.336.379.7164

Quote#: 2012-788  
Funding Source:  
Grant Details:  
Payment Method:

Quote Date: 02/27/2012  
Quote Expiry Date: 05/27/2012  
Scheduled Install Date:

Terms: Net 30 days from date of shipment. If installation is required then Net 30 days from the Installation Date. Elsag agrees not to ship equipment until an Installation Date is agreed upon by the Parties. All orders shipped FOB Greensboro.

Contracts: - Ohio #800067

Comment:

Bill To:	Cleveland Police Department 1300 Ontario St Cleveland, OH 44113 United States	Ship To:	Cleveland Police Department 1300 Ontario St Cleveland, OH 44113 United States
----------	----------------------------------------------------------------------------------------	----------	----------------------------------------------------------------------------------------

Product Qty	Product /Service	Unit Price	Amount
2	MPH-900 ADM3 ST2 25/16 10ft Perm Pwr(110091) [Mount: Hedley Mount(110091)]	16,350.00	32,700.00
2	ELSAG Operations Center (EOC) License Fee (410322)	1,275.00	2,550.00
1	ELSAG Operations Center (EOC) License Fee (410322)	1,275.00	1,275.00
1	Engineering Day- Onsite (210003)	1,250.00	1,250.00
1	MPH-900 SP2 COVERT TRAILBLAZER (110125) mounted inside the vehicle with a replacement window to all IR penetration. Includes IR glass and window frame.	19,380.00	19,380.00
1	IR Replacement Glass-Explorer (412305)	450.00	450.00
	Discount to make EOC \$650 each:		-1,250.00
	Discount to make LPR System \$16,300 each:		-100.00
Upfront	Goods & Services Sub-total (Pre-Tax):		56,255.00
	Tax Exempt		0.00
	Goods & Services Total:		56,255.00
*This Quote constitutes the entire offer and understanding between the parties and supersedes and replaces any prior offer, quote, agreement, understanding or arrangement whether written or oral between the parties. If there is a discrepancy, please contact your account manager for correction.			

\* Training and 24 Hour Telephone Support are in your purchase at no additional cost and will continue throughout your warranty period.

\* Terms listed above may not be changed or modified unless in writing and signed by authorized representative of Eltag. Eltag will not be bound by any terms of Buyer's purchase order unless expressly agreed to in writing and signed by an authorized representative of Eltag.

five vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed October 10, 2011.  
Effective October 14, 2011.

#### Ord. No. 1100-11.

By Council Members Kelley and Sweeney (by departmental request).

An emergency ordinance authorizing the Director of Public Utilities to enter into one or more requirement contracts without competitive bidding with HSQ Technology for materials, equipment, supplies, services, software, software integration, labor, and training necessary to refurbish the supervisory control and data acquisition system manufactured by HSQ Technology, including maintenance, for the Division of Water, Department of Public Utilities, for a period not to exceed two years.

Whereas this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. That this Council determines that the within commodities are non-competitive and cannot be secured from any source other than HSQ Technology. Therefore, the Director of Public Utilities is authorized to make one or more written requirement contracts with HSQ Technology, for the requirements for a period not to exceed two years of the necessary items for: materials, equipment, supplies, services, software, software integration, labor, and training necessary to refurbish the supervisory control and data acquisition system ("SCADA") manufactured by HSQ Technology, including maintenance, to be purchased by the Commissioner of Purchases and Supplies on a unit basis, for the Division of Water, Department of Public Utilities, for a period not to exceed two years.

Section 2. That the costs of the contract or contracts shall be charged against the proper appropriation accounts and the Director of Finance shall certify the amount of the initial purchase, which purchase, together with all later purchases, shall be made on order of the Commissioner of Purchases and Supplies under a delivery order against the contract or contracts certified by the Director of Finance. (RON 2002, R. 2011-25)

Section 3. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed October 10, 2011.  
Effective October 14, 2011.

#### Ord. No. 1101-11.

By Council Members Keane, Cleveland and Sweeney (by departmental request).

An emergency ordinance authorizing the Director of Port Control to enter into a Lease Agreement with

MUDA Construction, Inc. for the lease of office space at Burke Lakefront Airport for general office-related activities, for the Department of Port Control, for a period of two years, with two one-year options to renew, the first of which is exercisable through additional legislative authority.

Whereas this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. That the Director of Port Control is authorized to enter into a Lease Agreement ("Lease") with MUDA Construction, Inc. ("Lessee") for use and occupancy of approximately 824 square feet of office space located in Room 142 of the passenger terminal building at Burke Lakefront Airport ("Leased Premises") for general office-related activities which is no longer needed for public use for the term of the lease. The term of the lease shall be for a two year period, commencing on the effective date of the Lease, with two one-year options to renew. The first of the one-year options to renew may not be exercised without additional legislative authority. If such additional legislative authority is granted and the first of the one-year options to renew is exercised, then the second of the one-year options to renew may be exercisable at the option of the Director of Port Control, without the necessity of obtaining additional authority of this Council. For use of the Leased Premises, Lessee shall pay the City the annual rate of \$4,112.00, payable in monthly installments of \$341.00 which is equal to \$13.00 per square foot. Such rent shall be paid in monthly installments due on the first day of each month during the term of the Lease.

Section 2. That this Lease authorized shall be prepared by the Director of Law.

Section 3. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed October 10, 2011.  
Effective October 14, 2011.

#### Ord. No. 1112-11.

By Council Members Conway and Sweeney (by departmental request).

An emergency ordinance authorizing the Director of Public Safety to apply for and accept a grant from Cuyahoga County for the 2009 Law Enforcement Terrorism Prevention Program, authorizing one or more requirement contracts for the purchase of materials, equipment, supplies, and services, authorizing one or more contracts with Fingerhut USA for professional services necessary to manage the program and to amend Contract No. 69533 with Cogent, Inc. to provide additional AFIS equipment.

Whereas this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. That the Director of Public Safety is authorized to apply for and accept a grant in the approximate amount of \$880,555.78, and any other funds that may become available during the grant term, from Cuyahoga County to conduct the 2009 Law Enforcement Terrorism Prevention Program ("LETPP"); that the Director is authorized to file all papers and execute all documents necessary to receive the funds under the grant and that the funds are appropriated for the purposes described in the grant agreement and award letter for the grant contained in the file described below.

Section 2. That the grant agreement and award letter for the grant, File No. 1112-11-A, made a part of this ordinance as if fully rewritten, as presented to the Finance Committee of this Council at the public hearing on this legislation is approved in all respects and shall not be changed without additional legislative authority.

Section 3. That the Director of Public Safety is authorized to make one or more written requirement contracts under the Charter and the Codified Ordinances of Cleveland, Ohio, 1976, for the requirements for the necessary items of materials, equipment, supplies, and services needed to implement the program as described in the file. Bids shall be taken in a manner that permits an award to be made for all items as a single contract or by separate contract for each or any combination of the items as the Board of Control shall determine. Alternate bids for a period less than the grant term may be taken if desired by the Commissioner of Purchases and Supplies until provision is made for the requirements for the entire term.

Section 4. That the costs of the contract or contracts authorized by this ordinance shall be charged against the proper appropriation accounts and the Director of Finance shall certify the amount of the initial purchase, which purchase, together with all later purchases, shall be made on order of the Commissioner of Purchases and Supplies under a requisition against the contract or contracts certified by the Director.

Section 5. That under Section 103(b) of the Charter, the purchases authorized by this ordinance may be made through cooperative agreements with other governmental agencies. The Director of Public Safety may sign all documents that are necessary to make the purchases and may enter into one or more contracts with the vendors selected through that cooperative process.

Section 6. That the Director of Public Safety is authorized to enter into one or more contracts with Fingerhut USA for professional services necessary to manage the program during the grant term.

Section 7. That the Director of Public Safety is authorized to enter into an amendment to Contract No. 69533 with Cogent, Inc. to extend the term of the contract to run continuously with this grant term to provide additional AFIS equipment.

Section 8. That the Director of Public Safety shall have the authority to extend the term of the grant if the extension does not involve an increase in the dollar amount of the grant specified above.

Section 9. That the cost of the contract or contracts or contract amendment and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Section 10. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed October 10, 2011.  
Effective October 14, 2011.

#### Ord. No. 1149-11.

By Council Members Kneib, Cleveland and Sweeney (by departmental request).

An emergency ordinance determining the method of making the public improvement of repaving and maintaining runways, taxiways, ramps, roads, and other concrete surfaces for the various divisions of the Department of Port Control, and authorizing the Director of Port Control to enter into one or more public improvement requirement contracts for the making of the improvement, for a period of two years, with two one-year options to renew, the first of which is exercisable through additional legislative authority.

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. That, under Section 157 of the Charter of the City of Cleveland, this Council determines to make the public improvement of repaving and maintaining runways, taxiways, ramps, roads, and other concrete surfaces for the various divisions of the Department of Port Control, by one or more public improvement requirement contracts duly let to the lowest responsible bidder or bidders on a unit basis for the improvement.

Section 2. That the Director of Port Control is authorized to make one or more written requirement contracts under the Charter and the Codified Ordinances of Cleveland, Ohio, 1976, for the requirements for a period of two years, with two one-year options to renew, for the making of the above public improvement with the lowest responsible bidder or bidders after competitive bidding on a unit basis for the improvement for a period not to exceed the specified term, purchased by the Commissioner of Purchases and Supplies on a unit basis for the various divisions of the Department of Port Control. The first of the one-year options to renew may not be exercised without additional legislative authority. If such additional legislative authority is granted and the first of the one-year options to renew is exercised, then the second of the one-year options to renew may be exercisable at the option of the Director of Port Control, without the necessity of obtaining additional authority of this Council. Bids shall be taken in a manner that permits an award to be made for all items as a single contract, or by separate contract for each or any combination of the items as the

Board of Control determines. Alternate bids for a period less than the specified term may be taken if desired by the Commissioner of Purchases and Supplies until provisions are made for the requirements for the entire term.

Section 3. That the Director of Port Control is authorized to apply and pay for permits, licenses, or other authorizations required by any regulatory agency or public authority to permit performance of the work authorized by this ordinance.

Section 4. That the costs of the contract or contracts or other expenditures shall be charged against the proper appropriation accounts and the Director of Finance shall certify the amount of the initial purchase, which purchase, together with all later purchases, shall be made on order of the Commissioner of Purchases and Supplies under a delivery order against the contract or contracts certified by the Director of Finance. (RCN 2001, RL 2011-43)

Section 5. That under Section 108(b) of the Charter, the purchases authorized by this ordinance may be made through cooperative arrangements with other governmental agencies. The Director of Port Control may sign all documents that are necessary to make the purchases, and may enter into one or more contracts with the vendors selected through that cooperative process.

Section 6. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed October 10, 2011.  
Effective October 14, 2011.

#### Ord. No. 1216-11.

By Council Members Kelley and Sweeney (by departmental request).

An emergency ordinance to amend Sections 1 and 4 of Ordinance No. 558-11, passed July 20, 2011, relating to authorizing the Director of Public Utilities to purchase various wattage equivalent LED streetlights, including any materials necessary to retrofit or replace existing outdoor streetlights, to be installed on a limited number of poles for a pilot program for up to two years, for the Division of Cleveland Public Power.

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. That Sections 1 and 4 of Ordinance No. 558-11, passed July 20, 2011, are amended to read as follows:

Section 1. That notwithstanding and as an exception to the Charter and Codified Ordinances of Cleveland, Ohio, 1976, the Director of Public Utilities is authorized to make one or more written contracts with not more than the seven (7) lowest and best bidders for each or all of the following items eligible for federal funding and not more than the seven (7) lowest and best bidders for each or all of such items not eligible for federal funding equal

quantities of LED equivalent 150-watt streetlights, LED equivalent 250-watt streetlights, and LED equivalent 400-watt streetlights, including any materials necessary to retrofit or replace existing outdoor streetlights, to implement a pilot program for up to two years on a limited number of poles to evaluate the performance, photometry, aesthetic ambience, and energy and cost savings of LED streetlights, for the Division of Cleveland Public Power, Department of Public Utilities.

Section 4. That the cost of the contract or contracts authorized shall not exceed \$200,000 for federally funded items which shall be paid from Fund No. 20 SF 370, Request No. RQS 2004, RL 2011-27, and \$200,000 for non-federally funded items which shall be paid from Fund No. 58 SF 001, Request No. RQS 2004, RL 2011-37.

Section 2. That existing Sections 1 and 4 of Ordinance No. 558-11, passed July 20, 2011, are repealed.

Section 3. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed October 10, 2011.  
Effective October 14, 2011.

#### Ord. No. 1216-11.

By Council Members Kelley and Sweeney (by departmental request).

An emergency ordinance authorizing the purchase by one or more requirement contracts of labor and materials necessary to test, inspect, maintain, repair, enhance or replace building protection services, including, but not limited to, heating, ventilation, and air conditioning systems or components, security systems or components, and fire protection system or components, rental of equipment, and installation if necessary, for the Divisions of Water, Water Pollution Control, and Cleveland Public Power, Department of Public Utilities, for a period of two years.

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. That the Director of Public Utilities is authorized to make one or more written requirement contracts under the Charter and the Codified Ordinances of Cleveland, Ohio, 1976, for the requirements for the period of two years of the necessary items of labor and materials necessary to test, inspect, maintain, repair, enhance or replace building protection services, including, but not limited to, heating, ventilation, and air conditioning systems or components, security systems or components, and fire protection system or components, rental of equipment, and installation if necessary, in the approximate amount as purchased during the preceding term, to be purchased by the Commissioner of Purchases and Supplies on a unit basis for the Divisions of Water,

shall take effect and be in force from and after the earliest period allowed by law.

Passed September 27, 2010.

Effective September 28, 2010.

**Ord. No. 886-10.**

By Council Members Conwell and Sweeney (by departmental request).

An emergency ordinance authorizing the Director of Public Safety to apply for and accept a grant from the State of Ohio Emergency Management Agency, or a designated entity, for the 2009 Urban Area Security Initiative Program authorizing one or more equipment and standard contracts for the purchase of materials, equipment, supplies, and services; authorizing one or more agreements with governmental entities and to employ one or more professional consultants to implement the program.

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. That the Director of Public Safety is authorized to apply for and accept a grant in the approximate amount of \$5,086,880, and any other funds that become available, from the State of Ohio Emergency Management Agency, or a designated entity, to conduct the 2009 Urban Area Security Initiative ("UASI") Program; that the Director is authorized to file all papers and execute all documents necessary to receive the funds under the grant and that the funds are appropriated for the purposes set forth in the grant agreement for the grant contained in the file described below.

Section 2. That the grant agreement for the grant, File No. 886-10-A, made a part of this ordinance as if fully rewritten, as presented to the Finance Committee of this Council at the public hearing on this legislation and shall not be changed without additional legislative authority, is approved in all respects.

Section 3. That the Director of Public Safety is authorized to make one or more written standard purchase contracts and written requirement contracts under the Charter and the Codified Ordinances of Cleveland, Ohio, 1978, during the grant term, of materials, equipment, supplies, and services needed to implement the program as described in the file, to be purchased by the Commissioner of Purchases and Supplies on a unit basis for the Department of Public Safety. Bids shall be taken in a manner that permits an award to be made for all items as a single contract, or by separate contract for each or any combination of the items as the Board of Control determines.

Section 4. That the costs of the requirement contract shall be charged against the proper appropriation accounts and the Director of Finance shall certify the amount of the initial purchase, which purchase, together with all later purchases, shall be made on order of the Commissioner of Purchases and Supplies under a requisition against the contract or contracts certified by the Director of Finance.

Section 5. That under Section 106(b) of the Charter the purchases authorized by this ordinance may be

made through cooperative arrangements with other governmental agencies. The Director of Public Safety may sign all documents that are necessary to make the purchases and may enter into one or more contracts with the vendors selected through that cooperative process.

Section 6. That the Director of Public Safety is authorized to enter into one or more agreements with governmental entities to implement the program as described in the file.

Section 7. That the Director of Public Safety is authorized to employ by contract or contracts one or more consultants or one or more firms of consultants for the purpose of supplementing the regularly employed staff of the several departments of the City of Cleveland in order to provide professional services necessary to implement the program as described in the file.

The selection of the consultants for the services shall be made by the Board of Control on the nomination of the Director of Public Safety from a list of qualified consultants available for employment as may be determined after a full and complete canvass by the Director of Public Safety for the purpose of compiling a list. The compensation to be paid for the services shall be fixed by the Board of Control. The contract or contracts authorized shall be prepared by the Director of Law, approved by the Director of Public Safety, and certified by the Director of Finance.

Section 8. That the Director of Public Safety shall have the authority to extend the term of the grant if the extension does not involve an increase in the dollar amount of the grant specified above.

Section 9. That the cost of the contract or contracts shall be paid from the fund or funds which are credited under this ordinance.

Section 10. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed September 27, 2010.

Effective September 28, 2010.

**Ord. No. 887-10.**

By Council Members Johnson and Sweeney (by departmental request).

An emergency ordinance authorizing the Director of Parks, Recreation and Properties to enter into one or more Concession Agreements for the operation of concession stands at Gordon Park and Brookside Park, for the Department of Parks, Recreation and Properties, for a period not to exceed three years.

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. That notwithstanding any provision of the Codified Ordinances of Cleveland, Ohio, 1978, to the contrary, the Director of Parks, Recreation and Properties is authorized to enter into one or more Concession Agreements on the basis of competitive proposals for the operation of concession stands at Gordon

Park and Brookside Park. The selection of the concessionaire or concessionaires shall be made by the Board of Control on the nomination of the Director of Parks, Recreation and Properties. The concession fee to be paid to the City shall be fixed by the Board of Control. Each Concession Agreement shall not exceed a term of three years.

Section 2. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed September 27, 2010.

Effective September 28, 2010.

**Ord. No. 1056-10.**

By Council Members Brancatelli and Sweeney (by departmental request).

An emergency ordinance authorizing the Director of Building and Housing to employ one or more professional consultants to perform reconstruction services of structures in the City of Cleveland.

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. That the Director of Building and Housing is authorized to employ by contract or contracts one or more consultants or one or more firms of consultants for the purpose of supplementing the regularly employed staff of the several departments of the City of Cleveland in order to provide professional services necessary to perform reconstruction services of structures, including condemned structures, in the City of Cleveland.

The selection of the consultants for the services shall be made by the Board of Control on the nomination of the Director of Building and Housing from a list of qualified consultants available for employment as may be determined after a full and complete canvass by the Director of Building and Housing for the purpose of compiling a list. The compensation to be paid for the services shall be fixed by the Board of Control. The term of each contract or contracts shall expire not later than December 31, 2011. The contract or contracts authorized shall be prepared by the Director of Law, approved by the Director of Building and Housing, and certified by the Director of Finance.

Section 2. That the cost of the contract or contracts authorized shall not exceed \$185,000 and shall be paid from Fund No. 20, SF 670, Request No. RQS 8502 RL 2010-152.

Section 3. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed September 27, 2010.

Effective September 28, 2010.

Requested By: \_\_\_\_\_  
(Department/Office)



**NON-COMPETITIVE BID CONTRACT  
STATEMENT FOR CALENDAR YEAR 2012  
(ALL DEPARTMENTS/OFFICES)**

This statement, properly executed and containing all required information must be completed. IF YOU FAIL TO COMPLY, YOUR PROPOSAL WILL NOT BE CONSIDERED.

Entity Name: Elsag North America, LLC  
Entity's Mailing Address: 705 H Creek Ridge Road  
Greensboro, NC 27466

COMPLETE SECTION I, II, OR III BELOW, WHICHEVER IS APPROPRIATE, AND SECTION IV.

NOTE: For purposes of this Statement, the "Mayor" and "Mayor's Committee" means Frank G. Jackson and the Frank G. Jackson For A Better Cleveland Committee, respectively.

**SECTION I TO BE COMPLETED BY NON-PROFIT CORPORATIONS AND GOVERNMENTAL ENTITIES**

If you are recognized by the IRS as a non-profit corporation or are a governmental entity, mark the appropriate designation below and proceed to the indicated section(s).

☐ NON-PROFIT CORPORATION GO TO SECTIONS III and IV.  
☐ GOVERNMENTAL ENTITY GO TO SECTION IV.

**SECTION II TO BE COMPLETED BY INDIVIDUALS, SOLE PROPRIETORSHIPS, PARTNERSHIPS, INCORPORATED PROFESSIONAL ASSOCIATIONS, UNINCORPORATED ASSOCIATIONS, ESTATES AND TRUSTS**

The above-named entity is a (Please mark appropriate designation):

☐ SOLE PROPRIETORSHIP ☐ TRUST  
☐ INCORPORATED PROFESSIONAL ASSOCIATION ☐ ESTATE  
☐ UNINCORPORATED ASSOCIATION ☐ PARTNERSHIP  
☒ LIMITED LIABILITY COMPANY ☐ JOINT VENTURE

For purposes of Section II, a "principal" means an individual, an owner, a partner, a shareholder, a member, an administrator, an executor or trustee connected with the above-named entity, or the spouse of any of them.

PLEASE READ PARAGRAPHS (A) and (B) and mark the appropriate paragraph. If paragraph (B) is checked, the City of Cleveland is prohibited by Section 3517.13 of the Revised Code from awarding a non-competitively bid contract over \$500.00 to the entity during calendar year 2012 unless Council makes a direct award.

☒ (A) NO ONE PRINCIPAL of the above named entity made one or more contributions to the Mayor or the Mayor's Committee between January 1, 2010 and December 31, 2011 that totaled in excess of \$1,000.00 per individual. (This paragraph also applies if no principal of the above-named entity made any contributions to the Mayor or the Mayor's Committee).  
☐ (B) ONE OR MORE PRINCIPALS of the above named entity made, as individuals, one or more contributions to the Mayor or the Mayor's Committee between January 1, 2010 and December 31, 2011 that totaled in excess of \$1,000.00.

**SECTION III - TO BE COMPLETED BY NON-PROFIT AND FOR-PROFIT CORPORATIONS AND BUSINESS TRUSTS**

\_\_\_\_ NON-PROFIT CORPORATION      \_\_\_\_ FOR-PROFIT CORPORATION  
 \_\_\_\_ BUSINESS TRUST (OTHER THAN INCORPORATED PROFESSIONAL ASSOCIATIONS)

For purposes of Section III, a "principal" means an individual or an entity owning more than 20% of the corporation or business trust or the spouse of any such individual.

PLEASE READ PARAGRAPHS (A), (B), (C) and (D) and mark the appropriate paragraph. If paragraph (C) is checked, the City of Cleveland is prohibited by Section 3517.13 of the Revised Code from awarding a non-competitively bid contract over \$500,00 to the entity during calendar year 2012, unless Council makes a direct award. If paragraph (D) is checked, the City of Cleveland is prohibited by Section 3599.03 from awarding a contract to the non-profit corporation.

- \_\_\_\_ (A) NO INDIVIDUAL or entity owned more than 20% of the corporation or business trust between January 1, 2010 and December 31, 2011.
- \_\_\_\_ (B) NO PRINCIPAL of the above named entity made, as an individual, one or more contributions to the Mayor or the Mayor's Committee between January 1, 2010 and December 31, 2011 that totaled in excess of \$1,000.00. (This paragraph also applies if no principal of the above named entity made any contributions to the Mayor or the Mayor's Committee).
- \_\_\_\_ (C) ONE OR MORE PRINCIPALS of the above named entity made one or more contributions to the Mayor or the Mayor's Committee between January 1, 2010 and December 31, 2011 that totaled in excess of \$1,000.00 individual.
- \_\_\_\_ (D) FUNDS OF THE NON-PROFIT CORPORATION were contributed to the Mayor or the Mayor's Committee at any time.

GO TO SECTION IV.

**SECTION IV - TO BE COMPLETED BY ALL ENTITIES**

I do hereby state that I have legal authority to complete this statement on behalf of the above named entity and to the best of my knowledge and belief the answers herein are true and complete.

Print Name Ross Jureit      Print Title General Counsel  
 Signature [Signature]      Date 3/20/12  
 Telephone No. 336-379-7135  
 (Area Code)

STATE OF North Carolina  
 COUNTY OF Guilford      SS:

Before me, a Notary Public in and for said County and State, personally appeared the above named Ross Jureit, who acknowledged that (he/she) did sign the foregoing statement and that the same is (his/her) free act and deed, personally and as duly authorized representative of Elisag North America, and the free act and deed of the entity on whose behalf (he/she) signed.

Notary Public Kim A. Wagner-Evans  
 Date 3-20-12

FOR MAYOR'S OFFICE USE ONLY

\_\_\_\_ ELIGIBLE [Signature]  
 \_\_\_\_ INELIGIBLE  
 DATE 3/21/12

**KIM A. WAGNER-EVANS**  
 Notary Public  
 Forsyth County, NC

STATE OF OHIO  
DEPARTMENT OF ADMINISTRATIVE SERVICES  
GENERAL SERVICES DIVISION  
OFFICE OF PROCUREMENT SERVICES  
4200 SURFACE ROAD, COLUMBUS, OH 43228-1395

## S &amp; L GOVERNMENT PRICING SCHEDULE

SCHEDULE NUMBER: 800067EFFECTIVE DATES: 11/15/2009 TO 10/31/2013

The Department of Administrative Services has completed the evaluation and analysis of the State Term Schedule (STS) offering submitted by the Contractor as listed herein. The Contractor listed herein has been determined to provide competitive, economical and reasonable pricing for the items contained in their offer. The respective offer, including the Standard Contract Terms & Conditions, any proposal amendment, special contract terms & conditions, specifications, pricing schedules and any attachments incorporated by reference and accepted by DAS become a part of this State Term Schedule.

This State Term Schedule is effective beginning and ending on the dates noted above unless, prior to the expiration date, the Schedule is renewed, terminated, or cancelled in accordance with the Standard Contract Terms and Conditions dated 10-01-2007.

This State Term Schedule is available to all state agencies, state institutions of higher education and political subdivisions properly registered as members of the Cooperative Purchasing Program of the Department of Administration Services, as applicable.

Agencies are eligible to make purchases of the supplies and/or services in any amount and at any time as determined by the agency (see maximum order limit). The State makes no representation or guarantee that agencies will purchase the supplies and/or services approved in the State Term Schedule.

State agencies may make purchases under this State Term Schedule up to \$2500.00 using the state of Ohio payment card. Any purchases that exceed \$2500.00 will be made using the official state of Ohio purchase order (ADM-0623). Any non-state agency, institution of higher education or Cooperative Purchasing member will use forms applicable to their respective agency.

Questions regarding this and/or the State Term Schedule may be directed to:

Katie Heisler  
katie.heisler@das.state.oh.us



This State Term Schedule and any Amendments thereto are available from the DAS website at the following address: <http://procure.ohio.gov>.

**ELSAG North America, LLC**

**STATE TERM SCHEDULE**

STATE OF OHIO  
DEPARTMENT OF ADMINISTRATIVE SERVICES  
GENERAL SERVICES DIVISION  
OFFICE OF PROCUREMENT SERVICES  
4200 SURFACE ROAD, COLUMBUS, OH 43228-1395

Index No: STS846

New Date: 11/15/2009

**CONTRACTOR, PRICES, TERM SCHEDULE, ETC.**

**Send Purchase Orders To:**

0000084872  
ELSAG North America, LLC  
205-H Creek Ridge Road  
Greensboro, NC 27406  
www.elsagna.com

**Remit To:**

0000084872  
ELSAG North America, LLC  
PO Box 504111  
St. Louis, MO 63150-4111

**OAKS Contract ID:**

800067

**Contractor's Contact:**

Mr. Matthew Maxwell Telephone: (937) 294-3724 FAX: (336) 379-7164 Email: matthew.maxwell@elsagna.com

**Delivery:**

30 Days A.R.O. - F.O.B. Destination

**Terms:**

Net 30 Days

**Basic Order Limitations** (Agencies should contact Procurement Services when they expect to exceed the Maximum Order Limitation.)

Minimum: \$250.00

Maximum: \$100,000.00

**APPROVED PRODUCTS/SERVICES:** Only those vendors, products, or services as listed in the price pages, approved by the Office of Procurement Services, may be purchased from this State Term Schedule. Any vendors, prices, terms, conditions, products or services not listed in the approved price sheets are outside the scope of this schedule.

**MANDATORY USE CONTRACTS:** All General Distribution Contracts (GDC), Limited Distribution Contracts (LDC), Multiple Award Contracts (MAC), and Request for Proposals (RFP) take precedence over this State Term Schedule (STS). This STS is only for governmental entities without a mandatory use contract.

**EXCLUDED ITEMS:** (State Agencies Only) In accordance with the Ohio Revised Code Sections 5147.07, 4115.31, through 4115.35, 5119.16 and 3304.28 through 3304.33 state agencies are required to purchase through Ohio Penal Industries (OPI); Community Rehabilitation Programs (CRP); Department of Mental Health (DMH) Office of Support Services (Central Warehouse, and Pharmacy Services); and Rehabilitation Services Commission (RSC). State agencies must obtain a waiver from OPI, CRP, DMH Central Warehouse or Pharmacy Services, and/or RSC to procure from this schedule.

**SPECIAL NOTE:** The state of Ohio including but not limited to its agencies, boards, commissions, departments, state universities, state vocational schools, state community colleges of Ohio, and any entity authorized by law to use this State Term Schedule (STS) is not obligated to procure any products or services from this STS. This STS shall not be construed to prevent the state from purchasing products or services using other procurement methods as authorized by law.

**NOTICE TO CONTRACTOR/VENDOR:** It is the responsibility of the contractor's contact to maintain this State Term Schedule with current information. All updates i.e., telephone numbers, contact names, email addresses, tax identification number, prices, and catalogs etc., are required to be processed through the formal amendment authorization process which is initiated by way of a written request from the contractor's contact.

**UNSPSC CODES (OAKS Category ID) and Item Descriptions:**

All purchase orders placed against this contract shall use the following UNSPSC Codes when completing requisitions.

46171600 - Surveillance and detection equipment

License plate reading technology

**NOTES:**

Current Price List dated November 1, 2009.

This contract serves all 88 Ohio counties.

STATE OF OHIO  
DEPARTMENT OF ADMINISTRATIVE SERVICES  
STATE TERM SCHEDULE - S&LG-BASED

THIS CONTRACT is between the STATE OF OHIO, DEPARTMENT OF ADMINISTRATIVE SERVICES ("DAS"), GENERAL SERVICES DIVISION, OFFICE OF STATE PURCHASING, ON BEHALF OF THE STATE OF OHIO ("State"), with offices at 4200 Surface Road, Columbus, Ohio 43228 - 1395 and \_\_\_\_\_ ("Contractor") with Office(s) at \_\_\_\_\_

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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 will enter into a contract with the manufacturer provided that the manufacturer offers its goods and ancillary services at the same prices that the manufacturer offers those goods and services to its distributors, or if the manufacturer has no distributors, the prices that the manufacturer offers to its similarly situated 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 the service area. Because of this, the State may sometimes agree to work directly with a manufacturer's dealers. But, if the Contractor is not the manufacturer of the goods or services under this contract, the Contractor must submit a letter from the manufacturer that assures the State that the Contractor will have sufficient quantities of the offered products for the duration of the Contract and any extensions to meet the State's needs under the Contract and that the Contractor is an authorized dealer in the manufacturer's goods or services. The letter

must identify each product or service that the Contractor will supply under this Contract. The letter must also contain an assurance of the availability through the dealer of repair and spare parts for equipment covered by this Contract for five (5) years from the date of purchase. It must also contain an assurance that software maintenance will be available under the terms of this Contract either from the dealer or the manufacturer for six (6) years from the date of acceptance. (This assurance is not necessary for PC and PC-based server software with a permanent license fee of less than \$5,000.00 per copy.) The manufacturer's letter must be signed by an authorized official of the manufacturer and submitted with the executed copies of this Contract.

This state term contract (the "Contract") establishes terms and conditions under which a State agency (including any board, instrumentality or other political body) or political subdivision may acquire the Contractor's goods or services at the Contractor's best pricing. But this Contract only permits such; it in no manner obligates any State agency to do so.

### **STANDARD TERMS & CONDITIONS**

#### **I. CONTRACT TERM PROVISIONS:**

- A. APPROPRIATION OF FUNDS.** The State of Ohio's funds are contingent upon the availability of lawful appropriations by the Ohio General Assembly. If the General Assembly fails at any time to continue funding for the payments or any other obligations due by the State under this Contract, the State will be released from its obligations on the date funding expires.

The current General Assembly cannot commit a future General Assembly to an expenditure. Therefore, this Contract will automatically expire at the end of the current applicable biennium. The State may renew this Contract in the next biennium by issuing written notice to the Contractor or by actions of the State of the decision to do so.

- B. OBM CERTIFICATION.** None of the rights, duties, or obligations in this Contract will be binding on the State, and the Contractor will not begin its performance, until all the following conditions have been met:

1. All statutory provisions under the Ohio Revised Code, including Section §126.07, have been met.
2. All necessary funds are made available by the appropriate state agencies.
3. If required, approval of this Contract is given by the Controlling Board of Ohio; and
4. If the State is relying on Federal or third-party funds for this Contract the State gives the Contractor written notice that such funds have been made available.

#### **C. TERMINATION / SUSPENSION.**

1. **Contract Termination.** If Contractor fails to perform any one of its obligations under this Contract, it will be in default and the State may terminate this Contract in accordance with this section. The termination will be effective on the date delineated by the State.
  - a. **Termination for Default.** If Contractor's default is unable to be cured in a reasonable time, the State may terminate the Contract by written notice to the Contractor.

- b. **Termination for Unremedied Default.** If Contractor's default may be cured within a reasonable time, the State will provide written notice to Contractor specifying the default and the time within which Contractor must correct the default. If Contractor fails to cure the specified default within the time required, the State may terminate the Contract. If DAS does not give timely notice of a default to Contractor, the State has not waived any of the State's rights or remedies concerning the default.
- c. **Termination for Persistent Default.** The State may terminate this Contract by written notice to Contractor for defaults that are cured, but are persistent. "Persistent" means three or more defaults. After the State has notified Contractor of its third default, the State may terminate this Contract without providing Contractor with an opportunity to cure, if Contractor defaults for a fourth time. The four defaults are not required to be related to each other in anyway.
- d. **Termination for Endangered Performance.** The State may terminate this Contract by written notice to the Contractor if the State determines that the performance of the Contract is endangered through no fault of the State.
- e. **Termination for Financial Instability.** The State may terminate this contract by written notice to Contractor if a petition in bankruptcy or similar proceeding has been filed by or against the Contractor.
- f. **Termination for Delinquency, Violation of Law.** The State may terminate this Contract by written notice, if it determines that Contractor is delinquent in its payment of federal, state or local taxes, workers' compensation, insurance premiums, unemployment compensation contributions, child support, court costs or any other obligation owed to a state agency or political subdivision. The State also may cancel this Contract, if it determines that Contractor has violated any law during the performance of this Contract. However, the State may not terminate this Contract if the Contractor has entered into a repayment agreement with which the Contractor is current.
- g. **Termination for Subcontractor Default.** The State may terminate this contract for the default of the Contractor or any of its subcontractors. The Contractor will be solely responsible for satisfying any claims of its subcontractors for any suspension or termination and will indemnify the State for any liability to them. Subcontractors will hold the State harmless for any damage caused to them from a suspension or termination. The subcontractors will look solely to the Contractor for any compensation to which they may be entitled.
- h. **Termination for Failure to Retain Certification.** Pursuant to Section § 123.151 and §123.152 of the Revised Code, the State may certify businesses for participation in state sponsored business assistance programs. After certification is obtained it is the responsibility of the Contractor to maintain certification. If the Contractor is awarded a contract pursuant to a certification program and fails to renew its certification and/or is decertified, the State may immediately cancel the contract.
- i. **Termination for Convenience.** The State may terminate this Contract for its convenience after issuing written notice to the Contractor. 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 after the Contractor has submitted a proper invoice for such, with the invoice reflecting the amount determined by the State to be owing to the Contractor.

- j. **Termination, Effectiveness, Contractor Responsibilities.** The notice of termination whether for cause or without cause will be effective as soon as Contractor receives it. Upon receipt of the notice of termination, Contractor will immediately cease all work on the Project, if applicable, and refuse any additional orders and take all steps necessary to minimize the costs the Contractor will incur related to this Contract. The Contractor will immediately prepare a report and deliver it to the State. The report must detail either the work completed at the time of termination or the orders received and not processed prior to termination, and if applicable, the percentage of the Project's completion, estimated time for delivery of all orders received prior to termination, any costs incurred by the Contractor in doing the Project to date and any deliverables completed or partially completed but not delivered to the State at the time of termination. Any and all work, whether completed or not, will be delivered to the State along with the specified report. However, if delivery in that manner would not be in the State's interest, then the Contractor will propose a suitable alternate form of delivery.
2. **Contract Suspension.** If Contractor fails to perform any one of its obligations under this Contract, it will be in default and the State may suspend rather than terminate this Contract where the State believes that doing so would better serve its interest.

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

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

## II. CONTRACT REMEDIES:

- A. **ACTUAL DAMAGES.** Contractor is liable to the State of Ohio for all actual and direct damages caused by Contractor's default. The State may buy substitute supplies or services, from a third party, for those that were to be provided by Contractor. The State may recover the costs associated with acquiring substitute supplies or services, less any expenses or costs saved by Contractor's default, from Contractor.
- B. **LIQUIDATED DAMAGES.** If actual and direct damages are uncertain or difficult to determine, the State may recover liquidated damages in the amount of 1% of the value of the order, deliverable or milestone that is the subject of the default, for every day that the default is not cured by the Contractor.
- C. **DEDUCTION OF DAMAGES FROM CONTRACT PRICE.** The State may deduct all or any part of the damages resulting from Contractor's default from any part of the price still due on the contract, upon prior written notice being issued to the Contractor by the State.

## III. PAYMENT PROVISIONS:

- A. **INVOICE REQUIREMENTS.** The Contractor must submit an original invoice with three (3) copies to the office designated in the purchase order as the "bill to" address. To be a proper invoice, the invoice must include the following information:
1. The purchase order number authorizing the delivery of products or services;

2. A description of what the Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, the Contractor must also include the payment number (e.g., 1 of 36).

If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of the Contractor's information.

- B. **PAYMENT DUE DATE.** Payments under this Contract will be due on the 30<sup>th</sup> calendar day after the later of:

1. The date of actual receipt of a proper invoice in the office designated to receive the invoice, or the date the service is delivered and accepted in accordance with the terms of this Contract.
2. The date of the warrant issued in payment will be considered the date payment is made.

Interest on late payments will be paid in accordance with Ohio Revised Code Section §126.30.

#### IV. CONTRACTOR WARRANTY AND LIABILITY PROVISIONS:

- A. **CONTRACTOR'S WARRANTY AGAINST AN UNRESOLVED FINDING FOR RECOVERY.** Contractor warrants that it is not subject to an unresolved finding for recovery under ORC §9.24. If the warranty was false on the date the parties signed this Contract, the Contract is void *ab initio*.

- B. **GENERAL REPRESENTATIONS AND WARRANTIES.** The Contractor warrants that the recommendations, guidance, and performance of the Contractor under this Contract will:

1. Be in accordance with the sound professional standards and the requirements of this Contract and without any material defect.
2. No Deliverable will infringe on the intellectual property rights of any third party.
3. All warranties are in accordance with Contractor's standard business practices attached.
4. That the Deliverables hereunder are merchantable and fit for the particular purpose described in this contract.

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

5. The Contractor has the right to enter into this Contract.
6. The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Contract.
7. 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.
8. The Contractor has good and marketable title to any goods delivered under this Contract and which title passes to the State.
9. The Contractor has the right and ability to grant the license granted in 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 will correct such failure with all due speed or will

refund the amount of the compensation paid for the Deliverable. The Contractor will also indemnify the State for any direct damages and claims by third parties based on breach of these warranties.

- C. **INDEMNITY.** The Contractor will indemnify the State for any and all claims, damages, law suits, costs, judgments, expenses, and any other liabilities resulting from bodily injury to any person (including injury resulting in death) or damage to property that may arise out of or are related to Contractor's performance under this Contract, providing such bodily injury or property damage is due to the negligence of the Contractor, its employees, agents, or subcontractors.

The Contractor will also indemnify the State against any claim of infringement of a copyright, patent, trade secret, or similar intellectual property rights based on the State's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where the State has modified or misused the Deliverable and the claim of infringement, is based on the modification or misuse. The state agrees to give the Contractor notice of any such claim as soon as reasonably practicable and to give the Contractor the authority to settle or otherwise defend any such claim upon consultation with and approval by the Office of the State Attorney General. 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 take one (1) of the following four (4) actions:

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

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

1. NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAVE BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
2. THE CONTRACTOR FURTHER AGREES THAT THE CONTRACTOR SHALL BE LIABLE FOR ALL DIRECT DAMAGES DUE TO THE FAULT OR NEGLIGENCE OF THE CONTRACTOR.

V. **GENERAL PROVISIONS:**

- A. **AMENDMENTS.** No amendment or modification of this Contract will be effective unless it is in writing and signed by both parties.
- B. **ANTITRUST ASSIGNMENT TO THE STATE.** Contractor assigns to the State of Ohio, through the Department of Administrative Services, all of its rights to any claims and causes of action the Contractor now has or may acquire under state or federal antitrust laws if the claims or causes of action relate to the supplies or services provided under this Contract. Additionally, the State of Ohio will not pay excess charges resulting from antitrust violations by Contractor's suppliers and subcontractors.

- C. **ASSIGNMENT/DELEGATION.** The Contractor will not assign any of its rights nor delegate any of its duties under this Contract without the written consent of the State. Any assignment or delegation not consented to may be deemed void by the State.
- D. **AUDITS.** The Contractor must keep all financial records in a manner consistent with generally accepted accounting principles. Additionally, the Contractor must keep separate business records for this project, including records of disbursements and obligations incurred that must be supported by contracts, invoices, vouchers and other data as appropriate.

During the period covered by this Agreement and until the expiration of three (3) years after final payment under this Agreement, the Contractor agrees to provide the State, its duly authorized representatives or any person, agency or instrumentality providing financial support to the work undertaken hereunder, with access to and the right to examine any books, documents, papers and records of the Contractor involving transactions related to this Agreement.

The Contractor shall, for each subcontract in excess of two thousand five hundred dollars (\$2,500), require its subcontractors to agree to the same provisions of this Article. The Contractor may not artificially divide contracts with its subcontractors to avoid requiring subcontractors to agree to this provision.

The Contractor must provide access to the requested records no later than five (5) business days after the request by the State or any other party with audit rights. If an audit reveals any material deviation from the Contract requirements, any misrepresentations or any overcharge to the State or any other provider of funds for the Contract, the State or other party will be entitled to recover damages, as well as the cost of the audit.

- E. **CONFIDENTIALITY.** The Contractor may learn of information, documents, data, records, or other material that is confidential in the performance of this Contract. The Contractor may not disclose any information obtained by it as a result of this Contract, without the written permission of the State. The Contractor must assume that all state information, documents, data, records or other material is confidential.

The Contractor's obligation to maintain the confidentiality of the information will not apply where it: (1) was already in the Contractor's possession before disclosure by the State, and it was received by the Contractor without the obligation of confidence; (2) is independently developed by the Contractor; (3) is or becomes publicly available without breach of this Contract; (4) is rightfully received by the Contractor from a third party without an obligation of confidence; (5) is disclosed by the Contractor with the written consent of the State; or (6) is released in accordance with a valid order of a court or governmental agency, provided that the Contractor (a) notifies the State of such order immediately upon receipt of the order and (b) makes a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the confidential information solely for the purposes intended to be served by the original order of production. The Contractor will return all originals of any information and destroy any copies it has made on termination or expiration of this Contract.

The Contractor will be liable for the disclosure of any confidential information. The parties agree that the disclosure of confidential information of the State's may cause the State irreparable damage for which remedies other than injunctive relief may be inadequate, and the Contractor agrees that in the event of a breach of the obligations hereunder, the State shall be entitled to temporary and permanent injunctive relief to enforce this provision without the necessity of proving actual damages. This provision shall not, however, diminish or alter any right to claim and recover damages.

F. **CONTRACT CONSTRUCTION.** This Contract will be constructed in accordance with the plain meaning of its language and neither for nor against the drafting party.

G. **CONTRACTOR DISCLOSURE; LOCATION OF SERVICES, DATA.** As part of this Agreement, Contractor shall disclose the following:

1. The location(s) where all services will be performed; and
2. The location(s) where any state data applicable to the contract will be maintained or made available; and
3. The principal location of business for the contractor and all subcontractors.

Contractor shall not, during the performance of this Contract, change the location(s) of the country where the services are performed or change the location(s) of the country where the data is maintained or made available without prior written approval of the State.

H. **DRUG FREE WORKPLACE.** The Contractor agrees to comply with all applicable state and federal laws regarding drug – free workplace and shall make a good faith effort to ensure that all its employees, while working on state property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

I. **EQUAL EMPLOYMENT OPPORTUNITY.** The Contractor will comply with all state and federal laws regarding equal employment opportunity, including Ohio Revised Code Section 125.111 and all related Executive Orders.

Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be submitted to the DAS Equal Opportunity Division to comply with the affirmative action requirements. Affirmative Action Verification Forms and approved Affirmative Action Plans can be found by going to the Equal Opportunity Departments web site: <http://www.das.ohio.gov/Eod/AEEEO.htm>

J. **FORCE MAJEURE.** If the State or Contractor is unable to perform any part of its obligations under this Contract by reason of force majeure, the party will be excused from its obligations, to the extent that its performance is prevented by force majeure, for the duration of the event. The party must remedy with all reasonable dispatch the cause preventing it from carrying out its obligations under this Contract. The term "force majeure" means without limitation: acts of God; such as epidemics; lightning; earthquakes; fires; storms; hurricanes; tornadoes; floods; washouts; droughts; any other severe weather; explosions; restraint of government and people; war; strikes; and other like events; or any other cause that could not be reasonably foreseen in the exercise of ordinary care, and that is beyond the reasonable control of the party.

K. **GOVERNING LAW / SEVERABILITY.** This Contract shall be governed by the laws of the State of Ohio, and the venue for any disputes will be exclusively with the appropriate court in Franklin County, Ohio. If any provision of the Contract or the application of any provision is held by that court to be contrary to law, the remaining provisions of the Contract will remain in full force and effect.

L. **HEADINGS.** The headings used in this Contract are for convenience only and will not affect the interpretation of any of the Contract terms and conditions.

M. **NOTICES.** For any notice under this Contract to be effective it must be made in writing and sent to the address of the appropriate contact provided elsewhere in the Contract.

- N. **ORDER OF PRIORITY.** If there is any inconsistency or conflict between this document and any provision incorporated by reference, this document will prevail.
- O. **PUBLICITY.** The Contractor will not advertise that it is doing business with the State or use this Contract as a marketing or sales tool without the prior, written consent of the State.
- P. **STRICT PERFORMANCE.** The failure of either party, at any time, to demand strict performance by the other party of any of the terms of this Contract will not be construed as a waiver of any such term, and either party may at any time demand strict and complete performance by the other party.
- Q. **SUBCONTRACTING.** The State, through the Department of Administrative Services, General Services Division, Office of State Purchasing recognizes that it may be necessary for the Contractor to use a subcontractor to perform a portion of the work under the Contract. In those circumstances, the Contractor shall submit a list identifying its subcontractors or joint venture partners performing portions of the work under the Contract. If any changes occur during the term of the Contract, the Contractor shall supplement its list of subcontractors or joint venture business partners. In addition, all subcontractors or joint venture business partners agree to be bound by all of the Terms and Conditions and specifications of the Contract. The State, through the Department of Administrative Services, General Services Division, Office of State Purchasing, reserves the right to reject any subcontractor submitted by the Contractor.
- R. **SURVIVORSHIP.** All sections herein relating to payment, confidentiality, license and ownership, indemnification, publicity, construction warranties, limitations of warranties and limitations on damages shall survive the termination of this contract.
- S. **TAXES.** The State is exempt from all state and local taxes and does not agree to pay any taxes.
- T. **ELECTIONS LAW 11713.** Contractor, by signature affixed on this document, hereby certifies that all applicable parties listed in Division (I)(3) or (J)(3) of O.R.C. Section 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of O.R.C. Section 3517.13.

The Contractor is solely responsible to know the requirements and limitations set forth in the above-referenced Divisions of O.R.C. Section 3517.13, and to comply with those requirements and restrictions. The Contractor shall not accept a Contract and/or any purchase order issued under the Contract if the Contractor is unable to certify compliance with all provisions set forth in O.R.C. Section 3517.13. If the Contractor is unable to certify such compliance and accepts a Contract and/or purchase order issued under the Contract, DAS shall deem the Contractor in breach. As such, DAS may deem the Contract invalid and immediately cancel the Contract. If DAS cancels the Contract and applicable purchase order(s), the Contractor will be subject to all legal remedies available to the Department of Administrative Services up to and including debarment from doing business with the State of Ohio. Also, any Contractor unable to certify compliance with the above-referenced provisions in O.R.C. Section 3517.13, that accepts the Contract and any purchase orders issued under the Contract, will be held financially liable for any additional costs incurred by the DAS or other governmental entities placing orders under the Contract. These additional costs include those costs associated with re-awarding the Contract and/or seeking replacement items related to the cancellation of the Contract and/or related purchase orders.

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

- U. In accordance with R. C. 2909.33 (C) I certify that I meet one of the following Conditions:
1. I have 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) I have 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) I have either pre-certified with the Office of Budget and Management, or have completed the attached Declaration of Material Assistance form certifying that I have not provided material assistance to any organization on the Terrorist Exclusion List, as that term is defined in R. C. 2909.21.

### SPECIAL TERMS AND CONDITIONS

#### I. CONTRACT COMPLIANCE PROVISIONS:

**A. CONTRACT COMPLIANCE.** The participating state agency and/or political subdivision that utilize this State Term Schedule will be responsible for the administration of the Contract and will monitor the Contractor's performance and compliance with the terms, conditions and specifications of the Contract. If an agency observes any infraction(s), such shall be documented and conveyed to the Contractor for immediate correction. If the Contractor fails to rectify the infraction(s), the agency will notify the State through the Department of Administrative Services, Office of State Purchasing, by executing a Complaint to Vendor (CTV) to help resolve the infraction(s). The State will apply the terms and conditions of the Termination provision of this Contract to resolve the infractions(s).

**B. CERTIFICATION OF ACCURACY.** The Contractor hereby certifies the following:

1. The Contractor's prices under this Contract are the best prices for which it or any of its distributors has sold each product or provided each service to any of its or its distributor's similarly situated most favored customers within the year before the date the Contractor executed this Contract and added the product or service to this Contract.
2. If the Contractor has submitted a manufacturer's letter to certify that the Contractor is an authorized dealer for the manufacturer, the Contractor warrants that the information in the letter is accurate and that a duly authorized representative of the manufacturer signed the letter.

The Contractor further represents and warrants that all future pricing information submitted to revise this Contract would also be true, correct, current, accurate, and complete.

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

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

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

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

Department of Administrative Services  
General Services Division, STS Program  
4200 Surface Road  
Columbus, Ohio 43228 - 1395

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

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

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

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

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

The Contractor must forward the check to the following address:

Department of Administrative Services  
General Services Division, STS Program  
4200 Surface Road  
Columbus, Ohio 43228 - 1395

Please make check payable to: Ohio Treasurer Richard Cordray. Payment currency is to be in United States dollars (USD). MW2

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

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

- E. **DELIVERABLES.** Attached as Exhibit 1 is the Contractor's price list for the products and services that the Contractor may provide to the State under this Contract. For convenience, those goods and services are referred to as "Deliverables" under this Contract. The Contractor may not provide any other goods or services under this Contract without an amendment to this Contract. Also, the

Contractor may not charge any other prices for these Deliverables other than the prices on the Exhibit 1. If Exhibit 1 contains or incorporates by reference any terms or conditions other than a description of the scope of license for software, product/service description, and product/service prices, they are excluded from this Contract and are of no effect. The Contractor's price list attached as Exhibit 1 is identified as the following commercial price list(s).

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

1. Workers' compensation insurance, as required by Ohio law or the laws of any other state where work under this Contract will be done. The Contractor will also maintain employer's liability insurance with at least a \$1,000,000.00 limit.
2. Personal injury, bodily injury, and property damage liability insurance, including automobile coverage, with personal injury and bodily injury of not less than \$1,000,000.00 combined single limit, and property damage of at least \$500,000.00 for any one (1) occurrence.

The Contractor will also furnish a certificate of insurance to the State for the required insurance evidencing coverage from an insurance carrier, or carriers authorized to do business in Ohio. The certificate 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 carrier(s). The certificate must also provide thirty (30) days notice to the State before cancellation.

**G. LEASES/FINANCING.** The State may elect to obtain equipment and software on a finance/lease basis subject to the terms of the State of Ohio, Department of Administrative Services, Master Financing Agreement (Revised 01/20/02) or the Master Lease Agreement (Revised 04/24/02), when the parties execute the applicable agreement.

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

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

**II. PARTIES TO THE CONTRACT:**

**A. DEALERS.** The State authorizes the Contractor to name one or more dealers to work with the State on behalf of the Contractor. But if the Contractor decides to use any dealers, the Contractor must submit the name, address, and telephone number of any such dealer, as well as the dealer's purchase order and payment address(s) and federal tax identification number. The Contractor must also submit a completed W9 form for each dealer it wishes to name under this section. The Contractor's submission must be on its official letterhead, signed by an authorized representative, and addressed to the Administrator, Office of State Purchasing.

In doing so, the Contractor warrants that:

1. The dealer has been given a copy of this Contract, and a duly authorized representative of the dealer has agreed, in writing, to be bound by the terms and conditions in this Contract.
2. Such agreement specifically provides that it is for the benefit of the State as well as the Contractor.

3. The Contractor agrees to remain liable under this Contract for the services of any dealer to perform and any breach of the dealer under this Contract.
4. Payments under this Contract for the services of any dealer may be made directly to that dealer, and the Contractor will look solely to the dealer for any payments due the Contractor once the State has paid the dealer.
5. 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 would 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.

- B. **INDEPENDENT STATUS OF THE CONTRACTOR.** The parties will be acting as independent contractors. The partners, employees, officers, and agents of one party will act only in the capacity of representatives of that party and not as employees, officers, or agents of the other party and will not be deemed for any purpose to be such. Each party assumes full responsibility for the actions of its employees, officers, and agents, and agents while performing under this Contract and will be solely responsible for paying its people. Each party will also be alone responsible for withholding and paying income taxes and social security, workers' compensation, disability benefits and the like for its people. Neither party will commit, nor be authorized to commit, the other party in any manner.
- C. **POLITICAL SUBDIVISIONS.** This Contract may be relied on by Ohio political subdivisions, including Ohio cities and counties ("Political Subdivisions"). 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 will look solely to the Political Subdivision's performance, including but not limited to payment, and will 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 where the Contractor reasonably believes that the Political Subdivision is or will be unable to perform its obligations in relation to that order.

### III. PRICING PROVISIONS:

- A. **ECONOMIC PRICE ADJUSTMENT.** The State will be entitled to a price decrease any time the Contractor or any of its distributors sells a product or a service to any similarly situated most favored customer for less than the price agreed to between the State and the Contractor under this Contract. Any time the Contractor or any of its distributors sells a product or provides a service to any customer or dealer for less than it is available to the State under this Contract, the Contractor must notify the State of that event within thirty (30) calendar days of its occurrence and immediately reduce the price of the affected goods or services to the State under this Contract. The Contractor will also notify the State within thirty (30) calendar 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 will ask to renegotiate the price under this Contract of the goods and

services affected by the general reduction in price. If the Contractor and the State cannot agree on a renegotiated price, the State will have the right, on notice to the Contractor, to immediately remove the affected products and services from this Contract.

- B. NOTIFICATION OF PRICE INCREASE.** If this Contract permits any price increases, the Contractor must notify the Department of Administrative Services, Office of State Purchasing and any affected State customers of the increase at least sixty (60) days before the effective date of the price increase. State customers must be notified at their purchase order "bill to" address contained in the applicable purchase order(s). This notification must specify, when applicable, the product serial number, location, current price, increased price, and applicable purchase order number.

#### **IV. MERCHANDISE PROVISIONS:**

- A. EQUIPMENT WARRANTY.** If any electrical equipment, mechanical device, computer hardware, telecommunications hardware, or other type of physical machinery ("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 is modified or damaged after title passes to the State.

The Contractor will do the following if any Equipment does not meet the above warranties:

1. Cause the Equipment to perform substantially in accordance with the user manuals, technical materials, and related writings published by the manufacturer with respect to the Equipment, or if that is not commercially practicable; then
2. Grant the State a refund equal to the amount the State paid for the Equipment.

For all Equipment, the warranty period will be the longer of one (1) year after acceptance or the Equipment's standard warranty period.

- B. PRODUCT RECALL.** In the event product delivered has been recalled, seized, or embargoed and/or has been determined to be misbranded, adulterated, or found to be unfit for human consumption by the packer, processor, manufacturer or by any State or Federal regulatory agency, the Contractor shall be responsible to notify the State through DAS, Office of State Purchasing and all ordering agencies/entities within two business days after notice has been given. Contractor shall, at the option of the ordering agency, either reimburse the purchase price or provide an equivalent replacement product at no additional cost. Contractor shall be responsible for removal and/or replacement of the affected product within a reasonable time as determined by the ordering agency. At the option of the ordering agency, Contractor may be required to reimburse storage and/or handling fees to be calculated from time of delivery and acceptance to actual removal. Contractor will bear all costs associated with the removal and proper disposal of the affected product. Failure to reimburse the purchase price or provide equivalent replacement product will be considered a default.
- C. QUALITY ASSURANCE.** At the option of DAS or the participating agency, samples may be taken from deliveries made and submitted for laboratory tests. The State will bear the cost of testing when samples are found to be in compliance with the Contract. If samples do not conform to the Contract, Contractor will bear the costs of testing and the State will apply the terms and conditions of the Termination provision of this Contract.

**D. RETURN GOODS POLICY.** The State will apply the following Return Goods Policy on all purchases made under the Contract. The Contractor acknowledges to have read, understood, and agrees to this Policy.

1. Return goods, when due to Contractor error (i.e. over-shipment, defective merchandise, unapproved substitution, etc.) shall be returned to the Contractor, at the Contractor's expense. The Contractor shall make arrangements to remove the return goods from the ordering agency premises within seven (7) calendar days after notification. The Contractor shall not apply any restocking or other charges to the ordering agency. At the option of the ordering agency, replacement items may be accepted and will be shipped within seven (7) calendar days of notification. Failure of the Contractor to arrange for return of the items within the specified time will result in the items being deemed as abandoned property and the ordering agency will dispose of accordingly.
2. Return goods of regular catalog stock merchandise, when due to agency error (i.e. over purchase, discontinued use, inventory reduction, etc.) will be accepted by the Contractor if notice is given by the agency within six (6) months of delivery and acceptance. All items to be returned must be unused and in their original containers and in suitable condition for resale. The ordering agency will be responsible for all transportation costs associated with both the original shipment of items to the agency and the subsequent return of the items to the location designated by the Contractor. The Contractor may assess a restocking fee associated with the return of the items to the location designated by the Contractor. The Contractor may assess a restocking fee not to exceed their standard published restocking fee or equivalent restocking fee that is assessed to other customers of the Contractor. Return of regular stock catalog merchandise, when delivery and acceptance exceed six (6) months will be at the option of the Contractor.
3. For orders of custom manufactured items, the Contractor will provide a production sample of the item to the ordering agency for acceptance. The production sample will be identical to the item to be provided. The ordering agency will provide written acceptance of the item prior to the Contractor continuing with production. Once delivery and acceptance has been completed and the ordering agency determines for any reason that any remaining quantities will not be used, the agency may request the return of the custom manufactured items. Acceptance of the return of custom manufactured items will be at the option of the Contractor. If the Contractor agrees to the return of these items, the agency will be responsible for all costs associated with packaging, shipment and transportation, to include the original shipment to the agency and subsequent return of goods to the location designated by the Contractor. The Contractor may assess restocking fees that are equivalent to restocking fees that are normally assessed to other customers or as published by the Contractor. Failure of the Contractor to provide a production sample and obtain written approval from the ordering agency will result in the Contractor bearing all responsibility and costs associated with the return of these goods.

**V. MAINTENANCE PROVISIONS:**

- A. EQUIPMENT MAINTENANCE.** If this Contract involves computer or telecommunications hardware or other mechanical or electrical Equipment (use of the word "Equipment" means all the foregoing) as a Deliverable, then, during the warranty period and during any period covered by annual maintenance, the Contractor will provide Equipment maintenance to keep the Equipment in or restore the Equipment to good working order. This maintenance will 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 will also 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 condition means Equipment that performs in accordance with the manufacturer's published specifications.

The Contractor will exert its best efforts to perform all fault isolation and problem determination attributed to the Equipment covered under this Contract. The following services are outside the scope of this Contract:

1. 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.
2. 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 or included in the Contractor's proposal, or causes other than ordinary use of Equipment.
3. Furnishing platens, supplies, or accessories, making specification changes, or adding, or removing approved accessories, attachments or other devices except as set forth herein.
4. Maintenance or increase in 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.
5. Activities required restoring the Equipment to good operating condition if the problem has resulted from someone other than Contractor's authorized service personnel repairing, modifying or performing any maintenance service on the Equipment.

**B. EQUIPMENT MAINTENANCE CONTINUITY.** This section applies if Equipment will be a Deliverable under this Contract. If the Contractor is unable to provide maintenance services 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. But the State will also be entitled to the following items from the Contractor:

1. 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.
2. A listing of suppliers capable of supplying necessary spare parts.
3. Adequate information to permit the State to have spare parts manufactured elsewhere; and
4. A listing of spare parts and their recommended replacement schedule that will enable the State to create a centralized inventory of spare parts.

Any information in items (1) through (4) above that are rightfully identified by the Contractor as proprietary information will be maintained in confidence by the State except where disclosure to a third-party is necessary for the State to continue the maintenance. However, the State will require any third-party to whom disclosure is made to agree to hold the proprietary information in confidence and to make no further disclosure of it. Further, the State agrees that any such proprietary information will be used solely to perform maintenance for the State and will be returned to the Contractor or destroyed on completion of such use.

**C. EQUIPMENT MAINTENANCE STANDARDS.** This section applies if Equipment will be a Deliverable under this Contract. Except in the case of excusable delay, remedial Equipment maintenance by the Contractor will be completed within eight (8) 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 (8) 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 (8) hours to remedy a default. The Contractor will provide adequate staff to provide the maintenance required by this Contract.

- D. MAINTENANCE ACCESS (GENERAL).** The section applies if any software or Equipment will be a Deliverable under this Contract. The State will provide the Contractor with reasonable access to the Deliverable to perform maintenance. All maintenance that requires the 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 will be performed at mutually agreeable times, within the parameters of the manufacturer's published schedule.
- E. PRINCIPAL PERIOD OF MAINTENANCE (GENERAL).** This section applies if software or Equipment will be a Deliverable under this Contract. Maintenance will be available nine (9) 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 considered billable but will be included in the price of the maintenance.

## **VI. IT PROVISIONS:**

- A. LICENSE IN COMMERCIAL MATERIAL.** As used in this section, "Commercial Material" means anything that has been developed at private expense by the Contractor or a third party, commercially available in the marketplace, subject to intellectual property rights, and readily copyable through duplication on magnetic media, paper, or other media. Examples include the written reports, books, pictures, videos, movies, computer programs, and computer 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 Exhibit 1 or as an attachment referenced in Exhibit 1, 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 perpetual rights in item (1) through (8) of this section or as expressly stated otherwise in this Contract. The Commercial Software may be:

1. Used or copied 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. Used or copied for use in with a backup computer for disaster recovery and disaster recovery testing purposes or if any computer for which it was acquired is inoperative.
3. Reproduced for safekeeping (archives) or backup purposes.

4. Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the Commercial Software will be subject to same restrictions on use.
5. Disclosed to and reproduced for use on behalf of the State by support service contractors or their subcontractors, subject to the same restrictions on use; and
6. Used or copied for use in or transferred to a replacement computer.

**However:**

7. If Commercial Software delivered under this Contract is published and copyrighted, it is licensed to the State without disclosure prohibitions; and
8. If any Commercial Software is delivered under this Contract with the copyright notice in 17 U.S.C. 401, it will be presumed to be published, copyrighted, and licensed to the State without disclosure restrictions unless a statement substantially as follows accompanies the copyright notice: "Unpublished-rights reserved under the copyright laws of the United States". The State will treat such Commercial Software as Confidential Information to the extent that such is actually the case.

In case any other scope of license (e.g., MIP's, tier, concurrent users, enterprise, site, or otherwise) the foregoing will apply except as modified expressly by the applicable license description, which must be incorporated as part of Exhibit 1. If the Contractor provides greater license rights in and item included in Exhibit 1 to its general customer base for the Software's list price, those additional license rights will also 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.

**B. SOFTWARE WARRANTY.** If Exhibit 1 includes work to develop custom software as a Deliverable, then, on delivery and for one (1) year after the date of acceptance of any Deliverable that includes custom software, the Contractor warrants that:

1. The software will operate on the computer(s) for which the software is intended in the manner described in the relevant software documentation.
2. The software will be free of any material defects.
3. The Contractor will deliver and maintain relevant and complete software documentation, commentary, and source code.
4. 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
5. 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 (if applicable) to make the following warranties and maintenance obligations directly to the State. During the warranty period described in the next paragraph, the Contractor will:

6. Maintain or cause the third-party licensor to maintain the Commercial Software so that it operates in the manner described in its documentation.
7. Supply technical bulletins and updated user guides.
8. Supply the State with updates, improvements, enhancements, and modifications to the Commercial Software and documentation and, if available, the commentary and the source code.
9. Correct or replace the software and/or remedy any material programming error that is attributable to the Contractor or the third-party licensor; and
10. 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 \$5,000.00 per license or per copy, the warranty period will be the longer of one (1) year after acceptance or the licensor's standard warranty period. For Commercial Software designed for PC or PC-based servers and costing less than \$5,000.00 per license or per copy, the warranty period will be the longer of three (3) months after acceptance of 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 will 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 source code will be provided in the language in which it was written and will include commentary that will 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.

- C. SOFTWARE MAINTENANCE.** If this Contract involves any custom software as a Deliverable, then, during the warranty period, the Contractor will correct any material programming errors that are attributable to the Contractor, within a reasonable time, provided that the State notifies the Contractor, either orally or in writing, of a problem with the software and provides sufficient information to identify the problem. 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 work-arounds to fully use the software, Contractor will respond to requests for resolution within four (4) business hours and begin working on a proper solution within one (1) business day, dedicating the resources of one (1) 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 will respond within two (2) 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 \$5,000.00 per copy or license, the Contractor will provide maintenance during the warranty period at no cost.

to the State. That maintenance will be the standard maintenance program that the licensor, whether the Contractor or a third party, normally provides to its client base. But, at a minimum, that maintenance program must include all new releases, updates, patches, and fixes to the commercial Software. It will also include a commitment to keep the software current with the operating environment in which it is designed to function and to correct material defects that the State finds in the software in a timely fashion.

Additionally, the Contractor will make (or obtain a commitment from the third-party licensor to make) maintenance available for the product for at least five (5) 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 (5%) 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 (1) of the following two (2) things: (a) give the State a pro rata refund of the license fee based on a five (5) 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 the copy(ies) of the software for which the State has a proper license. For purposes of receiving the source code, the State agrees to treat it as confidential and to be obligated to the requirements under the Confidentiality Section of this Contract with respect to the source code. That is, with respect to the source code that the State gets under this section, the State will do all the things that the Confidentiality Section requires the contractor to do in handling the State's Confidential Information. 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 \$5,000.00 per copy or license, the Contractor will provide the maintenance and/or user assistance during the warranty period at no additional cost to the State that the Contractor or the third-party licensor makes generally available at no additional charge to its other customers. That maintenance will be the standard maintenance program that the licensor, whether the Contractor or a third-party, normally provides to its client base.

**D. 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 on which to use 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:

1. The Contractor's (or third party's) standard upgrade or migration fee.
2. The upgrade or migration fee in Exhibit 1.
3. Or 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. This will not apply to Commercial Software for PCs and PC-based server software with a license fee of less than \$5,000.00, 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 which is made available to other similarly situated most favored customers or dealers, as appropriate.

## VII. OWNERSHIP/TITLE PROVISIONS:

A. **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 thirty (30) days after installation to do this. The State will not issue a formal letter of acceptance, and passage of thirty (30) days will imply acceptance, though the State will issue a notice of noncompliance if a Deliverable does not meet the warranties in this Contract. If the State issues a letter of noncompliance, then the Contractor will have thirty (30) calendar days to correct the problems listed in the noncompliance 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 letters has been cured. If the problems have been fixed during the thirty (30) day period, the State will issue the acceptance letter within fifteen (15) days after all defects have been fixed.

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

C. **OWNERSHIP OF DELIVERABLES.** Notwithstanding this contract cannot be used for software development, all custom work done by the Contractor and covered by this Contract will be treated as "work for hire" on behalf of the State, with all rights, title, and interest in all intellectual property that comes into existence through the Contractor's custom work being assigned to the State. Additionally, the Contractor waives any shop rights, author rights, and similar retained interests in custom developed material. The Contractor will provide the State with all assistance reasonably needed to vest such rights of ownership in the State. But the Contractor will retain ownership of all tools, methods, techniques, standards, and other development procedures, as well as generic and preexisting shells, subroutines, and similar material incorporated in any custom Deliverable ("Pre-existing Materials").

The Contractor will grant the State a worldwide, non-exclusive, royalty-free perpetual license to use, modify, sell, and otherwise distribute all Pre-existing Materials that are incorporated in any custom-developed Deliverable rather than grant the State ownership of the Pre-existing Materials. The Contractor will 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 and obtain written approval from the State for doing so in advance. On request of the Contractor, the State will incorporate any proprietary notice of the Contractor may reasonably want for any Pre-existing Materials included in a 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.

D. **PASSAGE OF TITLE.** Title to any Deliverable will pass to the State only on acceptance of the Deliverable. All risk of loss will remain with the Contractor until title to the Deliverable passes to the State.

## VIII. GENERAL PROVISIONS:

A. **CONTRACT RENEWAL.** This Contract may be renewed solely at the discretion of the Department of Administrative Services for a period of one month. Any further renewals will be by mutual agreement between the contractor and the Department of Administrative Services for any number of times and for any period of time. The cumulative time of all mutual renewals may not exceed two years.

- B. CONTROLLING BOARD AUTHORIZATION.** The State's obligations under this Contract are subject to the Ohio Controlling Board's continuing authorization to use state term contracts. If the Ohio Controlling Board fails to authorize or withdraws its authorization for this program, this Contract will terminate, and the Contractor may not take any more orders under this Contract.

- C. OHIO ETHICS.** All Contractors who are actively doing business with the State of Ohio or who are seeking to do business with the State of Ohio are responsible to review and comply with all relevant provisions of O.R.C. Sections 102.01 to 102.09, and Governor Strickland's Executive Order 2007-01S for Ethics.

In accordance with Executive Order 2007-01S, Contractor, by signature on this document, certifies: (1) it has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands Ohio ethics and conflict 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 with the state of Ohio up to and including debarment.

Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of Ohio ethics laws.

Executive Order 2007-01S is available for review at [www.governor.ohio.gov](http://www.governor.ohio.gov), click on Governor's Office and then on Executive Orders.

- D. OHIO PAYMENT CARD.** Participating state agencies purchasing supplies from the Contract may use the Ohio Payment Card. Such purchases may not exceed \$2,500 unless the Office of Budget & Management has approved the agency to exceed this limit. In the event that OBM increases the dollar limit for payment cards for all state agencies, notice of such increase will be posted on the Department of Administrative Services, Office of State Purchasing website. Participating state agencies are required to use the Ohio Payment Card in accordance with the Ohio, Office of Budget and Management's current guidelines for the Ohio Payment Card and the participating agency's approved plan filed with the Office of Budget of Management. Contractor may process a payment in the payment card network only upon delivery and acceptance of the supplies or services ordered. For partial deliveries or performance, Contractor may process a payment for the amount delivered or completed only and not for the entire amount ordered by the participating agency. Upon completion of the delivery of remaining supplies or services, Contractor may process a payment request in the payment card network for the remainder of the order. Contractor will receive payment through its merchant bank within the time frame agreed upon between Contractor and its merchant bank. The Contractor should expect normal processing fees from its merchant bank for payment card transaction which may not be passed on to the agency making the purchase.
- E. TRAVEL EXPENSES.** Any travel or per diem required by the Contractor to do its obligations under this Contract will be at the Contractor's expense. The State will pay for any additional travel that it requests only with prior written approval. All additional travel and per diem that the State requests in addition to what this Contract requires the Contractor to provide at the Contractor's expense will be paid in accordance with the Office of Budget and Management's Travel Rules in Section §126-1-02 of the Ohio Administrative Code.
- F. ENTIRE AGREEMENT.** This Contract consists of this document; the Contractor's offer letter, and if applicable the Contractor's letter(s) designating authorized dealers and Exhibit 1. The foregoing constitutes the entire agreement between the parties; and any changes or modifications to this Contract must be in writing.

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

ACCEPTED BY:

THE CONTRACTOR

ACCEPTED BY:

STATE OF OHIO,  
DEPARTMENT OF ADMINISTRATIVE SERVICES

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (printed)

Hugh Quill  
\_\_\_\_\_  
Name (printed)

\_\_\_\_\_  
Title

Director  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



## ELSAG North America Law Enforcement Systems, LLC

**Contract Number:**

**Index: STS846**

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Effective Date November 1, 2009



**ELSAG North America Law Enforcement Systems, LLC**



## ELSAG North America Law Enforcement Systems, LLC

Item#: MPH-900X1

Description: 1 camera, permanently mounted License Plate Reader System

Details:

- One - infrared camera, color-overview camera in singular vacuum sealed housing.
- One License Plate Reader processor
- (1) Shielded camera cable with 16 pin military spec connectors
- (1) NMEA- compliant GPS Receiver with software drivers and utilities
- (1) 12V 25' Power cable
- (1) 25' Cat 6 Ethernet cable (RJ45-16 pin mil spec)
- Carsystem LPR interface software (latest version).

Optional Accessories:

- Permanent mount

Special Notes:

This item must include Item# MPH-900INSTALL

Pricing:

Catalog Price \$15,700

Discounted State Term Pricing:

\$14,300 installed



## ELSAG North America Law Enforcement Systems, LLC

Item#: MPH-900X2

Description: 2 cameras, permanently mounted License Plate Reader System

Details:

- Two - infrared camera, color-overview camera in singular vacuum sealed housing.
- One License Plate Reader processor
- (2) Shielded camera cable with 16 pin military spec connectors
- (1) NMEA- compliant GPS Receiver with software drivers and utilities
- (1) 12V 25' Power cable
- (1) 25' Cat 6 Ethernet cable (RJ45-16 pin mil spec)
- Carsystem LPR interface software (latest version).

Optional Accessories:

- Permanent mount

Special Notes:

This item must include Item# MPH-900INSTALL

Pricing:

Catalog Price \$23,100

Discounted State Term Pricing:

\$16,300 installed



## ELSAG North America Law Enforcement Systems, LLC

Item#: MPH-900X3

Description: 3 cameras, permanently mounted License Plate Reader System

Details:

- Three - infrared camera, color-overview camera in singular vacuum sealed housing.
- One License Plate Reader processor
- (3) Shielded camera cable with 16 pin military spec connectors
- (1) NMBA-compliant GPS Receiver with software drivers and utilities
- (1) 12V 25' Power cable
- (1) 25' Cat 6 Ethernet cable (RJ45-16 pin mil spec)
- Carsystem LPR interface software (latest version).

Optional Accessories:

- Permanent mount

Special Notes:

This item must include Item# MPH-900INSTALL

Pricing:

Catalog Price \$25,600

Discounted State Term Pricing:

\$19,905 installed



## ELSAG North America Law Enforcement Systems, LLC

Item#: MPH-900X4

Description: 4 cameras, permanently mounted License Plate Reader System

Details:

- Four -infrared camera, color-overview camera in singular vacuum sealed housing.
- One License Plate Reader processor
- (4) Shielded camera cable with 16 pin military spec connectors
- (1) NMEA- compliant GPS Receiver with software drivers and utilities
- (1) 12V 25' Power cable
- (1) 25' Cat 6 Ethernet cable (RJ45-16 pin mil spec)
- Carsystem LPR interface software (latest version).

Optional Accessories:

- Permanent mount

Special Notes:

This item must include Item# MPH-900INSTALL

Pricing:

Catalog Price \$28,818

Discounted State Term Pricing:

\$27,850 Installed



## ELSAG North America Law Enforcement Systems, LLC

Item#: MPH-900X1(TRANS)

Description: 1 camera, License Plate Reader System, in a transportable ruggedized electronic suitcase

Details:

- One infrared camera, one color-overview camera in singular vacuum sealed housing.
- One License Plate Reader processor
- (1) Shielded camera cable with 16 pin military spec connectors
- (1) NMEA- compliant GPS Receiver with software drivers and utilities
- (1) 12V 25' Power cable
- (1) 25' Cat 6 Ethernet cable (RJ45-16 pin mil spec)
- Carsystem LPR interface software (latest version).

Optional Accessories:

Special Notes:

Pricing:

Catalog Price \$16,700

Discounted State Term Pricing:

\$14,300 installed



## ELSAG North America Law Enforcement Systems, LLC

Item#: MPH-900X2(TRANS)

Description: 2 cameras, License Plate Reader System, in a transportable ruggedized electronic suitcase

Details:

- Two- infrared camera, color-overview camera in singular vacuum sealed housing.
- One License Plate Reader processor
- (2) Shielded camera cable with 16 pin military spec connectors
- (1) NMEA- compliant GPS Receiver with software drivers and utilities
- (1) 12V 25' Power cable
- (1) 25' Cat 6 Ethernet cable (RJ45-16 pin mil spec)
- Carsystem LPR interface software (latest version).

Optional Accessories:

Special Notes:

Pricing:

Catalog Price \$24,000

Discounted State Term Pricing:

\$16,350



## ELSAG North America Law Enforcement Systems, LLC

Item#: MPH-900X3(TRANS)

Description: 3 cameras, License Plate Reader System, in a transportable ruggedized electronic suitcase

Details:

- Three - infrared camera, color-overview camera in singular vacuum sealed housing.
- One License Plate Reader processor
- (3) Shielded camera cable with 16 pin military spec connectors
- (1) NMEA- compliant GPS Receiver with software drivers and utilities
- (1) 12V 25' Power cable
- (1) 25' Cat 6 Ethernet cable (RJ45-16 pin mil spec)
- Carsystem LPR interface software (latest version).

Optional Accessories:

Special Notes:

Pricing:

Catalog Price \$26,500

Discounted State Term Pricing:

\$19,905 installed



## ELSAG North America Law Enforcement Systems, LLC

Item#: MPH-900X4(TRANS)

Description: 4 cameras, License Plate Reader System, in a transportable ruggedized electronic suitcase

Details:

- Four - infrared camera, color-overview camera in singular vacuum sealed housing.
- One License Plate Reader processor
- (4) Shielded camera cable with 16 pin military spec connectors
- (1) NMEA- compliant GPS Receiver with software drivers and utilities
- (1) 12V 25' Power cable
- (1) 25' Cat 6 Ethernet cable (RJ45-16 pin mil spec)
- Carsystem LPR interface software (latest version).

Optional Accessories:

Special Notes:

Pricing:

Catalog Price: \$29,718

Discounted State Term Pricing:

\$27,850 Installed



## ELSAG North America Law Enforcement Systems, LLC

Item#: FPH-900X

Description: Fixed High Performance LPR Smart Camera and mounting hardware, with color video overlay camera and PC support back to command center.

Details:

- Two- infrared camera, color-overview camera in singular vacuum sealed housing.
- One License Plate Reader processor
- (2) Shielded camera cable with 16 pin military spec connectors
- (1) NMEA- compliant GPS Receiver with software drivers and utilities
- (1) 12V 25' Power cable
- (1) 25' Cat 6 Ethernet cable (RJ45-16 pin mil spec)
- Carsystem LPR interface software (latest version).

Optional Accessories:

Special Notes:

Pricing:

Catalog Price \$15,000

Discounted State Term Pricing:

\$8,950



## ELSAG North America Law Enforcement Systems, LLC

Item#: MPH-DLX

Description: Ruggedized Touch screen in car PC with, Windows XP, vehicle mounting hardware and keyboard

Details:

Optional Accessories:

Special Notes:

Pricing:

Catalog Price \$5,200

Discounted State Term Pricing:

\$4,995



## ELSAG North America Law Enforcement Systems, LLC

Item#: MPH-900INSTALL

Description: Charge per vehicle for standard MPH-900 installation.

Details:

Optional Accessories:

Special Notes:

Pricing:

Catalog Price \$1,500/day

Discounted State Term Pricing:

\$1,350



## ELSAG North America Law Enforcement Systems, LLC

Item#: LPT-900S

Description: Central Processing Unit, 2 Progressive Infrared Cameras in a covert car top carrier or truck tool box with network and power cord.

Details:

Optional Accessories:

Special Notes:

Pricing:

Catalog Price \$25,600

Discounted State Term Pricing:

\$21,200



## ELSAG North America Law Enforcement Systems, LLC

Item#: ENG SUP

Description: Day rate for ELSAG North America engineering staff either on site or in the development lab.

Details:

Optional Accessories:

Special Notes:

Pricing:

Catalog Price \$1,500/day

Discounted State Term Pricing:

\$1,250/day



## ELSAG North America Law Enforcement Systems, LLC

Item#: INST SUP

Description: Day rate for ELSAG North America installation staff either on site or in the development lab.

Details:

Optional Accessories:

Special Notes:

Pricing:

Catalog Price \$900/day

Discounted State Term Pricing:  
\$750



## ELSAG North America Law Enforcement Systems, LLC

Item#: MPH-900OPC

Description: Operations Center License designed to coordinate multiple fixed and mobile units across network.

Details:

Optional Accessories:

Special Notes:

Pricing:

Catalog Price \$1200

Discounted State Term Pricing:  
\$975



## ELSAG North America Law Enforcement Systems, LLC

Item#: XPH-8700

Description: Covert Fixed Gate LPR Smart Camera with WiFi and Battery rechargeable power.

Details:

Optional Accessories:

Special Notes:

Pricing:

Catalog Price \$18,000

Discounted State Term Pricing:

\$12,950



## ELSAG North America Law Enforcement Systems, LLC

Item#: MPH-900CarCable

Description: Replacement Cable set for MPH-900, 15' power, Shielded Ethernet.

Details: Transportable Power/Ethernet kit

- (1) 12V 25' Power cable
- (1) 25' Cat 6 Ethernet cable (RJ45-16 pin mil spec)

Optional Accessories:

Special Notes:

Pricing:

Catalog Price \$ 250

Discounted State Term Pricing:

\$137



## ELSAG North America Law Enforcement Systems, LLC

Item#: MPH-900CamCable

Description: Replacement Cable set for MPH-900, Camera Cable set

Details: Part Number: 410330 - 16' Shielded Video Cable

- Shielded camera cable with 16 pin military spec connectors

Optional Accessories:

Special Notes:

Pricing:

Catalog Price \$375

Discounted State Term Pricing:

\$269

**ELSAG North America**

205-H Creek Ridge Road  
Greensboro, NC 27406

Voice: 336-379-7135

Fax: 336-379-7164

**INVOICE**

Invoice Number: 12246

Invoice Date: Mar 23, 2010

Page: 1

Duplicate

Sales Order: 100002348

<b>Bill To:</b>
Homeland Security 205 West St. Clair 5th Fl Office of Homeland Security Cleveland, OH 44113 United States

<b>Ship to:</b>
Homeland Security 205 West St. Clair 5th Fl Office of Homeland Security Cleveland, OH 44113 United States

Customer ID	Customer PO	Payment Terms	
Homeland Security OH	CT6002	Net 15 Days	
Sales Rep ID	Shipping Method	Ship Date	Due Date
MAXWELL	Ground	3/23/10	4/7/10

Quantity	Item	Description	Unit Price	Amount
1.00		CT6002 PS2010000000033		
17.00	110091	MPH-900 ST2 w/Perm Power Cable	16,300.00	277,100.00
34.00	420069-S	AD3 Split Trunk Cam Mnt Hdly		
		Fixed HI Performance Camera	8,950.00	
		FCU-900	6,110.00	
17.00	410322	Operation Center License	650.00	11,050.00
17.00	520001	Service Plan Year 1		
Subtotal				288,150.00
Sales Tax				
Total Invoice Amount				288,150.00
Payment/Credit Applied				
TOTAL				288,150.00

Overdue invoices are subject to late charges.

**ELSAG North America**

205-H Creek Ridge Road  
Greensboro, NC 27406

**INVOICE**

Invoice Number: 12481  
Invoice Date: Apr 30, 2010  
Page: 1

*Duplicate*  
Sales Order: 100002348

Voice: 336-379-7135  
Fax: 336-379-7164

<b>Bill To:</b>
Homeland Security 205 West St. Clair 5th Fl Office of Homeland Security Cleveland, OH 44113 United States

<b>Ship To:</b>
Homeland Security 205 West St. Clair 5th Fl Office of Homeland Security Cleveland, OH 44113 United States

Customer ID	Customer PO	Payment Terms
Homeland Security OH	CT6002	Net 15 Days
Salesperson	Shipping Method	Ship Date
MAXWELL	Handcarry	4/30/10
		5/15/10

Quantity	Part Number	Description	Unit Price	Amount
1.00		CT6002 PS2010000000033		
1.00	421354	Fixed camera 60mm	8,950.00	8,950.00
1.00	120005	FCU-900 BOX One Camera	6,110.00	6,110.00
	410322	Operation Center License	650.00	
1.00	411563	50ft FG Camera Cable		
1.00	421399	Pole Mnt Cam Asm		
2.00	410932	Hose Clamps		
2.00	411263	Pelco Cable Pole Clamp		
1.00	411546	Hood Sun Shield		
Subtotal				15,080.00
Sales Tax				
Total Invoice Amount				15,080.00
Payment/Credit Applied				
<b>TOTAL</b>				<b>15,080.00</b>

Overdue invoices are subject to late charges.

**ELSAG North America**205-H Creek Ridge Road  
Greensboro, NC 27406**INVOICE**

Invoice Number: 12494

Invoice Date: May 6, 2010

Page: 1

Voice: 336-379-7135

Fax: 336-379-7164

<b>Bill To:</b>
Homeland Security 205 West St. Clair 5th Fl Office of Homeland Security Cleveland, OH 44113 United States

<b>Ship to:</b>
Homeland Security 205 West St. Clair 5th Fl Office of Homeland Security Cleveland, OH 44113 United States

Customer ID	Customer PO	Payment Terms	
Homeland Security OH	CT6002	Net 15 Days	
Sales Rep. ID	Shipping Method	Ship Date	Due Date
MAXWELL	Handcarry	5/6/10	5/21/10

Quantity	Item	Description	Unit Price	Amount
1.00	410322	Operation Center License	650.00	650.00
Subtotal				650.00
Sales Tax				
Total Invoice Amount				650.00
Payment/Credit Applied				
<b>TOTAL</b>				<b>650.00</b>

Check/Credit Memo No:

Overdue invoices are subject to late charges.

**ELSAG North America**

205-H Creek Ridge Road  
Greensboro, NC 27406

**INVOICE**

Invoice Number: 17492S-A  
Invoice Date: Jul 12, 2012  
Page: 1

Voice: 336-379-7135

Fax: 336-379-7164

Bill to:
Homeland Security 205 West St. Clair 5th Fl Office of Homeland Security Cleveland, OH 44113 United States

Ship to:
Homeland Security 205 West St. Clair 5th Fl Office of Homeland Security Cleveland, OH 44113 United States

Customer ID	Customer PO	Payment Terms	
Homeland Security OH	See below	Net 15 Days	
Sales Rep ID	Shipping Method	Ship Date	Due Date
MAXWELL	Ground	7/12/12	7/27/12

Quantity	Item	Description	Unit Price	Amount
1.00		PO 6001 OH201200000031		
16.00	140002	MPH-900 MS2 Two Camera Mini Split Mobile System.	15,000.00	240,000.00
16.00	210002	Installation Support	1,300.00	20,800.00
16.00	410322	Operation Center License	975.00	15,600.00
1.00	520501	Contract discount for MS2	650.00	-650.00
1.00	520501	Contract discount for EOC	4,450.00	-4,450.00
	410322	Operation Center License	1,275.00	
	110125	MPH-900 SP2 COVERT CAR KIT	19,380.00	
	412305	IR Replacement Glass-Explorer	450.00	
	210003	Engineering Day - Onsite	1,250.00	
16.00	520001	Service Plan Year 1		
	999999	Per Matt need to contact customer about the Covert car kit to see what they really need. Sent email to Eric Smith		
16.00	421644	2 Port Trunk Box - Alum Finish		
16.00	421487	Asm - Mini Split - 16mm 740nm		
16.00	421499	Asm - Mini Split - 25mm 740nm		
16.00	410052	Ethernet Cable Shielded cat5E		
16.00	412310	PACKING FOAM INSERT		
16.00	410917	Garmin GPS Antenna		
16.00	412149	OPUS PERMANENT POWER CABLE		
32.00	412275	CAM CABLE - 12FT SPLIT		

Subtotal	Continued
Sales Tax	Continued
Total Invoice Amount	Continued
Payment/Credit Applied	
<b>TOTAL</b>	<b>Continued</b>

## ELSAG North America

205-H Creek Ridge Road  
Greensboro, NC 27406

# INVOICE

Invoice Number: 174925-A  
Invoice Date: Jul 12, 2012  
Page: 2

Voice: 336-379-7135  
Fax: 336-379-7164

<b>Bill to:</b>
Homeland Security 205 West St. Clair 5th Fl Office of Homeland Security Cleveland, OH 44113 United States

<b>Ship to:</b>
Homeland Security 205 West St. Clair 5th Fl Office of Homeland Security Cleveland, OH 44113 United States

Customer ID	Customer PO	Payment Terms	
Homeland Security OH	See below	Net 15 Days	
Sales Rep ID	Shipping Method	Ship Date	Due Date
MAXWELL	Ground	7/12/12	7/27/12

Quantity	Item	Description	Unit Price	Amount
32.00	420069-M	TRANSPORTABLE WITH STRAIGHT ENDS Hedley Trunk Mt Assembly-Mini Split		
Subtotal				271,300.00
Sales Tax				
Total Invoice Amount				271,300.00
Payment/Credit Applied				
TOTAL				271,300.00