

**THIS MASTER CLOUD SERVICES AGREEMENT (“Agreement”)** is by and between Qualys, Inc. (“Service Provider”), having an office at 1600 Bridge Parkway, Redwood Shores, CA 94065, and the State of Ohio (“State”), through its Department of Administrative Services (“DAS”), having its principal place of business at 30 East Broad Street, 40<sup>th</sup> 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 Subscribing Entity 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 term 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 term.

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 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 address listed in Section 9.26.

In doing so, the Service Provider warrants that:

- i. 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.
- ii. such agreement specifically provides that it is for the benefit of the State as well as the Service Provider.
- iii. 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.
- iv. 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.
- v. 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, once annually, 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.

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.

Each Party will be responsible for any costs that are incurred for the audits by the respected Party.

#### **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**

All of Service Provider's prices, terms and conditions for the Services governed by this Agreement will at all times be equal, lower or more favorable to the State commensurate with those offered by Supplier for use and/or resale to any other similarly situated customer.

### **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 Administrator and the Service Provider's Account Manager (or equivalent) for resolution. For 15 days from receipt of the Dispute Notification ("Dispute Date"), the State's Contract Administrator 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 Administrator and the Service Provider's Account Manager are unable to resolve the dispute, the Parties will then submit the dispute to the State's Chief Operating Officer ("COO") and to the Service Provider's Sales Director (or equivalent) for resolution. For the next 15 days, the State's COO 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 State's COO 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.

The Services must also operate at the moderate level baseline as defined in the 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.

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 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 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 that is not cured within thirty (30) days of Service Provider's receipt of notice of such breach, 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.

EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SCANNER, SERVICE, REPORTS AND API ARE PROVIDED "AS IS," AND SERVICE PROVIDER EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ALL IMPLIED OR STATUTORY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ALL IMPLIED OR STATUTORY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUALITY, AND ACCURACY.

Without limitation to the foregoing, Service Provider makes no warranty that the Scanner, Service, Reports or API will be error-free, complete, free from interruption or failure, or absolutely secure from unauthorized access. Nor does Service Provider guarantee that the Scanner or Service will detect every vulnerability to The State's network. The State should not rely on a "Pass" designation in a Report or the statements of Service Provider personnel regarding a Card Program as an indication that The State's network is secure. No person, dealer, or company may alter this disclaimer of warranties

Note: Any terms and conditions that may be incorporated in a User Guide that conflicts with the MSA or SA, the MSA and SA will prevail.

## **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,
- 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,
- iv. because of the sensitive nature of performing security and compliance checks on Assets, The State represents and warrants that The State has full right, power, and authority to consent to have the Service test for vulnerabilities, compliance checking, or, as applicable, malware ("scan") the Assets identified to Service Provider for scanning, whether electronically or by any other means, whether at the time of initial Registration or thereafter, and
- v. The State may access the Service's user interface to reproduce solely for The State's own internal business purposes only such vulnerability, configuration checks and/or malware test results as set forth in the Reports.

A Subscribing Entity may not:

- i. intentionally make the Services available to anyone other than its employees and contractors acting on the State's behalf,
- ii. sell, resell, rent or lease the Services,
- iii. 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,
- iv. intentionally use the Services to store or transmit Malicious Code,
- v. intentionally interfere with or disrupt the integrity or performance of the Services or third-party data contained therein,
- vi. attempt to gain unauthorized access to the Services or their related systems or networks, or
- vii. reverse engineer, decompile, or disassemble the Scanner and any software that is embedded in or related to the Scanner or that provides the Service, or otherwise attempt to derive the processes by which the Service is provided or the Reports are generated.

The State will:

- i. be responsible for its compliance with this Agreement,
- ii. be responsible for the accuracy, quality and legality of its data and of the means by which it acquired that data,

- iii. 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, and
- iv. use the Services only in accordance with the applicable user guide, to the extent it is not inconsistent with this Agreement, and applicable laws and government regulations.

The State may not:

- i. intentionally make the Services available to anyone other than its employees and contractors acting on the State's behalf,
- ii. sell, resell, rent or lease the Services,
- iii. 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,
- iv. intentionally use the Services to store or transmit viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs ("Malicious Code"),
- v. intentionally interfere with or disrupt the integrity or performance of the Services or third-party data contained therein,
- vi. attempt to gain unauthorized access to the Services or their related systems or networks, or
- vii. reverse engineer, decompile, or disassemble the Scanner and any software that is embedded in or related to the Scanner or that provides the Service, or otherwise attempt to derive the processes by which the Service is provided or the Reports are generated.

### **3. Insurance, Indemnification, Limitation of Liability**

The policy must be endorsed to provide the State. Service Provider shall provide 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.

The quality of the insurance carriers and must identify this Agreement. All carriers must have at least an "A-" rating by A.M. Best.

See Exhibit A for Qualys Certificate of Liability Insurance.

### **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

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:

- i. was already in the possession of the Receiving Party without an obligation of confidence;
- ii. is independently developed by the Receiving Party, provided documentary evidence exists to support the independent development;
- iii. except as provided in the next paragraph, is or becomes publicly available without a breach of this Agreement;
- iv. is rightfully received by the Receiving Party from a third party without an obligation of confidence;
- v. is disclosed by the Receiving Party with the written consent of the Disclosing Party; or
- vi. 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 (iii) 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's Data, the Service Provider will immediately notify the affected Subscribing Entity(ies) and fully cooperate with the affected Subscribing Entity(ies) as it or they direct.

#### **4.3. Handling of Subscribing Entity's Data**

In case of an actual security breach that may have compromised Subscribing Entity's 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's 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's 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's 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.

#### **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's Data and of the means by which it acquired that Subscribing Entity's 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**

Service Provider shall provide to the State a thirty (30) day evaluation period, at no cost to the State, during which the State shall have the opportunity to evaluate the Service. The State shall be deemed to have accepted the Service if, upon finalization of the evaluation period, the State executes this Agreement. If the State experiences any performance issues during the thirty days, the evaluation period will be extended as needed until the State determines it is ready for acceptance.

#### **5.2. Service, Termination, or Modification**

All Orders for Service, as well as any termination of an Order or modification to an Order, including termination, must be made through the State's Ordering System. Therefore, the Service Provider must notify the State when an Order is received that was placed outside the State's Ordering System and the Service Provider will not accept the Order. If a Service Provider accepts an Order outside the State's Ordering System (after receiving notice from the State of the improper Order) 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.

## 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:

- i. the State may terminate this Agreement, the applicable Service Attachment(s), or the affected Order(s) under this Agreement;
- ii. 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
- iii. the State may file a complaint for damages with a court of competent jurisdiction in Ohio.

Upon termination or expiration (including non-renewal) of this Agreement or The State's subscription, The State will:

- i. cease all use of the Service, including any downloads of the Reports;
- ii. promptly and fully destroy, delete or uninstall any copy of the Software Image installed or copied by The State and certify such destruction, and
- iii. return all Hardware provided under this Agreement in substantially the same condition in which it was delivered to The State. Service Provider may terminate this Agreement at any time upon thirty (30) days' prior written notice if The State fails to pay any amounts due hereunder or breaches any other provision of this Agreement.

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 State terminates the Agreement for convenience as set forth above, The State will not receive any refund or credit for any unused portion of a subscription to the Service or any prepaid scanning fees because the Service is on a yearly basis.

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 State's Ordering System 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:

- i. name and address of the Service Provider as designated in this Agreement;
- ii. Federal Tax Identification Number of the Service Provider as designated in this Agreement;
- iii. invoice remittance address as designated in the Agreement; and
- iv. 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’s Service Level Agreement (SLA), which provides for service availability, response time, and service credits, is provided in the Service Attachment.

**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 State’s Ordering System, 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			
Service Provider Revenue Report	\$1,000.00	X 2%	\$20.00
State Expenditure Report	\$900.00		
Example 2			
Service Provider Revenue Report	\$800.00		
State Expenditure Report	\$1,000.00	X 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 – 39<sup>th</sup> 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 Administrator at the following address:

Department of Administrative Services  
Office of Information Technology  
Infrastructure Services Division  
1320 Arthur E. Adams Drive, 3rd Floor, Room 310  
Columbus, Ohio 43221  
Attention: Contract Administrator

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. Equipment Support Generally**

For any equipment used to provide the Services, remedial equipment maintenance by the Service Provider will be completed within eight business hours after notification by the Subscribing Entity that maintenance is required. In the case of preventative maintenance, the Service Provider will perform such in accordance with the manufacturer's published schedule and specifications. If maintenance is not completed within eight hours after notification by the Subscribing Entity, the Service Provider will be in default. Failure of the Service Provider to meet or maintain these requirements will provide the Subscribing Entity with the same rights and remedies as specified elsewhere in this Agreement for default, except that the Service Provider will only have eight hours to remedy a default. Nothing contained herein will limit the application of any credits for failure to meet any service level agreements in the applicable Service Attachment. The Service Provider will provide adequate staff to provide the maintenance required by this Agreement.

## **8.3. 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.

## **8.4. 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 24 hours a day, seven days per week (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.

## **8.5. Service Level Agreements**

See Service Attachments for Service Level Agreements

## **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:

- i. all statutory provisions under the ORC, including Section 126.07, have been met;
- ii. all necessary funds are made available by the appropriate State agencies;
- iii. if required, approval of this Agreement or the applicable Order is given by the Controlling Board of Ohio; and
- iv. 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.

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.

#### **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. 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.

#### **9.16. 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 must also must comply.

#### **9.17. 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.

#### **9.18. 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 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. Further, the Subscribing Entity may not add or require additional Terms as part of any authorized Order. 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.

#### **9.19. 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.

## **9.20. 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.

## **9.21. 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.

## **9.22. 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.

## **9.23. Headings**

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

## **9.24. 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.

## 9.25. Notices

Except as otherwise provided in this Agreement, all notices hereunder must be in writing and sent by:

- i. registered or certified mail, postage prepaid;
- ii. facsimile transmission;
- iii. overnight courier;
- iv. 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, Room 310  
Columbus, Ohio 43221  
Attention: Contract Administrator

The Service Provider's address for notification is:

Qualys, Inc.  
1600 Bridge Parkway  
Redwood Shores, CA 94065  
Attn: Legal Department

With a copy to:

**Signature Page to Follow**

IN WITNESS WHEREOF, the Parties have executed this Agreement which shall be effective on the date signed by the State, 'Effective Date.'

**QUALYS INC**

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Printed Name

  
\_\_\_\_\_  
Title

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Federal Tax ID

**STATE OF OHIO,  
DEPARTMENT OF  
ADMINISTRATIVE SERVICES**

  
\_\_\_\_\_  
Signature

Robert Blair/srd  
\_\_\_\_\_  
Printed Name  
DAS Director  
Assistant Director/State CIO  
\_\_\_\_\_  
Title

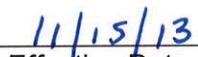
  
\_\_\_\_\_  
Effective Date

Exhibit A

		<b>CERTIFICATE OF LIABILITY INSURANCE</b>		<small>QUALYS INC</small> DATE (MM/DD/YYYY) 4/2/2012		
THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.						
IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).						
PRODUCER Technology - (650) 413-4200 Wells Fargo Insurance Services USA, Inc. - CA Lic#: 0D06408 999 Skyway Road San Carlos, CA 94070		CONTRACT NAME: Mande M. Loney PHONE (A/C, No. Ext): (650) 413-4200 FAX (A/C, No.): E-MAIL ADDRESS: Mande.Loney@wellsfargo.com		INSURER(S) AFFORDING COVERAGE INSURER A: Travelers Property & Casualty Co of America 25674 INSURER B: Travelers Indemnity Co. of Connecticut 25682 INSURER C: Travelers Property Casualty Co of America 25674 INSURER D: Axis Surplus Insurance Company 26620 INSURER E: INSURER F:		
INSURED Qualys, Inc 1600 Bridge Parkway, Suite 201 Redwood City CA 94065		CERTIFICATE NUMBER: 4103931 REVISION NUMBER: See below				
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
LINE	TYPE OF INSURANCE	DATE (MM/YY)	POLICY NUMBER	POLICY EFF. DATE (MM/YY)	POLICY EXP. DATE (MM/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> OCCUR <input type="checkbox"/> LOC		5305B048349 (Domestic Package)	04/01/2012	04/01/2013	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$ 1,000,000 MED EXP (Per one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPOP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-SCHEDULED AUTOS		BA5B052326	04/01/2012	04/01/2013	UNWRITTEN SINGLE LIMIT (Per accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
C	<input checked="" type="checkbox"/> UMBRELLA/EXCESS LIMS <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE RETENTION \$		CUP5B048349	04/01/2012	04/01/2013	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
C	WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/INSUREDS LEGAL (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	HJUB5B068372	04/01/2012	04/01/2013	<input checked="" type="checkbox"/> WC STAT-LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EAEMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Errors & Omissions Technology E&O Including Cyberability		ECN000060541201	04/01/2012	04/01/2013	\$10,000,000 Limit \$100,000 Retention
BRIEF DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required) Evidence of Coverage Only						
CERTIFICATE HOLDER Evidence of Coverage			CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 			

ACORD 25 (2010/05)

The ACORD name and logo are registered marks of ACORD

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(This certificate replaces certificate #102861 issued on 4/03/12)

Exhibit A



CERTIFICATE OF LIABILITY INSURANCE

DUALING

DATE (MM/DD/YYYY)  
4/2/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Technology - (650) 413-4200 Wells Fargo Insurance Services USA, Inc. - CA Lic#: 0D08406 959 Skyway Road San Carlos, CA 94070	<b>CONTACT NAME:</b> Mandee M. Loney <b>PHONE (A/C No., Ext.):</b> (650) 413-4200 <b>FAX (A/C No.):</b> <b>E-MAIL ADDRESS:</b> Mandee.Loney@wellsfargo.com
	<b>INSURER A:</b> Traveler's Property & Casualty Co of America <b>INSURER B:</b> Travelers Indemnity Co. of Connecticut <b>INSURER C:</b> Travelers Property Casualty Co of America <b>INSURER D:</b> Axis Surplus Insurance Company <b>INSURER E:</b> <b>INSURER F:</b>

**COVERAGES**      **CERTIFICATE NUMBER:** 4163931      **REVISION NUMBER:** See below

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

LINE	TYPE OF INSURANCE	ADDITIONAL CODES (W/O)	POLICY NUMBER	POLICY EFF. DATE	POLICY EXP. DATE	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GENE. AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PER-ACCIDENT <input type="checkbox"/> LOG		6305B048349 (Domestic Package)	04/01/2012	04/01/2013	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & A&O INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPLY AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> UNLICENSED AUTOS		BA5B052326	04/01/2012	04/01/2013	COVERED SINGLE LIMIT (Per accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<input checked="" type="checkbox"/> UMBRELLA/LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> RETENTION \$ <input checked="" type="checkbox"/> CLAIMS-MADE		CUP5B048349	04/01/2012	04/01/2013	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROVISIONS IN THE EXECUTIVE OFFICERS' POLICY ARE EXCLUDED (Not necessary in NR) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A	HJUB58088372	04/01/2012	04/01/2013	<input checked="" type="checkbox"/> NO STATUTORY LIMITS <input type="checkbox"/> TOW-PR E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Errors & Omissions Technology E&O Including Cyberliability		ECN00060541201	04/01/2012	04/01/2013	\$10,000,000 Limit \$100,000 Retention

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
Evidence of Coverage Only

<b>CERTIFICATE HOLDER</b> Evidence of Coverage	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 