MASTER CLOUD SERVICES AGREEMENT

MCSA0010

THIS MASTER CLOUD SERVICES AGREEMENT ("Agreement") is by and between GovernmentJobs.com, Inc., d/b/a NEOGOV, ("Service Provider"), having an office at 222 N Sepulveda, Blvd, Ste 2000, El Segundo, CA 90245, and the State of Ohio ("State"), through its Department of Administrative Services ("DAS"), having its principal place of business at 30 East Broad Street, 40th Floor, Columbus, OH 43215. The State and the Service Provider also are sometimes referred to jointly as the "Parties" or individually as a "Party". The effective date of this Agreement is the date it is signed on behalf of the State ("Effective Date").

1. General Information

1.1. Organization

This Agreement covers subscriptions to cloud services through one or more attachments ("Service Attachments") that describe the cloud offerings ("Services") that the Service Provider makes available to its customers by subscription and that it is authorized to sell to the State. The Service Attachments describe the Services the Service Provider offers under this Agreement, along with any special terms or conditions applicable only to those Services, descriptions of those Services, features, and all fees associated with such Services, as well as any other provisions to which the Parties have agreed with respect to the those Services. Such Service Attachments, when executed by the Parties, are incorporated into this Agreement and become a part hereof.

1.2. Subscribing Entities

A "Subscribing Entity" means State agencies, boards, and commissions that place requests through the State's ordering system described in another section ("Orders") under this Agreement for any of the Services identified by one or more Service Attachments to this Agreement. And it includes other entities of the State, such as the legislative and judicial branches of State government and the independent offices of elected State officials that place Orders under this Agreement. It also means the Cooperative Purchasing Members, defined in the next section, that place Orders under this Agreement.

1.3. Cooperative Purchasing Members

"Cooperative Purchasing Members" are entities that qualify for participation in the State's cooperative purchasing program under Section 125.04 of the Ohio Revised Code ("ORC") and that have completed the steps necessary to participate in that program. They may include Ohio political subdivisions, such as counties, townships, municipal corporations, school districts, conservancy districts, township park districts, park districts created under Chapter 1545 of the ORC, regional transit authorities, regional airport authorities, regional water and sewer districts, and port authorities. They also may include any Ohio county board of elections, private fire companies, private, nonprofit emergency medical service organizations, and chartered nonpublic schools.

1.4. Term

The current General Assembly cannot commit a future General Assembly to any expenditure. Therefore, this Agreement along with all Service Attachments will automatically expire at the end of the State's current biennium, which is June 30, 2015.

1.5. Agreement – Renewal

The State may renew this Agreement in the next biennium by issuing written notice to the Service Provider of the decision to do so. Renewals will be initiated by the State in writing at least 30 days before the expiration of the then current term. This expiration and renewal procedure will also apply to the end of any subsequent biennium.

1.6. Service Attachment(s) – Renewal

Along with renewal of this Agreement, the State may renew any or all Service Attachments for the next biennium by issuing written notice to the Service Provider of the decision to do so. Renewals will be initiated by the State at least 30 days before the expiration of the then current term. This expiration and renewal procedure will also apply to any subsequent biennium.

After the first renewal, the Parties agree that pricing of Services under any Service Attachment may be renegotiated to reflect more favorable rates to the State. Upon termination of this Agreement, all rights of the Subscribing Entities to order new Services cease and the Service Provider may not fulfill any such requests for any Subscribing Entity under this Agreement. Further, all existing Service Attachments and all existing Orders under those Service Attachments also will terminate, except to the extent that the Service Provider has any prepaid Services to perform.

The Subscribing Entities have the option anytime during the Agreement's term to upgrade to a new technology or service offering with the Service Provider without incurring any charges for terminating the existing technology or service offering before the agreed upon term of the Subscribing Entity's Order ("Early Termination Charge"), if any such charge is provided for in the applicable Service Attachment.

1.7. Relationship of the Parties and Subscribing Entities

The Parties are independent contractors and nothing herein creates or implies an agency relationship, joint venture, or partnership between the Parties. The Service Provider and its officers, employees, contractors, and subcontractors who may attend meetings and work in other situations where their independent contractor status is not obvious to third parties must identify themselves as such to avoid creating an impression that they are State representatives. In addition, neither the Service Provider nor its officers, employees, contractors, or subcontractors may make any representation that they are acting, speaking, representing, or otherwise advocating any position, agreement, service, or otherwise on behalf of the State or any Subscribing Entity.

1.8. Dealers and Distributors

The State authorizes the Service Provider to name one or more dealers to work with the State on behalf of the Service Provider. But if the Service Provider decides to use any dealers, the Service Provider must submit the name, principal business address, addresses for purchase orders and for payments, telephone number, and its federal tax identification number. The Service Provider also must submit a completed W9 form for each dealer it wishes to name under this section. The Service Provider's submission

must be on its official letterhead, signed by an authorized representative, and addressed to the Contract Manager, Office of Information Technology.

In doing so, the Service Provider warrants that:

(a) The Service Provider has provided the dealer with a copy of this Agreement, and a duly authorized representative of the dealer has agreed, in writing, to be bound by the terms and conditions in this Agreement.

(b) Such agreement specifically provides that it is for the benefit of the State as well as the Service Provider.

(c) The Service Provider will remain liable under this Agreement for the Services of its dealers and will remedy any breach of any of its dealers under this Agreement.

(d) Payments under this Agreement for the Services of any dealer may be made directly to that dealer, and the Service Provider will look solely to the dealer for any payments due to the Service Provider once the State has paid the dealer.

(e) To the extent that there is any liability to the State arising from doing business with a dealer that has not signed the agreement required under this section with the Service Provider, the Service Provider will indemnify the State for such liability.

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

The State strongly encourages the participation of small and disadvantaged businesses in its contracting programs and has created certification programs for Minority Business Enterprises (MBEs) and to Encourage Diversity Growth and Equity (EDGE) in State contracting.

1.9. Audits and Reports

During the term of this Agreement and for three years after its termination, on reasonable notice and during customary business hours, the State may audit the Service Provider's records and other materials that relate to the Services performed under this Agreement, to any billing or invoices under the Agreement, or to pricing representations that the Service Provider made to acquire this Agreement. This audit right also will apply to the State's duly authorized representatives and any organization providing funding for any Order hereunder.

The Service Provider must make such records and materials available to the State within 15 days after receiving the State's written notice of its intent to audit the Service Provider's records and must notify the State as soon as the records are ready for audit.

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

The State also may require various reports from the Service Provider related to the Services. Such reports include those identified in Section 7.6 and those identified in any Service Attachment. Further, the State will be entitled to any other reports that the Service Provider makes generally available to its other customers without additional charge. The State's rights under this section will apply to all Services provided to all Subscribing Entities under this Agreement, but a Subscribing Entity's rights to reports will apply solely to Services it orders or receives under this Agreement.

1.10. Subscribing Entities' Reliance on Agreement

Subscribing Entities may rely on this Agreement. But whenever a Subscribing Entity is a Cooperative Purchasing Member and relies on this Agreement to issue an Order, the Subscribing Entity will step into the shoes of the State under this Agreement for purposes of its Order, and, as to the Subscribing Entity's Order, this Agreement will be between the Service Provider and that Subscribing Entity. The Service Provider must look exclusively to that Subscribing Entity for performance, including but not limited to payment, and must hold the State harmless with regard to such Orders and the Subscribing Entity's performance. But the State, through DAS, will have the right to terminate this Agreement and seek such remedies on termination as this Agreement provides should the Service Provider fail to honor its obligations under an Order from any Subscribing Entity, whether a Cooperative Purchasing Member or not.

1.11. Third-Party Suppliers

The Service Provider must incorporate the costs of any third-party supplies and services in the Service Provider's fees identified on the applicable Service Attachment under this Agreement.

The Service Provider's use of other suppliers does not mean that the State will pay for them. The Service Provider will be solely responsible for payment of its suppliers and any claims of those suppliers for any failure of the Service Provider to meet its obligations under this Agreement in the required manner. The Service Provider will hold the State harmless and indemnify the State against any such claims.

The Service Provider assumes responsibility for all Services provided under this Agreement whether it or one of its suppliers provides them in whole or in part. Further, the Service Provider will be the sole point of contact with regard to contractual matters, including payment of all charges resulting from the Agreement and all Service requests.

1.12. Non-Exclusivity

This Agreement is non-exclusive and is not a requirements contract. Nothing herein prevents either Party from entering into similar agreements with other entities.

1.13. Competitive Pricing and Services

For the purposes of maintaining pricing and Service competitiveness through the term of the Agreement, the Service Provider agrees to an annual joint review of its pricing and service offerings. The annual review will include, but need not be limited to, a like-customer review wherein the Service Provider must provide an analysis that includes both retail and wholesale prices of the similar services it provides to other customers similar to the State to ensure the State and the Subscribing Entities are receiving cost-competitive and technologically competitive Services. Written amendments to the Service Attachments to reduce fees and introduce technological Service improvements may be submitted throughout the term of the Agreement.

1.14. Conflict Resolution

If a Party is noncompliant with any term or condition of this Agreement or if a dispute arises under this Agreement, the Party raising the dispute may provide to the other Party written notice referencing this section and specifying the nature of the dispute (the "Dispute Notification"). The Parties then will seek to resolve the dispute in accordance with the procedures in this Section.

All disputes will be submitted first to the State's Contract Manager and the Service Provider's Account Manager (or equivalent) for resolution. For 15 days from receipt of the Dispute Notification ("Dispute Date"), the State Contract Manager and Service Provider's Account Manager will meet in person or by telephone as often as is reasonably necessary to discuss and attempt to resolve the dispute in good faith.

If after the 15 days identified above, the State's Contract Manager and the Service Provider's Account Manager are unable to resolve the dispute, the Parties will then submit the dispute to the ISD Chief Operating Officer and to the Service Provider's Sales Director (or equivalent) for resolution. For the next 15 days, the ISD Chief Operating Officer and Service Provider's Sales Director will meet in person or by telephone as often as is reasonably necessary to discuss and attempt to resolve the dispute in good faith.

If following the 15 days in the previous section, the ISD Chief Operating Officer and the Service Provider's Sales Director are unable to resolve the dispute, the Parties will then submit the dispute to the State's Chief Information Officer ("CIO") or a designee and to the Service Provider's Vice President of Sales (or equivalent executive) for resolution. For the next 15 days, the State's CIO and Service Provider's Vice President will meet in person or by telephone as often as is reasonably necessary to discuss and attempt to resolve the dispute in good faith. If the State's CIO and Service Provider's Vice President are unable to resolve the dispute within that time, the Parties will nevertheless continue to retain their rights to initiate formal proceedings hereunder.

The specific format for such discussions will be left to the discretion of the representatives of the State and Service Provider responsible for attempting to resolve the dispute, but each Party will involve the business and legal resources reasonably necessary to attempt in good faith to resolve the dispute at the earliest possible time and without undue delay.

If the Parties are unable to resolve the dispute and the dispute involves a claim that the Service Provider is noncompliant with its obligations hereunder or has overcharged for a Service, the State or affected Subscribing Entities may withhold payment for any Services that are the subject of the dispute until the Service Provider cures the noncompliance, the Parties arrive at an agreement to resolve the dispute, or a Party obtains a resolution in a court of competent jurisdiction.

Nothing in this Section is intended to limit the rights provided under Section 6 or be a prerequisite to exercising those rights.

Once the dispute has been resolved, any payments withheld will be handled in the following manner:

If the resolution was in favor of the State or one or more Subscribing Entities, the Service Provider will issue a credit on the next invoice for the affected Subscribing Entities. If the credit exceeds the Service charges on the next invoice or an invoice will not be issued within 60 days of the resolution, the Service Provider will issue payment in the form of a check in the amount exceeding the Service charges or for the full amount if an invoice will not be issued within 60 days. Any such checks must be issued within that 60-day period.

If in favor of the Service Provider, the affected Subscribing Entities will submit appropriate payment within 30 days of receiving notification of the resolution at the office designated to receive the invoice.

In either of the above cases, the amount or amounts withheld by the State or Subscribing Entity(s) will be taken into account in calculating any amount(s) due.

2. General Requirements for Cloud Services

2.1. Standards

All Service subscriptions must provide a Service that maintains a redundant infrastructure that will ensure access for all of the State's enrolled users in the event of failure at any one of the Service Provider locations, with effective contingency planning (including back-up and disaster recovery capabilities) and [24x7] trouble shooting service for inquiries, outages, issue resolutions, etc. All such Services must be dependable and provide response rates that are as good as or better than industry standards. They also must meet the Service Level Agreements ("SLAs") provided in the applicable Service Attachment and be supported with sufficient connectivity and computing resources to handle reasonably anticipated peak demand, and the Service Provider must ensure that sufficient bandwidth and computing resources are dedicated to the Services to meet peak demand times without material degradation in performance.

The Services must also operate at the [moderate level baseline] as defined in National Institute of Standards and Technology ("NIST") 800-53 Rev. 3 ["moderate baseline requirements"], be consistent with Federal Information Security Management Act ("FISMA") requirements, and offer a customizable and extendable capability based on

open-standards APIs that enable integration with third party applications. Additionally, they must provide the State's systems administrators with 24x7 visibility into the services through a real-time, web-based "dashboard" capability that enables them to monitor, in real or near real time, the Services' performance against the established SLAs and promised operational parameters.

The Service Provider has and will continue to use its best efforts through quality assurance procedures to ensure that there are no viruses or malware or undocumented features in its infrastructure and Services and that they do not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent any use of or access to them by the Subscribing Entities. Notwithstanding any rights granted under the Agreement or at law, the Service Provider hereby waives under any and all circumstances any right it may have or may hereafter have to exercise electronic self help.

User access to the Services must be capable of being integrated with a Subscribing Entity's Active Directory (or other LDAP service) to support single sign-on capability for users and to ensure that every user is tied to an Active Directory or other LDAP account and to prevent user access when a user is disabled or deleted in the applicable Subscribing Entity's Active Directory or other LDAP service.

The Service Provider must obtain an annual *Statements on Standards for Attestation Engagements* ("SSAE") No. 16, Service Organization Control 1 Type 2, audit. The audit must cover all operations pertaining to the Services covered by this Agreement. The audit will be at the sole expense of the Service Provider and a copy of it must be provided to the State within 30 days of its completion each year.

At no cost to the State, the Service Provider must immediately remedy any issues, material weaknesses, or other items identified in each audit as they pertain to the Services.

2.2. Object Reassignment

Any Service subscriptions that are provided by the number of items that it may be used by or in conjunction with it, such as nodes, users, or connections ("Objects"), may be reassigned to other, similar Objects within the Subscribing Entity at any time and without any additional fee or charge. For example, a named user subscription may be assigned to another user. But any such reassignment must be in conjunction with termination of use by or with the previous Object, if such termination is required to keep the total number of licensed Objects within the scope of the applicable subscription. Should a Subscribing Entity require a special code, a unique key, or similar item to reassign the subscription as contemplated by this section, the Service Provider will provide such a code, key, or similar item to the Subscribing Entity at any time and without a fee or charge. A later section in this Agreement governs assignment of a Subscribing Entity's subscription to any Service to a successor in interest.

2.3. Generated Files

"Generated Files" are files storing information, instructions, or data that a Subscribing Entity creates or modifies using the Service Provider's Services and in which the data or

other information was provided or created by a Subscribing Entity. Such Generated Files are also included in the definition of "Subscribing Entity's Data" in a later section of this Agreement. Examples of such files could include, among others, text files generated with a word processor, data tables created with a database engine, and image files created with a graphics application. Applications consisting of instruction sets created with a programming language that the Service Provider provided to a Subscribing Entity also would be considered Generated Files. As between the Subscribing Entity and the Service Provider, the Subscribing Entity will own all Generated Files that the Subscribing Entity prepares by using the Services, excluding such portions of the Generated Files that consist of embedded portions of the Software. The Service Provider or its licensors will retain ownership of any portions of the Software embedded into Generated Files. But the Service Provider grants to the Subscribing Entity a nonexclusive, royalty-free right to reproduce and distribute to third parties any portions of the intellectual property embedded in any Generated Files that the Subscribing Entity creates while using the Services in the manner in which the Services are designed to be used. In the Subscribing Entity's distribution of the Generated Files, the Subscribing Entity may not use the Service Provider's name, logo, or trademarks, except to the extent that such are incorporated in such Generated Files by the design of a Service when used as intended.

2.4. Service Provider Warranties

The Service Provider warrants that (i) it has validly entered into this Agreement and has the legal power to do so, (ii) the Services will perform materially in accordance with the applicable user guide and the requirements of this Agreement, (iii) subject to any limitations specified in the applicable Service Attachment, the functionality of the Services will not be materially decreased during a subscription term, and (iv) it will not transmit viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs ("Malicious Code") to a Subscribing Entity, provided it is not a breach of this subpart (iv) if a Subscribing Entity uploads a file containing Malicious Code into the Services and later downloads that file containing Malicious Code. For any breach of a warranty above, the State's and individual Subscribing Entities' remedies will be as provided in the section of this Agreement dealing with termination.

Failure of the Service Provider to meet any SLAs in an applicable Service Attachment will not be considered a breach of this warranty section unless the State reasonably determines that the failure is persistent or extended in duration.

2.5. State and Subscribing Entities Responsibilities

The State and each Subscribing Entity will be responsible for their respective compliance with this Agreement. Additionally, each Subscribing Entity will (i) be responsible for the accuracy, quality, and legality of its data and of the means by which the data was acquired, (ii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services to which it subscribes and notify the Service Provider promptly of any unauthorized access or use of which it becomes aware, and (iii) use the Services only in accordance with the applicable user guide, to the extent it is not inconsistent with this Agreement, applicable laws, and government regulations. A Subscribing Entity may not (a) intentionally make the Services available to anyone other

than its employees and contractors acting on the State's behalf, (b) sell, resell, rent or lease the Services, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) intentionally use the Services to store or transmit Malicious Code, (e) intentionally interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services or their related systems or networks.

3. Insurance, Indemnification, Limitation of Liability

3.1. Insurance

The Service Provider must provide the following insurance coverage at its own expense throughout the term of this Agreement to the State:

(A) Workers' compensation insurance, as required by Ohio law, and if some work will be done outside Ohio, the laws of the appropriate states where work will be done. The Service Provider also must maintain employer's liability insurance with at least a $1,000,000.00 limit.

(B) Commercial General Liability insurance coverage for bodily injury, personal injury, wrongful death, and property damage. The defense cost must be outside of the policy limits. Such policy must designate the State of Ohio as an additional insured, as its interest may appear. The policy also must be endorsed to include a blanket waiver of subrogation. At a minimum, the limits of the insurance must be:

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

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

(C) Commercial Automobile Liability insurance with a combined single limit of $500,000. The policy must be endorsed to include a waiver of subrogation.

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

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

Any Subscribing Entity that is a Cooperative Purchasing Member that orders Services also may require a certificate of insurance from the Subscribing Entity naming it as an additional insured.

Whenever a Subscribing Entity locates its equipment at facilities owned or controlled by the Service Provider or one of its contractors, the Service Provider must maintain (a) property insurance insuring the equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement used by the Service Provider for its own property or that in common use in the industry, and any other risks reasonably required and covered by the Service Provider's insurance. The coverage must be in an amount at least equal to the reasonable replacement value of the equipment, and (b) workers' compensation coverage as required by the laws of the state in which the equipment is located. The Service Provider must furnish evidence of the coverage throughout each Order's term. All such insurance must be with insurers that are authorized to issue such insurance in the state. All such property insurance shall must name the applicable Subscribing Entity as the loss payee. All such insurance also must contain a provision to the effect that it cannot be canceled or modified without first giving written notice thereof to the Service Provider and the applicable Subscribing Entities without at least 30 days written notice. Such changes may not become effective without the applicable Subscribing Entities' prior written consent.

3.2. Indemnification for Bodily Injury and Property Damage

The Service Provider must indemnify the State and the Subscribing Entities against all liability or expense resulting from bodily injury to any person (including death) or damage to property arising out of its performance under this Agreement, provided such bodily injury or property damage is due to the negligence or other tortious conduct of the Service Provider, its employees, agents, or subcontractors.

3.3. Indemnification for Infringement

The Service Provider will release, protect, indemnify, defend, and hold the State and the Subscribing Entities harmless from and against any claims of infringement by any third parties based on any Service provided under this Agreement. Any defense of the State or a State Subscribing Entity requires and is subject to the approval and consent of the Ohio Attorney General. Any such defense will be at the Service Provider's sole cost and expense. Further, the Service Provider will indemnify the State and Subscribing Entities for any liability resulting from any such claims, demands, or suits, as well as hold the State and the Subscribing Entities harmless for the Service Provider's liability, losses, and damages resulting from such. This obligation of defense and indemnification will not apply where the State or a Subscribing Entity has modified or misused the Service and the claim or the suit is based on the modification or misuse. The State or affected Subscribing Entity or Entities agrees to give the Service Provider notice of any such claim as soon as reasonably practicable and to allow the Service Provider to control the defense of the any such claim, upon consultation with and the approval of the Office of the State's Attorney General.

If a successful claim of infringement is made, or if the Service Provider reasonably believes that an infringement or similar claim that is pending actually may succeed, the Service Provider will do one of the following four things as soon as reasonably possible to avoid or minimize any interruption of the Subscribing Entities business:

(a) Modify the offending Service so that it is no longer infringing but provides substantially the same functionality as before the modification;
(b) Replace the offending Service with an equivalent or better offering;
(c) Acquire the right for the Subscribing Entities to use the infringing Service as it was intended for the Subscribing Entities to use under this Agreement; or
(d) Terminate the infringing Service and refund the amount the Subscribing Entities paid for the Service and the amount of any other Service that requires the availability of the infringing Service for it to be useful to the Subscribing Entities.

3.4. Limitation of Liability - State

The State's and Subscribing Entities' combined total liability for damages, whether in contract or in tort, will not exceed two times the amount of compensation payable to Service Provider for the previous 12 months of Service related to the Service Attachment under which the damages occurred or the amount of direct damages incurred by the Service Provider, whichever is less.

3.5. Limitation of Liability - Service Provider

The Service Provider will be responsible for any liability, claims, losses and damages arising out of the performance of this Agreement provided such liability, claim, loss or damage is due to the fault or negligence of the Service Provider, its employees, agent or subcontractors. Any such damages will be capped at two times one year of the contract total.

NOTWITHSTANDING THE PREVIOUS SENTENCE AND EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY, ITS AFFILIATES OR CONTRACTORS WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

4. Confidentiality and Handling of Data

4.1. Confidentiality

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

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

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

(1) Was already in the possession of the Receiving Party without an obligation of confidence;
(2) Is independently developed by the Receiving Party, provided documentary evidence exists to support the independent development;
(3) Except as provided in the next paragraph, is or becomes publicly available without a breach of this Agreement;
(4) Is rightfully received by the Receiving Party from a third party without an obligation of confidence;
(5) Is disclosed by the Receiving Party with the written consent of the Disclosing Party; or
(6) Is released under a valid order of a court or governmental agency, provided that the Receiving Party:

    (a) Notifies the Disclosing Party of the order immediately upon receipt of it, unless it is legally prohibited from doing so; and
    (b) Makes a reasonable effort to obtain a protective order from the issuing court or agency limiting the disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production.

Information that may be available publicly through other sources about people that is personal in nature, such as medical records, addresses, phone numbers, social security numbers, and similar things, is nevertheless sensitive in nature and may not be disclosed or used in any manner except as expressly authorized in this Agreement. Therefore, item (3) in the preceding paragraph does not apply, and the Service Provider must treat such information as Confidential Information whether it is available elsewhere or not.

The Receiving Party must return all originals of any Confidential Information and destroy any copies it has made on termination or expiration of this Agreement.

The disclosure of the Confidential Information of the Disclosing Party in a manner inconsistent with the terms of this provision may cause the Disclosing Party irreparable damage for which remedies other than injunctive relief may be inadequate, and each Receiving Party agrees that in the event of a breach of the Receiving Party's obligations hereunder, the Disclosing Party will be entitled to seek temporary and permanent injunctive relief to enforce the provisions of this Agreement without the necessity of

proving actual damages. However, this provision does not diminish or alter any right to claim and recover damages.

This Agreement is not Confidential Information. All its terms and conditions, including pricing and any attachments, represent public information.

4.2. Public Records Requests.

Should the Service Provider receive any public records request with respect to any Subscribing Entity Data, the Service Provider will immediately notify the affected Subscribing Entity or Entities and fully cooperate with the affected Subscribing Entity or Entities as it or they direct.

4.3. Handling of Subscribing Entity Data

"Subscribing Entity Data" is any information, data, files, or software that a Subscribing Entity uses or stores on or in conjunction with the Services, including but not limited to Generated Files. The Service Provider must use due diligence to ensure computer and telecommunications systems and Services involved in storing, using, or transmitting Subscribing Entity Data are secure and to protect that data from unauthorized disclosure, modification, or destruction. To accomplish this, the Service Provider must comply with all applicable National Institute of Standards and Technology ("NIST") standards for [Moderate Impact] systems and:

(1) Apply appropriate risk management techniques to ensure security for all sensitive data, including but not limited to any data identified as Confidential Information elsewhere in this Agreement.
(2) Ensure that its internal security policies, plans, and procedures address the basic security elements of confidentiality, integrity, and availability.
(3) Maintain plans and policies that include methods to protect against security and integrity threats and vulnerabilities, as well as detect and respond to those threats and vulnerabilities.
(4) Maintain appropriate identification and authentication process for information systems and services associated with Subscribing Entity Data.
(5) Maintain appropriate access control and authorization policies, plans, and procedures to protect system assets and other information resources associated with Subscribing Entity Data.
(6) Implement and manage security audit logging on information systems, including computers and network devices.

The Service Provider must maintain a robust boundary security capacity that incorporates generally recognized system hardening techniques. This includes determining which ports and services are required to support access to systems that hold Subscribing Entity Data, limiting access to only these points, and disabling all others. To do this, the Service Provider must use assets and techniques such as properly configured firewalls, a demilitarized zone for handling public traffic, host-to-host management, Internet protocol specification for source and destination, strong authentication, encryption, packet filtering, activity logging, and implementation of system security fixes and patches as they become available. The Service Provider must

use two-factor authentication to limit access to systems that contain Subscribing Entity Data.

Unless a Subscribing Entity instructs the Service Provider otherwise in writing, the Service Provider must assume all Subscribing Entity Data is both confidential and critical for Subscribing Entity operations, and the Service Provider's security policies, plans, and procedure for the handling, storage, backup, access, and, if appropriate, destruction of that data must be commensurate to this level of sensitivity. As part of the Service Provider's protection and control of access to and use of data, the Service Provider must employ appropriate intrusion and attack prevention and detection capabilities. Those capabilities must track unauthorized access and attempts to access Subscribing Entity Data, as well as attacks on the Service Provider's infrastructure associated with Subscribing Entity Data. Further, the Service Provider must monitor and appropriately address information from its system tools used to prevent and detect unauthorized access to and attacks on the infrastructure associated with Subscribing Entity Data.

The Service Provider must use appropriate measures to ensure that Subscribing Entity Data is secure before transferring control of any systems or media on which Subscribing Entity Data is stored. The method of securing the data must be appropriate to the situation and may include erasure, destruction, or encryption of the data before transfer of control. The transfer of any such system or media must be reasonably necessary for the performance of the Service Provider's obligations under this Agreement.

The Service Provider must have a business continuity plan in place. The Service Provider must test and update the IT disaster recovery portion of its business continuity plan at least annually. The plan must address procedures for response to emergencies and other business interruptions. Part of the plan must address backing up and storing data at a location sufficiently remote from the facilities at which the Service Provider maintains Subscribing Entity Data in case of loss of that data at the primary site. The plan also must address the rapid restoration, relocation, or replacement of resources associated with Subscribing Entity Data in the case of a disaster or other business interruption. The Service Provider's business continuity plan must address short- and long-term restoration, relocation, or replacement of resources that will ensure the smooth continuation of operations related to Subscribing Entity Data. Such resources may include, among others, communications, supplies, transportation, space, power and environmental controls, documentation, people, data, software, and hardware. The Service Provider also must provide for reviewing, testing, and adjusting the plan on an annual basis.

The Service Provider may not allow Subscribing Entity Data to be loaded onto portable computing devices or portable storage components or media unless necessary to perform its obligations under this Agreement properly. Even then, the Service Provider may permit such only if adequate security measures are in place to ensure the integrity and security of the data. Those measures must include a policy on physical security for such devices to minimize the risks of theft and unauthorized access that includes a prohibition against viewing sensitive or confidential data in public or common areas. At a minimum, portable computing devices must have anti-virus software, personal firewalls, and system password protection. In addition, Subscribing Entity Data must be encrypted when stored on any portable computing or storage device or media or when transmitted from them across any data network. The Service Provider also must maintain an accurate inventory of all such devices and the individuals to whom they are assigned.

Any encryption requirement identified in this provision must meet the NIST standards identified above.

The Service Provider must have reporting requirements for lost or stolen portable computing devices authorized for use with Subscribing Entity Data and must report any loss or theft of such to the State in writing as quickly as reasonably possible. The Service Provider also must maintain an incident response capability for all security breaches involving Subscribing Entity Data whether involving mobile devices or media or not. The Service Provider must detail this capability in a written policy that defines procedures for how the Service Provider will detect, evaluate, and respond to adverse events that may indicate a breach or attempt to attack or access Subscribing Entity Data or the infrastructure associated with Subscribing Entity Data.

In case of an actual security breach that may have compromised Subscribing Entity Data, including but not limited to loss or theft of devices or media, the Service Provider must notify the Subscribing Entity in writing of the breach within 24 hours of the Service Provider becoming aware of the breach, and fully cooperate with the Subscribing Entity to mitigate the consequences of such a breach. This includes any use or disclosure of the Subscribing Entity Data that is inconsistent with the terms of this Agreement and of which the Service Provider becomes aware, including but not limited to, any discovery of a use or disclosure that is not consistent with this Agreement by an employee, agent, or subcontractor of the Service Provider.

The Service Provider must give affected Subscribing Entities full access to the details of the breach and assist each Subscribing Entity in making any notifications to potentially affected people and organizations that the affected Subscribing Entities deem are necessary or appropriate. The Service Provider must document all such incidents, including its response to them, and make that documentation available to the affected Subscribing Entities on request. In addition to any other liability under this Agreement related to the Service Provider's improper disclosure of Subscribing Entity Data, and regardless of any limitation on liability of any kind in this Agreement, the Service Provider will be responsible for acquiring one year's identity theft protection service on behalf of any individual or entity whose personally identifiable information is compromised while it is in the Service Provider's possession. Such identity theft protection must be reasonably acceptable to the State.

All Subscribing Entity Data will remain the property of the Subscribing Entity. The Service Provider must ensure that the Subscribing Entity retains access and download capability for purposes of retrieving its data for research, investigation, transfer, or migration to other systems.

All Subscribing Entity Data at rest in systems supporting the Service Provider's Services must reside within the contiguous United States with a minimum of two data center facilities at two different and distant geographic locations and be handled in accordance with the requirements of this section at all Service Provider locations.

4.4. Subscribing Entity Responsibilities

Each Subscribing Entity will be responsible for its compliance with this Agreement, be responsible for the accuracy, quality, and legality of its Subscribing Entity Data and of the means by which it acquired that Subscribing Entity Data, use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify the Service Provider promptly of any unauthorized access or use of which it becomes aware. Further, the Subscribing Entity will use the Services only in accordance with the applicable user guide(s), to the extent not inconsistent with the Subscribing Entity's rights under this Agreement and any applicable Service Attachments, and applicable laws and government regulations.

Further, a Subscribing Entity may not intentionally make the Services available to anyone other than its employees and its contract personnel, unless the applicable Service or Services are designed to be publically facing or intended for interaction with clients of the Subscribing Entity (e.g., hosted web sites), sell, resell, rent, or lease the Services, use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights. The Subscribing Entities also may not intentionally use the Services to store or transmit Malicious Code, intentionally interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or attempt to gain unauthorized access to the Services or their related systems or networks.

5. Orders, Requesting Service, Delivery, Acceptance, Termination, and Modification

5.1. Acceptance

The acceptance procedure for setup or installation of the Services will be a review by the Subscribing Entity acquiring the Service to ensure that it meets the performance standards and other requirements in the applicable Service Attachment and that the setup or installation has been done in a professional manner and that the Service itself meets all requirements. For other Services, the acceptance procedure will be a review by the Subscribing Entity to ensure the Service complies with the performance requirements in the applicable Service Attachment. In addition to the requirements of the applicable Service Attachment, if ordering documents such as a Statement of Work or other forms ("Order Forms") are authorized in that Service Attachment, the review will include any additional requirements in that Order Form. The Subscribing Entity will have up to 15 days after the setup, installation, or establishment of the Service to do this. The Subscribing Entity will not issue a formal letter of acceptance, unless otherwise specified in the applicable Service Attachment, and passage of 15 days will imply acceptance, though the Subscribing Entity will issue a notice of noncompliance if set up or installation or other Service does not meet the requirements in this Agreement.

If the Subscribing Entity issues a noncompliance letter, the Service Provider will have 30 days to correct the problems listed in the letter. If the Subscribing Entity has issued a noncompliance letter, the Service, installation, or set up will not be accepted until that Subscribing Entity issues a letter of acceptance indicating that each problem noted in the noncompliance letter has been cured. If the problems have been fixed during the 30-day period, the Subscribing Entity will issue the acceptance letter within 15 days after all defects have been fixed. If the Service Provider fails to correct the defect(s), the applicable Order(s) will terminate without cost or obligation to the Subscribing Entity.

The applicable Service Attachment may provide additional or alternative acceptance procedures, but no Order Form may change the acceptance process.

5.2. Service, Termination, or Modification

All Orders for Service, as well as any termination of an Order or modification to an Order, must be made through the State's Technology (formerly Telecommunications) Service Request ("TSR") system or any replacement system used by the State at the time an Order for Service, termination, or modification is requested. Therefore, the Service Provider must notify the State when an Order is received that was placed outside the TSR, or a replacement system, and the Service Provider will not accept the Order. If a Service Provider accepts an Order outside the TSR, or any replacement system, the State or the Subscribing Entity may either withhold payment for the unverified Order or require termination of the Service under the unverified Order without cost or obligation to the State or the Subscribing Entity.

The Service Provider agrees to keep Subscribing Entities' Orders updated and current in the TSR System.

The Service Provider is responsible for processing all Orders, billing, payments, cancellations, changes, and receiving and managing all Service calls in a consolidated manner. In this regard, the Service Provider must act as the sole point of contact for all Services under this Agreement and any related Service Attachments for all Subscribing Entities. The Service Provider may not require a Subscribing Entity to contact any of the Service Provider's third-party suppliers or otherwise transact business directly with such suppliers for any Services ordered under this Agreement, and in all respects, the Service Provider must maintain a seamless, single-point-of-contact business relationship with each Subscribing Entity for the Services ordered under this Agreement.

6. Termination – Agreement, Service Attachments, Orders

6.1. Termination by the State

The Service Provider must comply with all terms and conditions of this Agreement. If the Service Provider fails to perform any one of its obligations under this Agreement, it will be in default, and the State may proceed in any or all of the following ways:

1. The State may terminate this Agreement, the applicable Service Attachment(s), or the affected Order(s) under this Agreement;

2. The State may withhold payment for any affected Service until the Service Provider cures the noncompliance or the Parties arrive at an agreement as to the corrective action for the noncompliance; or

3. The State may file a complaint for damages with a court of competent jurisdiction in Ohio.

The State also may terminate this Agreement or any Service Attachments for its convenience with 30 days written notice to the Service Provider. In any such event, each Subscribing Entity must pay for all accrued and unpaid charges for Services and

any fee specified in the affected Service Attachment(s) for early termination ("Early Termination Charge"), if applicable.

If the termination of the Agreement or any Service Attachment(s) is for cause, then neither the State nor any Subscribing Entities will be liable for any Early Termination Charge outlined in any affected Service Attachments. And the Service Provider will fully cooperate in any disentanglement efforts any Subscribing Entity reasonably requests at no cost to the requesting Subscribing Entity(ies).

The State'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 and other obligations due as part of this Agreement, the State's obligations under this Agreement will terminate as of the date the funding expires without further obligation of the State, including but not limited to any Early Termination Charge outlined in any affected Service Attachments.

6.2. Termination of Orders by Subscribing Entity or Service Provider

Under this Agreement, specific Orders also may be terminated by either a Subscribing Entity or the Service Provider, as follows:

6.2.1. By a Subscribing Entity

A Subscribing Entity may terminate Service under any Order it has placed, and it may do so at any time for any or no reason. The Subscribing Entity will be liable for charges accrued but unpaid as of the termination date, as well as any Early Termination Charge outlined in the appropriate Service Attachments.

If the Subscribing Entity's funds are contingent upon the availability of lawful appropriations by the Ohio General Assembly or other governmental body, and the General Assembly or other governmental body fails at any time to continue funding for the payments and other obligations due under an Order, the Subscribing Entity's obligations with respect to that Order will terminate as of the date the funding expires, and the Subscribing Entity will have no further obligation with respect to such Order, including but not limited to any Early Termination Charge outlined in any affected Service Attachments.

If a termination of any Service under one or more Orders is for cause or non-appropriation of funds, as described in this Section 6, the Subscribing Entity will not be liable for any Early Termination Charge, if such are otherwise applicable to the Service or Services so terminated. If the termination is for cause, the Service Provider will fully cooperate in any disentanglement efforts the Subscribing Entity reasonably requests at no cost to the Subscribing Entity.

6.2.2. By the Service Provider

If a Subscribing Entity materially defaults in the performance of any of its duties or obligations under this Agreement, the Service Provider, by giving at least 30 days prior written notice, may cancel any affected Services provided to that Subscribing Entity under this Agreement.

If the Subscribing Entity cures the default to the satisfaction of the Service Provider and before the cancellation of Service date, the Order will remain in full force and effect.

If the Subscribing Entity fails to cure, then the Subscribing Entity will remain liable for charges accrued but unpaid as of the cancellation date and any Early Termination Charge as outlined in the appropriate Service Attachment(s), if applicable.

7. Financial – Fees, Claims and Disputes, Billing, and Payment

7.1. Fees

All applicable charges are fully documented in the appropriate Service Attachment(s). The Subscribing Entity will not be responsible for any charges not documented in the applicable Service Attachment(s) nor will the Subscribing Entity be responsible for any charges waived by the Service Provider in this Agreement or the applicable Service Attachment(s).

Subscribing Entities are not subject to increases in fees during the term of this Agreement.

Subscribing Entities are not responsible for any charges from the Service Provider's third-party suppliers for any Services ordered under this Agreement, unless an applicable Service Attachment expressly provides otherwise. In this regard, the Service Provider is the seller or reseller of all Services covered by this Agreement, and any payments due to the Service Provider's third-party suppliers for Services under this Agreement are included in the Service Provider's fees specified in the applicable Service Attachment, unless that Service Attachment expressly provides otherwise.

7.2. Billing

Invoices will be issued at the Order level, but the Subscribing Entity may require a recap at the agency, division, or district level based on the organizational structure of the Subscribing Entity.

Invoices must be submitted to the office designated in the purchase order or TSR as the "bill to address". The invoice must be submitted within 60 days of the Service. If the Subscribing Entity does not receive the invoice within the 60 days of the date of Service, the Subscribing Entity will be entitled to deny payment of the invoice.

A proper invoice must include the following information and/or attached documentation:

1. Name and address of the Service Provider as designated in this Agreement;
2. Federal Tax Identification Number of the Service Provider as designated in this Agreement;
3. Invoice remittance address as designated in the Agreement; and
4. A sufficient description of the Services to allow the Subscribing Entity to identify the Services and perform an audit of the Services.

7.3. Payment

Payments for Services under this Agreement will be due on the 30th calendar day after the actual receipt of a proper invoice in the office designated to receive the invoice. The Service Provider agrees to receive payment from approved vouchers by electronic fund transfer ("EFT") for Subscribing Entities that rely on them to make payment. The Service Provider will cooperate with Subscribing Entities in providing the necessary information to implement EFT. The date the EFT is issued in payment will be considered the date payment is made, or if a Subscribing Entity does not use an EFT process, the date its check or warrant is issued in payment will be considered the date payment is made.

7.4. State Reporting Requirements

The Service Provider must provide the State with a recap of all Services provided to the Subscribing Entities on a monthly basis. Additional, specific reporting data requirements may be outlined in the Service Attachment(s).

7.5. Service Level Guarantee and Credits

The Service Provider will issue a credit allowance to any Subscribing Entity affected by a Service outage, as defined in the Service Level Agreement contained in the applicable Service Attachment. The credit will appear on the affected Subscribing Entity's next invoice, or if the Subscribing Entity so requests, the Service Provider will issue a check to the Subscribing Entity as payment within 30 days of the request. Such payment will not exceed the overall cost of the license.

7.6. Cost Recovery

The Service Provider must pay a Cost Recovery Fee to the State to cover the estimated costs the State will incur administering this Agreement and the Services offered under it.

The Cost Recovery Fee will be 2% of the total dollar amount of Services the Service Provider invoices under this Agreement to all Subscribing Entities, including all State-level entities and all Cooperative Purchasing Members. The State will generate notification to the Service Provider via email on the last day of the calendar quarter advising the Service Provider to complete a revenue reporting form provided by the State within 30 days after the close of the quarter. The State may compare the form provided by the Service Provider to information in the State's accounting system, the TSR, and other records for purposes of verifying the accuracy of the form. The State will generate an invoice to the Service Provider for the quarterly Cost Recovery Fee based on reported revenue from the Service Provider or the State's records, whichever is greater.

Example of calculation of a Cost Recovery Fee:

Example 1

		X	
Service Provider Revenue Report	$1,000.00	2%	$20.00
State Expenditure Report	$900.00		

Example 2			
Service Provider Revenue Report	$800.00		
		X	
State Expenditure Report	$1,000.00	2%	$20.00

The Service Provider must remit to the State the 2% Cost Recovery Fee within 30 days of receipt of the invoice from the State by check to the State of Ohio, Office of Information Technology. The check must be made payable to the Treasurer, State of Ohio, Fund 133, and must be sent to the State at the following address:

Department of Administrative Services
Office of Information Technology
Infrastructure Services Division
30 E. Broad Street – 39th Floor
Columbus, OH 43215
Attn: Business Manager

To ensure that the payment is credited properly, the Service Provider must identify the check as a State of Ohio Cost Recovery Fee and reference this Agreement and the Quarterly Activity Reports supporting the check amount. The data requirements for the Quarterly Activity Reports will be detailed in the Service Attachment(s). Credit of the Cost Recovery Fee will begin in the month of execution of this Agreement.

A copy of the Quarterly Activity Report will be sent to the Contract Manager at the following address:

Department of Administrative Services
Office of Information Technology
Infrastructure Services Division
1320 Arthur E. Adams Drive, 3rd Floor
Columbus, Ohio 43221
Attention: Contract Manager

The first payment will be calculated against all Services rendered to the existing Subscribing Entities transferred to the Agreement in the month of effective date. Subsequent payments will be calculated against all Subscribing Entities as stated above.

8. Support

8.1. Service Support Generally

During the term of any Order, the Service Provider will provide the Subscribing Entity with telephonic assistance and advice for using all Services covered by the Order. The Service Provider also will provide troubleshooting and problem resolution by developing and providing fixes or patches for errors in any software it provides and contract with any third party providing software that supports the Services for the same. As part of the support the Service Provider provides in exchange for the applicable fee, the Service Provider also will keep all software current by installing all relevant service packs and patches as well as all updates and new releases and versions of the software as soon as reasonably possible. The Service Provider also will keep its own software offering compatible with any updated third-party software that is part of the Services or supports

the Services. The manner in which the Service Provider provides support will be governed by the Service Provider's policies and programs described in the applicable documentation or other materials that the Service Provider uses to notify its customers generally of such policies. But regardless of the Service Provider's policies and programs, unless otherwise agreed in the applicable Service Attachment, in all cases such support must comply with the requirements of this Agreement and the applicable Service Attachment(s). And the Service Provider must provide the support in a competent, professional, and timely manner.

8.2. Adjustments

A Subscribing Entity may acquire subscriptions that are based on the number of users, nodes, computers, processors, or other counts of objects covered by an Order ("Objects"). In any such cases, the Subscribing Entity may request that the fees for a subscription renewal be calculated based on fewer Objects than included in the previous Order, with an appropriate adjustment in the applicable fee(s). Despite the reduction, fees for the remaining objects may not be increased over the applicable fees from the previous Order.

During an Order's duration ("Order Term"), a Subscribing Entity may increase the volume of its Order (e.g., add additional users) without increasing the Order Term. The cost of any addition Objects or similar increase in usage must be prorated to reflect the time remaining in the Order Term rather than be based on the full Order Term.

8.3. Support Parameters

A Subscribing Entity may initiate support requests for problems it encounters with the Software by telephone, email, Internet, or fax, and the Service Provider must maintain lines of communication that support all four forms of communication. The Service Provider must make support available from 6am-6pm PST, excluding NEOGOV holidays (the "Support Window"), and it must do so by staffing its support function with an adequate number of qualified personnel to handle its traditional volume of calls. Further, the Service Provider must maintain at least one support center in North America with adequate English-speaking support personnel. The applicable Service Attachment(s) may provide for different support periods. A Subscribing Entity's technical staff may contact any support center that the Service Provider maintains, and they may choose to do so based on convenience, proximity, service hours, languages spoken, or otherwise. Online and emergency support is available 24x7

8.4. Incident Classification

The Service Provider must classify and respond to support calls by the underlying problem's effect on a Subscribing Entity. The guidelines for determining the severity of a problem and the appropriate classification of and response to it are described below.

The Service Provider must apply the above classifications in good faith to each call for support, and the Service Provider must give due consideration to any request by a Subscribing Entity to reclassify a problem, taking into account the Subscribing Entity's unique business and technical environments and any special needs it may have.

8.5. Incident Response

The Service Provider must respond to critical problems by ensuring that appropriate managerial personnel are made aware of the problem and that they actively track and expedite a resolution. The Service Provider must assign support or development personnel at the appropriate level to the problem, and those personnel must prepare a work plan for the problem's expeditious resolution. The work plan must assume that the Service Provider's appropriate staff will work without material interruption until the problem is resolved properly. At the request of an affected Subscribing Entity, the Service Provider's personnel must maintain daily contact with the Subscribing Entity's technical staff to keep the Subscribing Entity abreast of efforts being made to solve the problem. The Service Provider also must provide the Subscribing Entity's technical staff with direct access to the Service Provider's support personnel and product development personnel, if appropriate, who are assigned to the problem.

The Service Provider must respond to urgent problems by having its product development and support personnel work in concert to develop a fix or a workaround. If requested, the Service Provider's support personnel must maintain regular contact with the affected Subscribing Entities to keep their technical staff abreast of progress toward a resolution of the problem. The Service Provider's support staff must include the problem in regular status reports to the Service Provider's management team. And the Service Provider's support staff must provide the fix or workaround procedure as soon as it is available.

Based on the case priority, the following response times are established:

- Priority 1: System outage – Response and resolution is ASAP and work is started immediately.

- Priority 2: Able to conduct daily work, but encountered issue – Response time is 2 hours for communication and resolution is investigated immediately. Resolution communications are initiated and followed up with by support desk. Resolution timeline varies by the type of case, timeline, and scope.

- Priority 3: Can conduct daily work, no error messages, would like feature to work more effectively, "nice to have" feature – Response time is 8 hours for communication and resolution is investigated within 2 working days. Resolution communications are initiated and followed up with by support desk. Resolution timeline varies by the type of case, timeline, and scope.

- Enhancement Requests: Can conduct daily work, no error messages, wish to communicate a suggestion to Service Provider – Response time is 16 hours for communication and suggestion is added to enhancement list. Enhancement communications are conducted via the support desk, hosted calls and meetings, and quarterly rollout email communications. Enhancement timeline varies by the type of enhancement, timeline, and scope.

- Functionality Question: User Question – Response time is 8 hours for communication and question follow up. Resolution communications are initiated and

followed up with by support desk either via email or phone. Question answer timeline varies by the type of question and available answer options.

8.6. Response Times

The maximum time that the Service Provider takes to respond initially to a support request may vary based upon the classification of the request.

8.7. Escalation Process

Any support call that is not resolved must be escalated to the Service Provider's management under NEOOGOV's established parameters.

8.8. Subscribing Entity Obligations

To facilitate the Service Provider meeting its support obligations, Subscribing Entities must provide the Service Provider with the information reasonably necessary to determine the proper classification of the underlying problem. They also must assist the Service Provider as reasonably necessary for the Service Provider's support personnel to isolate and diagnose the source of the problem. Additionally, to assist the Service Provider's tracking of support calls and the resolution of support issues, Subscribing Entities must make a reasonable effort to use any ticket or incident number that the Service Provider assigns to a particular incident in each communication with the Service Provider.

8.9. Relationship to SLAs

The Service Provider's support obligations are in addition to the SLAs in the Service Attachment(s). Furthermore, the SLAs may provide for credits to the Subscribing Entities even though the Service Provider is meeting its support obligations hereunder.

9. Standard Provisions

9.1. Certification of Funds

None of the rights, duties, or obligations in this Agreement will be binding on the State or a Subscribing Entity, and the Service Provider will not begin its performance under any Order, until all the following conditions occur for that Order: (a) all statutory provisions under the ORC, including Section 126.07, have been met; (b) all necessary funds are made available by the appropriate State agencies; (c) if required, approval of this Agreement or the applicable Order is given by the Controlling Board of Ohio; and (d) if the Subscribing Entity is relying on federal or third-party funds for its Order, the Subscribing Entity gives the Service Provider written notice that such funds have been made available. Additional or alternate legal requirements may apply to political subdivisions that are a Subscribing Entity for an Order to be binding on it.

9.2. Excusable Delay

Neither Party will be liable for any delay in its performance that arises from causes beyond its control and without its negligence or fault. The delayed Party will notify the other promptly of any material delay in performance and will specify in writing the proposed revised performance date or dates as soon as practicable after notice of delay. The proposed date or dates must be reasonable and cannot exceed the actual delay caused by the events beyond the control of the Party. In the case of such an excusable delay, the dates of performance or delivery affected by the delay will be extended for a period equal to the time lost by reason of the excusable delay. The delayed Party must also describe the cause of the delay and what steps it is taking to remove the cause. The delayed Party may not rely on a claim of excusable delay to avoid liability for a delay if the delayed party has not taken commercially reasonable steps to mitigate or avoid the delay. Things that are controllable by the Service Provider's suppliers will be considered controllable by the Service Provider.

In the case of subscriptions to Services for a term that an excusable delay interrupts, the term of that subscription will be extended at no additional cost to affected Subscribing Entities by the same amount of time as the excusable delay.

9.3. Employment Taxes

Each Party will be solely responsible for reporting, withholding, and paying all employment related taxes, contributions, and withholdings for its own personnel, including, but not limited to, federal, state, and local income taxes, and social security, unemployment and disability deductions, withholdings, and contributions, together with any interest and penalties.

9.4. Sales, Use, Excise, and Property Taxes

The State and most Subscribing Entities are exempt from any sales, use, excise, and property tax. To the extent sales, use, excise, or any similar tax is imposed on the Service Provider in connection with any Service, such will be the sole and exclusive responsibility of the Service Provider, and the Service Provider will pay such taxes (together with any interest and penalties not disputed with the appropriate taxing authority) whether they are imposed at the time the Services are rendered or a later time.

9.5. Equal Employment Opportunity

The Service Provider will comply with all state and federal laws regarding equal employment opportunity and fair labor and employment practices, including ORC Section 125.111 and all related Executive Orders.

Before this Agreement 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 to the Ohio Business Gateway at:

http://business.ohio.gov/efiling/

The State encourages the Service Provider to purchase goods and services from Minority Business Enterprises ("MBEs") and Encouraging Diversity, Growth and Equity ("EDGE") contractors.

9.6. Drug-Free Workplace

The Service Provider must comply with all applicable state and federal laws regarding keeping a drug-free workplace. The Service Provider must make a good faith effort to ensure that all its employees, while working on State property or the property of any Subscribing Entity, will not have or be under the influence of illegal drugs or alcohol or abuse prescription drugs in any way.

9.7. Conflicts of Interest

No Service Provider personnel may voluntarily acquire any personal interest that conflicts with the Service Provider's responsibilities under this Agreement. Additionally, the Service Provider will not knowingly permit any public official or public employee who has any responsibilities related to this Agreement to acquire an interest in anything or any entity under the Service Provider's control, if such an interest would conflict with that official's or employee's duties. The Service Provider will disclose to the State knowledge of any such person who acquires an incompatible or conflicting personal interest related to this Agreement. The Service Provider will take all legal steps to ensure that such a person does not participate in any action affecting the work under this Agreement, unless the State has determined that, in the light of the personal interest disclosed, that person's participation in any such action would not be contrary to the public interest.

9.8. Assignment

The Service Provider may not assign this Agreement or any of its rights or obligations under this Agreement without the prior, written consent of the State, which consent the State will not be obligated to provide.

9.9. Governing Law

This Agreement will be governed by the laws of Ohio, and venue for any disputes will lie with the appropriate court in Ohio.

9.10. Finding for Recovery

The Service Provider warrants that the Service Provider is not subject to an unresolved finding for recovery under ORC §9.24. If the warranty is false on the date the parties signed this Agreement, the Agreement is void *ab initio*.

9.11. Anti-trust

The Parties recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by the State and the Subscribing Entities. The Service Provider therefore assigns to the State all state and federal antitrust claims and causes of action that the Service Provider now has or may acquire relating to the Services that are covered by this Agreement.

9.12. Use of Name

Neither Party will use the other Party's name in any marketing material, advertisement, or press release without the other Party's written consent. Further, neither Party may use any contact information collected from the other in the performance of this Agreement for general marketing or sales purposes, such as using email addresses to send mass marketing material, and must use such information solely for purposes of administering this Agreement.

9.13. Executive Order 2011-12K Compliance

The Service Provider affirms it has read and understands Executive Order 2011-12K and will abide by those requirements in the performance of this Agreement. Notwithstanding any other terms of this Agreement, the State reserves the right to recover any funds paid for Services the Service Provider performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights or remedies provided the State in this Agreement.

The Service Provider agrees to complete the attached Executive Order 2011-12K Affirmation and Disclosure Form, which is incorporated and becomes a part of this Agreement.

9.14. Campaign Contributions

The Service Provider, by signature affixed on this document, hereby certifies that all applicable parties listed in ORC Section 3517.13 are in full compliance with ORC Section 3517.13.

9.15. Declaration Regarding Terrorist Organization

The Service Provider represents and warrants that is has not provided any material assistance, as that term is defined in ORC Section 2909.33(C), to an organization that is included on, the United States Department of State Terrorist Exclusion List and that it has truthfully answered "no" to every question on the DMA form. The Service Provider further represents and warrants that it has provided or will provide the DMA form through the Ohio Business Gateway at http://business.ohio.gov/efiling/ before execution of this Agreement. If these representations and warranties are found to be false, this Agreement will be void and the Service Provider will immediately repay to the State any funds paid under this Agreement.

9.16. Export Compliance

The Services and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Both the Service Provider and the State represent that it is not named on any U.S. government denied-party list. Neither party will permit others to access or use the Services in a US-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.

9.17. Safety and Security Rules

When accessing State networks and systems, the Service Provider must comply with all applicable State policies and regulations regarding data security and integrity. And when on any property owned or controlled by the State, the Service Provider must comply with all security and safety rules applicable to people on those premises. Subscribing Entities may have policies and regulations that are specific to them that the Service Provider also must comply with.

9.18. Ohio Ethics Law

The Service Provider certifies that it is currently in compliance with and will continue to adhere to the requirements of the Ohio ethics laws.

9.19. Entire Agreement

This Agreement, together with any Service Attachments and all additional documents expressly incorporated herein, sets forth the entire agreement of the Parties with respect to the subject matter hereof and supersedes any prior agreements, promises, representations, understandings, and negotiations between the Parties with respect to the subject matter hereof.

Only executable Order Forms attached to a Service Attachment as an exhibit and identified as such in the applicable Service Attachment may be executed by a Subscribing Entity to evidence a transaction under this Agreement, though a Subscribing Entity may issue its own purchasing forms, such as a purchase order. Further, the Subscribing Entity may not add or require additional terms as part of any authorized Order Form. Documents attached to a Service Agreement as exhibits to be executed by a Subscribing Entity typically identify authorized Service options the Subscribing Entity has selected, provide information about a Subscribing Entity, identify installation or configuration requirements or similar statements of work to be done by the Service Provider, set schedules for performance, and similar matters.

9.20. Severability

If any provision hereunder is declared or held invalid, illegal, or unenforceable by a court of competent jurisdiction, this Agreement will be revised only to the extent necessary to make that provision legal and enforceable or, if impossible, the unaffected portions of this Agreement will remain in full force and effect so long as the Agreement remains consistent with the Parties' original intent.

9.21. Survival

Any terms, conditions, representations, or warranties contained in this Agreement that must survive termination or expiration of this Agreement to be fully effective will survive the termination or expiration of the Agreement, unless expressly provided otherwise in this Agreement. Additionally, no termination or expiration of the Agreement will affect the State's right to receive Services for which the State has paid before expiration or termination, but no subscription to a Service will continue beyond the period paid for before termination or expiration of the Agreement.

If any Service Attachment should expire or be terminated, the remaining portions of this Agreement will survive.

9.22. No Waiver

The failure of either party at any time to demand strict performance by the other Party of any terms or conditions of this Agreement may not be construed as a waiver of any of those terms or conditions, and either Party may at any time demand strict and complete performance by the other Party.

9.23. Order of Precedence

In the case of a conflict between the terms and conditions of this Master Cloud Services Agreement and those of a Service Attachment, the Master Cloud Services Agreement will prevail, unless the Service Attachment expressly provides otherwise. In any such case, the conflicting provision in the Service Attachment will be applicable only to that Service Attachment and then only to the Services thereunder that are intended to be covered by that provision.

9.24. Headings

The headings herein are for convenience only and are not intended to have any substantive significance in interpreting this Agreement.

9.25. Governmental Authorization, Regulatory Changes

This Agreement is subject to all applicable federal, state, and local laws, rules, orders, and regulations, and each Party must comply with all applicable federal, state, and local laws, rules, regulations, and orders in performing its obligations hereunder. To the extent any provision of this Agreement conflicts with any such law, rule, order, or regulation, such law, rule, order, or regulation will supersede the conflicting provision. The Service Provider may discontinue, limit, or impose additional requirements to the provision of Service, upon no less than 30 days written notice, if required to meet federal, state or local laws, rules, or regulations. But if any such action materially affects any Subscribing Entity's use of a Service, the Subscribing Entity may on written notice to the Service Provider terminate its use of the Service without an Early Termination Charge and receive a pro rata refund any amounts paid in advance for the Service.

9.26. Notices

Except as otherwise provided in this Agreement, all notices hereunder must be in writing and sent by (a) registered or certified mail, postage prepaid; (b) facsimile transmission; (c) overnight courier; (d) or email, upon confirmation of receipt. Alternatively, such notices may be hand delivered if confirmation of receipt is attained at delivery.

The State's address for notification is:

Department of Administrative Services

Office of Information Technology
Infrastructure Services Division
1320 Arthur E. Adams Drive, 3rd Floor
Columbus, Ohio 43221
Attention: Contract Manager

The Service Provider's address for notification is:

With a copy to:

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates indicated below.

SERVICE PROVIDER	**STATE OF OHIO, DEPARTMENT OF ADMINISTRATIVE SERVICES**
Signature	Signature
Scott Letourneau Printed Name	Robert Blair Printed Name
President Title	Director Title
7/29/13 Date	8/2/13 Effective Date
33-0888748 Federal Tax ID	

JOHN R. KASICH
GOVERNOR
STATE OF OHIO

Executive Order 2011-12K

Governing the Expenditure
of Public Funds for Offshore Services

WHEREAS, State of Ohio officials and employees must remain passionately focused on initiatives that will create and retain jobs in the United States in general and in Ohio in particular, and must do so especially during Ohio's continuing efforts to recover from the recent recession.

WHEREAS, allowing public funds to pay for services provided offshore has the potential to undermine economic development objectives in Ohio.

WHEREAS, the expenditure of public funds for services provided offshore may deprive Ohioans and other Americans of critical employment opportunities and may also undermine efforts to attract businesses to Ohio and retain them in Ohio, initiatives in which this State has invested heavily.

NOW THEREFORE, I, John R. Kasich, Governor of the State of Ohio, by virtue of the authority vested in me by the Constitution and the laws of this State, do hereby order and direct that:

1. No State Cabinet Agency, Board or Commission ("Executive Agency") shall enter into any contract which uses any public funds within its control to purchase services which will be provided outside the United States. This Executive Order applies to all purchases of services made directly by an Executive Agency and services provided by subcontractors of those providing services purchased by an Executive Agency.

2. This Executive Order will be personally provided, by the Director, Chair or other chief executive official of each Executive Agency, to the Chief Procurement Officer or other individual at that entity responsible for contracts for services.

3. The Department of Administrative Services, through Ohio's Chief Procurement Officer, shall have in place, by July 1, 2011, procedures to ensure all of the following:

    a. All agency procurements officers (APOs), or the person with equivalent duties at each Executive Agency, have standard language in all Executive Agency contracts which:

        i. Reflect this Order's prohibition on the purchase of offshore services.

ii. Require service providers or prospective service providers to:

1. Affirm that they understand and will abide by the requirements of this Order.
2. Disclose the location(s) where all services will be performed by any contractor or subcontractor.
3. Disclose the locations(s) where any state data associated with any of the services they are providing, or seek to provide, will be accessed, tested, maintained, backed-up or stored.
4. Disclose any shift in the location of any services being provided by the contractor or any subcontractor.
5. Disclose the principal location of business for the contactor and all subcontractors who are supplying services to the state under the proposed contracts.

b. All APOs confirm that all quotations, statements of work, and other such proposals for services affirm this Order's prohibition on the purchase of offshore services and include all of this Order's disclosure requirements.

i. Any such proposal for services lacking the affirmation and disclosure requirements of this Order will not be considered.
ii. Any such proposal where the performance of services is proposed to be provided at a location outside the United States by the contractor or any subcontractor will not be considered.

c. All procurement manuals, directive, policies, and procedures reflect the requirements of this Order.

d. All APOs have adequate training which addresses the terms of this Order.

4. Nothing in this Order is intended to contradict any state or federal law. In addition, this Order does not apply to:

a. Services necessary to support the efforts of the Department of Development to attract jobs and business to the state of Ohio;
b. Academic, instructional, educational, research or other services necessary to support the international missions of Ohio's public colleges and universities; or
c. Situations in which the Director of the Department of Administrative Services, or the Director's designee, shall determine that it is an emergency or that it is necessary for the State to waive some or all of the requirements of this Order. The Director shall establish standards by which Executive Agencies may request a waiver of some or all of the requirements of this Order and by which such requests will be evaluated and may be granted.

5. Executive Order 2010-09S is hereby rescinded.

I signed this Executive Order on June 21, 2011 in Columbus, Ohio and it will expire on my last day as Governor of Ohio unless rescinded before then.

John R. Kasich, Governor

ATTEST:

Jon Husted, Secretary of State

MASTER CLOUD SERVICES AGREEMENT

STANDARD AFFIRMATION AND DISCLOSURE FORM

EXECUTIVE ORDER 2011-12K

Governing the Expenditure of Public Funds on Offshore Services

All of the following provisions must be included in all invitations to bid, requests for proposals, state term schedules, multiple award contracts, requests for quotations, informal quotations, and statements of work. This information is to be submitted as part of the response to any of the procurement methods listed.

By the signature affixed hereto, the Service Provider affirms, understands and will abide by the requirements of Executive Order 2011-12K. If awarded a contract, both the Service Provider and any of its subcontractors will perform no Services requested under this Agreement outside of the United States.

The Service Provider will provide all the name(s) and location(s) where Services under this Agreement will be performed in the spaces provided below or by attachment. Failure to provide this information may subject the Service Provider to sanctions. If the Service Provider will not be using subcontractors, indicate "Not Applicable" in the appropriate spaces.

1. Principal location of business of Service Provider:

   222 N. Sepulveda Blvd Ste 2000 (Address) — El Segundo, CA 90245 (City, State, Zip)

   Name/Principal location of business of subcontractor(s):

   _____ (Name) — _____ (Address, City, State, Zip)

   _____ (Name) — _____ (Address, City, State, Zip)

2. Location where Services will be performed by Service Provider:

   222 N. Sepulveda Blvd, Ste 2000 (Address) — El Segundo, CA 90245 (City, State, Zip)

   Name/Location where Services will be performed by subcontractor(s):

   _____ (Name) — _____ (Address, City, State, Zip)

   _____ (Name) — _____ (Address, City, State, Zip)

3. Location where state data will be stored, accessed, tested, maintained or backed-up, by Service Provider:

Equinix, Inc	61 Segundo, CA, 90245
(Address)	(Address, City, State, Zip)

Name/Location(s) where state data will be stored, accessed, tested, maintained or backed-up by subcontractor(s):

(Name)	(Address, City, State, Zip)
(Name)	(Address, City, State, Zip)
(Name)	(Address, City, State, Zip)
(Name)	(Address, City, State, Zip)
(Name)	(Address, City, State, Zip)

Service Provider also affirms, understands and agrees that Service Provider and its subService Providers are under a duty to disclose to the State any change or shift in location of Services performed by Service Provider or its subcontractors before, during and after execution of any Agreement with the State. Service Provider agrees it will so notify the State immediately of any such change or shift in location of its Services. The State has the right to immediately terminate the contract, unless a duly signed waiver from the State has been attained by the Service Provider to perform the Services outside the United States.

On behalf of the Service Provider, I acknowledge that I am duly authorized to execute this Affirmation and Disclosure form and have read and understand that this form is a part of any Agreement that Service Provider may enter into with the State and is incorporated therein.

By: _____
Service Provider

Print Name: Scott Letourneau

Title: President

Date: 7/29/13